



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Observations of the Committee against Torture on the
revision of the United Nations Standard Minimum Rules for
the Treatment of Prisoners (SMR)¹**

¹ Advance unedited version.

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I. Introduction

1. The General Assembly, in its Resolution 65/230 of 21 December 2010, requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group (“the Expert Group”) to exchange information on best practices, as well as national legislation and existing international law, and on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), so that they reflect recent advances in correctional science and best practices². The Economic and Social Council, in its Resolution 2012/13 of 25 July 2013, and the General Assembly, in its Resolution 67/188, subsequently took note of the nine areas identified by the Expert Group for review³ as well as the recommendations made by the Expert Group during the meetings in Vienna⁴ and Buenos Aires⁵. The Economic and Social Council extended the mandate of the Expert Group and invited Member States to submit proposals for revision, in the nine areas identified, for the next meeting of the Expert Group, which will take place in Brazil in January 2014. Civil society and relevant United Nations bodies were also encouraged to contribute to the process.⁶

2. The Committee against Torture (“the Committee”) welcomes this opportunity to provide its observations on procedural standards and safeguards relevant to the prohibition of torture and ill-treatment that should be applied to all cases of deprivation of liberty, and that should be taken into account in the process of revising the SMR in the nine areas identified for review. These views derive from the specific provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”), and the jurisprudence of the Committee on issues related to the obligations of State parties under the Convention in respect to persons in detention, as well as on discussions among the members of the Committee.

3. These observations refer to a limited number of issues within the nine areas identified by the Expert Group, and will as such not cover all aspects that could be raised in the context of detention. The Committee will further engage in the on-going discussion with regard to this important set of standards on the treatment of persons in detention, with a special emphasis on the absolute prohibition against torture and other ill-treatment.

4. The absolute and non-derogable character of the prohibition of torture is a peremptory *jus cogens* norm⁷. Other essential principles undergird the Convention’s absolute prohibition against torture, such as the State obligation to prevent torture and ill-treatment⁸, to investigate when allegations are raised, to prosecute and sanction those responsible for such acts⁹ as well as to provide adequate redress to victims¹⁰. The Convention further indicates that there is no justification for torture and that no exceptional circumstances whatsoever can be invoked to justify such acts, including orders from superiors or situations of emergency¹¹. The Committee has clarified, moreover, in its General Comment No. 2 to article 2 of the Convention (“GC No. 2”): “*where State*

² A/RES/65/230, para. 10.

³ E/RES/2013/35, para. 5.

⁴ E/CN.15/2012/18.

⁵ E/CN.15/2013/23.

⁶ E/RES/2013/35, para.8.

⁷ Article 2 of the Convention, General Comment No. 2 on the implementation of article 2 by States parties, CAT/C/GC/2, (GC No.2) para. 1.

⁸ Article 2 and 16 of the Convention.

⁹ Article 12 of the Convention.

¹⁰ Article 14 of the Convention.

¹¹ Article 2(2) of the Convention.

authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts”¹².

5. These absolute and basic principles laid down in the Convention and further developed in the concluding observations of the Committee, as well as in its decisions and views concerning individual communications, and in the General Comments (especially GC No. 2 and GC No. 3) adopted by the Committee, must be respected at all times and particularly in any situation where a person is deprived of his or her liberty. The Committee recommends, therefore, that these basic principles should be taken into consideration in any revision of the SMR. The Committee affirms that any changes to the SMR should not lower any of the existing standards but should rather improve them¹³, a position also articulated by the Economic and Social Council. These standards must respect and uphold non-derogable human rights, including the absolute prohibition of torture, as well as recent advances in prison administration and restorative justice.

