



Promoting fair and effective criminal justice

6. Incident management¹

Issues/rules covered:

- Safety and security (Rule 1 last sentence)
- Complaints (Rule 56 and 57(1))
- Protection against reprisals (Rule 57(2) and (3))
- Cases of death or serious injury (Rules 68, 69, 70, 72)
- Investigations (Rule 71)
- Use of force (Rule 82, Basic Principles on Use of Force and Firearms)

Safety and security

The last sentence of Rule 1 establishes the general principle that safety and security must be ensured at all times, as well as respect for prisoners' inherent dignity and value as human beings. It calls for a balance between the two principles.

The Essex group affirmed that personal safety in prisons underpins the SMR as a whole and is essential to upholding human dignity. The duty to maintain safety is inextricably linked to other provisions such as: the use of force and restraints, searches, the prevention of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment), and the protection of prisoners at risk of discrimination or abuse. It is well documented that a lack of safety and security in prisons can lead to grave threats to the life and dignity of prisoners.² A loss of safety undermines dignity, but measures intended to maintain safety must also uphold the right to dignity.

Both the UN Special Rapporteur on Torture and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions have pointed out that 'the State assumes a heightened duty of protection by severely limiting an inmate's freedom of movement and capacity for self-defence'.³ The Inter-American Commission on Human Rights has also maintained that the state has particular obligations to protect the dignity of prisoners, their life, health, personal integrity and other rights.⁴

Prison authorities therefore need to act with due diligence in both the prevention of, and response to risks. The due diligence principle implies periodic assessments of risks and

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

² Open-Ended Intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners, *Second Report of Essex Expert Group on the Review of the Standard Minimum Rules for the Treatment of Prisoners, prepared by Penal Reform International/Essex University*, 20 March 2014, UNODC/CCPCJ/EG.6/2014/NGO.7, para. 5 (Essex 2).

³ UN General Assembly, 61st Session, *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General*, 5 September 2006, A/61/311, para.51.

⁴ 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 293 (*IACHR Report on Persons Deprived of Liberty*) (citing Report No. 118/10, Case 12.680, Merits, *Rafael Arturo Pacheco Teruel et al.*, Honduras, October 22, 2010, para. 63).

safeguards. Safety and security should inherently be key performance targets in a prison system.

The SMR acknowledge the importance of the safety of prison staff, and recognise it also as a right. If prison staff are not safe, it is difficult for them to provide for the safety of prisoners.

Scope/meaning of safety and security

There may not be a clear differentiation between the terms ‘safety’ and ‘security’ (used in Rule 1). Prison security may be used more often to describe infrastructural aspects such as the means by which escapes are prevented, while safety refers more frequently to the physical safety of individuals in prison.

The Essex group emphasised that the concept of safety and security is not limited to the external perimeters of the prison, but encompasses a number of components. It requires prison administrations to take proactive measures to prevent and protect prisoners and staff from risks to their safety and security such as inter-prisoner violence, self-harm and suicide and risks arising from the prison estate and its management, such as fires and floods.⁵

The principle applies to prisoners as well as prison staff, visitors and any other persons within the prison walls. It entails:

the protection of:

- prisoners
- staff
- visitors
- service providers in prisons such as healthcare personnel, social workers, etc
- children staying in prison with their parent;

and protection from:

- abuse of prisoners by staff and vice versa
- inter-prisoner violence
- self-harm and suicide
- escape (security of external perimeters)
- illegal items such as harmful drugs, weapons, etc.
- infrastructural risks including fire safety
- natural disasters such as floods, hurricanes, mudslides, etc.

The experts discussed the significance of the wording ‘at all times’ in Rule 1 and noted that it means 24 hours (day and night), from admission to prison through to release, including during any transfer of prisoners. For prison staff, the principle applies during the entire time of their duties.

The experts emphasised that the protection of prisoners from inter-prisoner violence is a key component of ensuring safety in prison and a human rights obligation. As a report of the Secretary-General has noted, acquiescence in inter-prisoner violence is not simply a breach of professional responsibilities but amounts to consent or acquiescence in torture or other ill-treatment’.⁶ The duty to prevent inter-prisoner violence has also been recognised as a

⁵ *IACHR Report on Persons Deprived of Liberty*, OEA/Ser.L/V/II.Doc 64, para. 51 (citing the decision of the Inter-American Court of Human Rights in *Case of Neira Alegria et al v Peru*, judgment of 19 January 1995, Series C No. 20, para. 60, which found that ‘since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners’).

⁶ UN General Assembly, 68th Session, *Human rights in the administration of justice: analysis of the international legal and institutional framework for the protection of all persons deprived of their liberty: Report of the Secretary-General*, 5 August 2013, A/68/261, para 49 (*Human rights in the administration of justice*). Separately, the UN

component inherent in the safety of prisoners in the Bangkok Rules⁷ and the European Prison Rules.⁸

Inter-prisoner violence involves a wide range of phenomena from subtle forms of harassment to unconcealed intimidation and serious physical attacks.⁹ In a prison environment where verbal abuse, harassment on racist or tribal grounds, theft, or exploitation are widespread, prisoners will be tempted to use force to defend their interests. The protection of prisoners from all forms of victimisation is therefore in the vital interest of prison staff.

It was stressed that safety and security is jeopardised in overcrowded prisons, alongside its negative impact on the conditions of detention overall. The Inter-American Commission on Human Rights has described the correlation, stating that 'the general context and the causes that give rise to the acts of violence are fundamentally the same: a general situation of inhumane conditions of detention characterized mainly by considerable overcrowding'.¹⁰ A report of the UN Secretary General concluded that 'overcrowded cells in prisons foster the development of an offender subculture, which is difficult for prison staff to control'.¹¹

- See Chapter 4, Healthcare – suicide prevention and prevention of self-harm
- See Chapter 3, Contact with the outside world – transfers/transport

Measures to ensure safety and security

The Essex group noted that prison security is usually associated with physical means, particularly walls, bars, watch towers and alarm systems, but in fact encompasses a whole range of measures, including:

- architectural aspects
- infrastructural safety, alarm systems and evacuation plans in case of fires and other emergencies
- exercise of control
- separation of prisoners
- classification, risk and needs assessments
- dynamic security, early warning systems and conflict resolution tools, such as mediation
- periodic safety assessments and security audits.

Architecture and technology

The Essex group did not discuss issues around architecture but referred to specialised literature such as the *Technical Guidance for Prison Planning*, published by UNOPS in

Special Rapporteur on Torture recalls that inter-prisoner violence may amount to torture or other ill-treatment if the State fails to act with due diligence to prevent it (in UN Human Rights Council, 13th Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Kazakhstan*, 16 December 2009, A/HRC/13/39/Add.3, para. 28). See also 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. 48 (*Special Rapporteur on Torture report 2013*).

⁷ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, 2011, Preliminary observations para.9.

⁸ *European Prison Rules*, 2006, Rule 52(2): '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'.

⁹ 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. 27 (*CPT 11th General Report*).

¹⁰ 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, paras.103-106.

¹¹ *Human rights in the administration of justice*, para.49.

2016.¹² Architectural measures to protect prisons from external attacks have also been provided in a handbook published by UNODC.¹³

Security equipment includes bars, doors and watchtowers, but also technology such as x-rays, metal detectors, radios, alarm systems, etc. Basic Principle 2 of the Basic Principles on the Use of Force and Firearms requires that law enforcement, a term that includes prison officers, should be 'equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind'.

The experts noted that new technologies have provided new tools, but also prompted new challenges for prison administrations in terms of safety. For example, drones are being used to smuggle drugs or phones into prison. New solutions will have to be developed to address such threats, including edificial measures without jeopardising natural light etc. (See also below on body cameras.).

Comparative research was noted, according to which 'unit management'¹⁴ has a positive impact on security and provides a good setting for rehabilitation and counselling programmes, without greater spending on buildings or staffing. The concept implies that multi-disciplinary teams deliver services in each unit, with individual team members being responsible for both security and prisoner development outcomes.¹⁵

Infrastructural safety

The safety and security principle also includes infrastructural safety, for example, with regard to the condition of the prison estate (e.g. dilapidated buildings), the risks arising from prisoners' belongings, fire hazards (e.g. smoking or use of unauthorised electrical equipment such as cooking stoves and non-fire resistant/proof mattresses) as well as procedures and evacuation policies in case of fire¹⁶ or natural disaster (e.g. floods, storms, mudslides, etc.).¹⁷ The Inter-American Commission has emphasised the obligation to maintain safe electrical installations.¹⁸ The Essex group noted that risks from poor infrastructure and an absence of procedures in cases of emergency tend to be overlooked and expressed their concern over situations where prisoners have been left in prison in life-threatening situations.

