

**Human Rights Council****Fifty-fifth session**

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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Current issues and good practices in prison management****Report of the Special Rapporteur on torture and other cruel, inhuman
or degrading treatment or punishment, Alice Jill Edwards****Summary*

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, provides an analysis of some of the most significant issues relating to prison management worldwide, including major emerging global trends, and identifies a number of good practices implemented at the national level for helping to address those issues. She considers that, while internationally agreed standards for the protection of all persons deprived of liberty exist, key gaps in those standards, as well as in their implementation, remain. The report contains a number of specific recommendations for contributing to the development of just and humane prison practices and management.

* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



I. Activities of the mandate holder

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, carried out two official country visits, to Ukraine from 4 to 10 September 2023¹ and Chile from 16 to 27 October 2023.² She issued a total of 52 communications to States and non-State actors, and 42 press statements, either individually or jointly with other mandate holders.³
2. During the reporting period, the Special Rapporteur presented a report to the Human Rights Council on good practices in national criminalization, investigation, prosecution and sentencing for offences of torture;⁴ and a report to the General Assembly, containing an annual overview of the state of torture in the world, alongside a thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment.⁵
3. The Special Rapporteur undertook 15 public engagements, in multiple jurisdictions, to raise awareness and offer technical advice on the prohibition of torture, and met with a range of government delegations and other stakeholders throughout the year. During the reporting period, the Special Rapporteur's work was referred to in more than 250 publications in approximately 60 countries.
4. Between 1 and 3 November 2023, the Special Rapporteur was honoured to hear the testimonies of 15 torture survivors from across Latin America in a "hearing for healing", held in Bogotá, organized by the Colombia Centre of Psychological Assistance Corporation, the International Rehabilitation Council for Torture Victims and the World Organisation Against Torture. This was the first of several regional hearings that the Special Rapporteur intends to hold during her mandate to ensure that her work is informed by the experiences of survivors.
5. The Special Rapporteur expresses her gratitude to the Governments of Australia and Switzerland for providing financial support to her mandate, and to the Geneva Academy of International Humanitarian Law and Human Rights for hosting her research work.
6. A full list of the mandate holder's activities is available on the webpage of the Special Rapporteur's.⁶

II. Current issues and good practices in prison management

A. Introduction

7. Too many people are imprisoned for too long, especially during pretrial detention, and in conditions that do not meet minimum international standards. A perfect storm of overcrowding, chronically neglected infrastructure and high incarceration rates creates the conditions for cruel, inhuman or degrading treatment or punishment, including in its most severe form, as torture.
8. Prisons are under pressure in many countries, as a result of too many demands and insufficient resources, and consequently administrators struggle to manage facilities safely, humanely and respectfully. The Special Rapporteur reminds the Human Rights Council of the heightened duty of care owed by States to persons deprived of their liberty.

¹ [A/HRC/55/52/Add.1](https://www.ohchr.org/en/press-releases/2023/10/un-expert-praises-chiles-human-rights-architectur).

² Preliminary observations from the visit to Chile are available at <https://www.ohchr.org/en/press-releases/2023/10/un-expert-praises-chiles-human-rights-architectur> e-warns-shadow-torture.

³ See <https://spcommreports.ohchr.org/>.

⁴ [A/HRC/52/30](https://www.ohchr.org/en/press-releases/2023/10/un-expert-praises-chiles-human-rights-architectur).

⁵ [A/78/324](https://www.ohchr.org/en/press-releases/2023/10/un-expert-praises-chiles-human-rights-architectur).

⁶ The Special Rapporteur's activities will be available at <https://www.ohchr.org/sites/default/files/documents/issues/srtorture/annex-sr-torture-march-2024.pdf>.

9. Prison populations continue to be largely composed of members of economically disadvantaged and otherwise marginalized communities, including large numbers of low-level drug or drug-adjacent offenders. The link between poverty and prisons is a clarion call for States to comprehensively review their criminal legal systems and should be part of States' plans for delivering on the Sustainable Development Goals.

10. There is suffering inherent in imprisonment as punishment for committing a crime. Depriving someone of their liberty, one of the essences of human life, is under-estimated as to its severity. Treatment and conditions within prison are not intended to be an additional hardship or penalisation⁷ and must never be degrading, inhuman or cruel.

11. Too often prisons are places where people are left to languish for years. The prison system must be properly resourced and should operate as an integral part of the criminal justice system. Most people who are incarcerated can be rehabilitated.

12. Crime prevention, diversion and the use of alternatives to imprisonment, including at the pretrial stage, must remain priority areas for the prevention of torture and other ill-treatment.

13. Regular and transparent monitoring by independent and impartial entities also provides a main way of preventing torture or other ill-treatment in prisons, and of reinforcing positive practices and identifying needed changes. Such monitoring can be carried out through national preventive mechanisms established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as by national human rights institutions, international or regional bodies, parliamentarians and civil society organizations.

14. Despite the plethora of internationally agreed standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), there remain some key gaps in those standards and many implementation gaps. The Special Rapporteur has selected a range of issues to discuss in the present report. Some of the topics represent new challenges and some are long-standing problems that require stepped-up attention. The Special Rapporteur acknowledges that there are other important issues not reflected in the present report that require time for fuller consultation.

15. The report has benefited from a total of 110 submissions, including from 13 States,⁸ many national preventive mechanisms and human rights institutions, and other stakeholders.⁹

B. Human rights-compliant management

16. Prisons are often harsh and complex environments to manage, in particular when they operate without the necessary human, physical and financial resources. While investing in prisons is rarely high on political agendas, especially in difficult economic times or when resources are stretched, that situation must change in order to ensure that prisons do not become incubators for crime and corruption, lead to high rates of recidivism, or become places where humans are "warehoused" to waste away and never fulfil their potential. Neglecting prisons and failing to treat prisoners as human beings have serious ramifications for society and do not keep the public safe.

17. Effective prison management must be governed by transparent and comprehensive regulations that are regularly updated to reflect changing circumstances and best practice. The regulations should always be consistent with relevant national and international law. In

⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), annex, rule 3.

⁸ Angola, Denmark, Ecuador, El Salvador, Iraq, Ireland, Montenegro, North Macedonia, Portugal, Qatar, South Sudan, Switzerland and Suriname.

⁹ The submissions will be available at <https://www.ohchr.org/en/calls-for-input/2023/current-issues-and-good-practices-prison-management-thematic-report-special>.

order for prisons to run well, prison rules must be current and enforceable, as well as enforced.¹⁰

18. Information about the prison population, as well as crime trends and statistics, are key to good decision-making and require prison registries and records to be updated, accessible and searchable. As the prison system is only one part of the criminal justice system, there needs to be good communication flow between the relevant ministries, administrations and personnel. The responsibility to prevent torture and other ill-treatment falls to multiple actors (such as prosecutors, judges, police and correctional services), all of whom must participate with updated knowledge. Ireland, for example, operates a “no surprises” policy in which the prison service alerts the Department of Justice to significant governance-related issues.¹¹

19. Staff are the most valuable resource available to prison administrations. Prison work is physically and psychologically draining and may be dangerous. It requires people with diverse capabilities. Yet, staff often do not receive the training,¹² recognition or rewards they deserve, including decent pay and conditions. It is the Special Rapporteur’s recommendation that prison staff should be remunerated for their service on salary scales and conditions equivalent to those of the armed or social services in order to recognize the valuable contribution that prison officials make to society. The salaries and employment conditions of medical personnel working in prisons should be aligned with those of such personnel in the public health services. Retention and opportunities for promotion and for gaining qualifications need to be part of human resource management strategies. To alleviate burnout of prison officers, it has been recommended that they should be encouraged to take sabbaticals or rotation periods out of the prison service.¹³

20. Some prison administrations use temporary, short-term staff contracts, which can increase the risk of abuse and neglect of detainees because of a lack of training or preparedness among such staff in handling various scenarios. Detainees suffer when there is a shortage of trained staff. It leads to prisoners spending more time being confined in their cells, reduced visiting hours, fewer activities and rehabilitation opportunities, and cancelled court hearings and medical appointments owing to a lack of available escorts.¹⁴

21. An appropriate prisoner-to-staff ratio is essential for effective prison management. Prisoner-to-staff ratios vary greatly across the globe, from 1:1 to as high as 28:1.¹⁵ There is no international standard governing prisoner-to-staff ratios.¹⁶ Practice shows that where there is a relatively low prisoner-to-staff ratio, there is less violence, as well as improved conditions, attitudes and well-being of prisoners and prison staff alike.¹⁷ A staff profile that is representative of different social groups and includes ethnic and Indigenous recruitment also contributes to humane prison management, and reporting on the staff profile of prisons should be made public.¹⁸

22. Many prisons are highly violent and volatile sites. The Special Rapporteur is particularly concerned at the growing number of facilities in which authorities have lost partial or complete control, with gangs ruling instead and prisoners taking discipline and security into their hands. Gangs are one of the biggest threats to prison management globally.

