



UNITED NATIONS  
*Office on Drugs and Crime*



**CUSTODIAL AND NON-CUSTODIAL MEASURES**

## **Detention Prior to Adjudication**

Criminal justice  
assessment  
toolkit

**2**



UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

# **CUSTODIAL AND NON-CUSTODIAL MEASURES**

## **Detention Prior to Adjudication**

**Criminal Justice Assessment Toolkit**



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## TABLE OF CONTENTS

|     |   |    |
|-----|---|----|
| 1.  | INTRODUCTION TO THE ISSUE .....                 | 1  |
| 2.  | OVERVIEW: GENERAL AND STATISTICAL DATA.....     | 5  |
| 2.1 | DETENTION TRENDS AND PROFILE OF PROCESS .....   | 5  |
| 2.2 | LEGAL REPRESENTATION .....                      | 6  |
| 2.3 | PROFILE OF DETAINEES.....                       | 7  |
| 2.4 | KEY CHALLENGES: OVERCROWDING, TB, AND HIV ..... | 7  |
| 2.5 | QUALITY OF DATA.....                            | 8  |
| 3.  | LEGAL AND REGULATORY FRAMEWORK.....             | 8  |
| 3.1 | LAW REFORM .....                                | 9  |
| 3.2 | ARREST, DIVERSION AND POLICE CUSTODY.....       | 9  |
| 3.3 | PRE-TRIAL DETENTION .....                       | 14 |
| 4.  | OTHER FORMS OF DETENTION .....                  | 21 |
| 4.1 | ADMINISTRATIVE DETENTION.....                   | 21 |
| 4.2 | PSYCHIATRIC DETENTION.....                      | 23 |
| 5.  | SPECIAL CATEGORIES.....                         | 25 |
| 5.1 | JUVENILES .....                                 | 25 |
| 5.2 | WOMEN.....                                      | 26 |
| 5.3 | THE MENTALLY ILL.....                           | 27 |
| 5.4 | DRUG RELATED OFFENCES .....                     | 28 |
| 5.5 | OVERREPRESENTED GROUPS.....                     | 29 |
| 6.  | MANAGEMENT .....                                | 31 |
| 6.1 | MANAGEMENT AUTHORITY .....                      | 32 |
| 6.2 | STRUCTURE.....                                  | 32 |
| 6.3 | BUDGET .....                                    | 33 |
| 6.4 | PROCUREMENT.....                                | 34 |
| 6.5 | PERSONNEL.....                                  | 34 |
| 6.6 | RESEARCH AND PLANNING .....                     | 36 |
| 6.7 | CORRUPTION.....                                 | 37 |
| 6.8 | OVERSIGHT.....                                  | 37 |
| 6.9 | PUBLIC OPINION AND ACCOUNTABILITY.....          | 39 |
| 7.  | PARTNERSHIPS AND COORDINATION.....              | 40 |
| 7.1 | SYSTEM COORDINATION.....                        | 40 |
| 7.2 | DONOR COORDINATION .....                        | 41 |
|     | ANNEX A. KEY DOCUMENTS .....                    | 43 |
|     | ANNEX B. ASSESSOR'S GUIDE / CHECKLIST.....      | 45 |



# 1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of detention during the period between arrest and sentence. It includes the time spent in the custody of police or other law enforcement agencies, as well as the period after which a court remands a suspect in custody until he or she is adjudicated, and where convicted, sentenced or released. Detention is a particularly sensitive area in the criminal justice process. It is the period most open to abuse, as documented in numerous reports by international inspection bodies. Recognizing the particular vulnerability of detainees prior to adjudication, international human rights instruments provide for a large number of very specific safeguards to ensure that the rights of detainees are not abused, that they are not ill-treated and their access to justice not hindered.

International human rights law prohibits the use of arbitrary arrest and detention (**Universal Declaration of Human Rights** (Article 9). Article 9(1) of the **International Covenant on Civil and Political Rights**, requires that an accused understands what he/she is charged with; Article 9(2) provides that the accused be brought “promptly” before a court; and Article 9(3) requires that the consideration of release pending trial “subject to guarantees” should be exercised in favour of the accused.

The thirty-nine clauses in the **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment** underscore the legal protections surrounding the detainee.

The decision whether to remand an accused or suspect to prison before his or her trial is usually a matter for the discretion of a court of law. The decision will be influenced by the prosecution or police who may seek to argue that because of the serious nature of the offence; the strength of the evidence against the person accused of committing it; or the past behaviour or personal characteristics of the accused, he or she is likely to:

- Flee/fail to appear for trial
- Commit additional or further offences if not kept in custody
- Obstruct of justice or interfere with evidence or witnesses
- Endanger the community.

The **Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)** state that pre-trial detention “shall be” used as a means of “last resort in criminal proceedings” (6.1); that where the protection of society, prevention of crime, respect for law and rights of victims are not compromised, the police or prosecution “should be empowered to discharge the offender”.

In the case of young persons in conflict with the law, the **Convention on the Rights of the Child** states that the detention or imprisonment of a child shall be used “only as a measure of last resort and for the shortest period of time” (CRC 37(b)).

People in prison awaiting trial are to be housed separately and treated differently from those who have been convicted of an offence and sentenced. The reason is that, under international human rights law, which is reflected in the constitutions of many countries, they shall be presumed innocent until proven guilty (UDHR 11; ICCPR 14(2)).

The **Standard Minimum Rules for the Treatment of Prisoners** (Rules 84-93) dedicate a section to prisoners under arrest or awaiting trial. These provisions act as guidelines for the prison authorities governing the conditions of detention of pre-trial prisoners, the privileges to which they are entitled and access to legal advice and assistance.

The international framework governing those in pre-trial detention is clear and exacting. In any prison, those on remand should be a privileged category of prisoner able to dress in their own clothes, receive food from outside, have access to their own doctors, procure reading and writing materials, receive regular visits from their legal advisers and assistance in preparation for their trials.

The reality in many criminal justice systems is otherwise. The lack of resources and adequate training of police officers mean that many arrest first and ask questions later, causing both delays for those properly arrested and grave inconvenience, if not injury, to those wrongly suspected. The courts may not be in a position to hear the case due for a long time due to their own pending backlog of cases.

Often, due to acute overcrowding, pre-trial detainees are held in conditions inferior to those of sentenced prisoners. Where they are not, they may be mixed together with convicted prisoners. The lack of resources for prisons in many low-income countries means that people in prison do not have access to legal advice and assistance, with the result being that they may overstay on remand, further adding to the congestion of the institution and injustice to the prisoner.

In overcrowded and under-resourced places of detention the rapid spread of transmissible diseases, especially TB and HIV, is common and a major challenge for a large number of countries worldwide. This reality alone should constitute an important consideration when deciding whether to remand suspects in custody. Some people in detention will eventually be determined to have been innocent by the courts, but may have acquired a life threatening medical condition while awaiting the outcome of their trials or appeals. The state's responsibility to provide the necessary healthcare to an increasing number of patients with TB and HIV/AIDS puts additional pressure on scarce resources.

Over-reliance on pre-trial detention may cause an already fragile criminal justice system to grind to a halt by overwhelming the system with cases. The lack of other critical resources may further slow the criminal justice system's ability to reach cases in which the accused are detained in a timely manner.

Pre-trial detention should be a measure of last resort applied only to protect society or ensure that a serious offender attends trial at a future date. Time spent on remand should be kept to a minimum and should be applied against any sentence that may eventually be imposed. Further analysis is required to determine whether the decision to remand a person is applied judiciously and due weight is given to other options.

The size of the pre-trial population in prison is a measure of the efficiency of the criminal justice system as a whole. The use or abuse of detention is a measure of the quality of justice the system provides to the poorest section of the community.

### **Terminology**

The term **detainee** in this tool is used to cover all persons detained prior to adjudication – i.e. in police custody, custody of other law enforcement agencies, prisons, and pre-trial detention facilities. The terms **pre-trial detainee** or **pre-trial prisoner** are used exclusively for those who have been remanded in custody by court order. When a distinction has to be made between the two, this is reflected in the suggested questions.

Similarly, the term **detention** is used to cover all forms of detention, prior to adjudication, while **pre-trial detention**, is used exclusively to cover detention ordered by a court, while the accused/defendant awaits trial.

A distinction is made between places of detention used by law enforcement agencies following arrest, such as **police cells**, **temporary isolators**, and those which are used by prison authorities following a decision to remand a person in custody – which are referred to as **pre-trial detention facilities**, **pre-trial detention centres** or **pre-trial prisons**.

Other specific terminology is explained under each relevant section.

### **Special considerations regarding visits to places of detention**

Assessors may need to visit places of detention, depending on the particular aims of their mission. It is recommended that:

- Preparations start well in advance of the mission, including permission being sought from relevant authorities for access to detention facilities. It may be particularly difficult to receive access to custody cells in police stations and other places of temporary detention;
- Terms of reference for the visits should be discussed and agreed upon with the authorities in advance.

Both during the preparation period and during the mission, unnecessary insistence on access to certain places of detention or parts of certain places of detention may not be helpful, if the aims of the mission do not specifically necessitate such insistence (e.g. assessment of human rights violations). If the objective of the mission is to undertake an assessment for technical assistance interventions or programme development, it is vital to develop trust and mutual understanding from the outset. However, ascertaining whether the rights of detainees are being respected in law and practice should form an integral part of any comprehensive assessment mission. Therefore, laws, policies and practices should be assessed to determine whether they are consistent with human rights standards.

Assessors inquiring into legislation and practices relating to detention should be mindful of the sensitivity of this subject and endeavour **to do no harm** (to detainees and their families) by their approach and nature of inquiries.

- It is recommended that assessors do not seek or hold private and individual interviews with detainees, especially if no follow up visit is planned. Private interviews generate expectations and some information given by a detainee may put him/her at risk.
- Meetings with groups of detainees, with or without the presence of staff, should not necessarily pose a risk, but assessors should also be careful in how the inquiry is made under such circumstances, taking care to avoid sensitive questions, e.g. questions regarding ill treatment, fairness of disciplinary procedures, etc.
- Information about matters such as treatment and application of safeguards in practice should be sought from alternative sources, such as the families of detainees, ex-detainees, prison chaplains, human rights and inspection bodies, bar associations and NGOs.

This tool guides assessors in their inquiries into the most common forms of detention prior to sentence. The rights of detainees and their treatment at all stages are covered. However, in order for all factors relating to detention to be fully examined, assessors are urged to refer to the following tools: **Policing: Crime Investigation; Access To Justice: The Courts; The Prosecution Service; and The Independence, Impartiality And Integrity of the Judiciary.**

This tool inquires into all factors relating to the **management of pre-trial detainees** (or **remand prisoners**). Assessors wishing to examine management issues such as management policies, structure, staffing, recruitment and training relating to the police force should refer to **Policing: Public Safety and Police Service Delivery.**

### **What this tool does not cover**

Although this tool does cover the most common arbitrary or illegal practices adopted by law enforcement agencies authorized to detain individuals, its scope does not extend to the specifics of all forms of arbitrary detention. This is so for several reasons:

- The subject itself and concerns relating to arbitrary detention are vast, while this tool is aimed primarily to guide assessors undertaking missions to develop programmes for reform or other technical interventions, mission which normally follow a request or

invitation from the country and ministry concerned, or from a donor organization, rather than to investigate, exclusively, violations of human rights;

- Access to detainees held in arbitrary detention and access to information about them, will not normally be available to assessors, unless they are persons or part of a team mandated specifically to investigate human rights violations, such as ill-treatment, torture and disappearances, in detention, e.g. the UN Special Rapporteur on Torture, UN Working Group on Arbitrary Detention, European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, African Union Special Rapporteur on Conditions in Prison and Other Places of Detention, International Committee of the Red Cross). Guidance for these kinds of specialized missions, necessitating particular expertise, is beyond the scope of this tool.

