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## Human Rights Council

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### 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. In the report, the United Nations High Commissioner for Human Rights addresses violence, death and serious injury in situations of deprivation of liberty, drawing on the experience of United Nations and regional human rights mechanisms, as well as submissions from States, civil society and other relevant stakeholders. The High Commissioner examines the types of violence that result in deaths and serious injury, as well as the environmental factors that contribute to such deaths. The High Commissioner also considers measures that can be adopted to address these issues, including measures to ensure accountability, as well as other practical measures and good practices.

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\* 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 Council. In preparation of this report, contributions were sought from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.<sup>1</sup> In addition to drawing on the information received from these entities, the High Commissioner also draws on a range of public sources, including from United Nations human rights mechanisms and work by civil society organizations.

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.<sup>2</sup> 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, as is the prohibition on arbitrary deprivation of life. The right to be protected from torture or cruel, inhuman or degrading treatment or punishment is found in article 7 of the Covenant 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 as set out in article 10 of the Covenant. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide States with important and detailed guidelines for protecting and fulfilling the human rights of persons deprived of their liberty.

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

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<sup>1</sup> Submissions were received from: Austria, Guatemala, Ireland, Jamaica, Kenya, Lebanon, Morocco, the Philippines, Poland, Portugal, Qatar, Slovenia, Turkey, Ukraine, Uruguay, the United Nations Office on Drugs and Crimes (UNODC), the Conseil National des Droits l'Homme (Algeria), the Defensor del Pueblo de la Nación (Argentina), the National Commission on Human Rights and Freedoms (Cameroon), the Defensoría del Pueblo (Ecuador), the Public Defender (Ombudsman) of Georgia, the Office of the Commissioner for Fundamental Rights (Hungary), the Ombudsman (Luxembourg), the Comisión de Derechos Humanos del Distrito Federal (Mexico), Amnesty International, Americans for Democracy and Human Rights in Bahrain, the Association nationale de promotion et protection des droits de l'homme (Cameroon), the Castan Centre for Human Rights Law – Monash University, Harm Reduction International, the Howard League, the International Bar Association's Human Rights Institute, the Institute for NGO Research and Penal Reform International.

<sup>2</sup> See A/68/261.

## II. Violence, death and serious injury in situations of deprivation of liberty

### A. Violence, death 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 the 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.<sup>3</sup> 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.<sup>4</sup> The problem arises in a variety of different contexts and affects diverse categories of persons deprived of their liberty. The Committee on the Rights of the Child has expressed its concern about the routine use in some States of torture and ill-treatment against children during investigations.<sup>5</sup> Another group facing an increased risk of torture and ill-treatment are persons 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.<sup>6</sup> 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.<sup>7</sup> In situations affected by armed conflict, the torture of conflict-related detainees immediately following capture and during interrogations often results in their death, either immediately or as a result of the injuries sustained due to torture.<sup>8</sup>

7. Resorting to physical and psychological violence to punish persons deprived of their liberty is another objective of police, corrections officers and other personnel working in places of detention.<sup>9</sup> The intentional withholding of drug treatment from a person who uses drugs may also be used as a form of punishment.<sup>10</sup> Children deprived of their liberty are especially vulnerable to the use of beatings and other forms of physical violence as a form of punishment.<sup>11</sup> The Committee on the Rights of the Child has expressed its concern about such violence in various institutions in which juveniles are deprived of their liberty, such as juvenile detention centres, socio-pedagogical boarding schools and correctional schools.<sup>12</sup> The Committee on the Protection of the Rights of All Migrant Workers and Members of

<sup>3</sup> See CAT/OP/MNG/1.

<sup>4</sup> See CAT/C/AZE/CO/4; CAT/OP/BOL/3.

<sup>5</sup> See CRC/C/UZB/CO/3-4; CRC/C/ISR/CO/2-4; CRC/C/GIN/CO/2.

<sup>6</sup> See A/HRC/30/65; CAT/C/RUS/CO/6.

<sup>7</sup> See A/HRC/10/44 and A/HRC/10/44/Corr.1; CCPR/C/RUS/CO/7.

<sup>8</sup> See the conference room paper (A/HRC/31/CRP.1) "Out of sight, out of mind: deaths in detention in the Syrian Arab Republic". Available from [www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx](http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx). United Nations Assistance Mission in Afghanistan and the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Treatment of Conflict-Related Detainees* (Kabul, 2015 and 2017).

<sup>9</sup> In the present 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. See A/HRC/16/52/Add.5; submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>10</sup> Submission of Harm Reduction International.

<sup>11</sup> See CAT/OP/BEN/3; CRC/C/ERI/CO/4; Council of Europe, "Report on violence in institutions for juvenile offenders" (Strasbourg, 2014).

<sup>12</sup> See CRC/C/BGR/CO/3-5.