¹⁰ United Nations Office on Drugs and Crime (UNODC), *Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers Based on International Standards and Norms* (United Nations publication, 2010), p. 4.

¹¹ Submission from Ireland.

¹² Submissions from the Hungarian Helsinki Committee and the National Preventive Mechanism of Romania.

¹³ Convention Against Torture Initiative and Wilton Park, “Report of the regional event on ‘Sharing experiences and building capacity in the Caribbean: the fair administration of justice and the UN Convention against Torture’, Saint Lucia, 4–6 June 2018”, para. 16.

¹⁴ Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2023* (2023), p. 31.

¹⁵ Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2021* (2021), p. 36.

¹⁶ International Committee of the Red Cross (ICRC), *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (Geneva, 2012), p. 39.

¹⁷ United Nations, “United Nations system common position on incarceration”, April 2021, p. 6.

¹⁸ Committee against Torture, general comment No. 2 (2007), para. 24.

Responses to the problem must be based on a firm understanding of why gang rule has prevailed. Reasons include the active use by authorities of criminal subcultures for maintaining order, through direct affiliation, complicity and inertia.

23. In terms of prisoner-staff relations and staff attitudes, “dynamic security approaches”¹⁹ are encouraged, whereby professionally trained staff engage and interact with prisoners in order to identify and anticipate problems before they escalate, thus creating mutual trust. Such approaches operate in addition to physical and procedural security arrangements. They help reduce the stress of prison life and prevent violence. At times it is only a matter of inputting an ethic of care and pride into the system or a particular prison. In other instances, institutional changes will be required. New Zealand has introduced a shift schedule for custodial staff which is aimed at improving day-to-day routines, including mealtimes, for people in custody.²⁰

24. Many States rely on private companies for designing, building and managing prisons, or for carrying out specific prison functions. States bear responsibility for the acts and omissions of private contractors. The Committee against Torture considers that personnel in detention centres that are privately owned or run act in an official capacity on account of their responsibility for carrying out the State’s function, including with regard to the obligation to monitor and take all effective measures for preventing torture and ill-treatment.²¹ The Special Rapporteur has visited private prisons that have infrastructure superior to that in public prisons, as well as private prisons that have allowed profit-driven objectives and contract incentives to undermine minimum standards. She warns against making assumptions about private entities, as certain functions may be suited to specialist or even non-State actors.

25. Private entities should follow the same rules as public entities and prisoners should enjoy the same rights in private prisons as those applicable in public prisons, otherwise a two-tier system could emerge where it becomes a lottery as to the conditions in which a prisoner will be held.

26. **The Special Rapporteur recommends that:**

(a) **Governments undertake prison reforms, alongside broader criminal justice reforms. Such reforms should involve all relevant State actors, including judges and prosecutors, in the light of their responsibilities to prevent, and avoid possible complicity in, subjecting prisoners to torture or inhumane conditions. Such reforms also need to address financial, human and technical resource questions. National human rights institutions, national preventive mechanisms, civil society and representatives of different prisoner groups should be consulted;**

(b) **Prisons be primarily considered as places where criminal behaviour is corrected in a positive way and prisoners are able to break the vicious cycle of involvement in criminal activity and reintegrate into the community;**

(c) **States review national legal and regulatory frameworks for compliance with international standards and best practice, and ensure those frameworks are publicly accessible;**

(d) **Prison authorities pursue an active recruitment policy aimed at employing a staffing profile representative of the local community. Good terms and conditions, including security of tenure, are key to recruiting and retaining suitable staff. Prison staff should be remunerated and compensated for their services on salary scales and with conditions equivalent to those of the armed or social services. The salaries and employment conditions of medical personnel working in prisons should be aligned with those of such personnel in the public health services;**

(e) **States ensure that the prisoner-to-staff ratio in all prisons is sufficient for enabling positive prisoner-staff relations, regular one-to-one communication and a safe**

¹⁹ See Working Group of the Directorate for Execution of Sanctions, *Trainers’ Manual on Dynamic Security* (Council of Europe, Skopje, 2018).

²⁰ Submission from the Chief Ombudsman of New Zealand.

²¹ Committee against Torture, general comment No. 2 (2007), paras. 15 and 17.

environment for all. Prison administrations should differentiate in their reporting between the number of all types of staff and of custodial staff per prisoner;

(f) **States ensure, when outsourcing the management of prisons to private entities, that contracts reinforce human rights, are audited to remove incentives for cutting corners on treatment, are subject to public reporting requirements, and allow for unannounced inspections by external and independent monitoring bodies.**

C. Designing and managing prisons to meet global challenges

Preparing for future global health emergencies

27. Prisons are hotspots for infectious disease contamination and therefore must be included in national pandemic preparedness planning. The World Health Organization (WHO) predicts that pandemics will emerge more rapidly in the future and lead to greater global morbidity and mortality.²²

28. The 194 WHO member States have agreed to draft a new convention, agreement or other international instrument on pandemic prevention, preparedness and response.²³ The basis for the proposed instrument is the need to ensure equity in access to tools and health care for all people. The latest draft indicates that equity requires specific measures to protect persons in vulnerable situations.²⁴ The Special Rapporteur notes that the types of vulnerable group are not specified in the latest draft but alerts the drafters to the fact that persons deprived of liberty are a vulnerable group requiring special attention in pandemic preparedness, prevention and response.

29. Lessons learned from the coronavirus disease (COVID-19) pandemic should inform future preparedness and responses in a manner consistent with human rights. Portugal, for example, reported no COVID-19 prison deaths. This was achieved through a combination of preventive hygiene measures, prophylactic isolation and the administration of vaccines.²⁵

30. Torture prevention and human rights bodies provided guidance to prisons during the COVID-19 pandemic to ensure that the preventive and responsive measures used were humane.²⁶ The guidance will remain applicable to future pandemics. The approach in places of detention should reflect the principles of “do no harm” and “equivalence of care”, meaning that prisoners should receive the same standard of health care as is available in the community.²⁷

31. Although certain temporary isolation measures may be part of pandemic response, authorities need to mitigate the impacts of isolation. States introduced various initiatives, including providing psychological programmes to help prisoners cope with anxiety,²⁸ correspondence courses to ensure education and rehabilitation continued,²⁹ and relevant and

²² WHO, *Imagining the Future of Pandemics and Epidemics: A 2022 Perspective* (Geneva, 2022), p. 25.

²³ WHO, “Pandemic prevention, preparedness and response accord”, 28 June 2023. See also World Health Assembly resolution SSA2(5).

²⁴ WHO, “Bureau’s text of the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (WHO CA+)”, document A/INB/5/6, art. 3.

²⁵ Submission from Portugal.