In addition to developing an understanding of the strengths and weaknesses of a state's approach to detention prior to adjudication, the assessor should be able to identify opportunities for reform and development. Technical assistance in the area of detention and alternatives to incarceration in the context of a broader strategic framework may include work that will enhance the following:

- Legislative reforms aiming to introduce and widen the scope of alternatives to pre-trial detention in the penal statutes, as well as introducing custody time limits, among other possible measures;
- Legislative reforms to improve legal safeguards for detainees and training for relevant law enforcement agencies in the application of these safeguards;
- Improving organisational design and management processes relating to the implementation of legislation relating to all forms of detention;
- Improving mechanisms of coordination between criminal justice agencies responsible for the detention of those suspected of criminal offences, as well as between them and social welfare or probation services, responsible for providing reports (e.g. social enquiry reports) about the detainee, with a view to speeding up the process and improving efficiency;
- Legislative and structural reforms enabling the transfer of the management of pre-trial detention from the ministry responsible for investigating charges to a separate ministry responsible for the management of pre-trial prisoners (e.g. from the Ministry of Interior to the Ministry of Justice);
- Improving access to justice, particularly for the poor, by providing technical assistance to develop procedures and management of legal aid programmes and by supporting NGOs and others providing paralegal advisory services;
- Effective strategies to combat TB and HIV/AIDS among detainees effectively; development of TB and HIV management programmes; improvement of on-entry health screening measures and health services in detention facilities;
- Developing training curricula for the police, prosecutors, judges, magistrates and prison service staff responsible for pre-trial detainees;
- Improving inspection procedures; training and technical capacity building for independent inspection bodies;
- Designing special projects aiming to increase and improve the use of alternatives for special categories and vulnerable groups;
- Enhancing capacity to develop and manage planning, research and information management;
- Increasing public awareness about the rights of a detainee; as well as about alternatives to pre-trial detention and imprisonment; increasing community participation in the criminal justice process.

## 2. OVERVIEW: GENERAL AND STATISTICAL DATA

Please refer to **CROSS-CUTTING ISSUES: CRIMINAL JUSTICE INFORMATION** for guidance on gathering the key criminal justice statistical data that will help provide an overview of the pre-trial and general prison population and overall capacity of the criminal justice system of the country being assessed.

Listed below are additional indicators that are specific to this Tool. Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it.

Written sources of statistical information may include, if they exist:

- Ministry of Justice and Ministry of Interior reports
- National Police Reports
- Penal System reports
- Court Annual reports
- National Human Rights reports
- Reports by prison inspection bodies, if available
- Reports by Law Society or Bar Association
- Non-governmental organisation (NGO) reports on the prison system
- Donor reports

The contacts likely to be able to provide the relevant information are:

- Ministry of Justice/ Ministry of Interior
- Senior prison service officers
- Judiciary (especially those who visit prisons and those who are responsible for dealing with appeals and complaints from pre-trial prisoners)
- Human Rights Commission
- Prison Monitoring Boards or other prison inspection bodies
- Law Society or Bar Association
- NGOs working on criminal justice matters
- Donor organisations working on the criminal justice sector

A meaningful analysis of the detention and pre-trial population trends will help identify some of the main challenges and indicate some immediate measures that can be taken in the short term to reduce overcrowding of prisons and detention facilities and enable policy and decision makers to plot a course of measures over the medium and long terms. Such an analysis will, for example, provide some indication of whether detention is being used too often and unnecessarily; whether particular groups are overrepresented, e.g. minorities, low-income groups; whether any special provisions are made for juveniles and women; and whether custody time limits are adhered to and how often they are exceeded. Further inquiry into these areas of possible concern is made under separate headings under **Sections 3 and 4**, which seek to clarify the details of law and practice.

While gathering information on figures and trends, the assessor should bear in mind that the quality of this information is extremely important to the reliability of the assessment. Information provided by authorities, especially in developing countries, can be outdated or not sufficiently reliable due to resource or technical problems. So, it is essential to gather information from a variety of sources, and determine the methodology used for data collection and the geographical coverage of information provided.

### 2.1 DETENTION TRENDS AND PROFILE OF PROCESS

- A. What are the figures for custody in police stations over the past 5 years? Is there an increase or decrease?
- B. What percentage of those detained in police custody was later remanded in custody by court decision? What percentage was released? What percentage eventually received a prison sentence after trial?
- C. What is the percentage/number of people placed in administrative detention over the past 5 years? Is there an increase or decrease?
- D. Over the last five years, what number of and percentage of prisoners have been detainees? What percentage of the prison population consists of un-sentenced prisoners?

- E. Do the detainee figures covering the last five years show a downward, stable, or upward trend? How does this trend compare to the convicted prisoner figures? Is the trend similar or is there an increasing or decreasing volume of pre-trial prisoners?
- F. How does the figures compare with other countries in the same region?
- G. What are the figures for juvenile offenders and women in pre-trial detention over the past five years? Is there an increase or decrease? Where possible, indicate the ages and offences of the juveniles and the offences of the women in pre-trial detention.
- H. What is the backlog of remand cases according to time spent in custody and offence?

See example below, showing the number and category of cases still pending from the year originally charged, starting with the year for which any such cases are still pending. This information can be obtained from booking information register even when it is not collected for an official report.

| Year                  | Offence  | Number |
|-----------------------|----------|--------|
| 1996                  | Homicide | 5      |
| 1997                  | Robbery  | 3      |
|                       | Homicide | 6      |
| 1998 to               |          |        |
| Current Calendar Year |          |        |

- I. If possible, disaggregate the above data by year. If possible, disaggregate the number of prisoners on remand by age, gender, and offence. If possible, indicate by percentiles or figures how many have been on remand for a) < 1 month; b) 1-3 months; c) 3-6 months; d) 6-12 months; e) up to 2 years; f) up to 3 years; g) up to 4 years; h) over 4 years?
- J. Who has been on remand for the longest period and for what offence? When was he/she last before a court?
- K. Can the above data be obtained for youthful offender/juvenile institutions?
- L. What is the size of this backlog at national, regional and local levels? What are the backlog trends? Where backlogs are increasing or decreasing, can the trend be tied to the implementation of any new policy or law?

## 2.2 LEGAL REPRESENTATION

PLEASE SEE ALSO ACCESS TO JUSTICE: LEGAL DEFENCE AND LEGAL AID.

- A. What percentage of adult detainees in police custody has legal representation?
- B. What percentage of juvenile detainees in police custody has legal representation?
- C. What percentage of adult pre-trial prisoners has legal representation?
- D. What percentage of juvenile pre-trial prisoners has legal representation?
- E. How do these figures vary geographically – both in different parts of the country and between urban and rural? Ask for separate figures from different locations.
- F. What percentage of these detainees are being provided with free legal representation by the state authorities? How does this vary geographically?
- G. How many practicing lawyers are there in the country? Is there a criminal bar?

## 2.3 PROFILE OF DETAINEES

- A. If data exists, set out the approximate percentage of detainee by suspected offences, e.g.: violent offences; non-violent offences; property offences; offences relating to drugs, etc.? How do these figures vary geographically? **Police custody and pre-trial detention should be categorized separately.**
- B. What is the percentage of those suspected of drug related offences held in police custody and pre-trial detention? What percentage of them are women? What percentage are foreign nationals?
- C. What is the percentage of ethnic minority groups and foreigners in police custody and in pre-trial detention? How does this percentage vary geographically?
- D. Are illegal immigrants or asylum seekers detained alongside other detainees? Is this common practice? What is the number/percentage of such persons? How does practice vary geographically? Illegal immigrants or asylum seekers should not be treated as criminal suspects. **Please see Section 5.5 for further guidance.**
- E. Targeting 2-3 sample pre-trial prisons (and youthful offender institutions), consider asking the prison officials in these institutions their opinion as to how many prisoners constitute a threat to public safety. Do the officials walk around the facility with ease? How many officials were assaulted in the past 12 months by how many individuals?
- F. How many adult suspects have been granted provisional liberty (also known as bail) but could not meet the conditions set by the court and are therefore detained? If general data are not available, information can be gathered from a representative sample of prisons to get an approximate picture.
- G. How many juvenile suspects have been granted provisional liberty, but could not meet the conditions set by the court and are therefore detained?
- H. How many persons are in pre-trial detention due to their inability to raise the means to pay a fine?

## 2.4 KEY CHALLENGES: OVERCROWDING, TB, AND HIV

- A. What are the challenges facing detainees in police custody and pre-trial detention?
- B. What is the official capacity of the pre-trial detention facilities and what is the current pre-trial prison population? In which regions/cities are the most overcrowded pre-trial prisons located?

The official capacity might not reflect current capacity, since official capacity will have been determined at the time of construction, whereas actual capacity may have changed over time, due to building dilapidation, use of sections set aside for prisoners for other purposes etc. So the actual capacity of a few pre-trial detention facilities can only be seen during site visits to a representative sample of such facilities. However, even the official capacity figures will give the assessor some idea about the situation.

- C. What is the official capacity of police custody cells, temporary holding facilities for criminal suspects and any other detention facilities used to hold suspects, prior to being transferred to a pre-trial detention facility (prison)? What is the current number of detainees in these facilities?

- D. What are the main health challenges? Is there a particular concern about the incidence of HIV and/or TB? How many pre-trial detainees have been diagnosed with TB and how many are estimated to be HIV positive? How do these figures compare to those relating to the convicted prisoners?
- E. What procedures or mechanisms do the government and prisons employ to create more space in detention facilities?
  - o Wider use of non-custodial options (such as caution, diversion, community service etc)
  - o Relaxing bail conditions
  - o Improving communication, collaboration and co-ordination between criminal justice agencies in case management (at the local level)
  - o Speeding up the delivery of judgments
  - o Involving the community more in the criminal justice process
- F. What 'bursting' provisions, if any, exist to enable authorities (judicial or prison authorities) to take action to reduce congestion in their prisons?

## 2.5 QUALITY OF DATA

- A. What methodology is used by the authorities to collect and process the information provided?
- B. When general information is given, what is the geographical coverage? Do the figures refer to the whole country or only to some regions?
- C. When was the information collected?

## 3. LEGAL AND REGULATORY FRAMEWORK

The following documents constitute the main sources from which to gain an understanding of the legal and regulatory framework governing detention.

The Constitution: The Constitution often includes a Human Rights Chapter. Usually there is a section on arrest, detention, and trial. The Constitution may also set up watchdogs to ensure the rights set down in the Human Rights Chapter are adhered to. Some will include a mechanism for inspecting prisons and places of detention.

Criminal/Penal Code and Criminal/Penal Procedure Code: The penal code will include non-custodial measures and sanctions, possibly for certain categories of offences. The law governing pre-trial detention and matters of provisional release or bail are usually to be found in the Criminal/Penal Procedure Code, sometimes in the Criminal/Penal Code. The Criminal/Penal Procedure Code and regulations will also include the rules relating to arrest and police custody.

The Penal Enforcement Code, Prison Act, Criminal Executive Code or similar, contains a set of principles by which the prisons are governed.

The Prison Regulations constitute secondary legislation that guide prison officers on the application of the law set out in the above code or act (primary legislation). Many Prison Acts are old and outdated and pre-date the framework of UN Rules, Principles and guidelines enunciated since the 1950s. However some newer Acts and Regulations will contain provisions on the action prison officers can take when an individual prison or the entire system becomes overcrowded.

The Probation Act, or similar, will include rules relating to the responsibilities of probation services, if they exist, during the pre-trial detention period – such as the preparation of pre-sentence enquiry reports.

Provisions governing juvenile justice are set down in Children and Young Persons' legislation or statutes such as a Juvenile Court Act or in similar provisions. The Prison Act and legislation governing young persons may also set out who is able to visit prisons and institutions for young offenders, such as elected members of the legislature and judicial officers; others admit accredited members of the legal establishment and civil society.

However, what is stated on paper is often not reflected in practice. In many countries, while the laws themselves appear to be sound, but the implementation of these laws is wanting. Having established what the national legislation provides for, the assessor should examine what the actual situation is, during site visits to a representative sample of detention facilities in different parts of the country and in interviews with local police, local prison staff, offenders (when appropriate), ex-offenders, their families, lawyers and NGOs.

Suggested questions are divided into themes, in chronological order of process and include questions on law and practice. Questions should be raised at both central and local levels.

Before inquiring into existing legislation under each topic, the tool assists the assessor to determine what, if any, attempts were made to reform legislation in recent times.

### 3.1 LAW REFORM

- A. When were the criminal/penal and criminal/penal procedure codes last reviewed? What, if any, changes were made?  
Did the review include, for example:
- A rationalization of sentencing, including decriminalization of certain offences;
  - Widening possibilities for alternatives to pre-trial detention;
  - Prohibiting pre-trial detention for less serious offences;
  - Setting stricter custody time limits;
  - Introducing new legal safeguards for pre-trial prisoners and detainees in police custody.
- B. Are there certain categories of offences in legislation for which pre-trial detention is never applied? Which ones are they? Have their numbers increased at all in any recent reforms?
- C. Is there a law commission or law review body that is considering the criminal/penal statutes, to include measures to reduce the pre-trial prison population and improve legal safeguards for pre-trial detainees? What are the changes being considered?
- D. What laws are currently under review that may affect pre-trial detention?

