
Advance Unedited Version

Distr.: General
30 July 2019

Original: English

Human Rights Council

Forty-second Session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Human rights in the administration of justice

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 36/16. It addresses violence, death and serious injury in situations of deprivation of liberty, drawing on the experience of United Nations and regional human rights mechanisms, and seeking the views of States, civil society, and other relevant stakeholders.

* The present report was submitted after the deadline in order to reflect the most recent information.

I. Introduction

1. In its resolution 36/16, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit a report on violence, death and serious injury in situations of deprivation of liberty, drawing on the experience of United Nations and regional human rights mechanisms, and seeking the views of States, including on their policies and best practices, civil society, and other relevant stakeholders. It requested the report to be presented at the forty-second session of the Human Rights Council. In preparation of this report, contributions were sought from Member States; international and regional organisations; national human rights institutions; and non-governmental organisations.¹ In addition to information received from these entities, the report draws on a range of public sources, including from United Nations human rights mechanisms, and work by civil society organisations.

2. The issue of violence, death and serious injury was identified by the Secretary General as one of the most important challenges pertaining to the protection of persons deprived of their liberty.² By depriving persons of their liberty, States assume the responsibility to protect the life and bodily integrity of such persons. States are thus obligated to prevent the ill-treatment of, and violence against such persons and to ensure that the conditions of a dignified life are met.

3. The human rights of persons deprived of their liberty are enumerated in core international human rights instruments. The right to life of all individuals, including of persons deprived of their liberty is enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), as is the prohibition on arbitrary deprivation of life. The right to be protected from the use of torture or cruel, inhuman or degrading treatment or punishment is found in Article 7 of the ICCPR and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Persons deprived of their liberty must also be treated with humanity and respect for the inherent dignity of the human person per Article 10 of the ICCPR. The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, provide States with important and detailed guidelines for protecting and fulfilling the human rights of persons deprived of their liberty.

4. The present report addresses the intersection between situations of deprivation of liberty and violence, death and serious injury. The report examines the vertical, horizontal and environmental causes of violence, death and serious injury in situations of deprivation of liberty. It then considers measures which should be taken to address such incidents.

¹ OHCHR received submissions from: Austria, Guatemala, Ireland, Jamaica, Kenya, Lebanon, Morocco, Philippines, Poland, Portugal, Qatar, Slovenia, Turkey, Ukraine, Uruguay, the United Nations Office on Drugs and Crimes (UNODC), Conseil National des Droits l'Homme – Algeria, Defensor del Pueblo de la Nacion Republica Argentina, National Commission on Human Rights and Freedoms – Cameroon, Defensoria del Pueblo de Ecuador, Public Defender of Georgia, Hungarian National Human Rights Institution, Ombudsman Luxembourg, Comision de Derechos Humanos del Distrito Federal (CDHDF)– Mexico, Amnesty International, Americans for Human Rights and Democracy in Bahrain, ANAPRDOH Cameroon, Castan Centre for Human Rights Law – Monash University, Harm Reduction International, International Bar Association (IBA)– Human Rights Institute, Institute for NGO Research, Penal Reform International (PRI), The Howard League.

² A/68/261.

II. The phenomenon of violence, death and serious injury in situations of deprivation of liberty

A. Violence, deaths and serious injury resulting from actions of state agents

5. One of the main causes of serious injury as well as death in situations of deprivation of liberty are acts of violence and use of force by corrections officers, police officers and other officials that come into contact with persons deprived of their liberty.

1. Torture, ill-treatment and sexual violence

6. Early stages of detention, such as the moment of arrest, its immediate aftermath, police custody and pretrial detention, carry a particularly high risk of physical violence.³ In such circumstances, persons deprived of their liberty are at an increased risk of torture or ill-treatment for the purpose of compelling confessions during interrogations.⁴ The problem arises in a variety of different contexts and affects diverse categories of persons deprived of liberty. The Committee on the Rights of the Child (CRC) has expressed its concern about the routine use in some States of torture and ill-treatment against children during investigations.⁵ Another group facing an increased risk of torture and ill-treatment are people who use drugs, as law enforcement officials in some cases deliberately take advantage of the pain and suffering associated with the withdrawal syndrome displayed by drug users deprived of their liberty to elicit forced confessions.⁶ Human rights mechanisms concluded that the use of withdrawal symptoms to obtain information or confessions, to punish or to intimidate or coerce may amount to torture.⁷ In situations affected by armed conflict, the torture of conflict related detainees immediately following capture and during interrogations often results in the death, either immediately or as a result of the injuries sustained due to torture.⁸

7. Resorting to physical and psychological violence to punish persons deprived of their liberty is another objective of police, correction officers and other personnel working in places of detention.⁹ The intentional withholding of drug treatment from a person who uses drugs may also be used as a form of punishment.¹¹ Children deprived of their liberty are especially vulnerable to the use of beatings and other forms of physical violence as a form of punishment.¹² The CRC has expressed its concern about such violence in various institutions where juveniles are deprived of their liberty such as juvenile detention centres, sociopedagogical boarding schools and correctional schools.¹³ The Committee on Migrant Workers has also expressed its concern at the use of physical violence by immigration officials and guards against unaccompanied minor children.¹⁴

³ CAT/OP/MNG/1

⁴ CAT/C/AZE/CO/4, CAT/OP/BOL/3

⁵ CRC/C/UZB/CO/3-4, CRC/C/ISR/CO/2/-4, CRC/C/GIN/CO/2

⁶ A/HRC/30/65, CAT/C/RUS/CO/6

⁷ A/HRC/10/44, CCPR/C/RUS/CO/7

⁸ A/HRC/31/CRP.1; UNAMA, *Treatment of Conflict-Related Detainees*, 2017 and 2015.

⁹ In this report the term “places of detention” is employed in a generic fashion and covers all places in which persons are deprived of their liberty, including but not limited to: prisons, pretrial detention facilities, police stations, mental health facilities and institutions for juvenile offenders.

¹⁰ Report of the Special Rapporteur against torture A/HRC/16/52/Add.5, Submission from Commission de Derechos Humanos del Distrito Federal Mexico (hereinafter CDHDF).

¹¹ Harm Reduction International submission.

¹² CAT/OP/BEN/3, CRC/C/ERI/CO/4, Council of Europe, *Report on Violence in Institution for Juvenile Offenders*, 2014.