Their Families has also expressed its concern at the use of physical violence by immigration officials and guards against unaccompanied minor children.<sup>13</sup>

8. Acts of sexual and gender-based violence committed by staff of detention facilities continue to be a cause of concern<sup>14</sup> and their widespread prevalence has been highlighted by the Committee against Torture both in criminal detention and in immigration detention settings.<sup>15</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also described custodial rape as constituting torture.<sup>16</sup> The Committee on the Elimination of Discrimination against Women has repeatedly denounced gender-based violence, including sexual harassment and assaults against female prisoners by male penitentiary staff and police officers.<sup>17</sup> 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.<sup>18</sup> Children who are arrested or detained are also victims of sexual violence.<sup>19</sup>

## 2. Use of force

9. The 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 extrajudicial executions of detainees by the security forces.<sup>20</sup> Use of force also covers resorting 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 of force involving less-lethal weapons such as batons, electroshock weapons, baton rounds and tear gas, in the quelling of demonstrations inside detention facilities.<sup>21</sup> The use of chemical irritants, such as tear gas and pepper spray, in detention facilities to quell riots and to subdue detainees deemed uncooperative also leads to serious injury and in some cases appears to be a contributing factor in the death of persons deprived of their liberty.<sup>22</sup> 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.<sup>23</sup>

10. The use of restraints and restraint positions has 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 25 per cent of cases of death in police custody and established as the cause of death in 10 per cent of the cases.<sup>24</sup> Restraint positions, in which detained persons are pinned face down or held in prone positions, have led to a number of deaths.<sup>25</sup> Human

<sup>13</sup> See CMW/C/IDN/CO/1.

<sup>14</sup> See CAT/C/TKM/CO/2.

<sup>15</sup> See CAT/C/USA/CO/3-5.

<sup>16</sup> See A/63/175.

<sup>17</sup> See 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.

<sup>18</sup> Submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>19</sup> See CRC/C/BRA/CO/2-4; CCPR/C/LKA/CO/5.

<sup>20</sup> See A/HRC/11/2/Add.2; United Nations Stabilization Mission in Haiti and OHCHR, “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* (2018), p. 20.

<sup>21</sup> See [www.unhcr.org/news/latest/2005/1/41ee7bdb4/unhcr-says-maltese-troops-seemed-use-excessive-force-quell-peaceful-demo.html](http://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.

<sup>22</sup> See OHCHR, “Press briefing notes on Gambia and 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.

<sup>23</sup> See CAT/C/CZE/CO/4-5; CAT/C/BHR/CO/2-3.

<sup>24</sup> See United Kingdom of Great Britain and Northern Ireland, Giles Lindon and Stephen Roe for the Home Office, *Deaths in Police Custody: A Review of the International Evidence*, Research Report 95 (London, 2017).

<sup>25</sup> Submission of the Castan Centre.

rights mechanisms have expressed their concern with regard to the use of mechanical restraints against both prisoners<sup>26</sup> and patients in psychiatric hospitals,<sup>27</sup> and warned that the prolonged use of restraint can lead to muscle atrophy, life-threatening deformities and organ failure.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup> The Nelson Mandela Rules contain detailed rules on the use of restraint instruments, in particular prohibiting their use for disciplinary purposes.<sup>31</sup>

### 3. Sentencing

12. The death penalty<sup>32</sup> has been recognized as a source of physical and psychological violence, in particular due to the fact that death row constitutes an environment in which persons sentenced to death are particularly vulnerable to violence.<sup>33</sup> The Special Rapporteur on torture found that death row violated the prohibition of torture, inhuman or degrading punishment, due to, inter alia, the prevailing harsh treatment and conditions of detention.<sup>34</sup> This may include physical violence, the almost constant use of physical restraints, such as shackling, detention in cages or small cells, and solitary confinement.<sup>35</sup>

13. Life sentences also have a significant impact on the physical health of prisoners, with some reports of health-care neglect by prison authorities. Some human rights mechanisms have found that prisoners serving life sentences are at risk of ill-treatment and excessive use of force by prison officers.<sup>36</sup> The number of prisoners serving life sentences increased by 84 per cent between 2000 and 2014, with their number amounting to close to 480,000 worldwide.<sup>37</sup> 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.<sup>38</sup>

## B. Violence among 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

<sup>26</sup> See CAT/OP/MNG/1.

<sup>27</sup> See CAT/OP/BOL/3.

<sup>28</sup> A/63/175, para. 55.

<sup>29</sup> See UNODC and OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement* (New York, 2017), p. 143.

<sup>30</sup> Principles 15 and 16.

<sup>31</sup> Rules 43 and 47–49.

<sup>32</sup> 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.

<sup>33</sup> Submission of Harm Reduction International.

<sup>34</sup> See A/67/279.

<sup>35</sup> Submission of Harm Reduction International.

<sup>36</sup> See 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” (Strasbourg, 26 November 2009), paras. 11–12.

<sup>37</sup> Submission of Penal Reform International.