### 3.2 ARREST, DIVERSION AND POLICE CUSTODY

#### 3.2.1 Diversion from Prosecution and Alternative Measures

Often it is the court that determines whether an accused is to be diverted from prosecution to an alternative measure, (such as an arbitrated settlement, a restorative justice process, a community service order or appropriate treatment), be released on bail or await his/her trial in detention.

However, often the police and prosecutors will have discretion to divert cases from the criminal justice process or to grant bail. Whether police and prosecutors use their discretion and how courts manage the caseload will directly have an impact upon the size of the prison population and conditions in detention.

Please see also **ACCESS TO JUSTICE: THE COURTS; THE INDEPENDENCE, IMPARTIALITY AND INTEGRITY OF THE JUDICIARY;** and **THE PROSECUTION SERVICE;** as well as **POLICING: CRIME INVESTIGATION; CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION (Sections 3.2 and 3.3);** and **SOCIAL REINTEGRATION (Section 4.1).**

- A. Who has authority to arrest people? Are there clear rules set out in legislation for arrest? What criteria apply? In practice, do police or other law enforcement agencies use their authority to arrest indiscriminately and arbitrarily? Are there any reports and case examples of frequent arbitrary arrest? Which groups are generally targeted?

- B. Are police ‘swoops’ conducted from time to time on for example, street children vagrants, commercial sex workers, illegal immigrants)?
- C. Who, if anyone, is allowed to divert people from the criminal justice process (whether by formal caution or diversion to a scheme operated by the social, probation, NGO services)? The police? The prosecutors? Judges?
- D. How often to the police and/or prosecutors, or other criminal justice agents divert cases away from the criminal justice system in practice? What diversion measures are used most frequently?
- E. What authority do the police, prosecutors or other criminal justice agents have to release a person who has been detained for questioning prior to the filing of charges? What are the rules and conditions governing bail before a court appearance? How often does this happen in practice?
- F. How often do courts grant bail or apply other alternatives to pre-trial detention?
- G. Is there a legal presumption in favour of bail or other alternatives to pre-trial detention, such as supervision/restrictions? What exceptions apply and in what circumstances?

It may be, for example, that in non-violent crimes such as simple theft, the presumption exists; but in cases involving homicide the presumption is exactly the opposite and special circumstances have to be offered in evidence by the defence to gain bail for someone so accused. Some countries have a formalised policy of presumption of bail for offences that carry a maximum sentence of imprisonment below 2-3 years. Typically, the criteria for ordering pre-trial detention are based on the accused’s likelihood of fleeing the jurisdiction, which involves assessing the accused’s ties to the community and the means and preparations he /she may have made to abscond, and whether the accused poses a threat to the safety of others.

### 3.2.2 Police Custody: Legal Process and Safeguards

This section inquires into the legislative framework and practice governing custody of a suspect in police custody cells and other places of temporary detention, which might be under the jurisdiction of the police or gendarmerie (or sometimes military authorities). These cells are designed for short-term occupancy, until a suspect is brought before a court –the period a suspect should spend in these cells should not normally exceed 48 hours.

Holding cells: In addition to police custody cells, there may be separate holding cells, where detainees are held for 10-12 hours – i.e. not for an overnight stay. This often happens at courthouses, for example, where the accused are held during trials or while awaiting an appearance before a judge. But more often the term “holding cell” is used for what is described above as police custody cells.

In some systems there may be temporary isolation facilities for criminal suspects or temporary detention isolators, which are used for detention prior to appearance at court (e.g. in the former Soviet Union). National legislation regarding maximum time limits in these cells varies – normally the maximum is 72 hours, with possibilities for extension, with the approval of a judge or a prosecutor.

Cells in police stations may also be used for the whole period of pre-trial detention (e.g. the period after a court has decided to remand a suspect in custody pending his/her trial). This may happen when the Ministry of Interior or the police are directly responsible for the management of pre-trial detention facilities or because of overcrowding in those facilities. In principle, police cells should not be used for prolonged periods of pre-trial detention, but when they are, measures must be taken to ensure that detainees in these cells enjoy the same rights and are provided with the same conditions and activities as those provided in pre-trial detention facilities. (Please see **Section 3.3** for guidance).

The laws of many countries recognize the vulnerability of the accused during the period immediately after arrest, by requiring police to produce a suspect before a court ‘promptly’ or at least within 48 hours. The understanding is that, once a decision has been made by the court, the suspect will either be released (discharged, diverted or released on bail) or transferred to a pre-trial detention facility designed for a longer-term stay. In practice, however, in many countries, the time a suspect is held in police custody may be extended either arbitrarily or by the prosecutor or judge for months or more.

There are serious concerns relating to detention in these facilities. They include lack of access to legal representation, risk of ill treatment or torture by the custody police or investigating police, health concerns, especially in countries where TB and HIV are prevalent and often extremely inadequate physical conditions.

In terms of protecting a person's legal rights and safeguarding against ill-treatment and torture, there are a number of fundamental safeguards that should apply from the outset of a person's detention:

- The right to inform a close relative or someone else of the detained person's choice of his/her situation immediately (**SMR 92, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16**).
- The right of immediate access to a lawyer (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17**).
- The right to a medical examination and the right of access to a doctor, ideally of the detainee's own choice, at all times, in addition to any official medical examination. (**See SMR 91, Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 24, CPT 2nd General Report, 1992 and Council of Europe, Committee of Ministers Recommendation Rec (2001) 10 on the European Code of Police Ethics, Rule 57**).
- The right to be brought "promptly" before a judge for a determination of the legality of the detention and whether it may continue. **Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, Principle 11**. While no precise definition for promptly exists, more than 72 hours is often considered excessive and is the maximum established by the **Model Code of Criminal Procedure (DRAFT, 30 May 2006) Article 125 bis**.
- The right to be informed immediately about the reasons for arrest and rights under the law, in a language they understand. (**Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principles 10, 13, and 14**).

In order to understand how the whole process works in a given country, from arrest to detention in pre-trial detention establishments, it is recommended that the assessor make inquiries into both the legislation and the actual practice relating to all forms of detention of suspects who have not been sentenced. The legislation governing the police will need to be reviewed, and depending on the objectives of the assessment mission, police custody cells, as well as any pre-trial detention cells in police stations should to be visited.

The assessor will also need to be mindful of the fact that in some countries persons apprehended by law enforcement agencies might be transferred a number of times between different locations before they reach the "official" place of detention. This process may take several days or even weeks, while the official date of arrest recorded might be the date on which the person arrived in the final place of detention. Some questions will need to be asked to ascertain if this is happening and how often. This information is likely to be available from monitoring/inspection bodies, NGOs and bar associations working on criminal justice issues, as well as ex-offenders and their families.

Please also refer to **POLICING: OVERSIGHT AND INTEGRITY OF THE POLICE**; and **CRIME INVESTIGATION**; as well as **ACCESS TO JUSTICE: THE COURTS; LEGAL DEFENCE AND LEGAL AID**; and **THE INDEPENDENCE, IMPARTIALITY, AND INTEGRITY OF THE JUDICIARY**.

- A. What provisions apply to detention in police/gendarmerie custody? How long can a suspect be held in police custody before being brought before a judge?
- B. Are there military detention facilities? What authority does the army have to detain civilians? What provisions apply?
- C. Who is responsible to order holding in custody? What are the rules for extending police custody? Who decides? Do police adhere to time limits in producing an accused before a court? Do people ever characterize a suspect as a witness to avoid such time limits?
- D. Where police exceed their jurisdiction in holding a suspect in police custody, what justification do they provide for doing so?
- E. Does legislation require that suspects be informed of their rights immediately upon arrest in a language that they understand? Are their rights given to them in written form? To what extent does this happen in practice?
- F. What are the rules governing access to legal representation? Is a suspect apprised of the right to contact a lawyer immediately on arrest and allowed to do so? Is the state/legal establishment obliged to provide legal aid to indigent defendants? Are meetings between a suspect and his/her lawyer confidential – i.e. out of hearing of a

police officer? **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 17 (1) and (2) and Basic Principles on the Role of Lawyers, Principle 8.**

- G. In practice, is the right to legal advice at the police station, in full confidentiality, a reality for all, some, very few? During interviews by police, is the accused assisted by legal counsel always, sometimes, rarely? Does the state/legal establishment always provide legal aid when requested?
- H. Is there an obligation to inform the family or relatives of a detainee? How soon after arrest must they be informed? In practice, are the family members or relatives informed – always, sometimes or rarely? How soon after arrest are they informed?
- I. Can a detainee, a member of his/her family or his/her legal representative appeal against detention? Who must they apply to and within what time frame? What are the rules? What percentage of requests for continued detention are declined/denied by the court? Do the courts order the release of the detainee when such a request is declined/denied?
- J. Do lawyers attend the lower courts always, sometimes, never? Are the unrepresented accused assisted in court or must they argue their cases themselves?
- K. Do the courts enforce custody time limits? What measures do they take? **Please see External Oversight, Section 6.8.2**
- L. Where custody time limits exist and the court releases a detainee on this basis or where the court discharges an accused person, do the police re-arrest the accused and re-charge him/her? How often? Does legislation explicitly prohibit re-arrest on the same charges?
- M. Are police obliged to keep custody registers for all suspects detained? Do they do so? Is it current? Complete? What information is included in custody registers?

The custody register should include information about all aspects of a person's custody and all action taken in connection with it, including:

- Full name of detained person
- Time and reason for arrest
- Time when the person was taken into police custody
- Time when detainee was informed of his/her rights
- Signs of injury or mental disorder
- Contact with family, lawyer, doctor, consular representative,
- Questioning
- Identity of the law enforcement officials concerned
- First appearance before a judicial or other authority
- Release
- Transfer, incl. to pre-trial detention facility.

(See **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 12**; **UN Declaration on the Protection of all Persons from Enforced Disappearance, Articles 10 and 11**; **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reports and recommendations.**)

- N. Are custody registers actually kept? What is the quality of the information recorded? Are there geographical variations in practice?
- O. Does the custody register give any information about any previous detention prior to arrival at the particular destination?
- P. Under what legal authority, if any, once a court orders that a suspect remain in custody on remand and he/she has been transferred to a pre-trial detention facility, may he/she

be brought back to police the police station for interrogation? How often does this happen in practice? How long are detainees held in police custody under such circumstances?

Police custody registers may be a source of determining whether this practice exists and whether it is common practice. Once pre-trial detention has been ordered and suspects have been placed in an institution under the jurisdiction of the prison authorities, they should not be brought back to the police station for questioning, as this carries a risk of ill treatment and abuse of legal rights. In addition, the conditions in facilities in police custody are not typically intended for, nor are they suitable for, long-term detention. Police interrogations should take place in the pre-trial facility, which, ideally, would be operated under the authority of a different ministry (normally Ministry of Justice, rather than Interior), though this is not always the case. (Please see also **Management Authority, Section 6**).

- Q. Does legislation provide for the medical examination of all detainees at the outset of the custody period? By law, do suspects in police custody have the right of access to a doctor at their own request, in addition to any medical examination carried out officially? Is there an obligation to record the facts of the medical examination? **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle, Principles 24 and 26 and CPT recommendations, as quoted in Council of Europe, Committee of Ministers Recommendation Rec (2001) 10 on the European Code of Police Ethics, Rule 57.** To what extent are the rules applied in practice? Are there geographical variations?
- R. What measures are taken, if any, if evidence of ill treatment is discovered? Does the doctor report the findings to a judicial authority – e.g. the prosecutor or judge? If not, what other measures, if any, does/can a doctor take? Are there examples of such cases?
- S. Is ‘confession-based’ evidence the practice, i.e., once the police have a confession from the accused, do they fail to seek any additional corroborating evidence?
- T. Are police cells used for long periods, due to lack of space in pre-trial detention (remand) prisons/or lack of remand prisons? Is this the rule or is it an exception? Does practice vary in different parts of the country? How many suspects are currently in pre-trial detention in police stations?
- U. What action is taken if a death in custody occurs? What are the procedures for investigation? Who is responsible for the investigation? Are the findings of investigation made available to the family and legal counsel of the detainee? Are there examples of such cases? What were the outcomes of investigation? Please see the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34**, for guidance.