The relevance of prison design was noted as a factor to improve safety in this regard, with the floor plan of any facility aiding or hindering speedy evacuation, edificial layouts that help prevent fire spreading, the location of fire alarms and extinguishing equipment, as well as escape routes, exits and evacuation areas. The UNOPS *Technical Guidance for Prison*

¹² 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*).

¹³ United Nations Office on Drugs and Crime (UNODC), *Handbook on Dynamic Security and Prison Intelligence*, New York, 2015, pp. 11-12 (*Handbook on Dynamic Security*); UNODC, *Handbook on the Management of High-Risk Prisoners*, New York, 2016, pp. 64-65.

¹⁴ The term refers to a prison that is broken down into units, each of which may contain a number of prisoner accommodation sections and static posts. Multi-disciplinary teams of staff consist of disciplinary officials, educationalists, social workers, psychologists, religious care workers and nurses.

¹⁵ *Handbook on Dynamic Security*, p. 35.

¹⁶ Inter-American Commission on Human Rights, *Report of the Inter-American Commission on Human Rights on the Situation of Persons Deprived of their Liberty in Honduras*, 18 March 2013, OEA/Ser.LN/II.147 (*IACHR Report on Honduras*). The Commission reported on a number of fires resulting in alarming numbers of fatalities amongst prisoners, e.g. in Argentina, Chile, the Dominican Republic, Uruguay, El Salvador and Panama: see IACHR press releases 33/05, 55/07, 120/10, 8/05, 68/10, 112/10 and 2/11.

¹⁷ For example, a report published by the American Civil Liberties Union documents the lack of emergency planning at the Orleans Parish Prison which during Hurricane Katrina resulted in thousands of individuals being trapped. See American Civil Liberties Union, *Abandoned & abused: Orleans Parish Prisoners in the Wake of Hurricane Katrina*, Washington DC, August 2006.

¹⁸ *IACHR Report on Persons Deprived of Liberty*, para 293 (citing the Report No. 118/10, Case 12.680, Merits, *Rafael Arturo Pacheco Teruel et al.*, Honduras, October 22, 2010, para. 63).

Planning notes that '[w]hen considering fire safety and evacuation for the prison, outdoor yards can provide a contained space close to accommodation areas where prisoners can be evacuated until the emergency is resolved'.¹⁹

It was stressed that proper equipment needs to be available to react to emergencies and that prison personnel must be trained in evacuation procedures and first aid.²⁰ This implies evacuation plans, which need to be included in prison safety audits. Analysing a number of mass casualties due to fires in Latin America, the Inter-American Commission on Human Rights concluded the main causes were 'overpopulated prisons in a state of physical disrepair' and the lack of protocols to dealing with these situations even though the risks were known to the authorities.²¹

The experts discussed that prison administrations may be reluctant to share evacuation plans with prisoners. However, good practice from the UK was referred to where posters give detailed information on fire drills and evacuation procedures to prisoners.

The experts highlighted that alarm systems must take into account the local context. For example, they must not rely on electric power if power supply is a problem in the respective country or region, and alternative systems or a back-up generator must be available in such cases. Examples of fire alarm systems are provided in the UNOPS *Technical Guidance*.²²

Effective control over the prison population

The Essex group emphasised that in order to ensure safety and security in prisons, prison authorities must exercise effective control over the prison population.²³ Prisons monitored only at the perimeters give rise to grave threats to the safety of prisoners, as highlighted by the Inter-American Commission on Human Rights, for example:

'[T]he fact that the State exercises effective control of the prisons implies that it must be capable of maintaining internal order and security within prisons, not limiting itself to the external perimeters of the prisons. (...) It is not admissible under any circumstance for the prison authorities to limit themselves to external or perimeter surveillance, leaving the inside of the facilities in the prisoners' hands. When this happens, the State puts the prisoners at permanent risk, exposing them to violence in the prison and to the

¹⁹ *Technical Guidance for Prison Planning*, p. 99.

²⁰ *IACHR Report on Persons Deprived of Liberty*, para 293 (citing the Report No. 118/10, Case 12.680, Merits, *Rafael Arturo Pacheco Teruel et al.*, Honduras, October 22, 2010, para. 63).

²¹ *IACHR Report on Persons Deprived of Liberty*, para. 292.

²² *Technical Guidance for Prison Planning*, p. 36.

²³ UN Committee against Torture, 46th session, *Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 3 February 2011, CAT/C/46/2, para. 57: 'It is axiomatic that the State party remains responsible at all times for the safety and well-being of all detainees and it is unacceptable for there to be sections of institutions which are not under the actual and effective control of the official staff.'

Special Rapporteur on Torture report 2013, A/68/261, para. 49: 'The fundamental role of authorities to exercise effective control over places of deprivation of liberty and ensure the personal safety of prisoners from physical, sexual or emotional abuse should be further strengthened as one of the most important obligations (see the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, para. 9, and the European Prison Rules, rule 52.2). In this respect, preventive measures include increasing the number of personnel sufficiently trained in using non-violent means of resolving conflicts'. Also see UN Committee Against Torture, 47th Session, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture: Bulgaria*, 14 December 2011, CAT/C/BGR/CO/4-5, para.23 (c), and UN Human Rights Council, 7th Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum: Mission to Paraguay*, 1 October 2007, A/HRC/7/3/Add.3, para.90 (t). These cover the prompt and efficient investigation of all reports of inter-prisoner violence and prosecuting and punishing those responsible; and offering protective custody to vulnerable individuals without marginalizing them from the prison population more than is required for their protection.

*abuses of other more powerful prisoners or the criminal groups that run such prisons.*²⁴

The experts noted problems in many countries due to self-governance or 'shared governance' where prison management is left too much, often even entirely, to prisoners. Human rights bodies have documented, for example, hierarchies of cell and yard bosses left in charge of day-to-day management, including entry to the prison compound and cells, enjoying considerable privileges in their detention conditions.²⁵ Other reports document prisoners deciding on who would receive or be denied medical care;²⁶ or discipline and protection of detainees delegated to privileged detainees who, in turn, 'use this power to their own benefit'.²⁷

Rule 40, which remained unchanged by the review, does not rule out systems based on self-governance, but specifies its limitation to 'social, educational or sports activities'. It also clarifies that this ought to take place 'under supervision' and that disciplinary functions must never be entrusted to prisoners.

The UN Subcommittee on Torture, the UN Special Rapporteur on Torture, as well as the Inter-American Commission on Human Rights, have all emphasised concerns about self-governance of prisoners in cases where it exceeded these boundaries. All bodies emphasised the prohibition of self-governance in prisons as enshrined in the SMR.²⁸ Some have also highlighted the link to corruption, stating that corruption was 'evidenced by the almost complete control of certain places of detention by organised criminal groups'.²⁹ The experts noted that in an atmosphere of corruption it is likely that dangerous goods will be brought into prison in exchange for bribes, undermining safety and security.

Adequate prisoner-staff ratio

The Essex group highlighted that the ability to exercise effective control is intrinsically linked to the availability of sufficient resources, in particular an adequate staff-prisoner ratio (day and night). It requires qualified and well-trained staff (see Rules 74-80).³⁰ (See Chapter 2, Prison management.)

The experts noted that adequate numbers of staff need to be present at all times, including overnight. Incidents often occur during the night, a time when usually there are fewer staff on duty and often also more junior staff members.

Separation and classification

The Essex group recalled that the separation of prisoners (Rule 11) is one means of providing safety. The separation of women from men, and of juveniles from adults makes it easier to care for their specific needs, but it is also a key measure to protect them from

²⁴ IACHR Report on Persons Deprived of Liberty, para. 53.

²⁵ 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. 59 (SPT Report on visit to Mali).