<sup>38</sup> Ibid.

in custody.<sup>39</sup> 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.<sup>40</sup> Human rights mechanisms have repeatedly expressed their concern about the high rate of inter-prisoner violence.<sup>41</sup>

15. The presence and activities of gangs in detention facilities are the source of much of the inter-prisoner violence.<sup>42</sup> According to some studies, such activities disproportionately contribute to this type of violence.<sup>43</sup> 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.<sup>44</sup> Gang violence has resulted in the death of child detainees in a number of countries.<sup>45</sup> 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.<sup>46</sup> Inter-prisoner violence also takes the form of “disciplinary” sanctions often imposed by certain inmates on others detainees.<sup>47</sup>

16. Several human rights mechanisms have also expressed serious concern at the prevalence of sexual violence in situations of deprivation of liberty, including in immigration detention.<sup>48</sup> 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.<sup>49</sup>

17. Ethnic tensions between prisoners have led to clashes resulting in injuries to detainees in many facilities.<sup>50</sup> 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,<sup>51</sup> and persons with disabilities being more exposed to violence.<sup>52</sup>

## 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.<sup>53</sup> In addition to being tolerated, violence between detainees is sometimes induced by law

<sup>39</sup> Submission of the International Bar Association’s Human Rights Institute.

<sup>40</sup> Submission of the Howard League.

<sup>41</sup> See CAT/C/MUS/CO/3; CAT/C/NZL/CO/6.

<sup>42</sup> See UNODC, *Handbook on the Management of High-Risk Prisoners* (Vienna, 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.

<sup>43</sup> See Correctional Service of Canada, “Prison gangs: a review and survey of strategies” (Ottawa, 2009).

<sup>44</sup> Submission of the International Bar Association’s Human Rights Institute.

<sup>45</sup> See CRC/C/BRA/CO/2-4; CRC/C/HND/CO/4-5.

<sup>46</sup> See CAT/C/GTM/CO/5-6.

<sup>47</sup> Submission of the Office of the Commissioner for Fundamental Rights (Hungary).

<sup>48</sup> See CAT/C/USA/CO/3-5; CCPR/C/CYP/CO/4.

<sup>49</sup> See A/HRC/36/28; CAT/C/USA/CO/3-5; CAT/C/NAM/CO/2.

<sup>50</sup> See CAT/C/CHE/CO/7.

<sup>51</sup> See CAT/C/ARM/CO/3.

<sup>52</sup> See CRPD/C/ARG/CO/1; A/63/175; submission of Penal Reform International.

<sup>53</sup> See CCPR/C/KAZ/CO/1/Add.1; CAT/C/THA/CO/1.

enforcement personnel in order to punish or elicit cooperation from targeted detainees.<sup>54</sup> Sexual violence has also been highlighted as occurring with the consent, approval or even at the behest of prison administrations.<sup>55</sup> The divulgence by guards to other detainees of the nature of a crime committed by a new detainee, for example by revealing that the individual had been convicted for sexual abuse, can also contribute to sexual violence.<sup>56</sup> 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.<sup>57</sup> 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 a high degree of authority, to ensure discipline and security within the prison.<sup>58</sup>

20. The management of prisons by prisoners has been identified by several human rights mechanisms as the main factor contributing to inter-prisoner violence.<sup>59</sup> According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the violent death of some inmates is an inescapable consequence of the abdication of authority to prisoners.<sup>60</sup> 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 uprisings 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.<sup>61</sup> In his 2008 report to the Human Rights Council, the Special Rapporteur extensively examines the phenomenon of prison self-government, and formulates concrete proposals for States on how to reassert responsible control over their prison populations and to effectively protect prisoners from each other.<sup>62</sup>

21. Overcrowding and understaffing are also conducive to inter-prisoner violence.<sup>63</sup> Understaffing can make both the management of prisons by prisoners and the exponential rise in the use of violence related to it unavoidable.<sup>64</sup> 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.<sup>65</sup> The unavailability of personnel trained in the management of inter-prisoner violence is also a contributing factor.<sup>66</sup> Overcrowding not only leads to riots,<sup>67</sup> but also hinders the efforts of prison staff to monitor densely populated cells and common spaces and impedes the effective segregation of detainees.<sup>68</sup> Lack of segregation between different categories of detainees further contributes to inter-prisoner violence. This includes the failure to separate pretrial detainees from convicted prisoners,<sup>69</sup> 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,<sup>70</sup> for transgender women placed together with male detainees<sup>71</sup>

<sup>54</sup> See CAT/C/MDA/CO/3; submission of the Office of the Commissioner for Fundamental Rights (Hungary).

<sup>55</sup> See CAT/C/KAZ/CO/3.

<sup>56</sup> Submission of the Office of the Commissioner for Fundamental Rights (Hungary).

<sup>57</sup> See A/HRC/13/39/Add.4.

<sup>58</sup> See CAT/C/ARM/CO/4; A/HRC/25/60/Add.1; CAT/C/KAZ/CO/3; CAT/OP/BOL/3.

<sup>59</sup> See CCPR/C/ARG/CO/5; CCPR/C/BOL/CO/3; CAT/C/MKD/CO/3.

<sup>60</sup> See A/HRC/8/3 and A/HRC/8/3/Corr.1.

<sup>61</sup> Ibid.; OHCHR, *Human Rights Violations in the Bolivarian Republic of Venezuela*.

<sup>62</sup> See A/HRC/8/3 and A/HRC/8/3/Corr.1.

<sup>63</sup> See CAT/C/BGR/CO/4-5; CAT/C/LTU/CO/3; CAT/C/CZE/CO/4-5; submission of the Defensor del Pueblo de la Nación (Argentina).

<sup>64</sup> See A/HRC/8/3 and A/HRC/8/3/Corr.1; Penal Reform International, *Global Prison Trends 2019*.