### 3.2.3 Detention Conditions

Minimum conditions of detention in police custody cells depend on the time a suspect is expected to stay in them. Cells which are meant for overnight stay – or for 2-3 nights – should be of reasonable size, with adequate lighting (i.e. sufficient to read by), preferably with natural light, adequate ventilation, a chair, table and bed. Detainees should be given a clean mattress and blankets at night. They should have ready access to sanitary facilities and drinking water, and should be provided with adequate food (including hot food) at regular intervals. People held in custody for more than 24 hours should be offered one hour of outdoor exercise each day. (See **Council of Europe, Committee of Ministers Recommendation Rec (2001)10 on the European Code of Police Ethics, Art. 56** and commentary thereto, and recommendations by CPT in a number of its reports).

Detainees should be held in single cells (**SMR 86**). However, where this is not possible, they should be separated according to the severity of the crime of which they are suspected and strictly according to gender and age. The amount of space each detainees or prisoner should have is a question frequently asked. SMR do not prescribe a specific minimum size of space each detainee. It rules that “Accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting,

heating and ventilation” (**SMR, Rule 10**). The European Prison Rules also do not recommend a specific amount of space (See **Rule 18.1**). As a measure to go by, for persons who are detained for more than 1-2

days, CPT has recommended an absolute minimum of 4 square meters per person in shared accommodation. Its comments, in its reports on conditions in particular countries, indicate that in individual cells 6 square meters is considered a minimum, but still “rather small”, and 8-9 square meters satisfactory.<sup>1</sup> This would apply to all pre-trial detainees and sentenced prisoners.

Prevalence of transmissible diseases, such as TB, in overcrowded detention and prison conditions is a reality in many countries. In countries where people are held in police custody cells for much longer than the intended 1-3 days, and particularly in countries where TB is widespread, health screenings should be undertaken on entry and on release or transfer and medical files transferred to the institution to which the person is being sent. (Please see also **Section 3.3.3**)

- A. Are detainees held in single cells? What size cells? Do they have sufficient natural and/or artificial lighting? Are they provided with a bed, mattress, sheets, and blankets? Do these appear to be clean?
- B. If they are not being held in single cells, are the cells overcrowded? Is there sufficient space for each person? How many people in each cell? What is the official capacity of each cell?
- C. Is there ventilation in the cells? Is it adequate?
- D. To what extent do detainees have access to sanitary facilities? How many toilets and washing facilities per how many detainees? Are they located in or adjacent to the cell? If not, what rules apply to gain access? Are detainees allowed to use them at night?
- E. Are detainees given food and water (that is potable)? How often? What does the food consist of? Does it appear adequate and nutritional? How does it compare to food available outside prisons or detention facilities?
- F. Are detainees allowed to have any reading materials or board games? Are there any reading materials or games in the cells visited?
- G. How much outdoor exercise are they allowed per day? Is their right reflected in practice? Where do they exercise? Is the yard open on top and sufficiently large to walk around in? Detainees being held for more than 24 hours, pre-trial detainees and prisoners should be allowed at least one hour of outdoor exercise per day.

### 3.3 PRE-TRIAL DETENTION

If a court decides that a suspect must be held in detention until his/her trial and sentence, then he/she should be transferred from police custody (or other temporary place of detention) to a pre-trial detention facility (or remand prison), normally managed by the prison service, rather than the police.

People should only be detained before trial where there is reasonable suspicion that they have committed an offence AND substantial reasons for believing that, if released, they would either abscond or commit a serious offence or interfere with the course of justice. Pre-trial detention should only be used where there is no possibility of using alternative measures to address the concerns that justify the use of such detention. Using pre-trial detention as a preliminary form of punishment is never acceptable. **The International Covenant on Civil and Political Rights, Article 9.3**, states this principle clearly: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” (See also **Tokyo Rules, Rule 6.1**).

The two most important aspects of the situation of remand prisoners are that they must be presumed innocent, until and if they are convicted, and that they have special needs and rights relating to their legal status and access to their lawyers. The regimes of remand prisoners also differ from those of other prisoners in certain respects, with fewer obligations and more rights with regard to the practical aspects of

prison life. Pre-trial prisoners are a special category of prisoner who should be kept separate from convicted prisoners (SMR 85 (1)).

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for general guidelines applying to prisoners of all categories. The questions below inquire into the particular rights of pre-trial detainees and practice, as well as into the most common challenges in pre-trial detention: overcrowding, long periods spent awaiting trial and health concerns (TB and HIV in particular).

Questions about practice should be asked in individual prisons – in different parts of the country and representing different sections of the population (rural/urban, high/low income). The assessor must be aware that there may be immense geographical variations in the level of overcrowding (as well as between different prisons) – the national average is not an adequate indicator to rely upon.

Questions are meant to be directed to prison staff, ex-offenders, and families of offenders. Questions that do not place the detainee at risk – e.g. those relating to legal aid or whether they are in detention because they could not afford bail – can also be directed to the detainees themselves, in the presence of prison staff.

### 3.3.1 Admission and Legal Proceedings

All detainees (and prisoners) being admitted to any detention facility (or prison) should be registered. (See Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance and Rule 7 of the Standard Minimum Rules). Prison officials should be aware of the need for the legal authority to provide a legally valid document that stipulates the reason for detention and the conditions of detention.

Pre-trial prisoners must have ready access to legal counsel and the opportunity to meet with their lawyers regularly and on a confidential basis. (See **SMR 93; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 17 and 18, and Basic Principles on the Role of Lawyers, Principle 8**).

- A. What are the legal requirements associated with a pre-trial prisoner's reception procedure? Is there an obligation for the maintenance of a register, where, on reception, each prisoner's details are noted? In practice, is the registration procedure always adhered to? Is the practice consistent among pre-trial prisons?

The register should include:

- All details of the detainee (name, date of birth, gender, identifying features, address, nationality, language)
- Legal authority for detention
- Dates of admission, next appearance before a court or other competent legal authority
- Details of next of kin
- A list of personal property (distinguishing between those which the person can keep in his/her possession and those which is stored by the authorities)
- Signatures (of the member of staff who completed the forms and of the detainee to confirm that he/she has been given details of his/her rights).

There should be a separate medical record.

See **Human Rights and Prisons, A Manual on Human Rights Training for Prison Officials, UN Office for the High Commissioner for Human Rights, Geneva 2000, Annex 1** for further details.

- B. Under the law, do pre-trial prisoners have the right to immediate and regular access to their legal representatives? How often can they meet with their lawyer? Are the meetings confidential – i.e. outside the hearing of a prison officer? To what extent are these rules applied in practice?
- C. Is correspondence between a suspect and his/her lawyer confidential? Can pre-trial detainees exchange written correspondence with their lawyers without being subjected to censorship? Are there limits on the frequency or length of correspondence? How does practice compare among the different pre-trial detention facilities visited?

- D. How many of the pre-trial detainees in the prison visited have legal representatives? How many have received legal aid? What percentage is this of the total pre-trial prisoner population in the prison visited?
- E. Can a detained person, his/her relatives or his/her lawyer appeal against pre-trial detention? What are the procedures? Who must he/she apply to? How speedy is the process? Are there examples of such appeals and the outcomes? Please see **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 32**.
- F. Is there a probation service or other social service responsible for preparing pre-sentencing reports? What access are they given to pre-trial detainees? Are there delays or lack of cooperation between the prison and probation services? Please see also **System Coordination, Section 7.1**. To what extent do their reports influence the sentence?
- G. How are prisoners transported to court? Who is responsible for security during transfers? In practice, are detainees sometimes unable to attend court hearings due to the lack of transport?
- H. During transfer, are detainees open to public view? Are they handcuffed or otherwise restrained on the way? Are there any reports of abuse during transfer?
- I. How often are they produced at court? Are they always produced before the court or will they wait in court holding cells without being produced?
- J. Does each court have a registry? Are files kept securely? Are files ordered? Please see also **ACCESS TO JUSTICE: THE COURTS**.
- K. How much time is set aside each day or week for bail applications? Does staff or an NGO or legal advocate assist detainees with their bail applications? Are they specially trained for this purpose?
- L. Is there provision for habeas corpus (called amparo in some jurisdictions) applications – i.e., which make the state accountable for the continued detention of a person?

A writ of habeas corpus or amparo is a judicial order to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. A habeas corpus petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment. The petition must show that the court ordering the detention or imprisonment made a legal or factual error. Habeas corpus petitions are usually filed by or on behalf of persons serving prison sentences.<sup>2</sup>

- M. What procedures or mechanisms do the government/the judiciary employ to assist offenders to enter a plea at the earliest opportunity on an informed basis, e.g.:
- early disclosure of the prosecution's evidence
  - advice on plea
  - making provision for the taking of early pleas
  - giving credit for an early plea
  - speeding up trials by encouraging closer communication between police and the prosecution at an early stage of the criminal process
  - involving an investigating judge (e.g. in the civil law system) at an early stage

Suggested questions below seek to identify procedures and challenges relating to adherence to detention periods. Please also refer to the tools: **ACCESS TO JUSTICE: THE COURTS; THE INDEPENDENCE, IMPARTIALITY AND INTEGRITY OF THE JUDICIARY**; and **THE PROSECUTION SERVICE**.

- N. What is the average time a case takes from first appearance at court to disposal?
- O. Are time limits for detention in pre-trial prisons set down in legislation? What are they? Can these time limits be extended? Who decides and on what basis? (In some countries these limits can be months or years, depending on the offence).
- P. Are these time limits adhered to? If not, how often are detainees held beyond the limit set by law? Cite case examples where time limits have been exceeded.
- Q. To what extent does the pre-trial facility administration keep a record of each detainee's appearance at court and the scheduled date for his/her next hearing? Does it track the time since the last court hearing, check whether a new date has been set, and if not, alert the court? Is this practice standard, applied only in some pre-trial facilities, or is it exceptional?
- R. In the particular pre-trial prison visited, how many of the detainees' period of detention has exceeded any time limits set down by law? To what extent? Weeks, months, years?
- S. If there are no time limits, what are the lengths of time detainees have spent in the prison? Are any of these periods in excess of the length of imprisonment the person concerned might be expected to serve, if he/she were to be sentenced?
- T. What are the reasons for exceeding time limits? Backlog of cases at court? Inefficiency of the court system? Long periods pending appeal? Lack of transport for defendants to be taken to court? Awaiting evidence from witnesses? Delays can also be caused when forensic evidence must be sent to another country for analysis under a Mutual Legal Assistance agreement. Inquire into this possibility too and check if this legislation may be generating delay.
- U. In the pre-trial detention facility visited, what percentage/how many are awaiting the result of their appeal? How long have they waited?
- V. Who has the authority to release a defendant/suspect from pre-trial detention if a time limit is exceeded? Does this happen in practice? Regularly? Please see also **Section 6.8**.
- W. What procedures or mechanisms may the government/judiciary/prisons employ to move cases through the system, e.g.:
  - Cost orders for unnecessary adjournments
  - Discharge of cases that take too long at the investigative stage
  - Pre-trial hearings to monitor progress in the case
  - Prison visits by judicial officers to screen remand cases
  - Local meetings of case management agencies (police, judiciary and prisons) Please see also **Section 7.1**
- X. Are pre-trial populations in some prisons lower than the national average – if so, why? Investigate whether initiatives have been implemented in these prisons, or by the investigating and judicial authorities in these regions, which have been adopted elsewhere. Are there any actions that can be used as an example of good practice for other parts of the country?

### 3.3.2 Accommodation

Untried prisoners must be held separate from convicted prisoners (**SMR 85 (1), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 8**). Young untried prisoners should be kept separate from adults and wherever possible held in separate institutions (**SMR 85 (2)**). Untried prisoners should have single rooms (**SMR 86**), but if this is not possible, then they should be separated according to the severity of the crime with which they are charged.

- A. Does legislation provide for pre-trial prisoners to be separated from convicted prisoners? Does this happen in practice? Is this the case in prisons visited? How does practice vary geographically?
- B. Do pre-trial prisoners stay in single cells or dormitories? How much space are they supposed to have according to national legislation? How does this compare to internationally recommended standards? Please see **Section 3.2.3** above for guidance on space. How much space do they have in practice?
- C. If they are held in dormitories, are they separated according to the category of crime for which they are being tried?
- D. What is the capacity of pre-trial facilities visited? What is the actual number of prisoners on the day of assessment? How was the capacity calculated? Is it still accurate? Are there sections of the prison that are not being used according to original plan?
- E. Are adults separated from juveniles? Are women separated from men? Please see also **Special Categories, Sections 5.1 and 5.2** below.
- F. In practice, do prisoners who have received sentences continue to stay in pre-trial detention? What are the reasons? Lack of space in prisons? Long procedures relating to permission of transfer? This may occur particularly if the ministry responsible for pre-trial is different than the one responsible for prisons. Lack of transport vehicles for transfer?