¹³ CRC/C/BRG/CO/3-5

¹⁴ CMW/C/IND/CO/1

8. Acts of sexual and gender-based violence committed by staff of detention facilities continues to be a cause of concern,¹⁵ and its widespread prevalence has been highlighted by the Committee against torture both in criminal detention and in immigration detention settings.¹⁶ The Special Rapporteur on torture has also described custodial rape as constituting torture.¹⁷ The Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly denounced gender-based violence, including sexual harassment and assault against female prisoners by male penitentiary staff and police officers.¹⁸ Lesbian, gay, bisexual, transgender and intersex persons are also more vulnerable to ill-treatment in detention. Sexual violence may also be used against male detainees in order to punish, humiliate and assert control over them.¹⁹ Children who are arrested or detained are also victims of sexual violence.²⁰

2. Use of force

9. Use of force by law enforcement and prison officials, including cases in which it is excessive, constitutes an important cause of death and serious injury for persons deprived of their liberty. Lethal force used in order to regain control of a detention facility in which a riot is taking place may result in death and serious injury. Over the past few years several of these operations have resulted in the killing of several dozen detainees and some have been the object of allegations of extra-judicial executions of detainees by the security forces.²¹ Use of force also covers the resort to less-lethal weapons, including chemicals; as well as instruments of restraint and restraint positions. Persons deprived of their liberty may also be injured as a result of excessive use force involving less-lethal weapons, such as batons, electroshock weapons, baton rounds, and tear gas, in the quelling of demonstrations inside detention facilities.²² The use of chemical irritants, such as tear gas and pepper spray, in detention facilities to quell riots and to subdue detainees deemed un-cooperative also lead to serious injury and in some cases appears to be a contributing factor in death of persons deprived of their liberty.²³ The Committee against torture expressed concerns about the use of chemical irritants in closed spaces and stated that such use endangers the lives of inmates.²⁴

10. The use of restraints and restraint positions have also resulted in the injury or death of persons deprived of their liberty with some studies indicating that restraint had been used by police officers in twenty-five per cent of cases of death in police custody and established as the cause of death in ten per cent of the cases.²⁵ Restraint positions, in which detained persons are pinned face down or held in prone positions have led to a number of deaths.²⁶ Human rights mechanisms have expressed their concern with regards to the use of mechanical restraints against both prisoners²⁷ and patients in psychiatric hospitals²⁸ and warned that the

¹⁵ CAT/C/TKM/CO/2;

¹⁶ CAT/C/USA/CO/3

¹⁷ A/63/175.

¹⁸ CEDAW/C/MNE/CO/2; CEDAW/C/ARG/CO/7; CEDAW/C/GMB/CO/4-5; CEDAW/C/PNG/CO/3; CEDAW/C/ERI/CO/5

¹⁹ Submission of CDHDF

²⁰ CRC/C/BRA/CO/2; CCPR/C/LKA/CO/5

²¹ A/HRC/11/2/Add.2, MINUSTAH, *Bi-Annual Report on Human Rights in Haiti January-June 2012*, para. 26; OHCHR, *Human Rights Violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight*, p.20.

²² <https://www.unhcr.org/news/latest/2005/1/41ee7bdb4/unhcr-says-maltese-troops-seemed-use-excessive-force-quell-peaceful-demo.html>; CRC/C/MLT/CO/2;

²³ OHCHR, *Press Briefing Note: Australia*, 29 July 2016; Canada, Office of the Correctional Investigator, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines – Final Report*, 15 February 2017.

²⁴ CAT/C/CZE/CO/4-5; CAT/C/BHR/CO/2-3;

²⁵ United Kingdom, Home Office, *Deaths in police custody: A review of the international evidence, Research Report 95*, 2017.

²⁶ SCastan Centre submission.

²⁷ CAT/OP/MNG/1

²⁸ CAT/OP/BOL/3

prolonged use of restraint can lead to muscle atrophy, life-threatening deformities and organ failure.²⁹

11. Police and prison officials should, when resorting to force – including the use of restraints in custodial settings – comply with the relevant international norms and standards.³⁰ The Basic Principles on the use of force and firearms by Law Enforcement Officials prescribe that when dealing with persons in custody, force should not be used except when strictly necessary for the maintenance of security and order in the institution or when personal safety is threatened and that in any case firearms can only be used in case of immediate threat of death or serious injury.³¹ The Nelson Mandela Rules contain detailed rules on the use of restraint instruments, in particular prohibiting their use for disciplinary purposes.³²

3. Sentencing

12. The death penalty³³ has been recognized as a source of physical and psychological violence, in particular due to the fact that death row constitutes an environment where persons sentenced to death are particularly vulnerable to violence.³⁴ The Special Rapporteur on torture found that the death row violated the prohibition of torture, inhuman or degrading punishment, due to, *inter alia*, the prevailing harsh treatment and conditions of detention.³⁵ This may include physical violence, *quasi* constant use of physical restraints such as shackling, detention in cages or small cells, and solitary confinement.³⁶

13. Life sentences also have a significant impact on the physical health of prisoners, with some reports of healthcare neglect by prison authorities. Some human rights mechanisms have found that life sentenced prisoners are at risk of ill-treatment and excessive use of force by prison officers.³⁷ The number of prisoners serving life sentences has increased by 84% between 2000 and 2014, with their number amounting to close to 480,000 worldwide.³⁸ In addition to the fact that such sentences inevitably result in the eventual death of the sentenced person in detention, life imprisonment has been described as “civil death” due to the loss of sense of self and control experienced by prisoners.³⁹

B. Violence between persons deprived of liberty and resulting deaths and serious injury

1. Forms of inter-prisoner violence

14. Inter-prisoner violence constitutes an important cause of death and serious injury of persons deprived of their liberty, representing in some contexts over 17 per cent of deaths in custody.⁴⁰ This type of violence is widespread, with some surveys indicating that over half of the prisoners interviewed had been exposed to violence originating from fellow inmates.⁴¹

²⁹ A/63/175, para. 55

³⁰ UNODC, OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, 2017, p. 143.

³¹ Principles 14 and 15

³² United Nations Standard Minimum Rules for the Treatment of Prisoners, A/RES/70/175, Rules 43 and 47-49.

³³ The death penalty is a form of death in custody, however the present report will not address this topic as it is extensively dealt with in several reports of both the High Commissioner for Human Rights, and the Secretary General.

³⁴ Harm Reduction International submission

³⁵ A/67/268

³⁶ Harm Reduction International submission

³⁷ Council of Europe, *Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 12 December 2008*, 26 November 2009, paras. 11-12.

³⁸ Submission of PRI.