<sup>65</sup> See A/HRC/13/39/Add.2.

<sup>66</sup> See CAT/C/IRL/CO/1.

<sup>67</sup> Submission of Penal Reform International.

<sup>68</sup> See A/HRC/8/3 and A/HRC/8/3/Corr.1.

<sup>69</sup> Submission of the Defensoría del Pueblo (Ecuador).

<sup>70</sup> See CEDAW/C/CAN/CO/7; CEDAW/C/BDI/CO/4; CCPR/C/MEX/CO/5.

<sup>71</sup> See CAT/C/NAM/CO/2.

and for children detained in adult facilities and police custody.<sup>72</sup> 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 magnitude of the phenomenon.<sup>73</sup> Prison staff can be affected by gang violence, with guards and their families intimidated and threatened and even killed outside of detention facilities by individuals affiliated with criminal gangs operating inside prisons.<sup>74</sup> Fear of such reprisals can prevent prison staff from acting to protect inmates from inter-prisoner violence.<sup>75</sup>

## 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 injuries in detention. When they are seriously inadequate they can constitute an immediate or long-term danger to life.<sup>76</sup> Infectious and communicable diseases spread easily in overcrowded detention facilities due to poor hygiene and sanitation and to infestation with vermin and insects, which may have an adverse impact on the right to life of detainees.<sup>77</sup>

24. Denial or inadequate provision of food and water to detainees can also adversely affect their right to life. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has expressed its concern when food and water was not provided in police custody,<sup>78</sup> when it was of inadequate quantity and quality, and when there were no budgets to feed detainees.<sup>79</sup> In extreme cases, minimal rations of food can cause severe weight loss, resulting in the deterioration of detainees' general health, causing diarrhoea, reducing their ability to recover from injuries and ultimately causing their death.<sup>80</sup>

25. Fires in detention facilities are also a cause of death and serious injury,<sup>81</sup> sometimes resulting in the death of several dozen detainees.<sup>82</sup> Overcrowding can lead to an increased death toll as authorities may be unable to ensure the protection of detainees in such emergencies.<sup>83</sup>

### 2. Self-harm

26. Self-harm is an important cause of death and serious injury for persons deprived of their liberty and human rights mechanisms have repeatedly expressed concern regarding its prevalence.<sup>84</sup> The World Health Organization has noted that suicide is often the single most

<sup>72</sup> See CAT/C/USA/CO/3-5; A/HRC/13/39/Add.4.

<sup>73</sup> See CAT/C/IRL/CO/2; CAT/C/CHE/CO/7; CAT/C/NZL/CO/6-7.

<sup>74</sup> See CAT/OP/BOL/3; Correctional Service of Canada, "Prison gangs: a review and survey of strategies".

<sup>75</sup> See CAT/OP/BOL/3.

<sup>76</sup> See ICRC, "Guidelines for Investigating Deaths in Custody" (Geneva, 2013).

<sup>77</sup> See A/HRC/30/19; A/HRC/31/CRP.1.

<sup>78</sup> See CAT/OP/MNG/1.

<sup>79</sup> See CAT/OP/BEN/3.

<sup>80</sup> See A/HRC/31/CRP.1.

<sup>81</sup> See CAT/C/URY/CO/3; submission of the Defensor del Pueblo de la Nación (Argentina).

<sup>82</sup> See OHCHR, "Statement by UN Human Rights Office on Venezuela jail deaths", 29 March 2018.

<sup>83</sup> See A/HRC/30/19.

<sup>84</sup> See CAT/C/ARM/CO/4.

common cause of death in correctional settings.<sup>85</sup> Studies have found that the risk of suicide is three times higher for male prisoners and nine times higher for female prisoners than the general population.<sup>86</sup>

27. Conditions of detention can contribute to self-harm, to which detainees sometimes resort in order to draw public attention to their treatment and conditions of detention.<sup>87</sup> Overcrowding has been identified as a factor in self-harm and suicide.<sup>88</sup> Conditions on death row, including solitary confinement, inadequate food and the constant use of restraints, have been acknowledged as often leading prisoners to develop psychological disorders and commit suicide.<sup>89</sup>

28. Other factors contributing to self-harm include the insufficient number of psychologists and psychiatrists and the lack of training of prison staff in how to maintain or improve the mental health of detainees.<sup>90</sup> Lack of vigilance towards persons requiring special protection is an additional factor. In its general comment No. 36 (2018) 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, a history of substance abuse and signs of increased risk of suicide, such as lack of family visits, both at the moment the person is sentenced or when a relative dies.<sup>91</sup>

### 3. Lack of adequate access to health care

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.<sup>92</sup> However, access to health care is often inexistent or inadequate and infringements of the right to health contribute to deaths in situations of deprivation of liberty.<sup>93</sup>

30. Rates of disease, drug dependency and mental illness in the prison population are much higher than in the general population.<sup>94</sup> 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.<sup>95</sup> Infectious and communicable diseases are often not adequately treated with potential lethal consequence.<sup>96</sup> Infection rates for tuberculosis are between 10 and 100 times greater among the prison population.<sup>97</sup> Prisoners are five times more likely to be living with HIV and are often left without treatment.<sup>98</sup> The full impact of overcrowding on access to health care by persons deprived of their liberty has been addressed in previous reports of the High Commissioner on human rights in the administration of justice.<sup>99</sup>

31. Inadequate access to health care often stems from routine underfunding, understaffing and lack of prison health policy. This can result in shortages of medicine and medical supplies and a lack of specialists,<sup>100</sup> which requires detainees to pay to receive

<sup>85</sup> See World Health Organization and the International Association for Suicide Prevention, “Preventing suicide in jails and prisons” (Geneva, 2007).