### 3.3.3 Healthcare

It is essential that pre-trial prisoners undergo, on an individual basis, a medical examination and health screening on entry. (**Body of Principles for the Protection of All Persons Under any Form of Detention of Imprisonment, Principle 24**). This is important to ensure that the person starts receiving proper treatment for any health conditions immediately, but it is essential particularly (a) to identify any signs of ill treatment in previous detention/custody; and (b) to diagnose the presence of any transmissible disease such as TB. Ideally detainees and prisoners should also be encouraged to undergo voluntary testing for HIV, with pre- and post-test counselling, but they should not be obliged to do so. (See **Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report**<sup>3</sup>).

Treatment for TB and HIV should begin in pre-trial detention and continue uninterrupted after release or in the prison that the person is transferred to if sentenced. Due to severe overcrowding and unhealthy conditions in pre-trial facilities in many low-income countries worldwide, it is essential to ensure that treatment starts immediately, with separation of those with TB from other detainees and separation of TB patients according to medical categorisation. Information should be made available to pre-trial prisoners on transmission of HIV and means of prevention. Treatment for drug addiction should also start in pre-trial detention.

- A. Is there a legal requirement that the appropriate law enforcement agencies transfer the medical files/reports of detainees from police or other custody to pre-trial detention facilities, once the detainee is remanded in custody by a court decision? In practice, does this system work – are medical files transferred without delay? How often are they lost or misplaced? Are they transferred at all?
- B. Does legislation provide for the medical examination of each detainee on admission to a pre-trial detention facility? Are medical reports kept in the file of each person? Who can see medical files? To what extent are they confidential? If there is evidence of ill treatment or torture, to whom must the medical officer refer the case? Does this

happen in practice? It would be helpful to look through sample medical files in the prisons visited, having first obtained any requisite permission.

- C. Are medical examinations undertaken confidentially – i.e. out of hearing and out of sight of prison staff (unless the doctor concerned expressly requests otherwise in a particular case)? If not, who is normally present during a medical examination?
- D. Do all detainees have access to medical treatment in practice? What is the process? Do detainees have to request access to a medical officer in writing or does a doctor visit cells/dormitories on a regular basis? If access is based on application - how long does it normally take from submitting a request to medical examination? See also **Corruption, 6.7**, below.
- E. Does the medical examination include screening for TB? How is the screening done? What measures are taken if a person is diagnosed with TB? Is there separation of TB cases according to medical categorisation? Is DOTS (Directly Observed Therapy Short-Course) used for treatment? If not, how are patients treated?

Many questions need to be asked about quality of treatment, access to treatment, recording, reporting, policies and strategies for a proper assessment. These questions aim only to identify the basic situation and challenges, to be investigated further by a medical assessor if necessary.

- F. Are detainees tested for HIV? Is the testing voluntary or obligatory? Is pre- and post-test counselling provided? What happens if a person is found to be HIV positive? Are they isolated? How does practice vary geographically and from prison to prison?

CPT and other international instruments emphasize that there is no medical justification for the segregation of HIV positive prisoners solely on the grounds that they are HIV positive.<sup>4</sup> However, sometimes prisoners themselves prefer to be accommodated with others who are HIV positive, due to fear of stigmatisation if accommodated with the general prisoner population.

- G. Does legislation allow for pre-trial detainees to be visited by their own doctor or dentist if they are able to pay for this service themselves? **SMR 91**. In practice, do people ever ask to be examined by their own doctor and if so, are they allowed?

### 3.3.4 Regime and Special Rights

The term regime in this tool is used to encompass all the rules and regulations governing the daily life of pre-trial prisoners, including their access to prison work, education, library provision, counselling, spiritual guidance, exercise and sport. In many countries the term regime has a narrow meaning – covering mainly measures that ensure order and security in prison, contradicting the modern understanding of the aim of prison and international standards relating to imprisonment.

- A. Is an untried prisoner allowed to wear his/her own clothing, but given prison clothing if he/she so requests? Is the clothing given to him/her different to that of convicted prisoners? **SMR 88**. What are the rules in legislation and what happens in practice?
- B. May untried prisoners be provided with the opportunity to work? Do they have the right to refuse? If they do work, are they remunerated fairly? **SMR 89**. In practice, how many untried prisoners have prison jobs – nationwide and in prisons visited? What kind of work are they offered? Are they paid? How does their remuneration compare to the national minimum wage?

- C. Do pre-trial detainees have access to reading and writing material? Are they allowed to procure these at their own expense? Does this happen as a rule in practice? Do prisoners in the pre-trial detention facilities visited have reading or writing materials in their cells/dormitories?
- D. What are the visiting rules for pre-trial detainees? How often can they see their family and friends? **SMR 92**. Can they receive more visits from their families, in comparison to sentenced prisoners, if no specific judicially imposed restrictions apply? **European Prison Rules, Rule 99 (b)**. Are the visits closed or open?
- E. Are visiting rights of pre-trial prisoners often not exercised because they are housed far from their homes? If so, what are the reasons for the distant detention? Not enough pre-trial detention facilities? Not enough facilities close to courts? Is adequate consideration given to detaining persons close to home? If this is the case, in the pre-trial facilities visited, does the administration use its discretion to allow such prisoners more telephone calls or have longer visits when their families are able to make the journey? If not, a recommendation can be made on the spot.
- F. Are pre-trial detainees offered access to activities provided to sentenced prisoners, as much as this is possible (especially when long periods of pre-trial detention is the norm)? Which activities are included? **See European Prison Rules, Rule 101**. How does practice vary geographically?

### 3.3.5 Profile of pre-trial detainees

In order to verify statistical and general information requested under Section 2, the assessor may wish to inquire further into the profile of pre-trial detainees, in the pre-trial detention facilities visited.

- A. What percentage/how many of pre-trial prisoners are in detention, because they could not afford bail?
- B. What percentage/how many of pre-trial prisoners are in detention because they could not afford the fine imposed?
- C. What percentage/how many are first time offenders? What are their suspected offences/what are they charged with?
- D. What percentage/how many are juveniles or women? What are their suspected offences/what are they charged with? What are the ages of the juveniles concerned?
- E. What percentage/how many are foreigners or members of ethnic or racial minority groups? What are their suspected offences/what are they charged with?
- F. If possible, determine income groups – what percentage is from a low-income group?

## 4. OTHER FORMS OF DETENTION

### 4.1 ADMINISTRATIVE DETENTION

The term administrative detention can describe a number of circumstances, with relevant legislation being found in the Administrative Code or Code of Administrative Offences, Administration Punishment Law or similar code.

Normally, administrative detention is meant to describe a short (a few hours) of detention period in police custody, imposed on people who are suspected of having committed an administrative violation (e.g. non payment of debt, insulting a public official, hooliganism, minor traffic violations, in some countries for disrupting public order, organising meetings and demonstrations etc) until a person is taken to court. If the person is found guilty (or “administratively liable”), in some countries, he/she can be sentenced to administrative arrest/detention by the court of first instance for a period of 15 – 30 days, which is normally served in temporary detention centres.<sup>5</sup> The appeal process can be unclear in legislation: the detainee may appeal his/her detention to a higher authority, but a provision for the suspension of the sentence, pending the final decision of the appeal may not be provided, unless the prosecutor lodges the appeal.<sup>6</sup> Sometimes the decision of the court of first instance is final.<sup>7</sup>

In practice, administrative detention (both the initial period of a few hours and the sentence imposed) is sometimes abused to provide police/law enforcement agencies with an opportunity to question persons who are suspected of committing criminal offences. If the administrative violations/offences are not clearly defined in legislation and the judiciary is not sufficiently independent, then administrative detention may be easily abused.

In some countries the police itself have authority to order administrative detention for extended periods. In at least one country, some forms of administrative detention, imposed by the police may be up to 4 years.<sup>8</sup> The detainee may appeal, but the hearing of the appeal is also conducted within the public security system (the police), the same authority that imposed the sentence in the first place. Detainees have no right to engage a lawyer at any stage of the process.<sup>9</sup>

Amnesty International has expressed concern at the practice of bypassing the courts by creating offences punishable with imprisonment and empowering a non-judicial body to mete out such punishment. It has called for the elimination of all punitive administrative detention and for the bringing of all sanctions that may result in deprivation of liberty within the scope of the Criminal Law and Criminal Procedure Law, in order for proper safeguards for detainees to be applied.<sup>10</sup>

Thus, there are concerns when a practice of punitive administrative detention runs in parallel to a formal criminal justice system, but fails to uphold the basic human rights safeguards that should apply to criminal trials under international law.

All legal safeguards described under **3.2.2** should apply and questions suggested under that section may guide the assessor in his/her inquiry.

Detention conditions of those who are actually sentenced to administrative arrest or detention should be suitable for accommodation for an extended period. The treatment of people thus detained shall not be less favourable than that of untried prisoners, with the reservation that they may possibly be required to work. (See **SMR 94** on the treatment of civil prisoners. Please refer also to **SMR Rule 95**). The requirement to work can be abused in some systems, however.

Assessors are advised to look into legislation governing administrative detention and practice, especially in countries where this measure is used often, for whatever reason, to determine the issues it presents for the success of penal reform programmes, strategies to reduce overcrowding or to tackle problems such as HIV/TB in detention facilities, among others.

#### 4.1.1 Legal Safeguards

- A. Are offences for which administrative detention can be imposed clearly defined in law? What are they? When were the number and types of offences that carry a possible imposition of administrative detention last reviewed? What changes were made?

- B. What are the provisions in legislation that govern the use of administrative detention by the police?
- C. What are the provisions that govern administrative detention based on a court decision? Does the accused appear before the court? Is he/she given access to information relating to the charges against him/her? Does he/she have access to legal counsel?
- D. Does the accused have a right to appeal? Is imposition of detention stayed until a competent court rules on the appeal? What are the procedures in law and practice?
- E. What are the maximum periods prescribed by law for administrative detention before trial and after sentence?
- F. What happens in practice? Are the initial time limits, before trial adhered to? Is it common practice that they are exceeded? What is the procedure for extensions of time limits? Who decides?
- G. Are periods of detention imposed by a court order adhered to? Are they exceeded? How often and to what extent?
- H. Is there a public perception or reports by independent bodies that the use of administrative detention is being abused by law enforcement agencies, to use such detention as a basis to investigate suspected criminal offences or to force confessions for criminal offences? Does this happen often? Are there case examples and/or reports?

#### 4.1.2 Detention Conditions

Adequate detention conditions are important for those who are being held in prolonged administrative detention. Please refer to Section 3.2.3 above. Additional questions are suggested below.

- A. How often do detainees receive food from the authorities? Do administrative detainees have to rely on, and allowed, food received from their families?
- B. What kind of activities, if any, do they have access to? Are they given books, do they have access to TV?
- C. Are there any reports of particular health problems in administrative detention facilities, such as TB and HIV? If so, how widespread is the problem?
- D. Are screenings for TB in particular, but also for the diagnosis of any other health conditions, performed on entry to administrative detention? Is this obligatory by law? Does it happen in practice?
- E. Do detainees have access to medical care? What does it consist of? Do civil healthcare specialists provide healthcare? Is treatment for TB provided in administrative detention facilities? What kind of treatment?
- F. Are detainees required to work? What kind of work do they undertake? How many hours per day? Do they receive payment? How does their remuneration compare with the minimum wage?

## 4.2 PSYCHIATRIC DETENTION

In many countries legislation will provide for the involuntary hospitalisation of persons who are deemed to pose a danger to society due to their mental illness. Relevant articles may be found in the Civil Code, Health Act or similar.

In some countries the law or procedure code allows for persons under investigation for a criminal activity to be held in medical institutions for a certain period (e.g. up to a month) to determine their mental condition. Such a provision may put the detainee at risk of ill treatment and torture to extract information or confessions. Provisions for mental commitment of criminal defendants to determine competency or sanity/criminal responsibility may be found the Criminal Procedure Code.

The **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care** provide that “where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.” (**Principle 15.1**). They explain that a person may be admitted involuntarily to a mental health facility or be retained as an involuntary patient in the mental health facility “...only if a qualified mental health practitioner authorized by law for that purpose determines, in accordance with **Principle 4**, that person has a mental illness and considers:

- That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or
- That, in the case of a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.” (**Principle 16.1**)

The principles further require that involuntary admission or retention shall initially be for a short period for observation and preliminary treatment pending review of the admission or retention by an independent (judicial or other) review body. Rules relating to the review body are set out under **Principle 17**, and procedural safeguards under **Principle 18**.