²⁶ IACHR Report on Persons Deprived of Liberty, para. 540. See also para. 583, stressing that relatives and others visits in correctional facilities run by systems of 'self-governance' or 'shared governance' were directly exposed to kidnapping, extortion, acts of forced prostitution, and all types of abuse and assault perpetrated by those who *de facto* exercise control in these prisons.

²⁷ Special Rapporteur on Torture report 2013, A/68/295, para. 47.

²⁸ Special Rapporteur on Torture report 2013, A/68/295, para. 47. SPT Report on visit to Mali, CAT/OP/MLI/1, para. 61.

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 Brazil, 5 July 2012, CAT/OP/BRA/1, para. 57 (SPT Report on visit to Brazil).

³⁰ See also 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).

violence and exploitation, including sexual violence.

Classification and risk assessments of prisoners are another key tool, seeking to differentiate levels of security applied for different prisons and prisoners.

→ For more detail on classification and risk assessments, see Chapter 2, Prison management

Diligent file management

The Essex group stressed the importance of proper prison file management as a tool for ensuring safety and security. Documentation of classification and risk assessments, behaviour and discipline and the imposition of any disciplinary sanctions (Rule 8(b), (c) and (e)) ensures that where there are staff changes or the transfers of prisoners to other facilities, relevant information is available about risks associated with each individual prisoner.

Dynamic security and conflict prevention

Lessons learned over the last 60 years include the acknowledgement 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.

→ For further detail, see Chapter 2, Prison Management.

Restrictions, discipline, sanctions and searches

→ On searches, see also Chapter 1

→ On disciplinary measures and procedures, see also Chapter 5.

The Essex group noted the role of fair and transparent disciplinary rules for the safety and security inside prison. However, they emphasised the effectiveness of a system of incentives and recommended that prison managers make more use of positive motivation as compared to disciplinary sanctions.

Searches of prisoners, visitors and staff were discussed in relation to the prevention of dangerous items being brought into prison (Rules 50-52 and 60), but it was noted the risk searches may have on the right to human dignity. The Inter-American Principles and Best Practices provided examples of measures to prevent violence against – or between – persons deprived of liberty, and call on prison staff to:

‘Effectively prevent the presence of weapons, drugs, alcohol, and other substances and objects forbidden by law, by means of regular searches and inspections, and by using technological and other appropriate methods, including searches to personnel.’³¹

The experts highlighted that safety and security require clear and transparent prison rules, with rights and obligations that are made known to the prisoners upon admission and which they have access to and understand (see Rules 54, 55).

While staff must enforce discipline as a means of maintaining order, Rule 36 also makes clear that discipline must operate ‘with no more restriction than is necessary’. Methods of delivering safety based on incapacitation alone – for example, through universal lockdowns,

³¹ Principle XXIII (1d) of the Principles and Best Practices on the Protection of People Deprived of Liberty in the Americas.

or excessive use of force – are ineffective and unlikely to deliver a safer environment.

‘Member States have to ensure that prisons are secure, safe and well-ordered but are not run in an oppressive or brutal manner. It is the duty of the prison authorities to implement the sentence of the court, not to impose additional punishment. The term ‘firmness’ in Rule 27 of the SMRs is not to be confused with harshness, but should be understood to mean consistency and fairness in all measures that aim to establish good order and in all disciplinary procedures. On the same basis, firmness should never be understood to imply the use of unnecessary force, the strict limitations of which are explained in Rule 54 of the SMRs.’³²

The UN Subcommittee on Prevention of Torture, for example, observed that ‘the increasingly strict prison regime, lack of employment opportunities, lost parole, long hours of lock down, etc., may have a bearing on increased levels of violence’.³³

Training of prison staff

Training specifically on issues relating to safety and security are captured in Rule 76(1c), and it is noted that, ‘at a minimum’, training shall include the concept of dynamic security as well as ‘the use of force and instruments of restraint, and the management of violent offenders’, with due consideration given to ‘preventive and defusing techniques, such as negotiation and mediation’. Rule 75(3) clarifies that training courses need to be provided not only prior to entering service, but continuously ‘with a view to maintaining and improving the knowledge and professional capacity’ of personnel. Rule 82(2) further notes that ‘prison staff shall be given special physical training to enable them to restrain aggressive prisoners’.

In order to implement the SMR, in particular on proportionate use of force, arms and restraints, it is vital that prison staff are trained on non-violent means of resolving conflicts, and receive practical training on a range of use of force techniques, from empty hand techniques³⁴ to the use of weaponry, to ensure that they are able to use no more force than is strictly necessary. Training should include explicit emphasis on human rights, and how to operationalise human rights. It should also include material on the risks and human rights concerns associated with the use of particular weapons/force options. As some use of force options and techniques pose a greater risk than others, training should ensure that officers are given a level of training commensurate with the complexity of the technique in question, and the risks it may pose.

Training should incorporate real life scenarios, practical exercises and scenario-based assessments, ensuring that officers can practically use the skills they have been taught and respond to a range of different circumstances.

Delivering detailed modules on the following aspects was mentioned as a good practice: avoiding danger, conflict prevention, defusing the situation, controlling the situation, necessity, guidance on decision whether use of force is necessary, reasonability in the circumstances, and using the least amount of force possible.³⁵

³² Open-Ended Intergovernmental Expert Group on The Standard Minimum Rules for the Treatment of Prisoners, *Working paper prepared by the Secretariat*, Buenos Aires, Argentina, 6 November 2012, UNODC/CCPCJ/EG.6/2012/2.

³³ 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. 35 (*SPT Report on visit to New Zealand*).

³⁴ ‘Empty hand techniques’ is an umbrella term used to refer to force that is inflicted without any kind of weapon or equipment. This can include, for example, punches, kicks, ground pins, strikes and pressure point techniques.

³⁵ HM Prison Service, *Prison Service Order 1600: Use of Force*, London, 2005 (amended 2015).

Regular system assessments

Implementation of safety and security also implies that prison administrations take a step back from the daily management of the prison to reflect, identify and resolve challenges and recurring issues in relation to safety and security. Periodic assessments enable the prison administration to identify questions of a systemic nature that require regulation or intervention by central authorities and that should be dealt with by those responsible for the prison system as a whole.³⁶

The importance of periodic reassessments of fire safety specifically has been highlighted by the Inter-American Commission on Human Rights which recommended that the fire department should be requested to 'periodically inspect and deliver assessments on the appropriateness of the fire safety and prevention measures' to prisons 'nationwide'.³⁷

Meaningful activities and mental health

Occupying prisoners' time with purposeful activity serves not only the rehabilitative purpose of imprisonment, but also reduces risks of violence. It has been established that meaningful activities keep prisoners engaged and channel their energy into constructive activities, 'reducing their motivation to engage in disorder'. At the same time such programmes allow prison staff to establish positive relationships with prisoners and contributes to dynamic security.³⁸

Rule 4(2) recalls the rehabilitative purpose of imprisonment and calls on prison administrators to offer education, vocational training and work.

The European Committee to Prevent Torture (CPT), for example, has stressed the importance of a 'satisfactory programme of activities (...) as diverse as possible (education, sport, work of vocational value, etc.)', including and in particular in high security units, stating that '[i]t can do much to counter the deleterious effects upon a prisoner's personality of living in the bubble-like atmosphere of such a unit'.³⁹

Use of force and arms

The Essex group noted that guidance in the revised SMR on the use of force and arms remains limited as this area was not updated in the course of the review. It is noteworthy that the only provision relating to the use of force and to arms is contained in the section on 'institutional personnel' rather than in any of the substantive sections.

However, the SMR are supplemented by the Code of Conduct for Law Enforcement Officials,⁴⁰ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF).⁴¹ Both of these instruments enshrine the requirements of prescription by

³⁶ See also UNODC, *Handbook on prisoner file management*, New York, 2008, p. 44, on the importance of processes and procedures to 'monitor the performance of various components of the organization in helping achieve the strategic objectives of the institution'.

³⁷ *IACHR Report on Honduras*, para. 162 (10), page 62.

³⁸ *Handbook on Dynamic Security*, pp. 38-39.

³⁹ *CPT 11th General Report*, CPT/Inf (2001) 16, para. 47.

⁴⁰ Article 3 of the Code states that 'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty'. The Commentary elaborates on the exceptionality and proportionality, stating that '[i]n no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved'.