<sup>86</sup> Submission of Penal Reform International.

<sup>87</sup> See CAT/C/KAZ/CO/3.

<sup>88</sup> See CAT/C/GBR/CO/5; Hans Wolff and others, “Self-harm and overcrowding among prisoners in Geneva, Switzerland”, *International Journal of Prisoner Health*, vol. 12, No. 1 (2016).

<sup>89</sup> See CAT/C/VNM/CO/1.

<sup>90</sup> Submission of Penal Reform International.

<sup>91</sup> Submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>92</sup> See A/HRC/30/19.

<sup>93</sup> *Ibid.*

<sup>94</sup> Submission of Penal Reform International.

<sup>95</sup> See A/HRC/38/36; submission of Penal Reform International.

<sup>96</sup> See A/HRC/30/19.

<sup>97</sup> See World Health Organization Regional Office for Europe, *Prisons and Health* (Copenhagen, 2014).

<sup>98</sup> See Joint United Nations Programme on HIV/AIDS, *The Prevention Gap Report* (Geneva, 2016); CAT/OP/BEN/3.

<sup>99</sup> See A/HRC/30/19; A/HRC/36/28.

<sup>100</sup> See CAT/OP/BEN/3.

treatment.<sup>101</sup> A lack of adequate access also results from organizational and structural lacuna, for example a lack of means of transportation or personnel to transfer inmates from detention facilities to hospitals<sup>102</sup> or an absence of personalized medical records.<sup>103</sup> Decisions on health care services are also often taken by penal-oriented administrators instead of independent public-health actors. Access to health-care services is often dependent on negotiations with staff tasked with security, sometimes resulting in a denial of access to appropriate medical services and preventable deaths.<sup>104</sup> Persons deprived of their liberty can often only access a limited range of treatments compared with those available in the community and, in some cases, external health facilities refuse to admit and treat persons deprived of their liberty.<sup>105</sup>

32. Lack of health care or inadequate treatment in detention for persons who use drugs can also contravene the right to health<sup>106</sup> and contribute to deaths in detention. Detainees' access to medical treatment, including access to opioid substitution therapy, is often severely restricted even if it has been demonstrated that such therapy is the most effective intervention available for the treatment of opioid dependency and that it contributes to reducing mortality.<sup>107</sup> Persons who use drugs may also face multiple forms of violence under the guise of treatment when placed in mandatory administrative detention.<sup>108</sup>

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 and diabetes, fatal.<sup>109</sup>

34. Detainees should enjoy at least the same level of access to health care as that available in the community, which takes into account the additional risks linked to incarceration.<sup>110</sup> The Nelson Mandela Rules offer extensive guidance to States on how to implement access to health care in detention in a manner that will contribute to reducing deaths in custody. In addition, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental 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.<sup>111</sup>

### **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 lives and bodily integrity. Due to this heightened duty of care, States must take all necessary measures to protect the lives of individuals deprived of their liberty.<sup>112</sup> 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, death and serious injury, while the collection of data contributes

<sup>101</sup> See CAT/OP/MNG/1; CAT/OP/UKR/3.

<sup>102</sup> Submission of the Defensor del Pueblo de la Nación (Argentina).

<sup>103</sup> See CAT/OP/BEN/3.

<sup>104</sup> See A/HRC/38/36.

<sup>105</sup> Submission of the Defensor del Pueblo de la Nación (Argentina).

<sup>106</sup> See A/65/255; CAT/C/CPV/CO/1; CAT/C/CHN/CO/4.

<sup>107</sup> See A/HRC/10/44 and A/HRC/10/44/Corr.1.

<sup>108</sup> Submission of Harm Reduction International.

<sup>109</sup> See A/HRC/31/CRP.1

<sup>110</sup> See ICRC, "Guidelines for Investigating Deaths in Custody".

<sup>111</sup> See A/HRC/38/36.

<sup>112</sup> Human Rights Committee, general comment No. 36.

to ensuring institutional accountability for these incidents and the factors that contributed to their occurrence.

36. The importance of recording and examining these incidents is recognized in the Nelson 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”.<sup>113</sup> 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 their liberty can exercise certain rights and freedoms and an important prerequisite for effective investigations into allegations of violence and ill-treatment and accountability. Rule 56 of the Nelson Mandela 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.<sup>114</sup> For instance, following certain country visits, the Subcommittee on Prevention of Torture expressed concern about the lack of complaints mechanisms in psychiatric hospitals in which some of the patients were committed without their consent.<sup>115</sup>

39. In order to be effective, complaints mechanisms must be independent, effective, confidential and accessible to victims of torture, including persons deprived of their liberty.<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup>

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.<sup>119</sup> 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.<sup>120</sup> 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.<sup>121</sup> The Committee is particularly concerned about the difficulties women confront when filing complaints about police

<sup>113</sup> Rule 71.