**Article 20** of the **Council of Europe Committee of Ministers Recommendation Concerning the Protection of the Human Rights and Dignity of Persons With Mental Disorder, Rec. (2004) 10** requires that “the decision to subject a person to involuntary placement should be taken by a court or another competent body...” An assessment of the use of psychiatric detention would aim to establish whether this form of detention is being used for its intended purpose and only in exceptional circumstances, or whether it is being abused, in order for example, to punish political opponents, to force confessions or to extract information. Legislation relating to involuntary placement in a mental facility, the decision making process, legal safeguards and the review process relating to the continuation of hospitalization will need to be examined.

### 4.2.1 Legal Safeguards

- A. Is there legislation governing the detention of mentally ill persons, who are deemed to present a danger to society, in psychiatric institutions? Is there a clear definition of what a danger to the public constitutes and under what circumstances a person may be involuntarily hospitalised? Who is responsible for ruling on a petition to commit someone on an involuntary basis? A court? Upon what information does the judge rely? Is a medical report by a specialist doctor obligatory? Do courts ever rule on such petitions without having seen a medical report?
- B. In practice, are such persons ever, sometimes or often placed in psychiatric establishments, without a court order?
- C. Do such persons have the right to obtain an independent second medical opinion? If they do, to what extent is this right reflected in practice?

- D. Are such persons' detention subjected to an automatic review procedure on a regular basis to check whether the detention/placement continues to be necessary? What does the procedure consist of? How does this work in practice?
- E. Do such persons have the right to complain about their treatment or detention? Who can they complain to and what is the procedure? How often does this happen in practice? What were the outcomes of any such complaints?
- F. Is there an independent inspection body that has responsibility to visit psychiatric establishments to examine the treatment received by patients and with authority to have confidential discussions with them? Is the body made up of specialists? How often does it visit such institutions? Are there any reports produced by such bodies and are they available to the public?
- G. Are there perceptions or reports that legislation is used to detain persons who are not mentally ill and who do not pose any danger to the public? How often does this happen? Are there any reports by independent human rights bodies or NGOs available?
- H. Does the criminal/penal procedure code include any article that gives authorities the right to involuntarily detain persons in psychiatric institutions to determine their mental condition? In what circumstances is this kind of detention allowed? How often does this happen in practice? What are the offences that such persons are normally suspected to have committed? See **Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 4.2.**

#### 4.2.2.1 Conditions

**Principle 1.2 of the UN Principles for the Protection of Persons with Mental Illness** provides that "all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person". Principle 9 sets out the rules that must be applied during the treatment of patients and **Principle 13** describes the conditions in mental health facilities. **Principle 13.2**, in particular, states:

The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

- Facilities for recreational and leisure activities;
- Facilities for education;
- Facilities to purchase or receive items for daily living, recreation and communication;
- Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community

These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) elaborated standards in 1998 for conditions and treatment in psychiatric institutions which require the provision of:

- the necessities of life, including adequate food, heating, clothing and appropriate medication;
- a positive therapeutic environment, including visual stimulation and lockable space for each patient;
- material conditions conducive to the treatment and welfare of patients, including maintenance of the building and meeting hospital hygiene requirements;
- psychiatric treatment to involve rehabilitative and therapeutic activities;
- access to suitably equipped recreation rooms and outdoor exercise.

An assessment of the conditions of detention would need to form part of any comprehensive assessment of psychiatric detention. Psychiatric health facilities can often have extremely poor living conditions and inadequately trained staff, while mentally ill patients are a vulnerable group susceptible to abuse, which might include being subjected to Electroconvulsive Therapy (ECT) in its unmodified form, which is unacceptable in modern psychiatric practice, causing immense pain, risking bone fractures and being degrading to the patient concerned.

**It is recommended that a mental health professional accompany the assessor on any visit to a mental health facility if an assessment of the conditions in psychiatric treatment facilities is being undertaken. The mental health expert should guide the assessment of conditions.**

## 5. SPECIAL CATEGORIES

### 5.1 JUVENILES

While a child is a human being under the age of 18, internationally, the term juvenile is used for those children under the age of 18 over whom a court may assume criminal jurisdiction, although this age can differ under different national statutory schemes (**Convention on the Rights of the Child, Article 1, UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11**). Children below a certain age, often ranging from 7 to 12, may also be excluded from juvenile criminal jurisdiction, though this is also not uniform in application. The **Model Criminal Code (MCC) (Draft, 31 March 2006) Article 1(5)** defines a juvenile as a child between the ages of 12 and 18.

Due to the particularly harmful effects of detention and imprisonment on juveniles, numerous international instruments hold that they should be kept out of prison, and that offences committed by juveniles should be dealt with in the community, as far as possible. The **UN Convention on the Rights of the Child, Article 37 (b)** holds that “no child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. **UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**, rule that consideration be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial and that detention pending trial should be used only as a measure of last resort and for the shortest period of time. (**Rules 11.1 and 13.1**). Rules **13.3-13.5** of the **Beijing Rules** provide guidance on the treatment of juveniles in pre-trial detention. Juveniles should enjoy all rights provided to adults, as set out in SMR, as well as being entitled to additional rights, care and protection, due to their special status.

Please also see **CROSS-CUTTING ISSUES: JUVENILE JUSTICE** for guidance on special legal requirements for children under the age of 18; **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** and **SOCIAL REINTEGRATION** for a full coverage of appropriate ways of dealing with children in conflict with the law.

- A. What special provisions relate to this vulnerable category of offender – e.g.:
- Is legislation consistent with the UN Convention on the Rights of the Child that puts the best interests of the child first?
  - Are there special procedures that apply to young people (i.e. juvenile or children’s courts)?
  - Are those charged with implementing such procedures adequately trained?
  - Is there a special body in charge of monitoring juvenile justice?

Please see **MCC (DRAFT, 31 March 2006), Section 13**, and the **Model Code of Criminal Procedure (DRAFT, 30 May 2006), Chapter 15**, for a model of juvenile statutes and dispositions that integrate the standards of the **Convention on the Rights of the Child**.

- B. What is the age of criminal liability in the country assessed? What is the minimum age for imprisonment?
- C. How is age determined and who is responsible for determining age if the birth certificate of a young suspect is missing or does not exist? Is this a common problem? How many such children are in the pre-trial detention facilities visited and what are the figures nationwide, if available?
- D. How long does it normally take for the parents or guardian of the juvenile to be informed of his/her arrest in practice? Is the juvenile brought before a judicial authority without delay? How long does it normally take for a juvenile to be produced at court from the time of arrest?
- E. Under what circumstances may a young person be committed to pre-trial detention? Are alternatives to pre-trial detention, including bail or diversion, applied more frequently in juvenile cases when compared to those of adults? What are the rates?

- F. If a code of conduct for lawyers exists, does it have any relevant provision governing representation of accused juveniles in criminal matters? Is there a duty on the part of the legal establishment to provide free legal aid to all juveniles? What happens in practice? Please see also **Access to Justice: Legal Aid and Legal Defence**.
- G. In detention, are juveniles accommodated in separate institutions to those of adult detainees? If not, are they accommodated in separated wings of adult pre-trial detention facilities, with separate staff? Are juveniles also separated according to age group? What are the age groups?
- H. In detention, are juveniles provided with special care? What does this care consist of? In pre-trial detention do they have the possibility to take part in educational and vocational activities? To what extent are they given access to the educational curriculum available for their age group outside of detention? Are they assisted by teachers in their education? Are they given special psychological support? What do these programmes consist of? See **Beijing Rules, 26.1 and 26.12**
- Often, activities provided for pre-trial prisoners in general and juvenile pre-trial prisoners in particular are extremely inadequate. This is based on the assumption that they will not spend a long time in these institutions and therefore investment in education or vocational training is wasted. But, in reality in many countries, juveniles (as well as adults) spend months, sometimes years, in pre-trial detention. It is vital, therefore, to ensure that all the special needs of young prisoners, including especially education, vocational training, and recreational facilities should be provided during this period. If they have particular psychological problems or addictions, treatment should start in pre-trial detention, since such problems will get worse with imprisonment, if not addressed as early as possible after detention.
- I. What are the rules governing visits from their family and/or guardians? Are the rules any different to those applied to adult prisoners? **Beijing Rules, 26.5**. Are the visits open or closed?
- J. How are female juveniles treated? Are they held separately? Do they enjoy all the rights that are granted to male juvenile detainees?
- K. Who is allowed to visit prison/young offender institutions in an official capacity? Who is allowed to visit prison/young offender institutions in an unofficial capacity? How often must they visit? How often do they visit in practice? Who do they report to? Please see also **Section 6.8**.

## 5.2 WOMEN

Pre-trial detention should be used as an exception rather than a rule for all persons who are suspected of having committed an offence. In the case of women, special consideration should be given to the use of alternatives to pre-trial detention (and to imprisonment), due to the particularly harmful effects deprivation of liberty can have on them, their families and children. In addition, the large majority of offences for which women are detained are non-violent (e.g. drug and property offences). When they are violent, it is likely that they have been victims of domestic violence or sexual abuse, and the crime committed will be against a person close to them. Thus, the women concerned often do not pose a particular threat to society. Pregnant women and women with infants should not be remanded in custody unless there are exceptional circumstances

If women are detained, then they must be held separately from male prisoners and their special needs are addressed.

Normally, the percentage of women in prison as a whole, including in pre-trial detention is very small (between 2% and 9% worldwide, exceptionally above 10%).<sup>11</sup> If, in the country assessed, the figure/percentage appears to be high, it is suggested that the assessor inquiries into the reasons – which is likely to be found in the national legislation (e.g. harsh sentences for drug offences, including for transporting drugs, for which women are often used; or in countries where discrimination against women is reflected in penal legislation, there could be harsh sentences for acts such as adultery, prostitution, rape (where the victim is penalised<sup>12</sup>), breaching the dress code, etc. – some of which may result in a period of police custody, some trial, and imprisonment).

See **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on all rules that apply to women prisoners, **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** for the use of community sanctions and measures for women.

- A. Is there particular legislation that may increase the imprisonment of women? Which offences would relate more often or specifically to women? How often are these articles in penal legislation applied in practice? What are the figures for detention on their basis, over the past 2-3 years?
- B. What percentage of women in police custody and pre-trial detention is suspected of having committed violent offences?
- C. What percentage of women in police custody and pre-trial detention are suspected of having committed drug related offences?
- D. What percentage of the overall female prison population do pre-trial women prisoners comprise? What are the most common offences with which they are charged?
- E. Are there provisions in the penal statutes discouraging or prohibiting pre-trial detention for pregnant women or women with small children? To what extent are these rules reflected in practice? For special provisions that apply to pregnant women and women with infants in prisons/detention see **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**.
- F. In detention, are women separated from men? **SMR 8(a)**. Are women prisoners supervised exclusively by female staff? Always/sometimes/rarely? **SMR 53(3)**. How does practice vary geographically?
- G. Do they have the same access as male detainees to all available activities? If not, what level of access do they have? What activities are they offered? Are they allowed to work, if they wish to? Are they paid? How does their remuneration compare to the national minimum wage?
- H. What are the visiting rules, especially by their family and children? Are the visits open or closed? How are these visits carried out in practice?
- I. Are their particular hygienic and medical needs catered for? What are the arrangements? See **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOL: THE PRISON SYSTEM** for further guidance.

### 5.3 THE MENTALLY ILL

In general, mentally ill persons are better treated outside prison. Ideally they should be in the community in which they live, a principle recognised by the United Nations Principles for the Protection of Persons with Mental Illness<sup>13</sup> Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES TOOL: ALTERNATIVES TO INCARCERATION**, for all special considerations relating to alternatives for the mentally ill.

If detained, mentally ill prisoners can often become the victims of other prisoners. They are vulnerable to assault, sexual abuse, exploitation, and extortion. In institutions where mentally ill persons are detained it is essential to have adequately trained staff to monitor, supervise, and protect them.

In comparison with the general population, there is a high incidence of mental illness among prisoners. Therefore, specialised health professionals should be available in pre-trial detention facilities and prisons, or there should be ready access to such specialists working in the civil healthcare service.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on all rules relating to mentally ill prisoners.

- A. Is the definition of insanity broad enough in the penal legislation to ensure that those who are not criminally responsible for their actions are not subjected to criminal law?
- B. Do the police and prosecuting authorities have the authority to divert persons who are mentally ill from the criminal justice system, provided that they do not pose a threat to society? What criteria apply? How often does this happen in practice?
- C. Does legislation allow courts to intervene on behalf of pre-trial prisoners suspected of having a mental illness, and acting on the basis of independent medical advice, to order that such persons be admitted to a mental health facility? Please see the **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principle 20.3**. How often does this happen in practice?
- D. Does legislation provide for special consideration to be given to impose non-custodial measures on mentally ill suspects at pre-trial stage? In practice, on what percentage of/how many mentally ill suspects were alternative measures imposed, over the past 2-3 years?
- E. Are mentally ill pre-trial detainees placed under the special supervision of a medical doctor? Are they housed with other detainees or in a special unit? Are they placed in single cells?