⁴¹ In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term 'law enforcement officials' includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

law, necessity and proportionality and call on law enforcement⁴² to, 'as far as possible, apply non-violent means'.

The use of force and restraints is documented as a high risk situation for ill-treatment of prisoners, and 'as such call[s] for specific safeguards'.⁴³

The experts noted that often the use of force, restraints and arms (including firearms) are linked, and recommended that more guidance is compiled on their use in a prison context, which should describe examples of legitimate and illegitimate use. They also recommended more guidance to clarify ambiguous terms such as 'arms' and 'passive physical resistance'.

While a distinction is often made between the use of force, arms, firearms and restraints, and specific standards are applicable to them, a number of principles apply to all uses of force and other coercive measures. These are:

- principle of legality
- principle of necessity
- principle of proportionality
- relevance of classification, prisoner file management, conflict prevention and dynamic security
- documentation of use
- training
- accountability.

In order to be permissible the use of force or arms must be 'used only in exceptional circumstances, when strictly necessary as specified by law'.⁴⁴ The experts recommended policy-makers provide written regulations setting out which different force options can (and cannot) be used, the criteria for their deployment and the risks that accompany their use. Providing clear guidance on different use of force options has been shown to influence significantly their use in practice.⁴⁵

The principle of necessity means that force or arms should be used 'only when less extreme means are insufficient' to achieve the objective. Basic Principle 4 of the BPUFF states that law enforcement officials shall 'as far as possible, apply non-violent means before resorting to the use of force and firearms' and may use them 'only if other means remain ineffective or without any promise of achieving the intended result'. Basic Principle 5 uses the term 'unavoidable',⁴⁶ and the Special Rapporteur on Torture refers to the concept of 'last resort'.⁴⁷

The experts stressed that factors such as a sufficient prisoner-staff ratio and adequate training of officers play a role when determining the necessity of such an intervention. They further recalled the relevance of conflict prevention and mediation as alternatives to physical intervention.⁴⁸

⁴² The term 'law enforcement officials' includes 'all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention' (See note 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which refers to the same definition in the commentary to article 1 of the Code of Conduct for Law Enforcement Officials).

⁴³ 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. 53 (*CPT 2nd General Report*).

⁴⁴ *Special Rapporteur on Torture report 2013, A/68/295*, para. 58.

⁴⁵ For example, when the Dallas Police implemented a more 'restrictive' policy on conducted energy weapons, the use of these weapons 'dropped significantly' (Stephen Bishopp, David Klinger and Robert Morris, 'An Examination of the Effect of a Policy Change on Police Use of TASERS', *Criminal Justice Policy Review*, Vol. 26 No. 7, October 2015, p. 737)

⁴⁶ Basic Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴⁷ *Special Rapporteur on Torture report 2013, A/68/295*, para. 58.

⁴⁸ Rule 38(2) in this context as it encourages, 'to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism' (although in the context of disciplinary measures), and of Rule 76(c)

The experts noted that the use of force, arms and/or restraints may increase rather than decrease the number and severity of incidents. As captured in the 2010 *Survey of the UN and other best practices in the treatment of prisoners in the criminal justice system*:

*'Excessive security and control can, at its worst, lead to a sense of injustice and increase the risk of a breakdown of control and of violent or abusive behaviour.'*⁴⁹

Thirdly, the use of force or other coercive means need to meet the test of proportionality. Basic Principle 5 describes that where the use of force is 'unavoidable, law enforcement officials shall (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved', and should '(b) minimise damage and injury (...)'.⁵⁰

While the extent of a threat and impact of a counter-measure may be difficult to predict, the experts noted that compared to police who have to make assessments in respect to entirely unknown individuals, prison staff do have information about the individuals in their custody. In fact, proper classification of prisoners, file management and dynamic security all contribute to allowing an assessment of which measure is adequate (proportionate) in resolving the situation with minimal or no use of force.

In this context, the experts recalled Basic Principle 2, which requires law enforcement agencies to 'develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms'. These should include the development of non-lethal incapacitating weapons for use in appropriate situations.

The principle also implies that the use of force or arms must be ceased as soon as it is not necessary or proportionate any longer (i.e. it is used for the shortest possible time).⁵⁰

The importance of documentation was emphasised as another general principle for both the use of force and arms, in order to enable a review of its application and to ensure accountability.⁵¹ Good practice from the UK was mentioned where a report is filed each time any arm, including a baton, is even drawn. It was also highlighted that medical personnel should examine prisoners after every use of force or arms.⁵²

The experts mentioned the benefits of closed circuit television (CCTV) and body cameras, especially those recording the use of arms, as they allow for accountability and have been found to reduce their use.

The importance of training was emphasised, as well as the need to review training programmes and operational procedures in light of particular incidents.

→ For more detail on training, see above; see also Chapter 2, Prison management

which encourages the use of the concept of dynamic security. (See Chapter 2, Prison management – Dynamic security and conflict prevention.)

⁴⁹ 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. 45. See also studies on prison populations which have found that those inmates who have had force used upon them in the past are 'more likely to engage in assaultive and other rule violating behaviour' once in prison (for example, Charles Klahm, Benjamin Steiner and Benjamin Meade, 'Assessing the Relationship between Police Use of Force and Inmate Offending (Rule Violations)', *Crime and Delinquency*, 17 November 2014).

⁵⁰ See, for example, *CPT 2nd General Report*, [CPT/Inf (92) 3], para. 53

⁵¹ See, for example, *CPT 2nd General Report*, para. 53, stating that 'a record should be kept of every instance of the use of force against prisoners'.

⁵² See, for example, *CPT 2nd General Report*, para. 53

The experts noted that wherever new methods or devices are deployed, prison staff are keen on using them. They also highlighted that carrying a weapon may enhance security, but it could also threaten it if it undermines the creation of an institutional culture which supports a rehabilitative rather than a punitive approach, and emphasises conflict prevention over repression.

Lastly, the experts highlighted the need for accountability, as also expressed in Rules 22-26 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the link to effective complaints mechanisms as well as external, independent monitoring.

→ For more on complaints, see below; see also Chapter 2, Prison management – inspection and external monitoring

Use of force

The Essex group noted that Rule 82 has not been updated in the course of the review and that its interpretation needs to draw on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) and the Code of Conduct on Law Enforcement Officials.

Accordingly, situations of ‘self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations’ described in Rule 82(1) only make the use of force permissible if and when it is also necessary and proportionate⁵³ (for detailed guidance on these principles, see above).

The experts noted a divergence between Rule 82 and Basic Principle 15 of the BPUFF. The latter states that force shall not be used ‘except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened’.

Concern was expressed over the ambiguity of the term ‘passive physical resistance’ in Rule 82(1). The experts discussed possible cases where this might apply and noted that the term could refer to instances where prison staff seek and fail to enforce an order, but emphasised that not every case of resistance to an order would render the use of force permissible. The experts felt that the term must not be interpreted too broadly and recommended the provision be clarified with concrete examples.

Use of arms

Provisions on the use of arms in the revised SMR remain limited to the provision of Rule 82(3), according to which prison staff performing duties in direct contact with prisoners should not be armed. The Essex group noted that officers guarding the external walls of a prison often carry firearms, yet would not be performing duties in direct contact with prisoners at the same time, and therefore should hand in their arms before they do.

The Essex group noted ambiguity of the terms ‘arms’ and ‘armed’, which applies not only to conventional firearms, but to the full range of weaponry with which prison officials are equipped.⁵⁴ Varying from one correctional setting to another, such arms can include batons, electrical discharge weapons (EDW), irritant sprays (e.g. pepper spray), kinetic impact weapons (e.g. so called ‘rubber bullets’), canines, – or even ‘ceremonial arms’ (e.g. whips).

⁵³ Rule 82 (1) emphasises the proportionality aspect (‘no more than is strictly necessary’) and requires an immediate report of the incident to the prison director. Article 3 of the Code of Conduct also uses the term ‘only when strictly necessary’ and the commentary specifies it should be ‘exceptional’.

⁵⁴ The use of dogs in some countries was also raised as a possible application of an arm. It was mentioned that in some countries officers carry ceremonial arms.