<sup>114</sup> See CCPR/C/ZMB/CO/3; CCPR/C/BWA/CO/1.

<sup>115</sup> See CAT/OP/BOL/3.

<sup>116</sup> See 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.

<sup>117</sup> See CAT/C/KAZ/CO/3.

<sup>118</sup> See 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 (Hungary).

<sup>119</sup> See CRC/C/LVA/CO/3-5.

<sup>120</sup> See CRC/C/HTI/CO/2-3; CRC/C/POL/CO/3-4; CRC/C/MEX/CO/4-5; CRC/C/COL/CO/4-5.

<sup>121</sup> See CEDAW/C/IDN/CO/6-7; CEDAW/C/TKM/CO/3-4; CEDAW/C/TUR/CO/7.

misconduct, the lack of adequate mechanisms for reporting and the absence of an environment conducive to submitting such complaints.<sup>122</sup>

41. Another challenge to the credibility of complaints mechanisms is their perceived lack of effectiveness.<sup>123</sup> Indeed, in some contexts, few complaints result in criminal investigations, prosecutions or sanctions,<sup>124</sup> or result in inadequate or lighter sentencing of perpetrators of violence or ill-treatment, which in some cases is tantamount to impunity.<sup>125</sup> In particular, there are reported instances of authorities bringing charges for abuse of authority or severe bodily injury rather than torture.<sup>126</sup> 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 procedure and provide for immediate medical and legal assistance to complainants.<sup>127</sup> Furthermore, in some countries, in all cases of death, the competent judicial authorities are immediately informed and an internal administrative procedure is initiated.<sup>128</sup>

## 2. Investigations

43. The heightened duty of a State to protect the lives of individuals deprived of their liberty by the State in question creates a presumption of State responsibility for deaths in custody that can only be rebutted through a prompt, impartial, thorough and transparent investigation carried out by an independent body.<sup>129</sup> In its general comment No. 36, the Human Rights Committee highlighted that investigations and prosecutions, where appropriate, of potentially unlawful deprivations of life were 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 regard to a death in custody, the purpose of the investigation 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 the next of kin and the identification, prosecution and punishment of those responsible.<sup>130</sup> When deaths appear to be of natural causes, an adequate investigation can contribute to dispelling concerns about inadequate health care 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.<sup>131</sup> 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 combating 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.<sup>132</sup> They also extensively called on States to undertake prompt, thorough, impartial and

<sup>122</sup> Ibid.

<sup>123</sup> Submission of Lebanon.

<sup>124</sup> See 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.

<sup>125</sup> Submission of the Public Defender (Ombudsman) of Georgia; CAT/C/MKD/CO/3.

<sup>126</sup> Submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico); CAT/C/MKD/CO/3.

<sup>127</sup> Submission of Uruguay.

<sup>128</sup> Ibid.

<sup>129</sup> See Human Rights Committee, general comment No. 36; African Commission on Human and Peoples' Rights, general comment No 3 on the right life (article 4).

<sup>130</sup> ICRC, "Guidelines for Investigating Deaths in Custody".

<sup>131</sup> Ibid.

<sup>132</sup> See CAT/C/PER/CO/5-6; CAT/C/SLV/CO/2; CAT/C/LVA/CO/3-5; CAT/C/MNE/CO/2.

effective investigations with respect to deaths in custody and all allegations of abuse or violence.<sup>133</sup> 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 crimes in such cases.<sup>134</sup> 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.<sup>135</sup>

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 were conducted by the perpetrators of such treatment or detention authorities, or by the prosecutors who were also in charge of the criminal case against the detainee rather than independent authorities.<sup>136</sup> Other lacunae have also been identified, such as the absence in forensic services of medical personnel trained in documenting and investigating torture.<sup>137</sup> In other cases, the actions of the detaining authorities, such as delaying or preventing access to the scene of the events,<sup>138</sup> or in other cases ordering the cleaning of a potential crime scene before the arrival of police,<sup>139</sup> 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. In its general comment No. 36, 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 regard to the victim's next of kin and the public. 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".<sup>140</sup> In 2013, the International Committee of the Red Cross (ICRC) published its 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.<sup>141</sup> 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 investigating cases of alleged torture and reporting such cases to the relevant authorities, setting out the standards for the legal investigation and documenting the physical and psychological effects of torture by medical professionals.<sup>142</sup>

### 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 treaty bodies have emphasized the importance of data for

<sup>133</sup> See 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.

<sup>134</sup> See 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.

<sup>135</sup> Submission of the International Bar Association's Human Rights Institute.

<sup>136</sup> See CAT/C/CHN-MAC/CO/5; CAT/C/KAZ/CO/3; CAT/OP/UKR/3; CAT/OP/MNG/1; CAT/OP/UKR/3; submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>137</sup> See CAT/C/TJK/CO/2.

<sup>138</sup> See CAT/OP/UKR/3.

<sup>139</sup> Canada, Office of the Correctional Investigator, "Fatal response".

<sup>140</sup> Minnesota Protocol, para. 17.