³⁹ Ibid

⁴⁰ International Bar Association submission

⁴¹ Howard League submission

Human rights mechanisms have repeatedly expressed their concern about the high rate of inter-prisoner violence.⁴²

15. The presence and activities of gangs in detention facilities is the source of much of inter-prisoner violent activities⁴³ and according to some studies, disproportionately contribute to this type of violence.⁴⁴ The expansion of criminal organizations inside prisons has resulted in several mass-killings of detainees, qualified by some as massacres, especially in the Latin-American context.⁴⁵ Gang violence has resulted in the death of child detainees in a number of countries.⁴⁶ Also linked to the presence of gangs in prisons is the extortion by organized groups of prisoners of their co-detainees for “protection” purposes. This results in violence as those refusing to pay are often beaten, sometimes to death.⁴⁷ Inter-prisoner violence also takes the form of “disciplinary” sanctions often imposed by certain inmates on others detainees.⁴⁸

16. Several human rights mechanisms have also expressed their serious concerns with regards to the prevalence of sexual violence in situations of deprivation of liberty, including in immigration detention.⁴⁹ Widespread inter-prisoner violence also leads persons deprived of their liberty to exchange sexual favours for protection. Women and girls in detention are extremely vulnerable to sexual violence when they are not detained separately from men and boys. Lesbian, gay, bisexual, transgender and intersex detainees as well as inmates with a history of mental health problems are among the persons most exposed to sexual violence and victimization from fellow inmates.⁵⁰

17. Ethnic tensions between prisoners have led to clashes resulting in injury to detainees in many facilities.⁵¹ Discrimination between prisoners on various grounds is a frequent cause of inter-prisoner violence, resulting for instance in detainees being singled out by groups of prisoners for abusive treatment based on nationality,⁵² and persons with disabilities being more exposed to violence.⁵³

2. Contributing factors

18. Lack of adequate investigations and accountability into instances of inter-prisoner violence is an important contributing factor as it creates a climate of impunity which results in the recurrence of this type of violence. For example, perpetrators of physical violence, including sexual violence often only face disciplinary measures whereas if these crimes took place outside of detention settings, perpetrators would face criminal prosecution and sanctions.

19. Acquiescence and tolerance of inter-prisoner violence by prison management and staff is highlighted as a major contributing factor by human rights mechanisms.⁵⁴ In addition to being tolerated, violence between detainees is sometimes induced by law enforcement personnel in order to punish or elicit cooperation from targeted detainees.⁵⁵ Sexual violence has also been highlighted as occurring with the consent, approval or even at the solicitation of prison administration.⁵⁶ The divulgation by guards to other detainees of the nature of a crime committed by a new detainee, for example by revealing that the individual was

⁴² CAT/C/MUS/CO/3; CAT/C/NZL/CO/6

⁴³ UNODC, *Handbook on the Management of High-Risk Prisoners*, 2016; Penal Reform International, *Global Prison Trends 2019*; CRC/C/HND/CO/4-5; CRC/C/BRA/CO/2-4; A/HRC/11/2/Add.2

⁴⁴ Correctional Service of Canada, *Prison Gangs: A Review and Survey of Strategies*, 2009.

⁴⁵ International Bar Association submission

⁴⁶ CRC/C/BRA/CO/2-4; CRC/C/HND/CO/4-5.

⁴⁷ CAT/C/GTM/CO/5-6

⁴⁸ Office of the Commissioner for Fundamental Rights of Hungary, submission

⁴⁹ CAT/C/USA/CO/3-5; CCPR/C/CYP/CO/4;

⁵⁰ A/HRC/36/28; CAT/C/USA/CO/3-5; CAT/C/NAM/CO/2

⁵¹ CAT/C/CHE/CO/7

⁵² CAT/C/ARM/CO/3

⁵³ CRPD/C/ARG/CO/1; A/63/175; PRI submission

⁵⁴ CCPR/C/KAZ/CO/1/Add.1; CAT/C/THA/CO/1.

⁵⁵ CAT/C/MDA/CO/3; Office of the Commissioner for Fundamental Rights of Hungary, submission

⁵⁶ CAT/C/KAZ/CO/3

convicted for sexual abuse, can also contribute to sexual violence.⁵⁷ The Special Rapporteur on torture has stated that inter-prisoner violence, including sexual harassment and rape, may amount to torture if the authorities consent or acquiesce.⁵⁸ Prison staff also contribute to inter-prisoner violence when they delegate authority to or rely on certain categories of prisoners, such as criminal leaders, inmate representatives or designated inmates granted with a high degree of authority, to ensure discipline and security within the prison.⁵⁹

20. The management of prisons by prisoners has been identified by several human rights mechanisms as the main factor contributing to inter-prisoner violence.⁶⁰ According to the Special Rapporteur on extrajudicial, summary and arbitrary executions, the violent death of some inmates is an inescapable consequence of the abdication of authority to prisoners.⁶¹ This is due to the ruthless nature of the “discipline” imposed by prisoners including beatings and stabbings; the fact that the strength of prison gangs grows over time and so does the number of clashes between these gangs; and because such conditions facilitate riots and uprising to which the only possible response is a large police or military intervention likely to result in the injury or killing of scores of detainees.⁶² In his 2008 report, the Special Rapporteur extensively examines the phenomenon of prison self-government, and formulates concrete proposal for States on how to reassert responsible control over their prison populations and to effectively protect prisoners from each other.⁶³

21. Overcrowding and understaffing are also conducive to inter-prisoner violence.⁶⁴ Understaffing can make both the management of prisons by prisoners, and the exponential rise of use of violence related to it unavoidable.⁶⁵ An insufficient ratio of staff to detainees can make it difficult for staff to supervise inmates effectively and results in a lack of security for themselves, making it difficult to protect detainees from inter-prisoner violence.⁶⁶ Unavailability of personnel trained in the management of inter-prisoner violence is also a contributing factor.⁶⁷ Overcrowding may not only lead to riots,⁶⁸ but also hinders prison staff efforts to monitor densely populated cells and common spaces and impedes effective segregation of detainees.⁶⁹ Lack of segregation between different categories of detainees further contributes to inter-prisoner violence. This includes failure to separate pre-trial detainees from convicted prisoners,⁷⁰ exposing the former to a greater risk of violence. The risk of sexual violence is significantly higher for women and girls in mixed-sex detention,⁷¹ for transgender women when placed together with male detainees,⁷² and for children detained in adult facilities and police custody.⁷³ Lack of work and educational activities which is exacerbated by overcrowding is also conducive to inter-prisoner violence.

3. Violence against prison staff

22. Violence by persons deprived of their liberty not only affects other detainees but also personnel working in detention settings. The Committee against Torture has highlighted violence and assaults faced by prison staff and expressed its concern over the frequency and

⁵⁷ Office of the Commissioner for Fundamental Rights of Hungary, submission

⁵⁸ A/HRC/13/39/Add.4

⁵⁹ CAT/C/ARM/CO/4; A/HRC/25/60/Add.1; CAT/C/KAZ/CO/3; CAT/OP/BOL/3;

⁶⁰ CCPR/C/ARG/CO/5; CCPR/C/BOL/CO/3; CAT/C/MKD/CO/3

⁶¹ A/HRC/8/3.

⁶² A/HRC/8/3; OHCHR, *Human Rights Violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight*

⁶³ A/HRC/8/3.

⁶⁴ CAT/C/BGR/CO/4-5; CAT/C/LTU/CO/3; CAT/C/CZE/CO/4-5; Defensor del Pueblo de Argentina, submission.