The experts reiterated that under no circumstances must prison officials be equipped with weaponry deemed to have no other use than for the purpose of torture or ill-treatment. Discussions at previous deliberations of the Essex group⁵⁵ were recalled on the prohibition of body-worn electro-shock devices and restraint chairs (see UN Committee Against Torture,⁵⁶ European Committee for the Prevention of Torture⁵⁷ and the European Commission⁵⁸). For example, the Omega Research Foundation has emphasised:

*'The electrical current not only causes severe pain, with one survivor describing it as 'very intense shocking pain, so intense I thought that I was actually dying', but can cause short and long term physical side effects. These include; muscular weakness, urination and defecation, and heartbeat irregularities and seizures.'*⁵⁹

The experts also recalled the 'Second Essex paper' with regard to the distinction between body worn electro-shock devices and restraint chairs on the one hand and electrical discharge weapons (EDW) on the other hand. EDWs may provide an alternative to the lethal use of firearms. However, by their nature they 'can cause acute pain and (...) are open to abuse'.⁶⁰ They must therefore be subject to strict circumscription in national law.

The European Committee for the Prevention of Torture has expressed 'strong reservations' about their use in prison settings, in which 'only very exceptional circumstances (e.g. hostage-taking situation) might justify the resort to EDW'. It stressed that even then circumstances where an EDW is used must be 'strictly circumscribed' and 'subject to the strict condition that the weapons concerned are used only by specially trained staff'.⁶¹ The UN Committee against Torture has concluded that EDWs should not be part of the general equipment of custodial staff in prisons or any other place of deprivation of liberty.⁶²

In light of this guidance, the experts noted good practice, in which legal framework explicitly prohibits specific acts or weapons such as 'striking with truncheons' or 'electric-shocks'.⁶³

The experts recalled in this context that particular weapons may be considered to constitute a proportionate response to incidents occurring outside of prisons, however, may not prove a proportionate response to similar incidents in detention due to an enhanced risk of death or serious injury that they pose in such environments (e.g. kinetic impact projectiles when used at close range).⁶⁴ 'Serious reservations' have also been raised about the 'the use of irritant

⁵⁵ Essex 2, paras. 50-51.

⁵⁶ The Committee recommended the abolition of electro-shock stun belts and restraint chairs as 'methods of restraining those in custody; their use almost invariably leads to breaches of article 16 of the Convention' (UN Committee against Torture, 23rd and 24th Sessions, *Report of the Committee against Torture: Consideration of reports submitted by States Parties under article 19 of the Convention: M. United States of America*, 2000, A/55/44, paras. 175-180).

⁵⁷ CPT, *20th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): 1 August 2009-31 July 2010*, Strasbourg, 26 October 2010, p. 35 (CPT 20th General Report).

⁵⁸ European Commission, *Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*, 16 July 2014, Annex 1, provisions 2.1 and 2.5.

⁵⁹ Philip Yoon, 'The "Stunning" Truth: Stun Belts Debilitate, They Prejudice, and They May Even Kill', *Capital Defense Journal*, Volume 15, Issue 2, 2003, pp. 383-404.

⁶⁰ CPT 20th General Report, p.35.

⁶¹ CPT 20th General Report, p.36.

⁶² CAT SMR revision observations, para. 38.

⁶³ Government of Uganda, *Acts Supplement Noto The Uganda Gazette No. 52 Volume CV dated 18th September, 2012: The Prevention And Prohibition of Torture Act 2012: Second Schedule – Acts constituting torture*, 2012, which describes them as 'acts constituting torture'.

⁶⁴ Impact projectiles can be fired from a wide variety of weapons, and projectiles can be made of wood, rubber, plastic or other materials (e.g. fabric bags weighted with lead shot). Single and multiple projectiles can be fired including, for example, balls, segments, blocks or cylinders of wood, plastic or rubber (often referred to as 'rubber

gases⁶⁵ [especially the alleged use of teargas] in confined spaces, as it may entail health risks and cause unnecessary suffering'.⁶⁶

The experts recalled Basic Principle 2 of the BPUFF, which requires law enforcement agencies to 'develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms'. These should include the development of non-lethal incapacitating weapons, while carefully controlling the use of such weapons and evaluating them to 'minimize the risk of endangering uninvolved persons'.⁶⁷

Where prison officials are provided with arms, Rule 82(3) is unambiguous in that officers should be trained in their use (see above). In this context, Basic Principle 20 calls for special attention to 'ethics and human rights, (...), to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, (... and) methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting' their use.

Where arms are used in places of detention, they should be stored safely, with access only to those entitled and clear records (e.g. signing in and out of arms), providing accountability for the use of weapons.

Use of firearms

The commentary to Article 3 of the Code of Conduct emphasises that 'the use of firearms is considered an extreme measure' and that 'Every effort should be made to exclude the use of firearms'.

Situations which may prompt the use of firearms are described in Basic Principle 9 as 'self-defense or defense 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, (...) or to prevent his or her escape'.⁶⁸ However, the Essex group emphasised that a particular threshold applies for the use of lethal force, which can only ever be applied 'when strictly necessary to protect a life'.⁶⁹ The Basic Principles also clarify that 'intentional lethal use of firearms' may only be used 'when strictly unavoidable in order to protect life'.

The Inter-American Commission on Human Rights has clarified that:

'In cases of flight or escape of persons deprived of their liberty, the State must employ all non-lethal means at its disposal to recapture the offenders and may only use lethal force in cases of imminent danger in which prisoners attempting to escape react against prison guards or third parties with violent means that threaten their lives.'

bullets'). On impact they are designed to cause blunt trauma (i.e. non-penetrating trauma); however, they often cause serious injuries including lacerations, broken bones, concussion, head injuries or internal organ damage (Omega Research Foundation, *Tools of torture and repression in South America: Use, manufacture and trade*, June 2016, p. 16).

⁶⁵ Chemical irritants are designed to deter or disable an individual, by producing temporary irritation of the eyes and upper respiratory tract. The most commonly used chemicals include CN or CS (commonly called tear gas) and OC/Pepper and PAVA (commonly called pepper spray). Chemical irritants are delivered through hand-held aerosol sprays, hand-thrown grenades, weapon-launched projectiles/grenades, as well as via water cannon. (Omega Research Foundation, *Tools of torture and repression in South America: Use, manufacture and trade*, June 2016, p. 18).

⁶⁶ For example, the UN Subcommittee on Prevention of Torture, has expressed "serious reservations about the use of irritant gases in confined spaces, as it may entail health risks and cause unnecessary suffering" (*SPT Report on visit to Brazil*, CAT/OP/BRA/1, para. 128.)

⁶⁷ Principle 3 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁶⁸ Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The case of 'arrest' was not included here as not relevant in the detention context.

⁶⁹ Principle XXIII (2) of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

*Therefore, there is no ethical or legal justification for a so-called 'escape law' legitimizing or empowering prison guards to automatically fire on prisoners attempting to escape.'*⁷⁰

'In every instance in which a firearm is discharged' a report needs to be made promptly to the competent authorities.⁷¹

Moreover, Basic Principle 11 specifies that rules and regulations on the use of firearms should include guidelines, which:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.'

These provisions would seem to have a broader applicability, and could usefully be extended to apply to all weapons used by state officials, not just firearms.⁷²

Complaints

Rules 56 and 57 stipulate the right of prisoners to issue requests and complaints. The Essex group discussed the following questions:

- Who can issue a complaint?
- How are prisoners informed about them?
- What are the types and contact points of complaints?
- What is the distinction between request and complaint?
- When is a complaints procedure effective?
- How are prisoners protected against reprisals?

The Essex group highlighted various issues for further deliberation including: the different types of request and complaints, in particular the interlinkages with external and independent complaints systems, clarification of the term 'judicial or other competent authorities, including those vested with reviewing and remedial power' (see Rule 56 (3) and Rule 57 (1)) and practical measures to prevent reprisals.

The experts recommended that prison administrations keep track of the number and nature of complaints as they are an important indicator for identifying and addressing grievances with the potential to prevent unrest and violence.⁷³ The UN Committee against Torture has

⁷⁰ IACHR Report on Honduras, para. 237.

⁷¹ Commentary to Article 3 of the UN Code of Conduct on Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.