<sup>141</sup> ICRC, "Guidelines for Investigating Deaths in Custody".

<sup>142</sup> Istanbul Protocol.

investigations and prosecutions. The Committee against Torture has emphasized the role that 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.<sup>143</sup>

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.<sup>144</sup> A number of States lack comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment.<sup>145</sup> The Committee against Torture has highlighted the importance of disaggregating data by crime, age, gender, nationality, ethnicity and geographical location.<sup>146</sup>

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 and abuse against persons with disabilities.<sup>147</sup> The Committee recommends disaggregating the data by age, sex, type of impairment, ethnicity, geographical location and type of residence or institution.<sup>148</sup> 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.<sup>149</sup>

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, ingestion of foreign objects, poison, blows, stabbing and suicide,<sup>150</sup> or the type of inter-prisoner violence and the related injuries.<sup>151</sup> The availability of data about the use of force, violence, death and injury, 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 the public availability of such data are 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 the Special Rapporteur on extrajudicial, summary or arbitrary executions have emphasized the importance of making data on violence and death in police and prison custody publicly available in the interests of transparency and facilitating effective investigations.<sup>152</sup>

## B. Practical measures and good practices

53. As examined above, overcrowding has an important impact on the material conditions of detention, the spread of disease and inter-prisoner violence, which has led some States to attempt to address the issue by undertaking criminal law reforms that reduce incarceration.<sup>153</sup> The initiative to elaborate a set of set of universal standards for non-coercive interviewing methods and procedural safeguards<sup>154</sup> 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

<sup>143</sup> See CAT/C/LTU/CO/2.

<sup>144</sup> Submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>145</sup> See CAT/C/ATG/CO/1; CAT/C/ROU/CO/2; CAT/C/SLE/CO/1; CAT/C/CYP/CO/4.

<sup>146</sup> See CAT/C/TKM/CO/1, CAT/C/LKA/CO/3-4, CAT/C/CUB/CO/2, CAT/C/MRT/CO/1.

<sup>147</sup> See CRPD/C/ARG/CO/1.

<sup>148</sup> See CRPD/C/CHL/CO/1.

<sup>149</sup> See CEDAW/C/UZB/CO/4.

<sup>150</sup> Submission of Slovenia.

<sup>151</sup> Submission of the Ombudsman (Luxembourg).

<sup>152</sup> See A/HRC/31/57/Add.4 and A/HRC/31/57/Add.4; A/HRC/17/28/Add.5; A/HRC/20/22/Add.3.

<sup>153</sup> See CAT/OP/MNG/1; submission of Jamaica.

<sup>154</sup> See General Assembly resolution 72/163.

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.<sup>155</sup> 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.<sup>156</sup>

55. Depending on the specific needs of a facility, issue-specific training should be organized. For instance, mandatory gender-sensitive training for judges, prosecutors and police and prison officers can reduce sexual violence in custodial settings,<sup>157</sup> while training and awareness-raising regarding issues children confront in detention facilities can also improve the conditions of detainees.<sup>158</sup> Furthermore, training detention facility staff to recognize suicidal tendencies in incarcerated individuals can assist in suicide prevention.<sup>159</sup>

56. However, training and education programmes on human rights and the prevention of torture have a limited impact.<sup>160</sup> Those organizing training should be attentive to the circumstances in which training is conducted, for example, compelling prison staff to attend such training in their personal time may predispose them negatively.<sup>161</sup> Training should include modules on sanctions that personnel may face if they fail to comply with the professional standards of conduct.<sup>162</sup> All training should be conducted with a view to improving the morale, work ethic and sense of belonging of detention facility personnel and law enforcement officials.<sup>163</sup> 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.<sup>164</sup>

## 2. Management and operation of facilities

57. The risk of violence, death and serious injury resulting from the 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, which ensures that all persons are kept track of,<sup>165</sup> ensuring a medical examination upon arrival and providing persons deprived of their liberty with immediate access to a lawyer.<sup>166</sup> Standard operating procedures, such as those related to visits, disciplinary measures and the use of force and restraints, should be regularly updated.<sup>167</sup> Integrating the evaluation of aggressive behaviour in the decision-making process regarding the use of physical restraints on potentially violent detainees and implementing de-escalation techniques can also reduce the incidence of violence, particularly in psychosocial facilities.<sup>168</sup> In addition to being separated from male detainees, female detainees should be monitored by female guards in order to protect them from

<sup>155</sup> See CMW/C/TUR/CO/1; A/HRC/28/68/Add.4.

<sup>156</sup> See A/HRC/11/2/Add.3; CAT/C/BGR/CO/6; CAT/C/MDA/CO/3; CAT/C/BGR/CO/6; CAT/C/KAZ/CO/3; ICRC, “Guidelines for Investigating Deaths in Custody”; submission of Uruguay.

<sup>157</sup> See CCPR/C/JPN/CO/5.

<sup>158</sup> See CRC/C/LVA/CO/3-5.

<sup>159</sup> Submission of Slovenia.

<sup>160</sup> Submission of the Comisión de Derechos Humanos del Distrito Federal (Mexico).

<sup>161</sup> Ibid.

<sup>162</sup> Submission of Uruguay.

<sup>163</sup> Ibid.