²⁶ See, for example, WHO Regional Office for Europe, *Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance – 8 February 2021* (Copenhagen, 2021); and WHO Regional Office for Europe, “WHO COVID-19 prison surveillance protocol: monitoring and reporting COVID-19 in prisons and other places of detention” (Copenhagen, 2021).

²⁷ The Nelson Mandela Rules, rule 24; CAT/OP/10, para. 4; and Penal Reform International, “Coronavirus: healthcare and human rights of people in prison” (2020), pp. 4 and 5.

²⁸ UNODC, “COVID-19 guidance note: mitigating the disruptive impact of infection prevention and control measures in prisons – core principles and recommendations” (2021), p. 8.

²⁹ Penal Reform International, Sharon Critoph and Vicki Prais, *The COVID-19 Pandemic in Prisons and Its Impact on Prison Reform Priorities: Study for the Council of Europe* (Council of Europe, 2023), p. 37.

up-to-date information about COVID-19.³⁰ Technology can play an important role, as long as safeguards are in place to ensure that it is used in a non-discriminatory, effective, voluntary, safe and responsible way.³¹

32. In many countries, infrared scanners were used to measure the temperature of prisoners, staff and visitors. Alternative ways of contacting family members and lawyers, through video calling,³² were expanded. The use of mobile phones was authorized, computers and tablets were provided, telephone call credits were increased,³³ online access to lawyers was facilitated and computers and videoconferencing systems were procured to support online court hearings in prison facilities.³⁴ Although the Special Rapporteur acknowledges the benefits of remote court hearings, such hearings must be continually evaluated to ensure their compliance with fair trial rights. Persons who have been subjected to torture or other inhuman treatment may be reluctant to report such mistreatment during online court hearings. Another concern regarding virtual courtrooms is that prisoners may be intimidated or threatened by persons who are “off camera”.

33. Equivalence of health care between detainees and the community can be achieved by facilitating alignment between national health authorities and prison health care. In Italy, the Department of Prison Administration issued a notice early in the pandemic with instructions on screening and testing of detainees.³⁵ In Indonesia, guidelines and standard operating procedures in prison facilities were harmonized with the health standards issued by the Ministry of Health at the national level and expeditiously disseminated to prison facilities.³⁶ Persons deprived of liberty must be included in national vaccination programmes.³⁷

34. The Special Rapporteur emphasizes that future plans must continue to allow monitoring bodies access to prisoners and the ability to monitor facilities during pandemics following pandemic-specific protocols. On-site visits should continue and hotlines can also be established to allow detainees to report human rights violations.³⁸ Those monitoring should be given access to closed-circuit television (CCTV) and video footage.³⁹ The use of robots with cameras and drones needs to be assessed further.

35. Planning for future pandemics requires addressing pre-existing weaknesses such as overcrowding.⁴⁰ During the COVID-19 pandemic, Kenya reduced its prison population by 25 per cent between March and August 2020. Police were instructed to suspend all new admissions to prison except for serious offences.⁴¹

36. Planning must also involve considering the suitability of existing infrastructure. In any new buildings or renovations, structural modifications such as installing operable

³⁰ Submission from the Chief Ombudsman of New Zealand.

³¹ Benny Goedbloed, “Robots, scanners and thermal cameras: technologies in prisons and the coronavirus pandemic”, Penal Reform International, 17 July 2020.

³² Submissions from the Uganda National Medical Alliance for Prisoners’ Support, Prison Insider and the Thailand Institute of Justice.

³³ Submissions from Prison Insider and the Centre for Legal and Social Studies, Argentina.

³⁴ UNODC, “COVID-19 guidance note: mitigating the disruptive impact of infection prevention and control measures in prisons”, pp. 6 and 8.

³⁵ Amnesty International, *Forgotten Behind Bars: COVID-19 and Prisons* (2021), p. 26.

³⁶ UNODC, “COVID-19 guidance note: mitigating the disruptive impact of infection prevention and control measures in prisons”, p. 4.

³⁷ CAT/OP/12, para. 15 (a).

³⁸ Convention Against Torture Initiative, “COVID-19 and the UN Convention against Torture” (December 2020), p. 4.

³⁹ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, and Association for the Prevention of Torture, “Guidance: monitoring places of detention through the COVID-19 pandemic” (2020), p. 18.

⁴⁰ General Assembly resolution 76/184. See also Therese Maria Rytter and Kalliopi Kambanella, “Dignity guidance document: reducing overcrowding in pre-trial detention and prison in the context of COVID-19: increasing the use of non-custodial measures” (Dignity – Danish Institute against Torture, 2020).

⁴¹ UNODC, “COVID-19 guidance note: emergency release mechanisms for detainees and prisoners during COVID-19 – findings and recommendations” (Vienna, 2021), p. 3.

external windows and air cleansing systems to improve ventilation and reduce risks of transmission should be considered.⁴²

37. The Special Rapporteur recommends that:

(a) **States and WHO consider incorporating the special situation of persons deprived of their liberty, including those in prisons, in the drafting and negotiating stages of the proposed convention, agreement or other international instrument on pandemic prevention, preparedness and response;**

(b) **States review and update their national pandemic preparedness plans to include places where people are deprived of their liberty, including prisons;**

(c) **States review policies implemented during the COVID-19 pandemic, such as those for reducing overcrowding and the use of technologies for communications, and consider whether those policies should be maintained post-pandemic;**

(d) **States create safety and other protocols to ensure that monitoring continues and that monitoring bodies, family members, lawyers and civil society organizations can continue to visit facilities and detainees.**

Safeguarding prisons and prisoners against climate change and natural hazards

38. In her first interim report to the General Assembly, the Special Rapporteur called on States to stay attuned to the impacts of climate change, so that all affected persons are treated humanely and with dignity.⁴³ When climate or other natural disasters strike, prisoners are completely dependent on authorities for evacuation and provisions. Where mitigation and adaptation measures are weak, or preparedness is low, there have been cases where detainees have been stranded without food and water or completely abandoned by staff during hurricanes or cyclones. Furthermore, prisoners have died when buildings have collapsed as a result of earthquakes.⁴⁴

39. Prisons must be included in national disaster risk reduction and response plans. Almost 30 per cent of the global prison population lives in the 12 countries most exposed to natural hazards. The Special Rapporteur calls on Governments to map prisons located in high hazard exposure areas to aid preparedness and crisis response, and to inform the siting and construction of new facilities. A project of the International Committee of the Red Cross (ICRC) in the Philippines found that around a quarter of the 130,000 detainees were in areas at high risk of floods, drought, typhoons, landslides, heatwaves, earthquakes and volcanoes.⁴⁵

40. Emergency response planning needs to include procedures for particular groups in vulnerable situations, including persons with disabilities, older prisoners and those with health conditions.

41. States have an obligation to protect prisoners, including helping them to avoid temperature-related illnesses during heatwaves⁴⁶ or sudden cold weather. Air conditioning and adequate access to ventilation, showers⁴⁷ and drinking water can help counteract extreme conditions. The Committee against Torture urged that measures be taken in relation to reported prisoner deaths caused by extreme heat exposure in unbearably hot and poorly ventilated prisons.⁴⁸ The European Court of Human Rights found that high temperatures in cells constitute inhuman and degrading treatment.⁴⁹ Hot temperatures are linked to higher

⁴² Mass Design Group, "The role of architecture in fighting COVID-19: carceral environments and COVID-19", 15 May 2020.

⁴³ [A/77/502](#), para. 11.

⁴⁴ Penal Reform International, "Natural hazards and prisons: protecting human rights of people in prison in disaster prevention, response and recovery" (2021), pp. 5–7.

⁴⁵ Submission from Penal Reform International.

⁴⁶ Submission from the Australian National Preventive Mechanism.

⁴⁷ Submission from the Hungarian Helsinki Committee.

⁴⁸ [CAT/C/USA/CO/3-5](#), para. 22.