II. Committee’s observations on the text of the SMR

A. Scope and application of the SMR

6. The Committee has made clear in its concluding observations and general comments that the States parties’ obligation to prohibit, prevent and redress torture and ill-treatment applies in all contexts of custody or control, including in detention facilities under the *de facto* effective control of a State¹⁴, as well as in contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm¹⁵. The absolute prohibition of torture and ill-treatment applies at all times and in all places, and no exceptional circumstances whatsoever may be invoked to justify such acts, including orders from superiors or situations of emergency¹⁶. This includes a state of war, or threat thereof, or internal political instability. It also includes any threat of terrorist acts or violent crime; or any religious or traditional justification that would violate this prohibition.¹⁷

7. The SMR should apply *mutatis mutandis* to all situations of detention, *i.e.*, that it applies unless there is a *lex specialis* that establishes a norm of higher standard, *e.g.*, in the case of detention in armed conflict (see paragraph 2 of article 2 and paragraph 2 of article 16 of the Convention against Torture). The remarks that the Committee provides in this document regarding the SMR refer to its current scope under rule 4(1) and rules 94 and 95, although the obligation of States, as laid down in the Convention and consistently applied by the Committee, extends to all contexts in which a person is deprived of his or her liberty. Accordingly, the scope of the SMR should be expanded, properly reflecting all legal obligations under the Convention against Torture. In the present text, when the Committee refers to prisoners or detained persons it will imply applicability to any person under any

¹² GC No. 2, para. 18.

¹³ A/RES/65/230, para. 10.

¹⁴ GC No. 2, para 16, CAT/C/USA/CO/2, 2006, para. 15, among others.

¹⁵ GC No. 2 para 15.

¹⁶ Article 2(2) of the Convention.

¹⁷ See CAT, Article 2(2), and GC No. 2, para. 5.

form of detention or imprisonment, criminal or civil, untried or convicted, as per rules 4 (1) and 95 of the SMR.

8. The Committee recommends that these observations be taken into consideration in the revision of the SMR. The Committee also recommends the inclusion of a new preamble or an annex in the SMR with a list of other international treaties and rules that complement the SMR with regard to the treatment of detained persons, and containing a specific reference to the Convention against Torture.

9. The Committee reiterates that, as stated in its General Comment No. 2, and reiterated by the Special Rapporteur on Torture¹⁸, States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State. Where State authorities or others acting in official capacity or under colour of law know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicity or otherwise responsible under the Convention for consenting or acquiescing in such impermissible acts,¹⁹ for example, in the case of inter-prisoner violence.

B. Respect for prisoners' inherent dignity and value as human beings

Non-discrimination

10. The Committee reiterates that the principle of non-discrimination is a basic and general principle in the protection of human rights, which is fundamental to the interpretation and application of the Convention.²⁰ The Committee considers that rule 6 of the SMR should make clear that States must ensure the application of the rules to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection or any other grounds of possible discrimination.²¹

Explicit prohibition of torture and ill-treatment

11. As indicated above, since the adoption of the Convention the absolute and non-derogable character of the prohibition of torture has become accepted as a matter of customary international law²². Article 2 called upon States to adopt effective measures to prevent torture including to prevent public authorities, or others acting in an official capacity or under colour of law, including personnel in detention centres that are privately owned or run, from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in any acts of torture or ill-treatment²³.

12. These principles should be clearly set out as rules of general application in the SMR, as an extension of current rule 6.

¹⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, paras. 29-33.

¹⁹ GC No 2, paras. 15, 18.

²⁰ GC No. 2, para. 20 and GC No. 3, para. 32.

²¹ GC No. 2 para. 21, GC No. 3, para. 32.

²² GC No. 2, para 1.

²³ GC No. 2, para.17.

Protection against violence

13. States should take the necessary steps to prevent violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and by other inmates²⁴. To prevent torture, sexual violence or ill-treatment or harassment of persons in custody, and to reaffirm every person's inherent rights to security of person and dignity, detained persons should be separated by gender, at least for the purpose of housing and personal functions, and protections against such violence and harassment should be established in the rules and practices.²⁵

14. In cases where a person is threatened with violence, or has been victimized due to actual or perceived sexual orientation or gender identity²⁶, the person should be provided appropriate protection and a respectful environment without being removed from the general prison population, except upon consent. The use of same-sex guards in contexts where the detainee is vulnerable to attack, in scenarios that involve close personal contact or that involve the privacy of the detainee is also a preventative measure.