⁷² UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.

⁷³ An effective complaint system and records of complaints lodged are recommended also by the IACHR, stating that 'the reception and examination of complaints and petitions is an effective mechanism for (...) detecting

called for 'a centralized register of complaints that includes information on the corresponding investigations, trials and criminal and/or disciplinary penalties imposed'.⁷⁴ The SPT has taken the lack of any trace of complaints by detainees in registers as evidence for the absence of an 'institutionalized complaints system'.⁷⁵

Who can issue a complaint?

The beneficiaries of the right to make requests and complaints are captured in Rule 56 (4). Primarily this is the prisoner, but also his/her legal representative and in case neither is able to exercise the right a 'member of the prisoner's family or any other person who has knowledge of the case'.

The Essex group recalled that the entitlement of family members to make a request or complaint seeks to account for the well acknowledged barriers of persons deprived of their liberty to contact the outside world, and does not require any proof of the detainee's inability to submit a complaint. For example, this is provided for in Principle VII of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.⁷⁶

How are prisoners informed about complaint mechanisms?

Examining Rules 54(b) and 55, the Essex group shared the observation of the Special Rapporteur on Torture that, because of literacy limitations (including legal literacy) and learning disabilities many detainees have difficulty in completing complaint forms.

Formal requirements should therefore be minimal and if forms are used, they should be simple and accessible, including for 'those who may have limited communication abilities'.⁷⁷

Prison administrations should therefore make information about requests and complaints available 'in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals' and 'display it prominently in all places of deprivation of liberty'.⁷⁸ It is good practice to display posters illustrating the avenues to issue requests or complaints on prison walls in an easy-to-understand way.

Other good practice examples mentioned were telephone hotlines and confidential complaint boxes.⁷⁹

Types of complaints and contact points

Rule 56 (1) and (2) and Rule 57(1) read together suggest a complaints mechanism escalating through various stages, as described below, although the wording makes clear that there is no limitation or specific order for these different stages.⁸⁰

structural deficiencies or abuses committed by prison officials' (*IACHR Report on Persons Deprived of Liberty*, p. 87).

⁷⁴ *CAT SMR revision observations*, para. 53.

⁷⁵ *SPT Report on visit to Mali*, CAT/OP/MLI/1, para. 91.

⁷⁶ Principle VII of the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas states: 'Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities. This right may be exercised by third parties or organizations, in accordance with the law. This right comprises, amongst others, the right to lodge petitions, claims, or complaints before the competent authorities, and to receive a prompt response within a reasonable time.'

⁷⁷ *CAT SMR revision observations*, CAT/C/51/4, para.54.

⁷⁸ *Special Rapporteur on Torture report 2013*, A/68/295, para. 79.

⁷⁹ *CAT SMR revision observations*, CAT/C/51/4, para.54.

⁸⁰ Further guidance can be drawn from Principle 33 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly on 9 December 1988, A/RES/43/173.

The different stages envisaged are:

1. to the prison director (or the person appointed by him/her, each day, Rule 56 (1))
2. to the inspector of prisons during his/her inspections (Rule 56 (2))
3. to the central prison administration (Rule 56 (3))
4. to a judicial or other competent authority, including those vested with reviewing or remedial power (Rule 56 (3))
5. to an independent national authority in case of allegations of torture or other cruel, inhuman or degrading treatment or punishment (71 (1) and (2)).⁸¹

There are slightly different provisions depending on the type of request and complaint:

1. Complaints to the prison director (or the person appointed by him/her) must be available 'each day' (Rule 56 (1)).

2. Where complaints are raised with the inspector of prisons, the prisoner must have the opportunity to talk to the inspector in private, without the presence of the prison director or staff. (Rule 56 (2) notes that this Rule is equally relevant for external monitors, see Rule 84 (c)).

3 & 4. Rule 56 (3) enshrines the right to make complaints to the central prison administration and to 'the judicial or other competent authority, including those vested with reviewing or remedial power'. The wording clarifies that such complaints can be made 'without censorship as to substance', implying that a) prisoners do not need to issue an internal complaint first, and b) complaints must be passed on as they are made.

5. Specific rules apply in case of allegations of torture or other cruel, inhuman or degrading treatment or punishment, in line with obligations under the Convention against Torture and the Istanbul Protocol.⁸² They must be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with Rule 71 (1) and (2).

The Essex group suggested that the terms 'independent national authority' and 'judicial or other competent authority' need further clarification and noted that a complaints mechanism is distinct from an external (preventive) monitoring body.⁸³ They also suggested that Principle 33(1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment indicates that a higher authority needs to be involved ('authorities vested with reviewing or remedial powers').

The experts mentioned the practice of employing non-operational members of staff (not wearing uniform) as 'contact officers', and they were seen positively by prisoners as less threatening and more approachable. At the same time, the experts cautioned against assigning 'wing leaders' or 'yard bosses' as recipients of informal complaints⁸⁴ as such a

⁸¹ The UN Committee against Torture has recommended establishing 'a central and accessible mechanism to receive complaints of torture or ill-treatment' (*CAT SMR revision observations*, CAT/C/51/4, para. 53).

⁸² UN High Commissioner for Human Rights, *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (commonly known as the Istanbul Protocol), 1999, 2004. See also Principle V of the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

⁸³ The emphasis of external monitoring mechanisms is on the prevention of torture, through the identification of systemic risk factors contributing to an environment where torture or other ill-treatment arise, and recommendations in order to address and rectify these risk factors. The function of complaints mechanisms, by comparison, is to investigate individual cases of torture and ill-treatment, to adjudicate on the facts of the case and redress for the individual victim.

⁸⁴ Participants mentioned the system of 'ward leaders' in East Africa, and 'Chaveiros' in Latin America, for example. See, for example, concerns expressed in *SPT Report on visit to Mali*, CAT/OP/MLI/1, paras. 31, 91.

system is open to abuse and constitutes self-governance in contradiction to Rule 40(2).

Distinction between requests and complaints

The SPT has documented problems with requests and complaints procedures due to lack of 'distinction between a request and a complaint, both being submitted on the same forms and processed in the same way', stating that 'As a result, simple requests are not dealt with quickly, and serious complaints can be trivialised'.⁸⁵

The Essex group confirmed that the majority of complaints are related to day-to-day issues, conditions of detention and basic services such as food, telephone calls, appointments with doctors, recreational, work-related or educational activities. Many of these can be solved without a lengthy complaints procedure and with modest financial means.⁸⁶

As both the Special Rapporteur on Torture and the SPT have noted these types of requests/day-to-day complaints could be addressed by delegating independent, dedicated persons to receive and handle minor complaints and ensure that steps are taken within a reasonable period of time to set aside funds required to give effect to these rights.⁸⁷ Also, many incidents can be resolved by prompt action by the prison staff.

The experts clarified that requests and complaints can be brought against acts as well as omissions of the prison administration/ staff.

Effectiveness of complaints mechanisms

The SPT stressed that 'the mere existence of complaints mechanisms is not enough; they must be, and must be seen to be, independent and impartial, and should offer guarantees of effectiveness, promptness and expeditiousness'.⁸⁸

Rule 57 describes procedural aspects, applicable to 'every request or complaint', (emphasis added) i.e. all types described under 1) to 5). It stipulates that they must be:

- promptly dealt with
- replied to without delay; and there must be
- availability of a remedy in case of rejection or undue delay ('can be brought before judicial or other authority if rejected or in case of undue delay').⁸⁹

The Essex group listed the following established requirements of effectiveness for complaints mechanisms:⁹⁰

1. sufficient detachment from the authority alleged of wrongdoing (independence)⁹¹
2. fairness and perceived fairness
3. promptness of enquiry into complaint ('without undue delay'⁹²)
4. confidentiality – if requested⁹³

⁸⁵ SPT Report on visit to New Zealand, CAT/OP/NZL/1, para. 44.

⁸⁶ Special Rapporteur on Torture report 2013, A/68/295, para. 78.

⁸⁷ Special Rapporteur on Torture report 2013, A/68/295, para. 78.

⁸⁸ SPT Report on visit to Brazil, CAT/OP/BRA/1, para. 32.

⁸⁹ As required by Principle 33(4) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: 'If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority'.