⁴⁹ European Court of Human Rights, *Štruč and Others v. Slovenia*, Applications No. 5903/10, No. 6003/10 and No. 6544/10, Judgment, 20 October 2011, paras. 81–89.

rates of violence, mortality and suicide, and exacerbate the spread of communicable diseases.⁵⁰

42. Early warning systems must be implemented. Prisons in Indonesia and the United States of America have access to services that provide information on disaster risks or extreme weather so that prisoners can be evacuated before a disaster strikes. Evacuation plans and contingency plans for food, water and shelter should be prison- and disaster-specific. In Indonesia and the Philippines, operational plans and guidelines provide responses for different types of disaster and set out what is required in each event. In Peru, an earthquake evacuation drill involved prisons and other agencies practising evacuation.⁵¹

43. At the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, it was reiterated that Governments should be required to mitigate and adapt to climate change.⁵² Prisons should be built or renovated to withstand climate disasters. Physical measures that can be put in place include flood levies, ocean wave barriers and earthquake-resistant structures and materials, impact- and fire-resistant windows and doors, braced frames, and roof and ground drainage systems. In addition, engineering techniques or technology can be used to achieve hazard resistance and resilience. Detention facilities should not be built in locations that are highly susceptible to natural disasters.⁵³

44. The Special Rapporteur encourages Governments and industry to collaborate on prison design. Good architectural design can improve well-being in prisons, and the construction of prison buildings should take into account specific climate and environmental conditions.⁵⁴ ICRC provides relevant guidance in this regard.⁵⁵

45. **The Special Rapporteur recommends that:**

(a) **States review and update national disaster risk reduction and response plans, ensuring that they include places of detention, and should incorporate all prisons into climate change mitigation and adaptation strategies and plans;**

(b) **States map prisons located in high hazard exposure areas to aid preparedness and crisis response, and to inform the siting and construction of new facilities;**

(c) **States create early warning systems and operating procedures, and practise evacuation plans;**

(d) **States apply innovative architectural design when refurbishing old prisons or building new prisons in order to ensure adaptation to climate change.**

D. Humane and dignified treatment

Opportunities for rehabilitation

46. The lack of investment in meaningful activities and rehabilitation may fail to break the cycle of recidivism and falls foul of international standards. Some detainees have access to almost no activities because they are locked in their cells for almost the entire day.⁵⁶ Others

⁵⁰ David Cloud and others, *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Louisiana Department of Public Safety and Corrections, and Progress Toward Implementation* (Vera Institute of Justice, May 2019), p. 40; and Julianne Skarha and others, "Heat-related mortality in U.S. state and private prisons: a case-crossover analysis", *PLoS ONE*, 1 March 2023.

⁵¹ Penal Reform International, "Natural hazards and prisons" (2021), pp. 15 and 20.

⁵² Cristina Rumbaitis del Rio and Evelin Toth, "Getting climate-ready: COP 28 and the global goal on adaptation", United Nations Foundation, 2 November 2023.

⁵³ Penal Reform International, "Natural hazards and prisons" (2021), pp. 12 and 13.

⁵⁴ Submissions from Denmark and Ireland.

⁵⁵ ICRC, *Towards Humane Prisons: A Principled and Participatory Approach to Prison Planning and Design* (2018).

⁵⁶ Submissions from the Chief Ombudsman of New Zealand and Kosova Rehabilitation for Torture Victims.

have little incentive to get out of bed.⁵⁷ Work and education programmes often only provide for rudimentary skills rather than equipping people with marketable skills upon release.⁵⁸ The Special Rapporteur has met many prisoners, including juveniles, who pleaded for work or training opportunities that would prepare them for work outside prison and allow them to break from crime. She emphasizes that dignity-led rehabilitation does not require extensive resources.

47. Successful rehabilitation should involve engagement with the local community regarding the importance of accepting offenders back into the community.⁵⁹

48. Although the needs and risks of each offender should be individually assessed,⁶⁰ there are many activities that can be carried out in groups. Survivors of abuse, trafficking in persons and torture may require specialized programmes or treatment. Gender- and age-responsive plans should take into account physical health, mental capacity and neurodiversity. Such an approach would also help eliminate discrimination in the provision of rehabilitation services. For example, older individuals, in particular those who have been in the system for extended periods, face the bias that they cannot be rehabilitated or reintegrated, or that they are not worthy of the expenditure of resources to do so.⁶¹

49. In Norway, the majority of prisoners are enrolled in a daily programme of training, work or education, spending most of their day outside their cells.⁶² In Mauritius, welfare officers play an important role in encouraging the rehabilitation of women, including through peer support counselling.⁶³ In one prison in Portugal, prisoners received certified technical training in agricultural hydroponic tower installation and maintenance of the vegetables cultivated.⁶⁴ In Tonga, prisoners can learn horticultural skills and vegetable and root-crop farming, which also benefits all prisoners by creating a prison in the style of a botanical garden.⁶⁵

50. In Austria, an online learning platform was introduced to provide additional education and information on job application processes to prisoners before their release.⁶⁶ In Ireland, a psychology service to support prisoners early in their sentence is aimed at developing bespoke sentence plans to target specific areas of risk and need. One such programme is co-facilitated by a psychologist and an ex-prisoner.⁶⁷

51. Vocational training and work⁶⁸ provides prisoners with valuable skills, confidence and improved self-esteem that reduces the risks of recidivism. In Norway, work options include traditional maintenance jobs (such as cleaning and working in the laundry and kitchen), workshop activities for woodwork (such as furniture-making) and mechanics.⁶⁹ In Sweden, authorities measure the number of hours spent on employment in relation to the total available time in a person's prison schedule to provide an indication of the overall "employment rate" in a given facility, thereby helping to identify differences between prisons.⁷⁰ In Thailand, there are culinary projects available, including one where former inmates prepare and serve meals in the Thailand Institute of Justice building.⁷¹

⁵⁷ Submission by the Australian Human Rights Commission.

⁵⁸ Submission from Justice House of Egypt.

⁵⁹ General Assembly resolution 76/181, para. 40.

⁶⁰ *Ibid.*, para. 37.

⁶¹ Submission from the Canadian Human Rights Commission.

⁶² Submission from Dignity – Danish Institute against Torture.

⁶³ Submission from the National Preventive Mechanism of Mauritius.

⁶⁴ Submission from the Portuguese Ombudsperson.

⁶⁵ Gary Hill, "Prisons in paradise: the correctional service of Tonga", *Corrections Compendium*, vol. 31, No. 4 (July/August 2006), pp. 18–20.

⁶⁶ Submission from the Austrian Ombudsman Board.

⁶⁷ Submission from Ireland.

⁶⁸ The Nelson Mandela Rules, rules 96–99 and 103.

⁶⁹ Submission from Dignity – Danish Institute against Torture.

⁷⁰ Penal Reform International and Council of Europe, *Guidance Document on the European Prison Rules* (2023), p. 87.

⁷¹ Submission from the Thailand Institute of Justice.

52. **The Special Rapporteur recommends that:**

(a) **States allocate appropriate resources so that all prisoners spend a reasonable part of their day outside their cells, engaged in meaningful activities;**

(b) **States ensure that the requirement for rehabilitation is included in prison policies and laws, and planning, and is properly resourced.**

Reducing overcrowding

53. Some prisons are so overcrowded that prisoners have to take turns sleeping on a bare floor⁷² or side by side on the ground. Some are forced to sleep standing up, in a kneeling position,⁷³ under beds on the floor⁷⁴ or in the toilet.⁷⁵ Overcrowded dormitories breed dangerous prison subcultures⁷⁶ and gangs. The struggle for space and resources within prisons create circumstances in which torture, violence and corruption thrive.