15. Providing a sufficient number of prison staff trained on the management of inter-prisoner violence²⁷ as well as in the identification and documentation of all forms of torture or ill-treatment, including sexual violence, is also essential to prevent violence in prisons. States should also monitor and document incidents of violence in prisons with a view to revealing the root causes and designing appropriate prevention strategies.²⁸

C. Medical and health services

16. The Committee considers the right to be subjected to an independent medical examination as a fundamental legal safeguard from the moment of deprivation of liberty.²⁹ Prisoners should be able to have prompt access to an independent doctor at any time when requested by the detainee, without conditioning such access on the permission or request of officials³⁰ and irrespective of their detention regime³¹. The health care service in prison should be so organised as to enable requests to consult a doctor to be met without undue delay.

17. Access to an independent doctor is of particular importance in the context of complaints and allegations on torture or ill-treatment, where there may be a need of/request for assessment and documentation of injuries or other health related consequences stemming from torture or ill-treatment, including forms of sexual violence and abuse. Available and qualified medical personnel trained in and applying the Manual on effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment ("the Istanbul Protocol") is required in places where persons are kept deprived of their liberty.³²

18. Upon admission, every prisoner shall be examined by a health professional as soon as possible for a general assessment of the health condition and need for treatment and/or

²⁴ CAT/C/BOL/CO/2, 2013, para 18, CAT/C/ARM/CO/3, 2012, para 19, CAT/C/MEX/CO/5-6, 2012, para 19.

²⁵ See, among others; CAT/C/KHM/CO/2, 2011, para. 15, CAT/C/PHL/CO/2, 2009, para. 18.

²⁶ See, among others, CAT/C/ARM/CO/3, 2012, para 19.

²⁷ CAT/C/IR/CO/1, para.9.

²⁸ CAT/C/MNE/CO/4, para 12.

²⁹ See, among others, CAT/C/JPN/CO/2, 2013, para. 10, CAT/C/TJK/CO/2, 2013, para.8, CAT/C/KAZ/CO/2, 2008, para. 9, CAT/C/KHM/CO/2, 2011, para.14.

³⁰ See, for example, CAT/C/TJK/CO/2, 2013, para. 8.

³¹ See, for example, CAT/C/TUR/CO/3, 2011, para.11.

³² See, among others, CAT/C/KWT/CO/2, 2011, para. 18.

care in relation to trauma related problems, risk of or propensity to commit suicide, substance abuse or other aspects of relevance to his or her health. This examination is also essential to identify and document injuries or other health related consequences stemming from torture or ill-treatment. The Committee has indicated that States should ensure that injuries observed during the medical screening of prisoners upon admission or thereafter by medical staff are fully recorded, including information on the consistency between the allegations made and the injuries observed.³³

19. Whenever injuries are indicative of ill-treatment, a report should be promptly sent by the medical staff to prosecutorial or judicial authorities and prison inspection services.³⁴ States should provide medical and psychosocial services for victims in the direct aftermath of torture,³⁵ and as full rehabilitation as possible, which may include a wide range of interdisciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; vocational training; education etc.³⁶

20. All the medical examinations of prisoners should be conducted out of hearing and, whenever the security situation allows, out of sight of prison officers,³⁷ and medical records should be made available to the prisoner concerned and his lawyer upon request.³⁸ The Committee considers that these principles should be taken into consideration in the new paragraph to be added to rule 24.

21. Medical confidentiality should be observed in prisons and places of detention in the same way as in the community at large. Keeping prisoners' medical files should be the doctor's responsibility. Further, in the event of a transfer, the file should be forwarded according to regular confidential procedures to the doctors in the receiving establishment. The confidentiality of medical data persists beyond the transfer and/or release of an inmate.

22. A doctor in a prison or place of detention acts as a patient's personal doctor. Consequently, in the interest of safeguarding the doctor/patient relationship, he or she should never be asked to certify, nor participate in certifying that a prisoner is fit to undergo punishment.