Mentally ill offenders should not be placed in single cells, except for very short periods when absolutely necessary and under medical supervision. **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, Principles 11.11 and 20.4**

- F. What kind of special psychiatric care do they have access to, if at all?
- G. Are there reports of abuse or violence against mentally ill detainees by other prisoners? If so, what measures do prison administrators take to prevent such abuse? These may include more careful separation of prisoners, stricter supervision by security staff and medical staff, training for staff to deal with such circumstances effectively.

## 5.4 DRUG RELATED OFFENCES

In most countries offenders who are imprisoned for drug related offences make up a large proportion of the prison population. In part this is explicable as a result of national and international efforts to combat the trafficking in illicit drugs. However, not all these offenders are major actors in the drugs trade. Often their crimes are committed because of their own addiction to drugs. Many of them could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem. The major international instruments, including the **1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**<sup>14</sup> and the **Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations**<sup>15</sup> recognise this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives.<sup>16</sup> Alternatives to imprisonment are a key part of these. In some countries, such as the USA and Australia, diversion from the criminal justice system, for illicit drug users, is formalised through drug treatment courts.

An assessor examining the pre-trial imprisonment of people charged with drug offences may wish to focus particularly on three areas: reasons for high numbers (if such is the case), by checking relevant legislation in the criminal statutes, as well as practice; treatment of drug users in pre-trial detention and prisons, e.g. whether they receive treatment for their condition, and issue of drug use in the context of HIV/AIDS, e.g. whether the drug users are IDUs (injecting/intravenous drug users) and whether all detainees have access to information on prevention methods.

Please also refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: ALTERNATIVES TO INCARCERATION** and **SOCIAL REINTEGRATION**.

- A. What sentences apply to illicit drug use in the penal code? Is there a differentiation between the use of different types of drugs, with lesser sentences being provided for drugs such as cannabis?
- B. What are the sentences for drug trafficking? In passing sentences do courts take into account the circumstances of the offence and the person suspected of committing the offence? Examples, e.g. women who have been used as “mules” to transport small amounts of drugs across border? Are such persons always, sometimes or rarely held in detention prior to trial?
- C. Have there been any recent attempts to decriminalise the use of certain drugs or to lift the obligation of pre-trial detention for certain drug related offences? What was the outcome? Has this reduced the rate of pre-trial detention for drug-related offences?
- D. Do police and prosecutors use discretion not to arrest suspected drug users, for example, on condition that they enter a drug educational or therapy programme? What criteria apply? How often is such discretion used in practice?
- E. Are alternative measures or sanctions provided in legislation for the use of illicit drugs? What are they and for which kind of drug offences do they relate to? How often are they used? (Figures or percentages for the past 2-3 years).
- F. Are there drug treatment courts available? Which offenders are targeted? How many were tried by drug courts in the recent 2-3 years? How does this compare to those detained for drug offences, but tried in other courts?
- G. Are persons being detained for illegal drug use provided with an opportunity to enter a treatment programme for drug addiction during pre-trial detention? Who is the programme run by and what does it consist of?
- H. Are persons being admitted to a pre-trial detention facility provided with information on the prevention of transmission of HIV/AIDS? Are guidelines for prevention also provided? If there are any such measures being taken, how does practice vary geographically?

## 5.5 OVERREPRESENTED GROUPS

In many countries certain ethnic or racial minority groups and/or foreign nationals form a disproportionately large part of the pre-trial and prison populations. This situation may be associated with a variety of factors. Overrepresented groups may not be considered for alternative measures or sanctions, due to prejudiced perceptions about the level of danger they pose to society. Again due to prejudice, the police may take members of ethnic, racial and national minority groups into custody without hesitation, when they are investigating certain offences or in periods when harsh criminal justice policies are being implemented. Such groups normally have a disadvantaged economic and social position in society, therefore members of such groups may be lacking in education, employment, vocational skills, which may have contributed to offending behaviour.

All rights enjoyed by un-sentenced detainees apply also to minority groups and foreign nationals. In addition these groups have specific needs relating to language, contact with families, consular representatives, UNHCR representatives, as well as religion and diet, which need to be addressed from the outset of their detention period. Of particular importance is their right to receive immediately on arrest written and oral information about their rights in a language they understand (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14**) and to be given access to their consular representatives (or UNHCR representative) if they request (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2; SMR 38; European Prison Rules (2006), 37.1 and 37.2**). They should, in particular, be informed of their rights concerning legal representation (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14; European Prison Rules, 37.4**) and be provided with interpreting services

during interrogation and meetings with lawyers (**Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 14; European Prison Rules, 38.3**).

Immigration detention refers to the detention of foreign nationals/asylum seekers under aliens legislation, such as an Immigration Act, or similar. The detainees may be persons refused entry to the country concerned; persons who have entered the country illegally and have subsequently been identified by the authorities; persons whose permit to stay in the country has expired or asylum-seekers whose detention is considered necessary by the authorities. In some countries, such persons are held in police stations for prolonged periods (for weeks or months), subject to inadequate material conditions of detention, and are sometimes obliged to share cells with criminal suspects. Treating immigrants as criminal suspects violates international law. If immigrants are detained, they must be accommodated in centres specifically designed for that purpose.

See **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** and **ALTERNATIVES TO INCARCERATION** for further guidance on alternative measures and sanctions for overrepresented groups.

- A. For which criminal offences have the majority of minority groups and foreign nationals been detained in police custody for the past 2-3 years? For which offences were they held in pre-trial detention over the past 2-3 years? How many/what percentage of them received a sentence?
- B. For what number/percentage of offences for which such groups were detained would an alternative pre-trial measure have been possible?
- C. On how many/what percentage of such groups who were detained in police custody did the court impose an alternative to pre-trial (bail or other) and how many/what percentage did it decide to place in custody on remand?
- D. What are the provisions governing the detention of illegal immigrants and asylum seekers? Are there special immigration detention centres, where illegal immigrants and asylum seekers are held? Are they held in detention alongside criminal suspects? Is this a common practice? How many such persons are in detention, together with detainees suspected of criminal offences at the time of assessment? For how long are they normally held? Weeks, months, years?
- E. How many/what percentage of minority groups and foreign nationals in pre-trial detention are first time offenders?
- F. According to legislation must foreign nationals be given written information about the reasons for their arrest and their rights in a language that they understand in police custody immediately on arrest? What does this information include? What happens in practice? Do they have the right to be provided with interpreting services? In practice, is this applied?
- G. Are detainees who are foreign nationals informed of their right to request contact and allowed facilities to communicate with the diplomatic or consular representative of their state, immediately after arrest? What are the legislative provisions and what happens in practice? How often can detainees have visits from consular officials of their state? Are these rights applied in practice? To what extent?
- H. Are prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons, e.g. UNHCR? **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.2**. What does the legislation provide for and what happens in practice?
- I. Are foreign nationals and minority groups given information about their rights, obligations, rules and regulations relating to pre-trial detention in a language they

understand immediately on entering a pre-trial detention facility? Is this standard practice? Check if samples of such written information exist in the pre-trial detention centres visited. Ask for copies, if possible.

- J. In pre-trial detention what level of access do foreign nationals have to the activities in the institution? Are they provided with reading material in a language that they understand? Visit the library, if one exists.
- K. Is any special provision made for contacts with the families of foreign nationals, if their families are in another country? What provisions are in fact made? Are they for example allowed more telephone calls, due to lack of visits from their families? These kinds of discretionary provisions will need to be inquired about in individual prisons and from individual ex-offenders, since it is unlikely that they will be included in any regulations.
- L. Does the law provide for meeting the special needs of members of minority religious groups in pre-trial detention? What opportunities are provided and what happens in practice? Can they meet with ministers of their religion? Are any special dietary needs of minority groups or foreign nationals catered for?

## 6. MANAGEMENT

The management of agencies responsible for detention will often be under the jurisdiction of more than one ministry. The police or gendarmerie is most likely to be under the Ministry of Interior. Pre-trial detention facilities may be managed by the Ministry of Interior, sometimes directly by the police force, or the Ministry of Justice. Exceptionally there may be a separate department responsible for the management of prisons, including pre-trial detention facilities. In addition, the Ministry responsible for pre-trial detention facilities may not be the same as the one responsible for managing prisons for sentenced prisoners even when these two types of prisoners are co-housed in the same facility. (The latter is more likely to be under the Ministry of Justice).

It is accepted as good practice to have the prison administration, including pre-trial detention facilities, placed under the jurisdiction of the Ministry of Justice. The Council of Europe recommends to all accession states, that where this is not the case, a transfer of the prison service from the Ministry of Interior to the Ministry of Justice should be take place. This step is important because it reflects the principle of separating the power of agencies that have responsibility for investigating charges and those which are responsible for the management of detention. Secondly, in countries where the Ministry of Interior is a military authority, it provides for the prison service to be under a civilian rather than military authority.

The law enforcement agencies with responsibility to prevent and detect crime, identify and apprehend suspects are normally under pressure to resolve cases speedily, sometimes at the cost of other considerations. Thus, overcrowding in detention facilities and respect for the rule of law may be low on the list of priorities of police or gendarmerie staff, especially if there is no clear policy, training and support provided to ensure that abuse of power is an exception rather than the rule during the custody and interrogation period. When pre-trial detention establishments are within the jurisdiction of the Ministry of Interior (and even sometimes located within police custody premises) it can be difficult to protect some of the most fundamental rights of detainees. Pressure may be placed upon detainees to confess to crimes, using conditions of detention, access to lawyers, contacts and services, among many others, as means of reaching this aim. When remand prisoners are placed in institutions under the jurisdiction of another authority, this kind of pressure is less likely, but is still possible, and there needs to be a clear policy and training of prison staff to ensure that investigating authorities do not influence the treatment of pre-trial detainees. This is perhaps one of the most important aspect of the management of pre-trial detention facilities in comparison to prisons that accommodate sentenced offenders, and it stems from the principle that, prisoners awaiting trial should be presumed to be innocent and should be treated as such. (As in the **Universal Declaration of Human Rights, Art. 11; SMR Rule 84 (2)**, among many others). In terms of the development of penal reform programmes, Ministries of Interior are more likely to resist reform.

This section of the tool seeks to guide assessors in their inquiries into the management of the prison service, in relation to its role in managing the pre-trial detention system specifically. The management of the prison service as a whole is covered in the tool **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM**. The assessor should refer to both tools as necessary.

The assessor should refer to **POLICING: THE INTEGRITY AND ACCOUNTABILITY OF THE POLICE** and **CRIME INVESTIGATION**, for guidance on all management aspects relating to the police service. Focus should be on the code of conduct for police staff, if it exists, training received by custody staff in police

stations and police responsible for interrogation, number, remuneration and working conditions of this category of personnel, which, if inadequate may drive corrupt behaviour. The assessor should also be guided by the **Code of Conduct for Law Enforcement Officials** and **Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials**.

## 6.1 MANAGEMENT AUTHORITY

- A. Which authority/ministry is responsible for the management of the prison service? Which authority/ministry is responsible for the management of pre-trial detention?
- B. If the prison service, including pre-trial detention facilities, is under one management authority/one ministry: Is it a military organisation (i.e. does staff have military ranks and matching privileges?)
- C. If pre-trial detention facilities are under a separate jurisdiction – e.g. the Ministry of Interior rather than the Ministry of Justice, or a separate department entirely – is the administration of pre-trial detention facilities military or civil?
- D. If the service is within the Ministry of Interior and militarised, is consideration being given to transferring the management of pre-trial detention facilities to the jurisdiction of the Ministry of Justice and to demilitarise it? If so, at what stage is the transfer process? If not, are the Ministry of Interior/prison authorities prepared to discuss transfer?
- E. What are the obstacles to transfer? (e.g. lower status under the Ministry of Justice, lower salaries, loss of military privileges, smaller budget in general etc). Are there any plans to resolve these issues? How?
- F. Have there been any recent management changes/restructuring?
- G. At the headquarters level, does the prison service have a unit, committee, working group or other body responsible specifically for policy formulation and strategic planning for the management of pre-trial prisons? If so, are there policy documents and/or strategic plan? If so, it would be helpful to obtain copies.
- H. Does the prison service have a strategy document or plan to address the main challenges in pre-trial prisons, such as overcrowding or health concerns, systematically? If so, what provisions does the strategy include?
- I. Do the relevant ministry and/or prison service have a strategic plan to tackle the problem of TB and HIV in the prison system generally and in pre-trial detention facilities particularly? What measures does the plan include?
- J. Has government/the prisons service set targets for reducing overcrowding in prisons in general; and pre-trial detention in particular?