54. International and regional bodies have found that certain degrees of overcrowding amount to cruel, inhuman and degrading treatment or even a form of torture.⁷⁷ In Colombia, a tribunal ordered reparations to be paid to women who were detained in an overcrowded prison based on the time spent in prison and the level of overcrowding.⁷⁸

55. The Special Rapporteur has observed instances of blatantly overcrowded facilities that are not officially considered as such because of the way personal space is defined and measured. A common standard used is the number of beds for the number of prisoners but this was often calculated at the time the prison was constructed and, if no renovation has taken place, then often no recalculation has been performed on the basis of current standards of required space per person. She estimates therefore that many more prisons than those reported are, in fact, overcrowded.

56. Even where capacity has not been exceeded at the national level, there may be regions, individual facilities or parts of facilities that are operating above capacity. The Special Rapporteur observed severe overcrowding in dormitory-style cells even when appropriate space was available elsewhere in the prison; sometimes such overcrowding is the direct consequence of staff shortages, as prisoners are placed in fewer cells in order to allow for more effective monitoring.

57. The Special Rapporteur endorses the minimum space-per-person ratio elaborated by ICRC.⁷⁹ She notes the slightly more generous standard applied by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.⁸⁰ States should strive to meet the higher of the two specifications. The Special Rapporteur recommends further that the more generous standards should be applied in any new buildings.

58. The responsibility for overcrowding falls to a range of actors within the criminal justice system. The use of pretrial detention is one of the major causes of prison overcrowding. In some countries, there are more people detained in pretrial detention than those serving prison sentences.⁸¹

⁷² Submission from The Advocates for Human Rights and others.

⁷³ Submission from Irish Rule of Law and others.

⁷⁴ Submission from the Public Defender's Office of the State of Espírito Santo, Brazil.

⁷⁵ Submission from Ambika Satkunanathan.

⁷⁶ Submission from Dignity – Danish Institute against Torture.

⁷⁷ See Inter-American Court of Human Rights, *Montero-Aranguren et al. v. Venezuela*, Judgment, 5 July 2006, paras. 89–94; and European Court of Human Rights, *Sukachov v. Ukraine*, Application No. 14057/17, Judgment, 30 January 2020, paras. 84–97.

⁷⁸ Submission from the research project Assessing the Impact of Urgent Measures in Protecting At-Risk Detainees in Latin America (Impactum) and the Programme for Studies on Human Rights in Context of Ghent University, Belgium.

⁷⁹ ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012), p. 33.

⁸⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Living space per prisoner in prison establishments: CPT standards", 15 December 2015.

⁸¹ Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2023*, p. 8.

59. The Special Rapporteur recalls that the State's role of guarantor of the rights of persons deprived of liberty applies to all relevant public authorities within the area of their competence, including prosecutors when requesting a custody ruling, and judicial oversight of the sentence of deprivation of liberty.⁸² Officials become responsible when they knowingly or foreseeably transfer a prisoner to an institution in which the conditions are cruel, inhuman or degrading. The Special Rapporteur recommends that information on overcrowding levels should be included in pre-sentencing reports presented to court and that States should implement warning systems. It is also recommended that magistrates and judges visit prisons regularly to view the levels of overcrowding and conditions. Such initiatives could solve overcrowding at very low or no cost.

60. In Brazil, a pilot project is providing magistrates with real-time information on occupancy rates of facilities so that they can make the most appropriate decision regarding detention.⁸³ In 2018, the Inter-American Court of Human Rights ordered Brazil to reduce overcrowding by counting each day spent by a prisoner in a prison in degrading conditions as two days, thereby reducing the overall length of the sentence to be served.⁸⁴ In 2023, a court of appeal in England found that the high prison population in men's prisons was an exceptional factor that could be taken into account when determining a sentence in favour of suspended sentences.⁸⁵ Identifying people eligible for early release and reclassifying prisoners to lower security regimes can also ease numbers in prisons.

61. In the Caribbean, Governments have identified and started implementing a number of solutions for overcrowding, including allowing for a greater number of offences to be bailable; using the full range of non-custodial measures available; reclassifying and transferring inmates from overcrowded facilities to underpopulated medium- and low-security centres; and using night or remote courts and holding court hearings in prison to alleviate the backlog of cases.⁸⁶

62. Data-driven prison audits are another way to reduce overcrowding. A project planned for 10 countries in Africa where overcrowding is most acute was piloted in Malawi in 2023. The audits are designed to examine the prison population and identify those eligible for release, with a view to reducing both pretrial and sentenced prison populations. The audit in Malawi found that 66 per cent of unsentenced prisoners were eligible for release.⁸⁷

63. **The Special Rapporteur recommends that:**

(a) **Prison authorities publish their methodology for measuring capacity, and report accurately and regularly on detention conditions and overcrowding levels to policy and decision makers and monitoring bodies;**

(b) **States establish a legal procedure through which prosecutors requesting incarceration and judges ruling on the same are provided with up-to-date information on the capacity of various institutions, and the range and number of alternatives to detention and placements that are available;**

(c) **Judges, prosecutors and other decision makers regularly visit prisons to witness the conditions first-hand, including any overcrowding;**

(d) **States implement an early warning system through which the prison service can alert all relevant actors, including judges and prosecutors, when a prison is near or over capacity, so that a response protocol can be instituted;**

⁸² Inter-American Court of Human Rights, *Differentiated Approaches With Respect to Certain Groups of Persons Deprived of Liberty*, Advisory Opinion OC-29/22, 30 May 2022, para. 54.

⁸³ Submission from Prison Insider.

⁸⁴ Submission from United Against Torture.

⁸⁵ Court of Appeal (Criminal Division), *R. v. Arie Ali*, No. 202300447 A2, Judgment, 3 March 2023.

⁸⁶ Convention Against Torture Initiative and Wilton Park, "Sharing experiences and building capacity in the Caribbean", para. 14.

⁸⁷ Eric Cadora, Clifford Msiska and Adam Stapleton, "Findings from auditing prisons in Malawi (part 1): a data-driven approach to SDG16.3.2", Medium, 26 October 2023.

(e) States ensure, where prisons are privately managed, that contracts do not incentivize overcrowding, for example through payment based on the number of prisoners in a given facility;

(f) States establish lines of communication between different entities, while at the same time preserving the separation of powers.

E. Meeting the needs of particular groups

Women and girls

64. Despite making up only 6.9 per cent of the global prison population, women and girls are being imprisoned at a faster rate than men;⁸⁸ and because of the relatively small number of women and girls in prisons, the conditions in which they are held, and opportunities for rehabilitation, may be more limited. Most women and girls are in prison for non-violent minor offences,⁸⁹ such as property and drug offences. In many jurisdictions, it is always, or nearly always, women and girls who are incarcerated for “moral crimes”, such as adultery and extramarital relationships, and witchcraft and sorcery, as well as the criminalization of abortion.⁹⁰ Women and girls may also receive heavier penalties than men and boys for the same crimes.⁹¹

65. In the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the specific needs of female offenders are recognized and there is a call for the greater use of non-custodial measures for women and girls.

66. Many women prisoners are victims of horrific domestic and sexual violence. Violence and the infliction of trauma and abuse may continue behind prison walls. Different incarceration and treatment policies, services and even infrastructure are required to address women’s distinct needs and ensure their protection.⁹²

67. There have been significant advances in the use of non-custodial measures for female offenders. In Brazil, a ruling by the Supreme Court in 2018 granted the replacement of pretrial detention with house arrest for all pregnant women and women who are mothers of children up to 12 years old and who have not committed a violent crime. In Colombia, a new law was signed in 2023 that promotes alternatives to imprisonment for women with care responsibilities who have been sentenced to up to eight years in prison, replacing prison sentences with unpaid community service. In Hawaii, United States, there are no girls and women between the age of 15 and 24 in prison due to the development of community-based alternatives and rehabilitation.⁹³

68. Owing to the lower number of women and girls in prison, opportunities for them to engage in rehabilitation activities are often less varied and of poorer quality than those offered to men and boys.⁹⁴ Women may be only offered gender-stereotypical courses, such as sewing and handcrafting, which may carry limited potential for earning a living wage.⁹⁵ Countering such stereotypes requires offering women skills-building in more viable professions. In the United Kingdom of Great Britain and Northern Ireland, a retailer launched a training facility for female prisoners who want to train as cycle mechanics, a profession that is traditionally male-dominated.⁹⁶ In Italy, prisoners at the largest women’s prison are employed by an

⁸⁸ Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2023*.