⁶⁵ A/HRC/8/3, Penal Reform International, *Global Prison Trends 2019*

⁶⁶ A/HRC/13/39/Add.2

⁶⁷ CAT/C/IRLCO/1

⁶⁸ PRI, submission

⁶⁹ A/HRC/8/3

⁷⁰ Defensoria del Pueblo de Ecuador, submission

⁷¹ CEDAW/C/CAN/CO/7; CEDAW/C/BDI/CO/4; CCPR/C/MEX/CO/5;

⁷² CAT/C/NAM/CO/2

⁷³ CAT/C/USA/CO/3-5; A/HRC/13/39/Add.4

magnitude of the phenomenon.⁷⁴ Prison staff can be affected by gang violence, with guards and their families intimidated and threatened and even killed outside of the detention facility by individuals affiliated with criminal gangs operating inside prisons.⁷⁵ Fear of such reprisals can prevent prison staff from acting to protect inmates from inter-prisoner violence.⁷⁶

C. Violence death and serious injury resulting from environmental factors

1. Conditions of detention

23. Inadequate conditions of detention can also be a factor contributing to deaths and serious injury in detention, when they are seriously inadequate they can constitute an immediate or long-term danger to life.⁷⁷ Infectious and communicable diseases spread easily in overcrowded detention facilities due to poor hygiene and sanitation and infestation with vermin and insects facilitate which may adversely impact on the right to life of detainees.⁷⁸

24. Denial or inadequate provision of food and water to detainees can also adversely affect their right to life. The Subcommittee on the prevention of torture has expressed its concern when food and water was not provided in police custody,⁷⁹ when it was of inadequate quantity and quality, and in the absence of budgets to feed detainees.⁸⁰ In extreme cases, minimal rations of food can cause severe weight loss, resulting in deterioration of detainees' general health condition, causing diarrhoea, reducing their ability to recover from injuries and ultimately causing their death.⁸¹

25. Fires in detention facilities are also a cause of death and serious injury,⁸² sometimes resulting in the death of several dozen detainees.⁸³ Overcrowding can lead to an increased death toll as authorities may be to ensure the protection of detainees in such emergencies.⁸⁴

2. Self-harm

26. Self-harm is an important cause of death and serious injury for persons deprived of their liberty and human rights mechanism have repeatedly expressed concern regarding its prevalence.⁸⁵ The World Health Organization has noted that suicide is often the single most common cause of death in correctional settings⁸⁶ and studies have found that risk of suicide was three times higher for male prisoners and nine times higher for female prisoners than the general population.⁸⁷

27. Conditions of detention can contribute to self-harm to which detainees sometimes resort to in order to draw public attention to their treatment and conditions of detention.⁸⁸ Overcrowding has been identified as factor in self-harm and suicide.⁸⁹ Conditions on death row, including solitary confinement, inadequate food and constant use of restraints has been

⁷⁴ CAT/C/IRL/CO/2; CAT/C/CHE/CO/7; CAT/C/NZL/CO/6-7

⁷⁵ CAT/OP/BOL/3; Correctional Service of Canada, *Prison Gangs: A Review and Survey of Strategies*, 2009

⁷⁶ CAT/OP/BOL/3

⁷⁷ ICRC, *Guidelines for Investigating Deaths in Custody*

⁷⁸ A/HRC/30/19; A/HRC/31/CRP.1

⁷⁹ CAT/OP/MNG/1

⁸⁰ CAT/OP/BEN/3

⁸¹ A/HRC/31/CRP.1

⁸² CAT/C/URY/CO/3; Defensor del Pueblo de Argentina submission

⁸³ OHCHR, Statement by UN Human Rights Office on Venezuela jail deaths, 29 March 2018

⁸⁴ A/HRC/30/19

⁸⁵ CAT/C/ARM/CO/4;

⁸⁶ WHO, *Preventing Suicide in Jails and Prisons*, 2007

⁸⁷ PRI submission

⁸⁸ CAT/C/KAZ/CO/3

⁸⁹ CAT/C/GBR/CO/5; *Self-harm and overcrowding among prisoners in Geneva, Switzerland*, International Journal of Prisoner Health, 2016.

acknowledged as often leading prisoners develop psychological disorders and to commit suicide.⁹⁰

28. Other factors contributing to self-harm include the insufficient number of psychologists and psychiatrists and the lack of training of prison in how to maintain or improve the mental health of detainees.⁹¹ Lack of vigilance towards persons requiring special protection is an additional factor. In its General Comment 36 on the right to life the Human Rights Committee highlighted the duty of States to take adequate measures to prevent suicides of individuals deprived of their liberty. Additional vigilance is required for detainees with, psychosocial disabilities, a history of self-harm and suicide attempts, history of substance abuse, as well as signs of increased risk of suicide such as lack of family visits, , the moment at which the person is sentenced or when a relative dies.⁹²

3. Lack of adequate access to healthcare

29. States must respect the right to health and ensure equal access for all persons, including those deprived of their liberty, to preventive, curative and palliative health services.⁹³ Yet access to healthcare is often inexistent or inadequate and infringements to the right to health contribute to deaths in situations of deprivation of liberty.⁹⁴

30. Rates of disease, drug dependency and mental illness in the prison population are much higher than in the general population.⁹⁵ Indeed, mortality rates are high and have been shown to be as much as 50 per cent higher for prisoners than for people in the wider community.⁹⁶ Infectious and communicable diseases are often not adequately treated with potential lethal consequence.⁹⁷ Infection rates for tuberculosis are between 10 and 100 times greater in prison.⁹⁸ Prisoners are five times more likely to be living with HIV and are often left without treatment.⁹⁹ The full impact of overcrowding on access to healthcare by persons deprived of liberty has been addressed in previous reports of the High Commissioner on human rights in the administration of justice.¹⁰⁰

31. Inadequate access to healthcare often stems from routine underfunding, understaffing and lack of prison health policy. This can result in shortages of medicine and medical supplies, lack of specialists,¹⁰¹ requiring that detainees to pay to receive treatment.¹⁰² Lack adequate access also results from organizational and structural lacuna, for example lack of means of transportation or personnel to transfer inmates from detention facilities to hospitals,¹⁰³ or absence of personalized medical records.¹⁰⁴ Decisions on healthcare services are also often taken by penal-oriented administrators instead of independent public-health actors. Access to healthcare services is often dependent on negotiations with staff tasked with security sometimes resulting in denial of access to appropriate medical services and preventable deaths.¹⁰⁵ Persons deprived of liberty can also often access a limited range of treatments compared to those available in the community and in some cases, external health facilities refuse to admit and treat persons deprived of their liberty.¹⁰⁶