23. The Committee calls for rule 25 to be amended to clarify that medical personnel must not, under any circumstances, engage, actively or passively, in acts which may constitute participation in, complicity or acquiescence in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

24. The Committee has recommended States in numerous occasions to ensure that there are sufficient medical professionals, including mental health professionals, in places of detention³⁹. The Committee urges that rule 22 should be amended to indicate that health-care in prisons should be available and accessible, without discrimination and without cost, to all prisoners. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facilities, in order to fulfil the prisoners' basic needs.

25. The health-care services should include somatic and mental health care⁴⁰, including specialized services for persons with mental illness of either acute or longer term character.

³³ See, among others, CAT/C/PT/CO/5-6, 2013, para. 9, CAT/C/MEX/CO/5-6, 2012, para 17.

³⁴ See, among others, CAT/C/PT/CO/5-6, 2013, para. 9.

³⁵ GC No.3, para 14.

³⁶ GC No.3, para. 13.

³⁷ See, among others, CAT/C/AUT/CO/3, 2005, para. 13, CAT/C/GHA/CO/1, 2011, para. 10, CAT/C/PT/CO/5-6, 2013, para. 9.

³⁸ See, among others, CAT/C/PT/CO/5-6, 2013, para. 9, CAT/C/MEX/CO/5-6, 2012, para 17.

³⁹ See, among others, CAT/C/PRY/CO/4-6, para. 19, CAT/C/PER/CO/5-6, 2013, para.10, CAT/C/GRC/CO/5-6, 2012, para. 14.

⁴⁰ See, among others, CAT/C/JPN/CO/2, 2013, para.13.

The State should also adopt all necessary measures to protect detainees from contracting tuberculosis, hepatitis C, and HIV/AIDs.⁴¹

26. The Committee encourages that rule 23(1) be clarified to provide that, beyond prenatal and postnatal care, a broad range of gender-specific health-care services should be available to women prisoners, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

Psychiatric care

27. A detained person with a diagnosed mental illness should be kept and cared for in a hospital facility, which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.

28. The health-care services should be organized in close relationship with the general health administration of the State, but also in collaboration with the health-care system in the community to which the person returns to upon release, in order to ensure continuity and follow-up during the challenging period following imprisonment.

29. The health-care services and the professionals providing health-care in prisons shall operate in full clinical independence and according to internationally accepted professional and ethical standards, in particular with regard to the autonomy, informed consent and confidentiality of prisoners in all health matters.

30. A medical file should be compiled for each patient, containing diagnostic information as well as an on-going record of the patient's evolution and of any special examinations he or she has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

D. Disciplinary action and punishment

Body searches

31. The Committee has recommended that body searches of both visitors and detained persons should be strictly regulated and limited, to ensure they are conducted in private in a way that is the least intrusive and most respectful of the integrity of the individual, by trained individuals, and using alternatives whenever possible, such as electronic detection scanning methods.⁴²

Solitary confinement

32. As regards rule 32, the Committee's long-standing recommendation has been that solitary confinement might constitute torture or inhuman treatment and should be regulated as a measure of last resort to be applied in exceptional circumstances, for as short a time as possible, under strict supervision including being subjected to judicial review.⁴³ Indefinite solitary confinement is prohibited. Solitary confinement should be prohibited as a punishment for juveniles,⁴⁴ prisoners with psychosocial and/or intellectual disabilities,⁴⁵ as well as for others in situations of special vulnerability, including pregnant women, women with infants, and breastfeeding mothers.

⁴¹ CAT/C/ETH/CO/1, 2011, para. 26.

⁴² See, among others, CAT/C/GRC/CO/5-6, 2012, para. 16, CAT/C/FRA/CO/4-6, 2010, para. 28, CAT/C/HKG/CO/4, 2009, para. 10.

⁴³ See, among others, CAT/C/JPN/CO/2, 2013, para. 14, CAT/C/PT/CO/5-6, 2013, para. 12.