⁸⁹ UNODC, *Handbook on Women and Imprisonment*, 2nd ed. (United Nations publication, 2014), p. 4.

⁹⁰ A/HRC/31/57, para. 14.

⁹¹ Human Rights Council resolution 53/27.

⁹² A/HRC/31/57, paras. 16, 17 and 19.

⁹³ Submission from United Against Torture.

⁹⁴ Penal Reform International and Thailand Institute of Justice, *Guide: Rehabilitation and Social Reintegration of Women Prisoners – Implementation of the Bangkok Rules* (2019), p. 14.

⁹⁵ Submission from Ambika Satkunanathan.

⁹⁶ Penal Reform International and Thailand Institute of Justice, *Guide: Rehabilitation and Social Reintegration of Women Prisoners*, p. 34.

all-women social enterprise producing artisanal coffee at the roasting plant located within the prison.⁹⁷

69. Many women in prisons are primary caregivers to children. Both the exposure of children to detention settings and the separation of children from their incarcerated mothers have adverse consequences.⁹⁸ Non-custodial sentences are preferable where possible and appropriate, and the decision to allow children to stay with their mothers in detention should be based on the best interests of the child, also taking into account the child's preference, according to his or her age and level of development.⁹⁹

70. The Global Study on Children Deprived of Liberty states that children affected should be treated as right holders and not merely circumstantial victims of their caregiver's encounter with the criminal justice system.¹⁰⁰ Such an approach was taken in the constitutional court case *M. v. The State* in South Africa in 2007,¹⁰¹ where the custodial sentence of a mother of young children was replaced with a non-custodial sentence because the magistrate had not given sufficient attention to the impact on the children of sending their mother to prison.

71. Where incarceration is unavoidable, the length that a child can stay with the mother in detention should be limited. Most countries establish specific age limits, typically between 2 and 6 years of age, which are the formative years where bonding with a parent is important for healthy development, for a child's admission into a place of detention and also place restrictions on the length of permissible stay.¹⁰² Factors that may be taken into consideration when deciding whether a child should stay in a detention facility with the mother include breastfeeding needs, lack of alternative childcare solutions, suitability of prison accommodation for the child's development, health of the child, protection of the child's safety, full parental responsibility and ability to exercise parenthood, length of the sentence and the caregiver-child relationship before entering the prison.¹⁰³

72. The dignity and safety of mothers and pregnant women and girls must be protected in prisons. The European Court of Human Rights found that the shackling of a woman in the maternity hospital, the inadequate conditions of her detention and the lack of appropriate medical care for the baby amounted to inhuman and degrading treatment.¹⁰⁴ In contrast, in Thailand, women are transported to medical facilities outside prison to give birth, with no restraints during the transfer, medical examinations and delivery.¹⁰⁵ Women prisoners must receive gynaecological health care during pregnancy and childbirth, as well as after the birth.¹⁰⁶ In one facility in Serbia, children are able to attend a local preschool, allowing their mothers to participate in work and other activities.¹⁰⁷

73. In Spain, one prison has adopted a health review protocol that, when assessing the mental health of women, takes into account considerations such as whether or not they are mothers, their social background and any history of abuse¹⁰⁸ In Sierra Leone, some prisons

⁹⁷ Penal Reform International and Council of Europe, *Guidance Document on the European Prison Rules*, p. 88.

⁹⁸ [A/74/136](#), para. 50.

⁹⁹ See variously the Bangkok Rules, rules 49 and 64; General Assembly resolution 64/142; the African Charter on the Rights and Welfare of the Child, art. 30; Committee on the Rights of the Child, general comment No. 14 (2013), para. 69; and Inter-American Court of Human Rights, Advisory Opinion OC-29/22, para. 195.

¹⁰⁰ [A/74/136](#), para. 51.

¹⁰¹ Constitutional Court of South Africa, *M. v. The State*, Case No. CCT 53/06 [2007] ZACC 18, Judgment, 26 September 2007.

¹⁰² Penal Reform International and the Thailand Institute of Justice, *Guidance Document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, December 2021, p. 116.

¹⁰³ [A/74/136](#), para. 52.

¹⁰⁴ European Court of Human Rights, *Korneykova and Korneykov v. Ukraine*, Application No. 56660/12, Judgment, 24 March 2016.

¹⁰⁵ Submission from the Thailand Institute of Justice.

¹⁰⁶ The Bangkok Rules, rule 5.

¹⁰⁷ Submission from the Belgrade Centre for Human Rights.

¹⁰⁸ Submission from the Ombudsman of Spain.

hold sessions where influential women are invited to act as peace agents between women in prison and prison staff. Such sessions include recreational and trust-building elements.¹⁰⁹

74. Gender-specific health care goes beyond pregnancy and giving birth. The Bangkok Rules provide that the accommodation of women prisoners should have the facilities and materials required to meet women's specific hygiene needs.¹¹⁰ Some prisons still do not provide adequate access to menstrual products.¹¹¹

75. Health services in detention must also ensure appropriate care for women's health and for changes in older women.¹¹² In particular, the stressful and confined environment of prison can exacerbate the symptoms of perimenopause and menopause. Most prisons do not allow for easy access to common lifestyle interventions that alleviate menopausal symptoms, such as layered clothing, cool drinks and frequent showers. Women may experience discipline as a result of emotional or psychological symptoms associated with menopause and for their attempts to manage hot flushes.¹¹³ Overcrowding in cells can make heat unbearable for women experiencing menopausal symptoms and they may not be granted access to facilities that could provide relief for their symptoms.¹¹⁴

76. Although everyone needs access to water for bathing, women who are menstruating, going through menopause, pregnant or have children with them in prison¹¹⁵ may need additional access. When considering the appropriateness of imprisonment for women, judges should take into account such factors as pregnancy, the impact on any children and the effects of menopause or other age- or health-related issues.¹¹⁶

77. **The Special Rapporteur recommends that:**

(a) **States promote gender-responsive options for diversionary measures at the pretrial and sentencing stages within legal systems;**

(b) **Prison authorities provide more gender-sensitive and trauma-informed health services and rehabilitation programmes for women;**

(c) **States engage actively and positively in the process for developing a global strategy for implementation of the Bangkok Rules.**

Children and juveniles

78. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) provide standards of care in detention that are specific to children and young persons. Article 37 of the Convention on the Rights of the Child and the Committee on the Rights of the Child general comment No. 24 (2019) on children's rights in the child justice system contain principles relating to the detention of children.

79. The primary goal should always be to keep children out of prison. This can be achieved through educational, economic, familial, social, psychological and other interventions, including legal interventions. The Special Rapporteur encourages States that have an age of criminal responsibility lower than 14 years of age to increase that age to at least 14.¹¹⁷ Deprivation of liberty should be a measure of last resort and, where it is deemed

¹⁰⁹ Submission from Dignity – Danish Institute against Torture.

¹¹⁰ The Bangkok Rules, rule 5.

¹¹¹ Submissions from the Parliamentary Ombudsman of Iceland and The Advocates for Human Rights et al.

¹¹² Inter-American Court of Human Rights, Advisory Opinion OC-29/22, para. 372; and Committee on the Elimination of Discrimination against Women, general recommendation No. 27 (2010), para. 21.

¹¹³ Elana F. Jaffe, Aunchalee E.L. Palmquist and Andrea K. Knittel, "Experiences of menopause during incarceration", *Menopause*, vol. 28, No. 7 (July 2021), pp. 829–832.