⁹⁰ CAT/C/VNM/CO/1

⁹¹ PRI submission

⁹² CDHDF Mexico submission

⁹³ A/HRC/30/19

⁹⁴ A/HRC/30/19

⁹⁵ PRI submission

⁹⁶ A/HRC/38/36; PRI submission

⁹⁷ A/HRC/30/19

⁹⁸ World Health Organization, *Prisons and Health*, 2014

⁹⁹ UN AIDS, *The Prevention Gap Report*, 2016; CAT/OP/BEN/3

¹⁰⁰ A/HRC/30/19; A/HRC/36/28

¹⁰¹ CAT/OP/BEN/3

¹⁰² CAT/OP/MNG/1; CAT/OP/UKR/3

¹⁰³ Defensor del Pueblo de Argentina submission

¹⁰⁴ CAT/OP/BEN/3

¹⁰⁵ A/HRC/38/36

¹⁰⁶ Defensor del Pueblo de Argentina submission

32. Lack of healthcare or inadequate treatment in detention for persons who use drugs can also contravene the right to health¹⁰⁷ and can contribute to deaths in detention. Access of detainees to medical treatment, including access to opioid substitution therapy, is often severely restricted even if it has been demonstrated that therapy is the most effective intervention available for the treatment of opioid dependence and that it contributes to reducing mortality.¹⁰⁸ Persons who use drugs may also face multiple forms of violence under the guise of treatment when placed in mandatory administrative detention.¹⁰⁹

33. Deaths in custody also result from lack of medical treatment for injuries and illnesses stemming from torture and inadequate conditions of detention. Lack of basic medical attention and denial of access to medicine, make otherwise treatable conditions, such as infected wounds, asthma or diabetes, fatal.¹¹⁰

34. Detainees should have access to healthcare at least equivalent to that available in the community, which takes into account the additional risks linked to incarceration.¹¹¹ The Mandela Rules offer extensive guidance to States on how to implement access to healthcare in detention in a manner which will contribute to reducing deaths in custody and the Special Rapporteur on the right to health has formulated numerous recommendations in this regard in a recent report on the right to health in the context of confinement and deprivation of liberty.¹¹²

III. Measures to address violence and prevent deaths and serious injury in situations of deprivation of liberty

A. Accountability

35. By depriving persons of their liberty, States assume responsibility to care for their life and bodily integrity. Due to this heightened duty of care, States must take any necessary measures to protect the lives of individuals deprived of their liberty.¹¹³ The adoption of such measures requires the identification of the causes of violence, death and serious injury in custody. This can be done in a comprehensive manner by initiating and conducting investigations into these incidents and collecting and analysing detailed data on them. Adequate investigations pave the way for holding to account individuals responsible for incidents of violence, deaths and serious injury while the collection of data contributes to ensuring institutional accountability for these incidents and the factors which contributed to their occurrence.

36. The importance of recording and examining these incidents is recognized in the Mandela Rules which require the prompt reporting of “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.”¹¹⁴ However, authorities being often unaware of violent incidents taking place in detention facilities, access by persons deprived of liberty to complaints mechanisms are required to bring these incidents to light.

1. Complaints mechanisms

37. Adequate complaints mechanisms are an important tool through which persons deprived of liberty can exercise certain rights and freedom and an important prerequisite for effective investigations into allegations of violence and ill-treatment. Rule 56 of the Mandela

¹⁰⁷ A/65/255; CAT/C/CPV/CO/1; CAT/C/CHN/CO/4

¹⁰⁸ A/HRC/10/44

¹⁰⁹ Harm Reduction International submission

¹¹⁰ A/HRC/31/CRP.1

¹¹¹ ICRC, Guidelines for Investigating Deaths in Custody

¹¹² A/HRC/38/36

¹¹³ CCPR/C/GC/C36

¹¹⁴ Rule 71

Rules provides that prisoners should be afforded an opportunity to make complaints regarding their treatment, without censorship, to the central prison administration or the appropriate judicial or competent authorities. The existence of adequate complaints mechanisms is an important prerequisite for effective investigative and accountability mechanisms.

38. Human rights mechanisms have expressed their concern regarding the absence of complaints mechanism for persons deprived of their liberty.¹¹⁵ For instance, following some country-visits the Subcommittee on the prevention of torture expressed concern about the lack of complaints mechanisms in psychiatric hospitals where some of the patients are committed without their consent.¹¹⁶

39. In order to be effective, complaints mechanisms must be independent, effective, confidential and accessible for victims of torture, including persons deprived of their liberty.¹¹⁷ They must have the capacity to deal freely with any complaint, provide effective follow-up for the purpose of remedial action and ensure that those who file complaints do not face reprisals.¹¹⁸ Persons deprived of their liberty must be aware of and have confidence in these mechanisms. Several human rights mechanisms have found that, in some countries, detainees had no knowledge of, or trust in existing complaints mechanisms, or that fear of reprisals precluded them from seeking protection.¹¹⁹

40. Complaints mechanisms must also take into account the needs of persons with increased vulnerability. The Committee on the rights of the child has expressed concern about the lack of independent complaints mechanisms available to children in some countries.¹²⁰ The Committee has urged States parties to ensure that all children deprived of their liberty have access to a safe and child-friendly mechanism to file complaints relating to their deprivation of liberty.¹²¹ The Committee on the elimination of discrimination against women has highlighted its concerns about women's ability to report violence in situations of deprivation of liberty, and has called upon States to establish independent mechanisms for the submission of such complaints.¹²² The Committee is particularly concerned about the difficulties women confront when filing complaints about police misconduct, the lack of adequate mechanisms for reporting, and the absence of an environment conducive to submitting such complaints.¹²³

41. Another challenge to the credibility of complaints mechanisms is their perceived lack of effectiveness.¹²⁴ Indeed, in some contexts, few complaints result in criminal investigations, prosecutions or sanctions,¹²⁵ or result in inadequate or lighter sentencing of perpetrators of violence or ill-treatment, which in some cases is tantamount to impunity.¹²⁶ In particular, there are reported instances of authorities bringing charges for abuse of authority or severe bodily injury rather than torture.¹²⁷ This may discourage victims from proceeding with their complaints or filing complaints at all.

42. While some complaint mechanisms are lacking in some states, others provide useful examples to emulate. For instance, some complaint mechanisms include a centralized filing

¹¹⁵ CCPR/C/ZMB/CO/3, CCPR/C/BWA/CO/1.

¹¹⁶ CAT/OP/BOL/3

¹¹⁷ CAT/C/LKA/CO/5, CAT/C/CHN-MAC/CO/5, CAT/C/KAZ/CO/3, CAT/C/UKR/CO/6, CAT/C/BDI/CO/1; CAT/C/TUR/CO/3, CAT/C/GRC/CO/5-6

¹¹⁸ CAT/C/KAZ/CO/3

¹¹⁹ A/HRC/16/52/Add.5, A/HRC/16/52/Add.3; CAT/OP/UKR/3, Submission of the Office of the Commissioner for Fundamental Rights of Hungary.

¹²⁰ CRC/LVA/CO/3-5.

¹²¹ CRC/C/HTI/CO/2-3, CRC/C/POL/CO/3-4, CRC/C/MEX/CO/4-5, CRC/C/COL/CO/4-5.

¹²² CEDAW/C/IDN/CO/6-7, CEDAW/C/TKM/CO/3-4, CEDAW/C/TUR/CO/7

¹²³ CEDAW/C/IDN/CO/6-7, CEDAW/C/TKM/CO/3-4, CEDAW/C/TUR/CO/7.