<sup>164</sup> See A/HRC/37/27.

<sup>165</sup> See A/HRC/25/60/Add.1.

<sup>166</sup> Submission of Morocco.

<sup>167</sup> Submission of Uruguay.

<sup>168</sup> Submission of the Ombudsman (Luxembourg).

sexual violence and exploitation.<sup>169</sup> Finally, detainees should be provided with a means to lodge complaints when threatened with arbitrary deprivation of life or ill-treatment.<sup>170</sup> This can be by way of an anonymous hotline,<sup>171</sup> a confidential complaint mechanism<sup>172</sup> or through internal or external investigations of places of detention.<sup>173</sup> When dealing with juvenile detainees, States should ensure that such mechanisms are child friendly.<sup>174</sup>

58. Access to health care 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 and<sup>175</sup> ensuring that each person deprived of their liberty has an individualized medical file assists the authorities in providing medical care tailored to their needs.<sup>176</sup> Ensuring regular medical check-ups and periodic meetings with trained psychosocial staff,<sup>177</sup> combined with awareness-raising on the prevention of suicide across the prison can help detect suicidal and self-harm tendencies in prison populations.<sup>178</sup>

59. Proper management of detention facilities can reduce inter-prisoner violence. States should maintain effective control of the entirety of such facilities.<sup>179</sup> Prison officials should therefore not limit their tasks to the monitoring of the perimeter of accommodation units, they should also ensure the internal management of such units. Detention facility staff are best positioned to prevent violence.<sup>180</sup> States should therefore implement strategies to detect and prevent violence in detention facilities to be carried out by such staff. Furthermore, encouraging staff engagement with detainees and ensuring that detainees are heard can reduce violence among detainees.<sup>181</sup>

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,<sup>182</sup> install cameras in facilities<sup>183</sup> and develop policies to combat gang violence.<sup>184</sup> 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.<sup>185</sup> 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.<sup>186</sup> 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.<sup>187</sup>

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.<sup>188</sup> Staff ratios, pay levels, working conditions and proper training and supervision all facilitate

<sup>169</sup> See CRC/C/CAN/CO/3-4.

<sup>170</sup> See ICRC, "Guidelines for Investigating Deaths in Custody".

<sup>171</sup> Submission of Uruguay.

<sup>172</sup> See CAT/C/CHN-MAC/CO/5.

<sup>173</sup> See ICRC, "Guidelines for Investigating Deaths in Custody".

<sup>174</sup> See CRC/C/COL/CO/4-5.

<sup>175</sup> Submission of Penal Reform International; submission of the Defensoría del Pueblo (Ecuador); submission of Morocco.

<sup>176</sup> Submission of the Defensoría del Pueblo (Ecuador).

<sup>177</sup> Submission of Penal Reform International; submission of the Ombudsman (Luxembourg).

<sup>178</sup> Submission of Penal Reform International.

<sup>179</sup> See CCPR/C/BOL/CO/3.

<sup>180</sup> Submission of the Ombudsman (Luxembourg).

<sup>181</sup> Ibid.

<sup>182</sup> See CRPD/C/ARG/CO/1; CAT/C/IRL/CO/2; CAT/C/ARM/CO/4; CCPR/C/CYP/CO/4; submission of Jamaica; submission of Uruguay.

<sup>183</sup> See A/HRC/32/31/Add.2.

<sup>184</sup> See CRC/C/BRA/CO/2-4; Penal Reform International, *Global Prison Trends 2019*.

<sup>185</sup> Submission of the Ombudsman (Luxembourg).

<sup>186</sup> Ibid.

<sup>187</sup> See CAT/OP/MNG/1.

<sup>188</sup> See CCPR/C/LVA/CO/3; CAT/C/CPV/CO/1.

better treatment of detainees and increase the security of such environments.<sup>189</sup> Adequate staff training and resources are necessary for effective oversight and accountability, which in turn ensures that the law is properly implemented.<sup>190</sup> 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 health care.**

63. **Lack of accountability for serious injury and death in detention remains a concern both with regard to the individual accountability of the perpetrators of the ill-treatment and violence, and the 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 No. 36 of the Human Rights Committee, 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 lives and bodily integrity of persons deprived of their liberty.**

65. **States should, in addition to exploring the possibility of implementing some of the good practices mentioned throughout the present 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 detention and after conviction; and reviewing penal policies and legislation to ensure that sentencing is proportionate. States should, in this regard, analyse the impact of life sentences without parole on overcrowding;**

(b) **Guarantee access to health care that is tailored to the individual needs of detainees and ensure that the care available to them is 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) **Take measures to reassert responsible control over prisons and prison populations in situations in which they are de facto managed by prisoners;**

(e) **Collect, compile and analyse data about the 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 the 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 death, in which the preliminary investigation reveals that the cause of death was homicide or negligence, or in cases in**

<sup>189</sup> Submission of Penal Reform International; CAT/C/BIH/CO/6; CAT/C/LTU/CO/3.

<sup>190</sup> Submission of the Castan Centre for Human Rights Law.

**which this is a prima facie conclusion, a judicial or 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, in cases in which such acts amount to crimes, ensure that all perpetrators are prosecuted and that sanctions are commensurate with the gravity of the offence.**

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