⁴⁴ See among others, CAT/C/PT/CO/5-6, 2013, para. 12.

⁴⁵ See, among others, CAT/C/PER/CO/5-6, 2013, para. 10.

33. Solitary confinement should be prohibited for life-sentenced prisoners and prisoners sentenced to death, and for pre-trial detainees. The Committee has recommended that there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.⁴⁶ Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

34. The Committee has further recommended that meaningful social contact for detainees while in solitary confinement should be ensured.⁴⁷ Qualified medical personnel should regularly monitor every detainee's physical and mental condition after solitary confinement has been imposed and should also provide such medical records to the detainees and their legal counsel upon request.⁴⁸

Restraints

35. The Committee urges that rule 33 be modified so that it reflects the following principles and minimum standards.

36. The guiding principle in the matter of restraints and the enjoyment of rights generally is that the status, penalty, legal condition or disability of an individual cannot be a reason to automatically impose restraints. The use of restraints must always be justified and subject to strict requirements of proportionality and timeliness. The burden of proof in this matter is on the authorities. The use of restraints should be avoided or applied as a measure of last resort, when all other alternatives for control have failed and for the shortest possible time,⁴⁹ with a view to minimizing their use in all establishments and, ultimately, abandoning them.⁵⁰ When it is absolutely necessary to resort to means of restraint in a prison setting, basic safeguards against possible abuse include regulations governing the use of means of restraint (reason, conditions and procedure) that are in line with the human rights standards and the rigorous recording of every application of these means.⁵¹ The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint and staff must be trained in the use of the equipment.⁵²

37. Immobilisation should only be used as a last resort to prevent the risk of harm to the individual or others, according to strict written guidelines and by trained staff, when all other reasonable options would fail to contain those risks. Persons subject to immobilisation should receive full information on the reasons for the intervention. Immobilisation should never be used as a punishment or to compensate for shortages of trained staff. The duration should be for the shortest possible time (usually minutes rather than hours). Restraint for periods of days at a time cannot be justified and could amount to either torture or ill-treatment.

38. The Committee has also concluded that electrical discharge weapons ("Tasers") should not be part of the general equipment of custodial staff in prisons or any other place of deprivation of liberty.⁵³

⁴⁶ See, among others, CAT/C/PT/CO/5-6, 2013, para. 12.

⁴⁷ See, among others, CAT/C/JPN/CO/2, 2013, para. 14, CAT/C/PT/CO/5-6, 2013, para. 12.

⁴⁸ See, among others, CAT/C/JPN/CO/2, 2013, para. 14, CAT/C/PT/CO/5-6, 2013, para. 12.

⁴⁹ See, among others, CAT/C/JPN/CO/2, 2013, para. 22.

⁵⁰ See, among others, CAT/C/DEU/CO/5, 2011, para. 16.

⁵¹ See, among others, CAT/C/JPN/CO/2, 2013, para. 22.

⁵² See, among others, CAT/C/DEU/CO/5, 2011, para.16.

⁵³ See, among others, CAT/C/BEL/CO/3, para. 26, CAT/C/PT/CO/5-6, 2013, para. 15.

Other disciplinary punishments

39. The Committee rejects the application of additional and severe punishments on prisoners serving life sentences, such as handcuffing when outside cells, and segregation.⁵⁴

40. The Committee considers that the reference to "reduction of diet as a punishment" in rule 32(1) should be deleted, as reduction of diet or water should be absolutely prohibited, as it would breach the requirements of the Convention itself.

41. Prisoners facing disciplinary or other charges while in detention should be formally guaranteed due process rights including to be informed in writing of the charges against them, to be heard in person; to call witnesses and examine evidence given against them; to be provided with a copy of any disciplinary decision concerning them and an oral explanation of the reasons for the decision and the modalities for lodging an appeal, and to appeal to an independent authority against any sanctions imposed.