⁹⁰ The principles draw on the Special Rapporteur on Torture report 2013, A/68/295.

⁹¹ Special Rapporteur on Torture report 2013, A/68/295, para. 77.

⁹² Principle 33(4) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

⁹³ With regard to confidentiality, the experts referred to language included in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 33 (3) calls for confidentiality 'if

5. complaint mechanism needs power to enquire
6. facilitates simple, prompt and effective recourse⁹⁴
7. safety from reprisals.⁹⁵

Effective mechanisms should seek to proactively address circumstances that discourage prisoners from issuing complaints.⁹⁶ The UN Special Rapporteur on Torture has emphasised that complainants may require access to independent lawyers and timely independent medical examination in order to substantiate their complaint.⁹⁷ Procedures also need to address the risk of complaints being tampered with or not being transmitted to the complaints mechanism.⁹⁸

The experts noted particular disincentives for women in custody, such as the fear of stigma and shame associated with sexual abuse and rape and of investigations involving humiliating physical examinations. Complaints mechanisms should therefore account for the specific risks of retaliation against women prisoners, and implement Bangkok Rules 7 and 25. Experts cautioned against transfer of a woman to another prison, as a means of protection against reprisals, as given the small number of women's prisons in most countries this would 'almost certainly mean that she would be taken further away from her home'.⁹⁹

In order to investigate any alleged wrong-doing complaint mechanisms need to be equipped with their own investigative capacity, rather than having to rely on the enquiries of other bodies, in particular the one alleged of misconduct.¹⁰⁰

The experts identified elements of a functioning complaints system: differentiation between requests and complaints (to expedite day-to-day and less serious complaints/requests); provision of a complaints form that is easy to read/understand and freely available to prisoners (without the requirement to request a form); provision of a locked and discrete complaints box at various locations in the prison facility'; a step-by-step response system (e.g. prison officer at the wing, management level, governor, Ombudsperson); and accessible 'easy-to-read' replies.

so requested by the complainant'), the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Bangkok Rules (Rule 57 (2), see also Rule 25(1)) and Article 21 of the Optional Protocol to the Convention against Torture (OPCAT). See also *CAT SMR revision observations*, CAT/C/51/4, para. 54.

⁹⁴ Principle VII of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas emphasises the importance of a 'simple, prompt, and effective recourse'.

⁹⁵ Principle 33(4) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: '(...) Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint'. Rule 25(1) of the Bangkok Rules also requires protection measures specifically relating to the risk of retaliation (see also Rule 57(2) of the Bangkok Rules). Article 21 (1) of the Optional Protocol to the Convention against Torture states: 'No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way'.

⁹⁶ The SPT, for example, documented the lack of awareness of the possibility to submit a complaint, but also the lack of trust that a complaint would lead to any positive or useful outcome, or that it would lead to reprisals against them (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, para. 53 (*SPT Report on visit to Ukraine*)). See also *SPT Report on visit to Brazil*, para. 32; and 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. 75 (*SPT Report on visit to Argentina*).

⁹⁷ *Special Rapporteur on Torture report 2013*, A/68/295.

⁹⁸ See, for example, *SPT Report on visit to Ukraine*, CAT/OP/UKR/1, para. 53.

⁹⁹ Penal Reform International and Thailand Institute of Justice, *Guidance Document: United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)*, London and Bangkok, October 2013, p. 70.

¹⁰⁰ *SPT Report on visit to Brazil*, CAT/OP/BRA/1, para. 54.

They emphasised that an effective complaints mechanism is one that provides recourse within reasonable time if the complaint is found to be well founded, and that it must be linked with accountability of officers who are found to have violated laws or regulations. As the UN Special Rapporteur on Torture has noted, it is important to 'integrate a provision obliging the personnel to guarantee the timely enforcement of any decision'.¹⁰¹

Protection against reprisals

The Rules place an obligation on prison authorities to take effective measures to protect complainants against 'any risk of retaliation, intimidation or other negative consequence as a result of having submitted a request or complaint' (Rule 57(2)). As the Rule suggests, measures need to be taken to protect the prisoner – as well as persons who are entitled to issue complaints (legal representative, family members, according to Rule 56 (4)).¹⁰²

The UN Special Rapporteur on Torture has emphasised that '[m]easures in this regard include the transfer of the complainant or the implicated personnel to a different detention facility or the suspension from duty of the personnel'.¹⁰³ The UN Committee against Torture recommended '[p]rotective measures including relocation, on site security, hotlines, and judicial orders of protection to prevent violence and harassment against complainants, witnesses, or close associates of such parties'.¹⁰⁴

Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, also need to be protected against retaliation.¹⁰⁵

Investigations

The UN Special Rapporteur on Torture emphasised that it is the State who bears the burden of evidentiary proof to rebut the presumption of its responsibility for violations of the right to life and for inhumane treatment committed against persons in its custody.¹⁰⁶ Accordingly, 'the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent' in the case of death and exists irrespective of whether a complaint is filed or not.¹⁰⁷

In this context, the Essex group highlighted that Rule 71(1) unequivocally requires an investigation into *any* case of death. They emphasised that this includes what is often termed as cases of death due to 'natural causes', and that a natural cause does not necessarily mean unavoidable. This includes cases of deaths in custody due to lack of

¹⁰¹ *Special Rapporteur on Torture report 2013*, A/68/295, para. 77

¹⁰² The Inter-American Commission on Human Rights also emphasised that detainees who take recourse in appeals, complaints and petitions must not be punished for filing them (*IACHR Report on Persons Deprived of Liberty*).

¹⁰³ *Special Rapporteur on Torture report 2013*, A/68/295, para. 77.

¹⁰⁴ *CAT SMR revision observations*, CAT/C/51/4, para. 55.

¹⁰⁵ *CAT SMR revision observations*, CAT/C/51/4, para. 45.

¹⁰⁶ The burden of proof on the state in case of death of a person detained, but also when their physical condition worsens, has also been maintained by the Inter-American Court of Human Rights, for example in I/A Court. *Case of Mendoza et al.*, 2013, para. 219; I/A Court. *Case of Vera Vera v. Ecuador*, 2011, para. 88; I/A Court. *Case of Cabrera García and Montiel Flores v. Mexico*, 2010, para. 134; I/A Court. *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*, 2006, para. 80; I/A Court *Case of Bulacio v. Argentina*, 2003, para. 127; I/A Court. *Case of Juan Humberto Sánchez v. Honduras*, 2003, para. 111.

¹⁰⁷ *Special Rapporteur on Torture report 2013*, A/68/295, para. 62, referring also to *IACHR Report on Persons Deprived of Liberty*, para. 54. The experts referred to Principle 34 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which also requires an inquiry 'into the cause of death or disappearance' whenever a 'death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment', 'by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case'.

medical care.¹⁰⁸ The Inter-American Commission on Human Rights has emphasised that ‘the fact that evidence might initially suggest the possibility of a suicide does not exempt the competent authorities from undertaking a serious and impartial investigation in which all logical lines of inquiry are pursued’.¹⁰⁹

The experts noted that the SMR deliberately omit guidance on the course and modalities of investigations because these have to be conducted by an independent (i.e. external) body. As the SMR are intended as a standard specifically addressing prison administration and prison staff, they focus on the obligations and role of prison authorities when such cases arise.

Initiation of an investigation

The Essex group examined Rule 71 and Rule 57,¹¹⁰ which incorporate the obligation of the prison director to ‘report, without any 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’.

As for allegations of torture or other cruel, inhuman or degrading treatment or punishment, the requirement of an investigation is reiterated in Rule 57(3).

The experts recalled the duty of law enforcement officials (which includes prison staff) to report promptly to their superiors any case ‘where injury or death is caused by the use of force and firearms by law enforcement officials’, and to send a detailed report ‘promptly to the competent authorities responsible for administrative review and judicial control’.¹¹¹

The experts highlighted that detainees may have suffered torture or ill-treatment before being admitted to prison, while in the custody of other law enforcement agencies. It is therefore in the interest of prison administrations to ensure that any signs of such abuse are identified and documented upon admission – in line with Rule 30 (b)).¹¹²

According to Rule 34, an investigation can be triggered by healthcare staff who have an obligation to ‘document and report to the competent medical, administrative or judicial authority’ any case in which they become aware of signs of torture and other cruel, inhuman or degrading treatment or punishment.¹¹³

Accordingly, the experts noted the importance of the independence of healthcare professions¹¹⁴ and noted a link to the requirement of having confidential, up-to-date medical files (Rule 26).