¹²⁴ Lebanon submission

¹²⁵ CCPR/C/GRC/CO/2, CEDAW/C/TUR/CO/7, CEDAW/C/GMB/CO/4-5, CEDAW/C/VEN/CO/7-8, CCPR/C/DJI/CO/1.

¹²⁶ Public Defender (Ombudsman) of Georgia submission; CAT/C/MKD/CO/3.

¹²⁷ CDHDF Mexico submission; CAT/C/MKD/CO/3.

procedure and provide for immediate medical and legal assistance to complainants.¹²⁸ Further in some countries, in all cases of death, the competent judicial authorities are immediately informed and an internal administrative procedure is initiated.¹²⁹

2. Investigations

43. The heightened duty of States to protect the lives of individuals deprived of their liberty by the State, creates a presumption of State responsibility for deaths in custody which can only be rebutted through a prompt, impartial, thorough and transparent investigation carried out by an independent body.¹³⁰ In its General Comment no 36 the Human Rights Committee highlighted that investigations and prosecutions, where appropriate, of potentially unlawful deprivations of life are an important component of the protection of the right to life. Investigations can take various forms: preliminary investigations, non-judicial or administrative investigations and of course judicial investigations. Investigations into violence, death and serious injury contribute to the protection of the rights of persons deprived of their liberty and ensure that violations are documented and redressed. With regards to deaths in custody, the purpose of the investigations is to clarify the circumstances surrounding the death, and to contribute to preventing the recurrence of death in custody, reducing trauma and providing an effective remedy to next of kin and the identification, prosecution and punishment of those responsible.¹³¹ When deaths appear to be of natural causes, an adequate investigation can contribute to dispelling concerns about inadequate healthcare or foul play, thereby assisting States to address the presumption of responsibility for deaths in detention.

44. Judicial investigations become an obligation when there appears to be an arbitrary deprivation of life for example when there are reasons to believe that the cause of death was homicide or negligence.¹³² Investigations along with the ensuing criminal and disciplinary accountability mechanisms allow for the identification, prosecution and punishment of those responsible for violence, deaths and serious injury, ensuring proper implementation of the law and combat impunity.

45. Human rights mechanisms have repeatedly highlighted instances of failure to investigate allegations of violence or ill-treatment in situations of deprivation of liberty.¹³³ They also extensively called on States to undertake prompt, thorough, impartial and effective investigations with respect to deaths in custody and all allegations of abuse or violence.¹³⁴ These calls were made particularly. Human rights mechanisms also highlighted the need to adequately investigate instances of inter-prisoner violence and decried the absence of accountability and punishment commensurate with the crime in these cases.¹³⁵ Failure to investigate results in impunity and this has been described as a human rights violation in and of itself in cases of torture and ill-treatment.¹³⁶

46. The Committee against torture also expressed concern about how investigations were being conducted. The Committee raised the issue of conflicts of interest in investigations, particularly when complaints of torture or ill-treatment are conducted by the perpetrators of such treatment or detention authorities, or by the prosecutors who are also in charge of the

¹²⁸ Uruguay submission

¹²⁹ Uruguay submission

¹³⁰ CCPR/C/GC/C36; African Commission on Human and Peoples Rights, General Comment no 3 on the Right Life

¹³¹ ICRC Guidelines for Investigating Deaths in Custody

¹³² Ibid.

¹³³ CAT/C/PER/CO/5-6, CAT/C/SLV/CO/2, CAT/C/LVA/CO/3-5, CAT/C/MNE/CO/2.

¹³⁴ CCPR/C/MDA/CO/3, CCPR/C/ECU/CO/6, CCPR/C/UZB/CO/4, CCPR/C/VEN/CO/4; CEDAW/C/IRQ/CO/4-6, CEDAW/C/GTM/CO/8-9; CRC/C/KAZ/CO/4, CRC/C/GAB/CO/2, CRC/C/TZA/CO/3-5, CRC/C/KGZ/CO/3-4; CAT/C/LKA/CO/5, CAT/C/TKM/CO/2,, CAT/C/TUR/CO/3.

¹³⁵ CAT/C/MDA/CO/3, CAT/C/BGR/CO/6, CAT/C/KAZ/CO/3, CAT/C/NLD/CO/5-6; CCPR/C/CYP/CO/4; CCPR/C/BOL/CO/3, CCPR/C/BIH/CO/2

¹³⁶ International Bar Association submission

criminal case against the detainee rather than independent authorities.¹³⁷ Other lacunae have also been identified, such as the absence in forensic services of medical personnel trained in documenting and investigating torture.¹³⁸ In other cases, actions of the detaining authorities, such as delaying or preventing access to the scene of the events,¹³⁹ or in other cases ordering the cleaning a potential crime scene before the arrival of police,¹⁴⁰ have resulted in obstructing the investigations into deaths in detention or allegations of torture and ill-treatment.

47. Several resources are available to States to assist them in the implementation of their obligation to investigate deaths in custody. General Comment no 36 of the Human Rights Committee sets out some of the requirements and objectives of investigations into potential violations of the rights to life, including for instance the need for transparency both with regards to the victim's next of kin and the public. The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, also known as the Minnesota Protocol on the Investigation of Potentially Unlawful Death, is rooted in the international legal obligations of States to respect and protect life and to investigate unlawful deaths. It specifies that the duty to investigate is triggered when a State agent causes the death of a detainee or when a person dies in custody. The duty entails reporting the event, without delay, "to a judicial or other competent authority that is independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death."¹⁴¹ The International Committee of the Red Cross recently published Guidelines for Investigating Deaths in Custody providing States with detailed guidance on the norms and standards to be respected and the methodology to be followed by preliminary, judicial and non-judicial investigations into cases of death in custody.¹⁴² The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol, provides detailed guidance for the investigating cases of alleged torture and reporting such cases to the relevant authorities, setting out the standards for the legal investigation, but also for the documenting of the physical and psychological effects of torture by medical professionals.¹⁴³

3. Data collection

48. Adequate and accurate data-gathering can help identify trends across detention facilities, improve oversight, and ensure that investigations are effective and perpetrators are held accountable. Several UN treaty bodies have emphasized the importance of data for investigations and prosecutions. The Committee against torture has emphasized the role statistical data can play in facilitating the determination of root causes and the design of strategies to prevent and reduce the occurrence of violence and ill-treatment in places of imprisonment.¹⁴⁴

49. In some States, there is an absence of reliable records of violent events and their causes and consequences in situations of deprivation of liberty.¹⁴⁵ A number of states lack comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment.¹⁴⁶ The Committee against torture highlighted the importance of disaggregating data by crime, age, gender, nationality ethnicity, and geographical location.¹⁴⁷

¹³⁷ CAT/C/CHN-MAC/CO/5, CAT/C/KAZ/CO/3, CAT/OP/UKR/3, CDHDF Mexico submission; CAT/OP/MNG/1; CAT/OP/UKR/3.