E. Investigation of all deaths in custody, as well as signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

42. The Committee has on many occasions recommended that that all incidents of death in custody must be investigated promptly, thoroughly and impartially, and medical services as well as the family of the deceased should be informed of the outcome.⁵⁵

43. Article 12 of the Convention imposes an obligation on States to ensure that competent authorities proceed to prompt, thorough and impartial investigations whenever there is reasonable ground to believe that an act of torture or other inhuman or degrading treatment or punishment has been committed in the territory of the State as the result of its actions or omissions⁵⁶. The Committee recommends that a new rule 54 bis include the obligation of prison administrations or other competent bodies, to initiate prompt and impartial investigations in such circumstances, particularly in prison settings, irrespective of whether a complaint has been received. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol.⁵⁷

44. Whenever there are reasonable grounds to believe that an official have committed acts of torture or ill-treatment, he or she should be suspended from his or her duties immediately and remain so throughout the investigation, particularly if there is any risk that the official might otherwise be in a position to repeat the alleged act or interfere with the investigation.⁵⁸ Moreover, persons suspected of having committed torture or ill-treatment should be prosecuted by judicial or prosecutorial authorities and, if found guilty, should be punished with appropriate sentences that are commensurate with the gravity of their acts, and victims should be afforded appropriate redress.⁵⁹

45. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial

⁵⁴ See, among others, CAT/C/BGR/CO/4-5, 2011, para. 24.

⁵⁵ See, among others, CAT/C/UZB/CO/3, 2008, para. 11, CAT/C/AZE/CO/3, 2009, para. 12.

⁵⁶ GC No. 3, para. 23.

⁵⁷ GC No. 3, para. 25.

⁵⁸ See, among others, CAT/C/BOL/CO/2, 2013, para.11, CAT/C/GTM/CO/5-6, 2013, para. 9, CAT/C/PT/CO/5-6, 2013, para. 9.

⁵⁹ Article 4(2) of the Convention and CAT/C/BOL/CO/2, 2013, para.11, CAT/C/GTM/CO/5-6, 2013, para.9, CAT/C/PT/CO/5-6, 2013, para.9, among others.

prosecutorial and judicial authorities.⁶⁰ This is particularly relevant with regard to prison violence, including sexual violence, by prison staff and by other inmates on other detained persons. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.⁶¹

F. Protection and special needs of vulnerable groups deprived of their liberty

46. The Committee recommends the addition of a paragraph to rule 6 addressing prisoners with special needs or in situation of vulnerability, such as victims of trafficking, foreigners, women, in particular pregnant women, children, disabled persons, lesbian, gay, bisexual and transgender (LGBT) persons and members of ethnic, racial, religious, age, health, and other groups among the population made vulnerable.

47. Special needs of at risk groups such as women and others subject to torture or ill-treatment shall be respected fully by, for example, providing an independent medical exam or access to counsel upon request.

G. The right to access legal representation

48. The Committee considers, and has consistently reiterated, that access to and assistance of a lawyer as well as the provision of legal aid, whenever necessary, from the moment of deprivation of liberty and throughout all stages of proceedings and all moments of detention is one of the relevant fundamental legal safeguards to prevent torture and ill treatment during detention as well as to ensure a fair legal proceeding, in conformity with the UN Basic Principles on the Role of Lawyers. Detained persons should also be formally guaranteed other due process rights, including to be informed in writing of the charges against them, to be tried without undue delay; to be heard in person; to examine, or have examined, the witnesses and evidence against them, to have the free assistance of an interpreter, not to be compelled to testify or to confess guilt, to be provided with a copy of the judgment and an oral explanation of the reasons for the conviction and the modalities for lodging an appeal, and to appeal to an independent authority against the conviction.⁶²

49. Access to legal representation entails the prompt confidential access to and consultations in private with an independent lawyer or a counsel of the detainee's own choice, in a language he or she understands, from the moment of deprivation of liberty and throughout the detention but especially during the interrogation, investigation and questioning process.