→ See more in Chapter 4, Healthcare

¹⁰⁸ See, for example, *SPT Report on visit to Mali*, para. 37 (‘the Subcommittee met numerous persons who were dying due to the lack of adequate medical care’), and *SPT Report on visit to Ukraine*, CAT/OP/UKR/1, para. 88 (‘a large proportion of deaths in custody were reportedly related to the combination of HIV and hepatitis B’).

¹⁰⁹ *IACHR Report on Persons Deprived of Liberty*, para. 324.

¹¹⁰ Further guidance was drawn from Principle 34 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.

¹¹¹ Principle 6 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

¹¹² The obligation of an examination upon entering prison on whether the detainee had been a victim of torture or ill-treatment is also enshrined in Principle IX of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

¹¹³ *CAT SMR revision observations*, CAT/C/51/4, para. 19; *IACHR Report on Persons Deprived of Liberty*, para. 564.

¹¹⁴ See, for example, Inter-American Commission on Human Rights, about the importance of health care professionals acting with autonomy and independence, free from any interference, coercion or intimidation. (*IACHR Report on Persons Deprived of Liberty*, para. 561).

Independent body of enquiry

The Essex group noted that there is an obligation of the state to ensure the establishment of an independent investigatory body, since an enquiry carried out by prison administrations would be 'marred by a conflict of interest'.¹¹⁵ The Essex group noted that the independence of the investigatory body is in the interest of prison administrations as it demonstrates fairness and accountability, and is needed to refute malicious allegations.

The body must be an 'external investigative body, independent from those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators'.¹¹⁶

Modalities of the investigation

Given that the duty to investigate rests with an external body, the role of the prison administration in cases of death, disappearance or serious injury is to:

- ensure the external investigation is initiated, by promptly reporting the incident
- preserve the evidence within the perimeters of the prison
- ensure that officers implicated in the incident do not interfere with the investigation
- protect the alleged victim and witnesses
- cooperate with and support the investigative body, and;
- collect and monitor occurrences of such incidents in order to identify and address any structural causes.

The Essex group noted clarification by the UN Committee against Torture of the meaning of 'prompt' for the initiation of an investigation by the prison director, stating that this 'must be initiated within hours or, at the most, within days' and that relatively short delay can constitute a violation of Article 12 of the Convention against Torture.¹¹⁷

The UN Special Rapporteur on Torture has emphasised that: '[t]here should be protocols and guidelines for the prison administration about cooperating with the authorities by not obstructing the investigation and by collecting and preserving evidence'.¹¹⁸ The experts emphasised that other than those measures required immediately after an incident, the course of enquiry should be determined, as soon as possible, by the external investigatory body, including instructions to the prison administration as to necessary measures and steps.

It was emphasised that the protocols and guidelines for the preservation of evidence and forensics need to be consistent with those in the community.

It should be ensured that the scene of any incident is sealed off immediately, that evidence is secured and that witnesses are protected against influence or intimidation. Preservation of evidence includes the instant securing and safe storage of CCTV footage in order to prevent it from disappearing or being manipulated.

The experts rebutted frequent claims by prison administrations that sealing off the location of an incident was not possible in a prison, e.g. in the case of a suspicious death. They pointed

¹¹⁵ *Special Rapporteur on Torture report 2013*, A/68/295, para. 64.

¹¹⁶ *Special Rapporteur on Torture report 2013*, A/68/295, para. 64, with reference also to *Jordan v. United Kingdom*, application No. 24746/94, para. 106.

¹¹⁷ *Blanco Abad v. Spain*, Comm. No. 59/1996, para. 8.5. See also: Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary (2nd ed.)*, Kehl am Rhein, Engel Verlag, 2005, p. 434.

¹¹⁸ *Special Rapporteur on Torture report 2013*, A/68/295, para. 65.

to the fact that on the contrary, while it may be inconvenient for the operation of a prison, it is in fact easier to seal off and prevent persons from entering the scene of an incident in a prison than in the community.¹¹⁹ The experts noted that good management of the prison can be maintained by ensuring that evidence is secured promptly and professionally by the appropriate authority so that the scene can then be properly disinfected and returned to use as soon as possible.

Another key element of protocols for incidents are measures to prevent interference in the investigation and reprisals against victims or witnesses. Officers implicated in an incident should therefore not have any contact with the relevant prisoner or witnesses. Similarly, the experts considered that any officer allegedly implicated in incidents under Rule 71 should also not have any contact with members of the victim's family. The experts raised that states, and prison administrations, need to ensure accountability for any infringements of Rule 71, and that any alleged infraction should be reported to the independent investigatory body and the prison director.

Rule 34 calls for 'proper procedural safeguards (...) in order not to expose the prisoner or associated persons to foreseeable risk of harm' in the context of healthcare personnel documenting and reporting signs of torture or other ill-treatment. The experts noted the link to Rule 57(2) which calls for protection from reprisals in the context of complaints.

This may imply the temporary transfer of any relevant officer to a different part of the facility, or even to a different prison. The experts noted that it may be necessary to move the alleged victim and others (if reprisals are feared on a larger scale); however, it was cautioned that this will usually have the effect of punishing the victim and experts noted risks of retaliation during the transfer/transport itself which need to be prevented. The UN Special Rapporteur on Torture recommended to take into account witness protection programmes 'that fully cover persons with a previous criminal record and staff'.¹²⁰

Both the UN Special Rapporteur on Torture and the UN Committee against Torture have recommended that those potentially implicated in deaths, injuries or torture/ill-treatment 'should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving access to detainees or prisoners because of the risk that they might undermine or obstruct investigations'.¹²¹

The experts noted that the modalities of the enquiry by the external, independent body go beyond the remit of the SMR, and referred to the Principles on Effective Investigation and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Istanbul Protocol (1999) Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹²² for guidance. The experts also recommended the Council of Europe document, *Effective investigation of ill-treatment – Guidelines on European standards*, for further guidance.¹²³

Impediments documented with regard to the investigation of cases of torture included fear of reprisals which impede the ability to gather evidence, lack of effective legal representation for victims, failure to follow a protocol of investigation, lack of a systematic approach to

¹¹⁹ They noted the example of a fatality on the road, requiring the closure of the road.

¹²⁰ *Special Rapporteur on Torture report 2013, A/68/295*, para. 66, with reference to Commission on Human Rights, 60th Session, *Torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur, Theo van Boven*, 23 December 2003, E/CN.4/2004/56, para. 40.

¹²¹ *Special Rapporteur on Torture report 2013, A/68/295*, para. 66, referring to Principle 3(b) of the Principles on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). *CAT SMR revision observations*, CAT/C/51/4, para. 44.

¹²² See respective recommendation in *IACHR Report on Persons Deprived of Liberty*, para. 518.

¹²³ Council of Europe, *Effective investigation of ill-treatment: Guidelines on European standards*, Strasbourg, 2009.

investigations and lack of enforcement of penalties handed down where violations were established.¹²⁴

Outcome of investigations

Principle 34 of the UN Body of Principles¹²⁵ stipulates that: '[t]he findings of such inquiry [into the cause of death or disappearance] or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation'.

The experts pointed to the view of the UN Committee against Torture that the family of the deceased should be informed of the outcome of an investigation.¹²⁶ They shared the assessment of the Special Rapporteur on Torture that information related to the circumstances surrounding the death of a person in custody needs to be 'made publicly accessible, considering that public scrutiny outweighs the right to privacy unless otherwise justified'.¹²⁷

It is also a responsibility of the prison administration to 'systematically identify and collect the patterns of deaths for further examination by independent bodies'.¹²⁸

¹²⁴ *SPT Report on visit to Argentina*, CAT/OP/ARG/1, para. 104.

¹²⁵ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.

¹²⁶ *CAT SMR revision observations*, CAT/C/51/4, para. 42.

¹²⁷ *Special Rapporteur on Torture report 2013*, A/68/295, para. 65.

¹²⁸ *Special Rapporteur on Torture report 2013*, A/68/295, para. 65.