¹¹⁴ Submission from Irish Rules of Law and others.

¹¹⁵ Penal Reform International and the Association for the Prevention of Torture, "Women in detention: a guide to gender-sensitive monitoring" 2nd ed. (2015), p. 14.

¹¹⁶ Sentencing Council for England and Wales, "The imposition of community and custodial sentences guideline: consultation", 29 November 2023.

¹¹⁷ Committee on the Rights of the Child, general comment No. 24 (2019), para. 22.

necessary, it should be proportionate and unavoidable. Children should be housed in residential, rather than prison-style facilities, that are child-friendly and appropriate to their age and stage of development. Incarcerated adolescents commonly experience poor health across a range of physical and mental health domains, and show consistently poorer health profiles than non-detained adolescents in comparison studies.¹¹⁸

80. Children should be placed in facilities as close as possible to their family's place of residence in order to maintain contact with their family, unless that is not in the child's best interest, and have frequent contact with the wider community. They have a right to education and should receive vocational training when appropriate.¹¹⁹ The number of girls in prisons remains small and, as a consequence, prisons are particularly ill-equipped for their needs, leading to girls often being detained in adult facilities, in breach of rule 11 (d) of the Nelson Mandela Rules.

81. Disciplinary measures such as corporal punishment, placement in a dark cell, solitary confinement or any other punishment that may compromise the physical or mental health or well-being of the child should be strictly forbidden. Restraints may only be used when a child poses an imminent threat of injury to himself or herself or others and only after other means of control have been exhausted.¹²⁰ The Special Rapporteur has included the use of spit hoods and other restraints in her list of inherently cruel instruments.¹²¹

82. Special consideration needs to be given to children approaching the end of childhood. It is particularly traumatic for children approaching the age of majority when they do not know if or when they may be moved to an adult prison. At least six months in advance of reaching the age of majority, and in close consultation with the child and his or her family, guardian or other representative, appropriate authorities should conduct a needs and risk assessment that takes into account all relevant factors, including the rights and needs of the other children in the youth facility, the suitability of prison in view of any underlying conditions, and the avoidance of disruption to any continuing education or vocational training. Depending on the profile of children deprived of their liberty, some States run youth facilities that extend beyond the age of majority. This recognizes that the needs and vulnerabilities of children do not change when they reach the age of majority. It also helps minimize disruption to supportive relationships that young people have formed with youth justice services.¹²²

83. It is important to note that youth detention facilities can be as appalling and detrimental to children as adult prisons. Youth prisons have reported overuse of lockdowns, leading to incidents of self-harm¹²³ and suicide. Although residential facilities are preferable, such facilities must differ from a prison in more than name. There must be an accompanying change in staff mindset and training oriented towards the rehabilitation and release of young people.¹²⁴

84. In the Lao People's Democratic Republic, the Ministry of Justice formalized traditional community-based interventions and established village mediation units with guidelines on carrying out mediations with children, which has diverted 90 per cent of cases from going to court in the provinces where the project was implemented.¹²⁵ In Iraq, there have been efforts to introduce counselling, art therapy and peace education to support children's reintegration.¹²⁶

85. Legislative and collaborative changes to juvenile justice systems are crucial to protecting children deprived of their liberty. Antigua and Barbuda, Grenada and Saint Kitts

¹¹⁸ See Rohan Borschmann and others, "The health of adolescents in detention: a global scoping review", *The Lancet Public Health*, vol. 5, No. 2 (February 2020), pp. e114–e126.

¹¹⁹ Committee on the Rights of the Child, general comment No. 24 (2019), paras. 94 and 95(c) and (e).

¹²⁰ *Ibid.*, para. 95 (f) and (g).

¹²¹ A/78/324, para. 49.

¹²² His Majesty's Inspectorate of Probation, "Youth to adult transitions", 27 October 2023.

¹²³ Submission from the Australian Human Rights Commission.

¹²⁴ Submission from Odhikar of Bangladesh.

¹²⁵ World Organisation against Torture, *Best Practices to Protect Children against Torture in Detention* (2021), p. 24.

¹²⁶ Terre des hommes, *Making a Positive Impact for Children: Annual Report 2022* (2023), p. 25.

and Nevis, for example, have adopted the Child Justice Model Bill of the Organisation of Eastern Caribbean States. Trinidad and Tobago adopted a multi-agency protocol that provides for a collaborative relationship between agencies playing different roles in the juvenile justice system.¹²⁷

86. The Special Rapporteur recommends that:

(a) **States develop national action plans on the treatment of children in criminal justice systems, including prisons, with clear benchmarks on how to sustainably reduce the number of children detained;**

(b) **States update national laws and policies to be in compliance with international standards related to children in conflict with the law, incorporating the general comment No. 24 (2019) of the Committee on the Rights of the Child.**

Furthermore, the Special Rapporteur calls on the international community to consider updating the Havana Rules and the Beijing Rules.

Indigenous Peoples

87. Criminal legal systems, including prisons, regularly mirror and intensify the discrimination and marginalization that Indigenous Peoples may experience in the community. Without special measures in place, the risk of cruel, inhuman or degrading treatment of Indigenous Peoples can be heightened in prisons, where the power imbalance between Indigenous prisoners and authorities increases.

88. Of great concern is the fact that Indigenous prisoners are more likely to be subjected to solitary confinement, higher security classifications and harsher disciplinary measures than non-Indigenous prisoners.¹²⁸ Some countries have recorded higher incidences of deaths in custody and higher rates of suicide.¹²⁹

89. The obligation of non-discrimination includes a positive obligation on States to consider and promote the special needs and vulnerabilities of Indigenous prisoners.¹³⁰ Discrimination against Indigenous prisoners can occur when they are not treated any differently from non-Indigenous prisoners, leading to their special cultural, religious and linguistic needs not being addressed. The Special Rapporteur is concerned that imprisonment rates among Indigenous Peoples reportedly remain high or are even increasing in some States.¹³¹

90. Although Indigenous communities are diverse, a general characteristic of Indigenous justice systems is their use of restorative justice based on consensus, mediation and maintaining community ties, rather than custodial sentences, as punishment.¹³² The Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognized that conventional places of detention can subject Indigenous people to double punishment, namely the deprivation of liberty and the deprivation of cultural identity and way of life, which may lead to cruel, inhuman or degrading treatment.¹³³ A guiding principle in imposing penalties on Indigenous people is to use non-custodial penalties, in conformity with their customs or customary law, where these are compatible with the legal system in force.¹³⁴

¹²⁷ Convention Against Torture Initiative and Wilton Park, "Sharing experiences and building capacity in the Caribbean", paras. 18 and 19.

¹²⁸ [A/HRC/24/50](#), para. 44.

¹²⁹ Submissions from the Australian Human Rights Commission, Victorian Aboriginal Legal Service and British Columbia First Nations Justice Council and others.

¹³⁰ The Nelson Mandela Rules, rule 2.

¹³¹ Submissions from the Australian Human Rights Commission, Australian National Preventive Mechanism, Canadian Human Rights Commission and the Chief Ombudsman of New Zealand.

¹³² [CAT/C/50/2](#), para. 92, and [CAT/OP/BOL/3](#), para. 108.

¹³³ [CAT/OP/MEX/1](#), para. 255.

¹³⁴ International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 10 (2); and United Nations Declaration on the Rights of Indigenous Peoples, arts. 2, 5 and 8.