50. A functioning legal assistance mechanism, if and when necessary, permits detainees the right promptly to receive access a lawyer. For all those detained that cannot afford it, this guarantees the effectiveness of fundamental legal safeguards to prevent torture and ill-treatment as provided in articles 2 and 11 of the Convention, as well as other rights such as to lodge complaints under article 13, as the Committee recalled in its GC No.2, para 13.⁶³

51. This right must be ensured in practice to every person deprived of liberty, including to those detained under the administrative law. In addition to the right to a doctor and medical examination, it also includes, in particular, the right of detainees to notify a

⁶⁰ GC No. 2, para. 16.

⁶¹ *Ibid.*

⁶² Article 14 of the International Covenant of Civil and Political Rights.

⁶³ See also the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

member of family or another appropriate person of their own choice in a timely manner, to be informed of their rights in a language they understand, including the grounds for the detention, to be brought promptly before a judge, and the ability to challenge effectively and expeditiously the lawfulness of their detention through *habeas corpus*.

52. The official registration of detainees is another key element for the prevention of torture and ill-treatment, in conformity with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which should be made available for consultation upon request of the respective lawyer. Registration should contain, amongst other elements, information on the identity of the detainee, date, time and place of the detention, the identity of the authority that detained the person, grounds for the detention, date and time of admission to the detention facility, state of health of the detainee upon admission and any changes thereto, time and place of interrogations, with names of all interrogators present, as well as the date and time of release or transfer to another detention facility. Access to one's lawyer must also be recorded in the registry of the detention premise. The Committee recommends that these considerations should be taken into consideration in the revision of rules 35 and 37 of the SMR.

H. Complaints and independent inspections

Complaints

53. Article 13 of the Convention indicates that States should ensure that any individual who alleges that he or she has been subjected to torture has the right to complain to, and to have his or her case promptly, effectively and impartially examined by competent authorities. Thus, the Committee recommends modifying rule 36 along this principle. The Committee has also recommended establishing a central and accessible mechanism to receive complaints of torture or ill-treatment, and a centralized register of complaints that includes information on the corresponding investigations, trials and criminal and/ or disciplinary penalties imposed.⁶⁴

54. Complaints mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty via, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.⁶⁵ States should ensure the confidentiality of these mechanisms.

55. Article 13 also provides that steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his or her complaint or any evidence given. Protective measures including relocation, on site security, hotlines, and judicial orders of protection to prevent violence and harassment against complainants, witnesses, or close associates of such parties should be available and consistently enforced free of discrimination. The Committee recommends that rule 36 should reflect these important aspects.

56. The Committee recommends adding a subparagraph to rule 36 that addresses the entitlement of prisoners to bring their request or complaint before a judicial or other (independent and impartial) authority in case the initial request or complaint is rejected, or in case of undue delay.

⁶⁴ See, among others, CAT/C/EST/CO/5, 2013, para. 20, CAT/C/BOL/CO/2, 2013, para. 10, CAT/C/PT/CO/5-6, 2013, para. 10.

⁶⁵ GC No. 3, para. 23.

Independent inspections

57. Regular visits should be carried out to all prisons and places of detention by a body, independent from the authority in charge of the administration of places of detention or imprisonment, with authority to receive and investigate prisoners' complaints and to visit the premises in order to monitor, among others, all forms of violence in custody, including sexual violence against both men and women, and all forms of inter-prisoner violence, including proxy violence which occurs with the acquiescence of officials within the prison system. During such visits, the inspectors should make themselves "visible" to both the prison authorities and staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative of visiting the establishments' detention areas and entering into contact with inmates. The inspection body should ensure that action is taken to follow up on the results of that monitoring process and that their findings are made public, excluding any personal data of a prisoner without his or her express consent.⁶⁶

58. The inspection body should also be able to carry out unannounced visits in order to prevent torture and other ill-treatment⁶⁷. The State should also ensure that forensic doctors and, when needed, female inspectors trained to detect signs of torture or other ill-treatment, including sexual violence, are present during those visits.⁶⁸