¹³⁸ CAT/C/TJK/CO/2

¹³⁹ CAT/OP/UKR/3

¹⁴⁰ Canada, Office of the Correctional Investigator, *Fatal Response: An Investigation into the Preventable Death of Matthew Ryan Hines – Final Report*, 15 February 2017

¹⁴¹ Minnesota Protocol.

¹⁴² ICRC Guidelines for Investigating Deaths in Custody.

¹⁴³ Istanbul Protocol.

¹⁴⁴ CAT/C/LTU/CO/2.

¹⁴⁵ CDHDF Mexico submission.

¹⁴⁶ CAT/C/ATG/CO/1, CAT/C/ROU/CO/2, CAT/C/SLE/CO/1, CAT/C/CYP/CO/4.

¹⁴⁷ CAT/C/TKM/CO/1, CAT/C/LKA/CO/3-4, CAT/C/CUB/CO/2, CAT/C/MRT/CO/1.

50. Human rights mechanisms addressing particular segments of the population have also called for increased disaggregation of the data collected on violence in situations of deprivation of liberty. The Committee on the Rights of Persons with Disabilities has encouraged States to collect data on violence an abuse against persons with disabilities.¹⁴⁸ The Committee recommends disaggregating the data by age, sex, type of impairment, ethnicity, geographical location, and type of residence or institution.¹⁴⁹ The Committee on the elimination of discrimination against women has recommended that States collect statistics on incidents of violence against women in detention, including sexual violence.¹⁵⁰

51. Some States effectively gather data on deaths and injury of detainees in custody, including data on causes of self-inflicted injuries such as cuts, oral ingestion of foreign objects, poison, blows, stabbing, and suicide,¹⁵¹ or the type of inter-prisoner violence and the related injuries.¹⁵² Availability of data about use of force, violence, death and injury is compiled and disaggregated by age, ethnicity, gender, sexual-orientation and in criminal justice detention by crime or type of crime the victim was accused or found guilty of, allows for a thorough examination and identification of trends by the authorities, even after several years, which may in turn allow for the adoption of mitigating circumstances.

52. Transparency and availability of this data to the public is increasingly seen as being important to ensure the accountability of organs of the State that detain individuals and manage detention facilities. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment and the Special Rapporteur on Summary Executions have emphasized the importance of making data on occurrences of violence and death in police and prison custody publicly available in the interest of transparency and facilitating effective investigations.¹⁵³

B. Practical measures / good practices

53. As examined above overcrowding has an important impact on material conditions of detention, facilitate spread of disease and is conducive to inter-prisoner violence and some States have attempted to address this issue by undertaking criminal law reforms that reduced incarceration.¹⁵⁴ The initiative to elaborate a set of set of universal standards for non-coercive interviewing methods and procedural safeguards,¹⁵⁵ will provide guidance to States on moving away from a confession based criminal justice system, thereby reducing the risk of torture and ill-treatment. In addition to these far-reaching reforms, States can adopt a variety of practical measures aiming at reducing violence against and among prisoners and deaths in custody. Among the best practices in that regard are improvements to the training of staff and the implementation of changes in the management and operation of detention facilities.

1. Training of detention facility personnel

54. Effective training for detention staff and law enforcement officials can reduce the occurrence of death in custody and prevent violence against and among detainees.¹⁵⁶ Such trainings should focus on: the proper treatment of detained suspects and the prohibition of torture; the lawful use of force in law enforcement operations; the arbitrary deprivation of life, and the management of prisoners in order to prevent inter-prisoner violence.¹⁵⁷

¹⁴⁸ CRPD/C/ARG/CO/1.

¹⁴⁹ CRPD/C/CHL/CO/1.

¹⁵⁰ CEDAW/C/UZB/CO/4.

¹⁵¹ Slovenia submission.

¹⁵² Ombudsman Luxemburg submission

¹⁵³ A/HRC/31/57/Add.4, A/HRC/17/28/Add.5, A/HRC/20/22/Add.3.

¹⁵⁴ CAT/OP/MNG/1; Jamaica Submission

¹⁵⁵ A/RES/72/163

¹⁵⁶ CMW/C/TUR/CO/1; A/HRC/28/68/Add.4.

¹⁵⁷ A/HRC/11/2/Add.3; CAT/C/BGR/CO/6; ICRC Guidelines for Investigating Deaths in Custody; CAT/C/MDA/CO/3; CAT/C/BGR/CO/6; CAT/C/KAZ/CO/3; Uruguay Submission

55. Depending on the specific needs of the facility, issue-specific trainings should be organized. For instance, mandatory gender-sensitive training for judges, prosecutors, and police and prison officers can reduce sexual violence in custodial settings,¹⁵⁸ while training and awareness-raising regarding issues children confront in detention facilities can also improve the conditions of detainees.¹⁵⁹ Further, training detention facility staff to recognize suicidal tendencies in incarcerated individuals can assist in suicide prevention.¹⁶⁰

56. However, training and education programs on human rights and the prevention of torture have a limited impact.¹⁶¹ Those organizing trainings should be attentive to the circumstances in which trainings are conducted, for examples compelling prison staff to attend such trainings on their personal time may predispose them negatively.¹⁶² Trainings should include modules on sanctions that personnel may face if they fail to comply with the professional standards of conduct.¹⁶³ All trainings should be conducted with a view to improving the morale, work ethic, and sense of belonging of detention facility personnel and law enforcement officials.¹⁶⁴ The report on the seminar held in 2017 to exchange national experiences and practices on the implementation of effective safeguards to prevent torture during police custody and pretrial detention offers additional guidance for States in their efforts to prevent torture and other ill-treatment in custodial settings.¹⁶⁵

2. Management and Operation of Facilities

57. Risk of violence, death and serious injury resulting from actions of officials can be reduced through the adoption of a number of practical measures. These include maintaining proper records of persons deprived of their liberty by registering them upon arrival at a detention facility ensures that all persons are kept track of,¹⁶⁶ ensuring a medical examination upon arrival and providing persons deprived of their liberty immediate access to a lawyer.¹⁶⁷ Standard operating procedures such as those related to visits, disciplinary measures and use of force and restraints should be regularly updated.¹⁶⁸ Integrating evaluation of aggressive behavior in the decision process regarding resort to physical restraints on potentially violent detainees and implementing de-escalation techniques can also reduce the incidence of violence, particularly in psychosocial facilities.¹⁶⁹ In addition to being separated from male detainees, female detainees should be monitored by female guards in order to protect them from sexual violence and exploitation.¹⁷⁰ Finally, detainees should be provided an avenue to lodge complaints when threatened with arbitrary deprivation of life or ill-treatment.¹⁷¹ This can be by way of an anonymous hotline,¹⁷² confidential complaint mechanisms,¹⁷³ or via internal or external investigations of places of detention.¹⁷⁴ When dealing with juvenile detainees, States should ensure that such mechanisms are child-friendly.¹⁷⁵

58. Access to healthcare can be improved and incidents of self-harm reduced through the implementation of a number of practical measures. For instance, providing prisoners with access to a medical professional immediately upon arrival and¹⁷⁶ ensuring that each person

¹⁵⁸ CCPR/C/JPN/CO/5.