91. The Special Rapporteur welcomes the differentiated approach to Indigenous people deprived of liberty taken by the Inter-American Court of Human Rights in its 2022 advisory opinion.¹³⁵ The Court emphasized that deprivation of liberty should be the exception and, where it is necessary, cultural identity should be preserved by placing Indigenous persons in prisons closest to their communities; protecting their right to practise traditional, religious or spiritual activities; ensuring access to culturally appropriate food; and providing access to medical care that includes the use of traditional medicines.¹³⁶

92. States should ensure that Indigenous people can communicate, receive, and understand information in their own language and that prison programmes meet their cultural needs.¹³⁷ Indigenous inmates should be able to be accommodated in a manner that best reflects their community approach, such as in “modules” or collective rooms, and where possible be able to prepare their own food and follow their own customs.¹³⁸ Consultation on a regular basis with Indigenous authorities and communities,¹³⁹ including imprisoned members of those communities, is fundamental.

93. The age, sex and gender, and other characteristics of individual Indigenous prisoners should be taken into account when developing policies, as well as individual responses, to ensure a dignified stay and to prevent torture and ill-treatment. Indigenous women are, for example, overrepresented in prisons compared with non-Indigenous women,¹⁴⁰ and, in some jurisdictions, with Indigenous men,¹⁴¹ and often face greater barriers to health care. Indigenous women in some countries have been found to have been subjected to strip searches more frequently than non-Indigenous women.¹⁴² It is reported that they have also experienced higher incidents of violence, including sexual violence.¹⁴³

94. Indigenous young people are also overrepresented in some jurisdictions¹⁴⁴ and there have been highly concerning reports of bullying, harassment, physical and sexual violence from staff and other prisoners in some countries.¹⁴⁵ Other reports have documented that Indigenous young people are more likely to receive the most punitive measures and subjected to the harshest treatments, such as being placed in solitary confinement, than non-Indigenous young people.¹⁴⁶

95. Addressing the special cultural, religious, and linguistic needs of Indigenous prisoners can minimize discrimination and allegations of ill-treatment. It is the Special Rapporteur’s view that paying attention to such issues does not require substantial inputs and can be accommodated where there is political will, reaping sizeable benefits. In Brazil, there are procedures for people to self-identify as Indigenous, which establishes an obligation on the State to collect that information and provide the services of an interpreter.¹⁴⁷ In Canada, justice strategies permit Indigenous people to go to cabins instead of prisons in order to maintain connections with their land and people.¹⁴⁸ Canada also requires its judges to take into account unique circumstances and social histories in their sentencing decisions, with the goal of reducing overrepresentation and ensuring fairness in judicial outcomes.¹⁴⁹ Chile

¹³⁵ Inter-American Court of Human Rights, Advisory Opinion OC-29/22, paras. 277–336.

¹³⁶ *Ibid.*, paras. 295–322.

¹³⁷ *Ibid.*, paras. 323–330.

¹³⁸ Preliminary observations from the visit of the Special Rapporteur to Chile. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/torture/sr/preliminary-observations-srt-mission-chile-25102023.pdf>.

¹³⁹ Inter-American Court of Human Rights, Advisory Opinion OC-29/22, para. 298.

¹⁴⁰ Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022), para. 32.

¹⁴¹ Office of the Correctional Investigator of Canada, *Annual Report 2022–2023* (2023), pp. 52 and 55.

¹⁴² Submission from the Australian Human Rights Commission.

¹⁴³ [A/HRC/24/50](#), para. 63.

¹⁴⁴ Submission from the Queensland Family and Children Commission; and Committee on the Rights of the Child, general comment No. 11 (2009), para. 74.

¹⁴⁵ [E/C.19/2022/4](#), paras. 28–32.

¹⁴⁶ [A/HRC/24/50](#), para. 67.

¹⁴⁷ Submission from the Federal Public Defender’s Office of Brazil.

¹⁴⁸ Submission from British Columbia First Nations Justice Council and others.

¹⁴⁹ Office of the Correctional Investigator of Canada, *Annual Report 2022–2023*, p. 52.

provides intercultural facilitators to help Indigenous people navigate the judicial system and Mexico provides cultural promoters who spend time with Indigenous inmates and provide continued links with the community through the sharing of language, food and rituals in prison.¹⁵⁰

96. **The Special Rapporteur recommends that:**

(a) **States consider adopting the comprehensive approach taken by the Inter-American Court of Human Rights as good practice for approaches to Indigenous prisoners;**

(b) **Prison authorities improve the employment rates and representation of Indigenous staff and those with specialist expertise in Indigenous affairs;**¹⁵¹

(c) **Prison authorities provide culturally appropriate training, risk and needs assessments, health care, rehabilitation and reintegration programmes for Indigenous people, and respect the right of Indigenous people to practise their customs and traditions.**

Prisoners with neurodivergent conditions

97. Prison environments are unfamiliar and can be startling, on account of jangling keys, banging metal doors and gates, strange or loud sounds, smells and unnatural lighting. The behavioural response of neurodivergent prisoners to such environments can be misconstrued by staff as aggression, indifference or intoxication, leading to the unfair treatment or punishment of such prisoners.¹⁵² The Special Rapporteur notes that the threshold for what constitutes ill-treatment may be lower for neurodivergent prisoners.

98. Prisoners with neurodivergent conditions include those with attention deficit disorder, autism, speech and language difficulties, tic disorders and brain injuries. Although such conditions may co-occur with mental illnesses, it must be understood that they are different from mental health conditions, and thus may give rise to different needs and accommodations.

99. Although more research is required in this area, people with neurodivergent conditions have been documented in high numbers among prisoners. In England and Wales, for example, it is estimated that half of people entering prison are neurodivergent.¹⁵³ The rate of head injury among women prisoners may be higher due to prior domestic abuse.¹⁵⁴

100. Initiatives that could be undertaken include increasing staff awareness of neurodivergence, including how to identify possible conditions, the use of individualized care plans and the provision of one-to-one support for prisoners with learning needs.¹⁵⁵ Having specialized staff would be best practice. A growing range of autism accreditation programmes and resources for prisons are available that provide suggestions for reasonable adjustments to the prison environment and to activities for autistic people, such as attending the gym at quieter times, allowing autistic prisoners to have ear defenders to drown out noise, and taking prisoners beforehand to facilities where education or workshops will take place so that they can familiarize themselves with the setting.¹⁵⁶ Reasonable accommodations for prisoners with neurodivergent conditions need not be financially burdensome if the prison is already well managed.

101. Other steps to adjust sensory stimuli and reduce overload for neurodivergent individuals could be introduced. These may include using dimmable light bulbs, providing

¹⁵⁰ Inter-American Court of Human Rights, Advisory Opinion OC-29/22, para. 299.

¹⁵¹ CAT/OP/MEX/1, para. 30.

¹⁵² Revolving Doors, "Exploring the links between neurodiversity and the revolving door of crisis and crime" (September 2022), p. 5.

¹⁵³ Her Majesty's Inspectorate of Prisons and Her Majesty's Inspectorate of Probation, *Neurodiversity in the Criminal Justice System: A Review of Evidence* (2021), p. 8.

¹⁵⁴ Submission from Juana Inés Acosta-López and others.

¹⁵⁵ Submission from the United Kingdom National Preventive Mechanism.

¹⁵⁶ Clare Hughes, "Supporting autistic people in prison and probation services", National Autistic Society, 2 September 2019.

earplugs and other noise reduction methods, allowing sensory items or fidget toys and adopting neurodiversity-informed communication methods.¹⁵⁷

102. **The Special Rapporteur recommends that:**

(a) **States undertake research on neurodiversity in relation to prisons and devise recommendations and guidelines in that regard;**

(b) **Prison authorities include neurodiversity screening as part of individual assessments, sentence planning and rehabilitative programming.**

III. Conclusion

103. **The Special Rapporteur underscores the urgent need for prison reform globally. She urges States to undertake such reforms not in isolation, but with the full engagement of the wider criminal justice system. She is ready to assist States to usher in a new modern era of just and humane prison practices and management.**

¹⁵⁷ Her Majesty's Inspectorate of Prisons and Her Majesty's Inspectorate of Probation, *Neurodiversity in the Criminal Justice System*.