59. These independent inspection bodies should ensure that gender sensitive measures and others designed to protect at risk populations are in place to protect the victims where appropriate⁶⁹. Effective measures to ensure the safety of such persons include human rights offices within police forces and units of officers specifically trained to handle cases of sexual and gender violence, domestic violence, and/or violence against ethnic, religious, national or other minorities. They may also include inspections by appropriate non-governmental organizations or national preventive mechanisms.⁷⁰

60. The Committee considers that the powers of independent inspection mechanisms in rule 45 should also include access to all information on numbers of both persons deprived of their liberty and places of detention, including locations, as well as to all information relevant to the treatment of persons deprived of their liberty, including conditions of detention and which persons deprived of liberty to interview; and the authority to conduct private and fully confidential interviews with persons deprived of their liberty in the course of visits.

I. Training of relevant staff to implement SMR

61. Article 10 of the Convention requires that education and information regarding the prohibition against torture and ill-treatment is fully included in the training of law enforcement personnel, civil or military, medical personnel (including those working in prisons), public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Indeed, the Committee recommends that prison authorities should give high priority to the development of prison staff training, both initial and on-going. Such training should include, as a minimum, the basic principles of the Convention and the Istanbul

⁶⁶ See, among others, CAT/C/MAR/CO/4, 2011, para. 18, CAT/C/TJK/CO/2, 2013, para. 14

⁶⁷ See, among others, CAT/C/MAR/CO/4, 2011, para. 18.

⁶⁸ See, among others, CAT/C/MAR/CO/4, 2011, para. 18.

⁶⁹ CAT/C/KOR/CO/1, para. 3.

⁷⁰ See, among others, CAT/C/TJK/CO/2, 2013, para. 14, CAT/C/MAR/CO/4, 2011, para. 18.

Protocol, in order to facilitate the monitoring, documentation and investigation of torture and ill-treatment, focusing on both physical and psychological traces.⁷¹

62. Trainings should prepare persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment to appropriately handle the challenges related to members of groups made vulnerable and ensure appropriate and respectful treatment of these groups, such victims of trafficking, foreigners, women, children, disabled persons and members of ethnic, racial, religious, age, health, transgender and other diverse groups among the population.⁷² The Committee has consistently recommended that States provide gender sensitivity training, especially in the areas of crimes that typically or disproportionately affect women including, but not limited to, rape and sexual violence, trafficking, and domestic violence.⁷³ States should ensure that training programs for medical experts and staff in places of detention specifically deal with the identification and documentation of all forms of torture or ill-treatment, including sexual and gender violence, and are in keeping with the Istanbul Protocol. More specifically, medical personnel should be trained regarding appropriate forensic and medical techniques, including gender sensitive measures, for treating torture victims.

63. The Committee also recommends that considerable emphasis should be placed on the acquisition of interpersonal communication skills by prison staff. Building positive relations with prisoners should be recognised as a key feature of a prison officer's vocation. To obtain personnel of the right calibre, the authorities must be prepared to invest adequate resources into the process of recruitment and training and to offer adequate salaries.

J. The replacement of outdated terminology

64. The Committee considers that the heading "Insane and mentally abnormal prisoners", the term "insane" in rule 82(1), the phrase "prisoners who suffer from other mental diseases or abnormalities" in rule 82(2), and the text "treatment of states of mental abnormality" in rule 22(1) fall short of today's standards and acceptable terminology and should refer to "psychosocial disability", including both long term and acute psychiatric disorders, throughout the text. A reference could also be made to "persons with intellectual disability", as this is not considered an illness from which a person recovers, as will be the case in most of the psychosocial disabilities, including psychiatric illnesses, as defined and described in the diagnostic manuals.

⁷¹ See, among others, CAT/C/MRT/CO/1, 2013, para. 17, CAT/C/JPN/CO/2, 2013, para. 17.

⁷² Article 10 of the Convention, CAT/C/KWT/CO/2, 2011, para. 18, CAT/C/IRL/CO/1, 2011, para. 30, among others.

⁷³ See, among others, CAT/C/KWT/CO/2, 2011, para. 18, CAT/C/ARM/CO/3, 2012, para. 18.