¹⁵⁹ CRC/C/LVA/CO/3-5.

¹⁶⁰ Slovenia Submission

¹⁶¹ CDHDF Mexico submission

¹⁶² CDHDF Mexico submission

¹⁶³ Uruguay Submission

¹⁶⁴ Uruguay Submission

¹⁶⁵ A/HRC/37/27

¹⁶⁶ A/HRC/25/60/Add.1.

¹⁶⁷ Morocco submission

¹⁶⁸ Uruguay submission.

¹⁶⁹ Ombudsman Luxembourg submission

¹⁷⁰ CRC/C/CAN/CO/3-4.

¹⁷¹ ICRC Guidelines for Investigating Deaths in Custody

¹⁷² Uruguay submission

¹⁷³ CAT/C/CHN-MAC/CO/5.

¹⁷⁴ ICRC Guidelines for Investigating Deaths in Custody

¹⁷⁵ CRC/C/COL/CO/4-5.

¹⁷⁶ PRI Submission; Defensoria del Pueblo de Ecuador submission; Morocco submission

deprived of their liberty has an individualized medical file assists the authorities in providing medical care tailored to their needs.¹⁷⁷ Ensuring regular medical check-ups, and periodic meetings with trained psychosocial staff.¹⁷⁸ Combined with awareness raising on the prevention of suicide across the prison, such care can help detect suicidal and self-harm tendencies in prison populations.¹⁷⁹

59. Proper management of detention facilities can reduce inter-prisoner violence, and States should maintain effective control of the entirety of these facilities.¹⁸⁰ Prison officials should therefore not limit their tasks to the monitoring of the perimeter of facility but also ensure the internal management of the accommodation units. Detention facility staff are best-positioned to prevent violence¹⁸¹ and States can implement strategies to detect and prevent violence in detention facilities to be carried out by facility staff. Further, encouraging staff engagement with detainees and ensuring that detainees are heard can reduce violence between detainees.¹⁸²

60. Measures related to the organization of the detention facility are equally important. Prison management can establish institutional or external mechanisms for early detection, monitoring, and documentation of violence,¹⁸³ install cameras in facilities,¹⁸⁴ and develop policies to combat gang violence.¹⁸⁵ Establishing a mechanism to keep detainees informed of their administrative situation is also important as transparency can reduce dissatisfaction and, consequently, the incidence of violence.¹⁸⁶ The practice of ensuring cultural and ethnic diversity in accommodation units instead of grouping detainees according to their ethnicity or origin can also contribute to limiting tensions.¹⁸⁷ Substandard material conditions of detention also contribute to violence death and serious injury. Some States have made strides to renovate detention facilities and improve the material conditions of prisoners.¹⁸⁸

61. Proper management of detention facilities cannot be effectively implemented in the absence of adequate resources. In order to execute the strategies that will improve detention conditions and reduce violence detention facilities must be adequately staffed.¹⁸⁹ Staff ratios, pay levels, working conditions, and proper training and supervision all facilitate better treatment of detainees and increase the security of these environments.¹⁹⁰ Adequate staff training and resources are necessary for effective oversight and accountability, which in turn ensures that the law is properly implemented.¹⁹¹ Adequate resources also promote better institutional cultures.

IV. Conclusions and recommendations

62. Violence is prevalent in situations of deprivation of liberty and mortality rates of persons deprived of liberty are often much higher than the general population. This is the result not only of vertical and horizontal violence but also due to environmental causes such as conditions of detention and inadequate access to healthcare.

63. Lack of accountability for serious injury and death in detention remains a concern both with regards to individual accountability of perpetrators of the ill-

¹⁷⁷ Defensoria del Pueblo de Ecuador, submission

¹⁷⁸ PRI Submission; Ombudsman Luxemburg submission

¹⁷⁹ PRI Submission

¹⁸⁰ CCPR/C/BOL/CO/3.

¹⁸¹ Ombudsman Luxemburg submission

¹⁸² Ibid

¹⁸³ CRPD/C/ARG/CO/1; CAT/C/IRL/CO/2; CAT/C/ARM/CO/4; CCPR/C/CYP/CO/4; Uruguay Submission; Jamaica Submission

¹⁸⁴ A/HRC/32/31/Add.2

¹⁸⁵ CRC/C/BRA/CO/2-4; Penal Reform International, "Global Prison Trends 2019,"

¹⁸⁶ Ombudsman Luxembourg submission

¹⁸⁷ Ombudsman Luxembourg submission

¹⁸⁸ CAT/OP/MNG/1.

¹⁸⁹ CCPR/C/LVA/CO/3; CAT/C/CPV/CO/1.

¹⁹⁰ PRI Submission; CAT/C/BIH/CO/6; CAT/C/LTU/CO/3.

¹⁹¹ Castan Centre submission

treatment and violence, and institutional accountability for creating conditions conducive to violence death and serious injury or for failing to take measures to address them.

64. The interpretation and conclusions of human rights mechanisms, such as General Comment 36 on the right to life offer valuable guidance to States. Expert and practitioner led initiatives such as the development of guidance on non-coercive interviewing methods and procedural safeguards and the updating of the Istanbul Protocol on effective investigation and documentation of torture also assist States to comply with their heightened duty of care to protect the life and bodily integrity of persons deprived of liberty.

65. States should, in addition to exploring the possibility of implementing some of the good practices mentioned throughout this report, consider the following recommendations:

a) Adopt measures to address overcrowding by reducing recourse to incarceration including by resorting to pretrial detention as a last resort; developing and implementing alternatives to custodial measures during pretrial and post-conviction and reviewing penal policies and legislation to ensure proportionate sentencing. States should in this regard analyse the impact of life sentences without parole on overcrowding.

b) Guarantee access to healthcare that is tailored to the individual needs of detainees and ensure that the care available to them be at least equivalent to that available in the community.

c) Ensure good and safe working conditions for staff and assess the adequacy of prison staffing to ensure sufficient prisoner-staff ratios.

d) Where prisons are de facto managed by prisoners States should take measures to reassert responsible control over the prison and prison population.

e) Collect, compile and analyse data about use of force, violence, death and serious injury in detention, disaggregated by age, ethnicity, gender, sexual-orientation, cause of death and type of offence the victim was accused or found guilty of.

f) Analyse causes of inter-prisoner violence with a view to develop strategies to address it.

g) Ensure that all cases of death and serious injury in custody are reported and investigated by an independent body. In cases of deaths, where the preliminary investigation reveals that the cause of death was homicide or negligence, or where this is a prima facie conclusion, a judicial/criminal investigation must be initiated and those found responsible held to account.

h) Ensure adequate disciplinary sanctions for staff or detainee perpetrators of acts of violence and where these acts amount to crimes ensure that all perpetrators are prosecuted and that sanctions are commensurate to the gravity of the offence.