## 6.2 STRUCTURE

- A. If the same ministry is responsible for both pre-trial prison establishments and prisons for sentenced prisoners, obtain an organisational chart of the prison department and determine the different levels of departments/services within the prison system, which are responsible for the management of pre-trial detention facilities. Are there different levels of administration at central, regional and other local levels?

- B. Is the system centralised or decentralised? How much autonomy do the regional and local prison administrations have? What issues does this autonomy cover?
- C. If pre-trial detention facilities are within the jurisdiction of a separate ministry, then obtain the organisational chart of that ministry and the place of the management of pre-trial detention facilities within it, and seek answers to the questions suggested above. See in addition questions under **System Coordination, 7.1**.
- D. In the pre-trial facilities are there units responsible for cooperating with investigating authorities to establish a detainee's guilt, e.g. in some countries of the former Soviet Union "operativniki" responsible for working alongside police investigators?

### 6.3 BUDGET

- A. How is the management of pre-trial detention facilities funded? Is the budget part of the prison system budget or is it separate, e.g. especially if the two are under separate jurisdictions.
- B. What is the budgetary process under the law? Who is involved in planning the initial budget? Who prepares and submits the operating budget? Are individual pre-trial detention facility administrations involved in budget planning? To what extent?
- C. Under the law, who manages the budget? Who oversees its spending?
- D. Over the last 3 years, what was the budget requested by the relevant management authority/ministry from the government for the management of pre-trial detention facilities? What was actually agreed? What percentage of the requested budget does the actual budget constitute?
- E. Has the budget increased over the past 3 years? To what extent?
- F. Did the management authority responsible for pre-trial detention facilities actually receive the funds allocated in its budget over the past 3 years? Are there normally delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- G. How is the budget distributed geographically? Are there disparities in allocation of funds? If so, why?
- H. What expenditure does the budget cover? Try to see a recent financial report or budget for an individual prison. What percentage for food? What percentage for healthcare? What percentage for renovation of buildings, and what does this include, e.g. does it include improvement of facilities for pre-trial detainees to meet with their lawyers? Improvement of visiting facilities? Are interpreting services covered for foreign nationals and minority groups?
- I. Who oversees the receiving and paying out of money? Are proper records kept? Is there an internal audit process? Who performs that function? Is there an independent audit process? By whom?
- J. Have there been any recent incidents of theft or fraud relating to such money? If so, how were they dealt with?
- K. Is corruption in the system perceived as a widespread problem? If so have any measures been taken to tackle the problem? What do the most common corrupt practices consist of? Please see also **Section 6.7**.

## 6.4 PROCUREMENT

- A. How is procurement organised? Who is responsible for procurement? Is it centralised or decentralised? Partly/wholly? How exactly does the system work? How does the system dealing with the procurement of food, particularly, work?
- B. Are there often delays in procurement? What are the reasons?
- C. If centralised, how is distribution organised? What does transport consist of? Are there problems with transport? Are there sufficient vehicles for transport? What are the main challenges?
- D. What kinds of advantages does decentralisation have, e.g. saves time on procurement and distribution, reduced transport costs, etc.? What kinds of problems, if any, have arisen as a result of decentralisation, e.g. geographical disparities, decreased accountability of regional and local authorities, corruption etc.?
- E. If pre-trial detention facilities and prisons are under separate jurisdictions, such as the Ministry of Interior and the Ministry of Justice, are there two separate systems operating for procurement and distribution of goods? If so, does this influence efficiency in any way? What financial implications does it have? Does it cost the state more? To what extent? Do pre-trial and sentenced prisoners receive disparate treatment as a result of this system? How is this evident?
- F. Are there any plans to improve the procurement and distribution process? What are they?

## 6.5 PERSONNEL

Adequate and well-trained personnel are essential for the efficient management of any organisation. They are fundamental to good management in prisons. Prison management is about the management of people – from the very vulnerable to the very dangerous. Personnel responsible for the daily administration of prisons, and daily contact with a group of persons with diverse problems and requirements, need to have very special skills and training, to ensure that security and safety is provided, while prisoners are treated humanely and cared for according to their individual needs. (See **SMR, Rules 46-53; Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** for guidance).

Unfortunately, however, the status of prison staff is very low in most countries. Little attention is given to their proper recruitment and training. A large majority will not have selected a career in the prison service in particular—e.g. they might be former military personnel, people who have been unable to find other employment etc. Their salaries are normally very inadequate, which contributes to dissatisfaction and corrupt practices. If pre-trial detention facilities are under the jurisdiction of the Ministry of Interior, however, the budget and staff conditions may be better – especially if prisons are managed by the police force. If staff under the Ministry of Interior have military status, then they might have a range of additional privileges, as well as comparatively higher salaries. These are some of the key reasons for resistance to the transfer of the responsibility of the system from the Ministry of Interior to the Ministry of Justice, as mentioned earlier. An assessor who is confronted with such a pre-trial system might want to inquire into the details of staff salaries and privileges, to assess the obstacles standing in the way of a transfer to a civil authority and investigate how these obstacles may be overcome.

Please refer to **CUSTODIAL AND NON-CUSTODIAL MEASURES: THE PRISON SYSTEM** for guidance on prison personnel in general. The following section focuses on the specific requirements relating to the personnel of pre-trial detention facilities.

- A. Does the prison service have an organizational chart that describes the lines of authority and staffing scheme, including pre-trial detention facilities? How are functions coordinated?

- B. Are the duties, rights and responsibilities of each member of staff clearly defined in their contract and relevant regulations?
- C. What is the number of staff positions in pre-trial detention facilities? What is the actual number? How does the situation vary geographically? From facility to facility?
- D. What services exist in pre-trial detention facilities? How many staff in each service – staff positions and actual numbers? Which positions are vacant, e.g. security personnel, medical staff, psychologists, social workers etc.? How does the situation vary geographically?
- E. Is there a standard, formal recruitment procedure for staff in pre-trial detention facilities? If so, what does it consist of? Are positions advertised? Posted? Where?
  - o Are there minimum qualifications for positions?
  - o Is there transparency in the hiring process, including the use of standard questions during the interview process, rating sheets, etc.?
  - o Is there a policy of equal opportunity/non-discrimination? Is it posted?
  - o Does the prison service have an employee manual that explains policies, procedures and responsibilities?
  - o How are employees evaluated? Promoted? Disciplined? Demoted? Terminated? Is there a written procedure for each?
- F. Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? Do they receive benefits other than salary as part of their compensation?
- G. If the pre-trial detention facilities are administered by the police force or special department within a militarised Ministry of Interior, while prisons for sentenced prisoners are administered by a civil authority, how do the salaries and benefits received by pre-trial staff compare to staff of prisons for sentenced prisoners? Is there a large disparity? What is the staff attitude about working under a civil authority?
- H. What particular training do pre-trial detention staff receive in connection with their responsibilities? Does their training curriculum or mission statement make it clear that they are dealing with persons who are un-convicted, and that they should therefore be treated as innocent?
- I. Does their training curriculum include the principle that staff should not use prison conditions or the provision of certain services as a means to assist with investigation? Are they made to understand that staff responsible for detaining suspected persons should not take part in the investigation? How is this expressed, if at all?
- J. If pre-trial detention facilities are managed by the Ministry of Interior, and especially if they are located within police stations, is separate training provided for those who are responsible for the supervision of pre-trial detainees? What does this training consist of?
- K. Are staff especially trained to help prisoners understand their rights and legal situation in general? How many such staff are there in the system? How does their availability vary geographically?
- L. Are there any specially trained staff to examine the cases of each prisoner in order to detect grounds for release on bail and prepare reports for the courts? How many such staff are there in the system? How does their availability vary geographically?

- M. Are there specialised staff dealing with juvenile detainees? Do they receive special training? What does their training consist of? How many such staff are there in the system? How does their availability vary geographically?
- N. Is there special training provided for dealing with/caring for the mentally ill? What does the training consist of?
- O. Do pre-trial prison staff receive in-service training to improve their qualifications? What does this training consist of? How often can/must staff take part in in-service training?
- P. Where is staff trained? Are there adequate training centres? Are the training centres for prison staff (including pre-trial prison staff) located in a separate building with its own administration or is the training of pre-trial staff undertaken in a military academy, police academy etc?
- Q. Who is pre-trial prison staff trained by? Are the trainers especially qualified and trained for this task? Are they simply retired prison officers, military personnel, members of the police force etc?
- R. How is staff accountability ensured? Is there an explicit disciplinary procedure, including for the use of force and ill treatment? Is this procedure made clear in prison personnel contracts and regulations? Is it enforced? Are there examples? **Ask for figures relating to disciplinary measures against staff from the individual prison administrations, over the past 2-3 years to determine numbers and trend. This information may not, however, be reliable in terms of assessing the extent to which discipline is enforced.**

## 6.6 RESEARCH AND PLANNING

- A. Is there a national development plan including the penal system? What is included in this plan in relation to pre-trial detention facilities?
- B. Is there a department responsible for planning at headquarters level? What is its capacity? How does it develop its plans? Who provides information? Does it coordinate with similar units at local level? What is included in the plans, e.g. do they include a mission statement, improvement of policy and practice? On which areas do they focus?
- C. Has research been carried out on the problems encountered in pre-trial detention facilities and their reasons? If so, what were the outcomes, and what steps were taken to address these problems?
- D. Has research been conducted into the reasons for overrepresentation of certain groups in pre-trial detention facilities, e.g. income, gender, nationality, ethnicity based? What are the results? Have any steps been taken based on these results? What are they?
- E. Have mechanisms been built into the criminal justice system for the collection and analysis of data and statistics relating to the use of detention prior to trial? What do these mechanisms consist of?
- F. Are regular evaluations carried out, with a view to improving the implementation of non-custodial alternatives to pre-trial detention? Are there any copies of such evaluations available? What measures have been taken on the basis of such evaluations?

## 6.7 CORRUPTION

Corruption can be widespread in pre-trial detention and prisons, especially in low-income countries, where police and especially prison staff receive low salaries. Often people detained in police custody and in pre-trial detention facilities may exercise their most fundamental rights only in exchange for bribes. The rights that must be purchased can include receiving daily necessities, gaining access to a doctor, to a lawyer, obtaining a transfer to another cell or establishment, among many others. In many countries corruption might extend to “buying” a judge. If corruption is widespread in the criminal justice system, then the administration of justice will be undermined or even come to a standstill, with the poor being the victims.

Corrupt practices among prisoners themselves may also be widespread, with prisoners having to pay leader prisoners for anything from access to particular areas in prison, to food and even to be allocated a bed. Prisoners who are unable to pay and who are not protected by a stronger prisoner may be subjected to physical violence, including sexual abuse. Under such a system, it will be the poor and weak who suffer.

Information about corruption in the prison system in general and during pre-trial detention specifically may be obtained from independent reports produced by NGOs, bar associations, other human rights and inspection commissions bodies, ex-offenders, families of offenders and ombudsmen’s reports. Working conditions, staff salaries and benefits will need to be reviewed to identify some possible reasons and solutions. (Please see **Section 6.5**)

- A. Is there a general perception among the public, offenders’ families and offenders that corruption is widespread during the period of police custody and pre-trial detention? What must detainees pay for most often, e.g. access to legal counsel, to medical care, to visits, to telephone calls, to food etc.?
- B. Does the situation vary between rural and urban areas and in different parts of the country? From facility to facility?
- C. Is there a perception that detainees with money receive better conditions and more respect for their rights? Is there evidence that time limits of the pre-trial periods of high-income groups are adhered to, while low-income groups have to wait for months or years for their cases to come to court? Are there case examples?
- D. If corruption is a problem, to what extent? Has corruption been “institutionalised”? What are the main reasons? Have any steps been taken by state /police/prison authorities/special commissions to tackle corruption? What are they?
- E. Are corrupt practices widespread among prisoners? Is there a prisoner hierarchy in pre-trial detention facilities allowing stronger prisoners to extract money from the weaker in order to allow them access to essential needs? Have these practices led to violence among prisoners? Is the prison administration taking any measures to prevent such practices? (e.g. the more careful separation of detainees, especially those which are likely to be abused by the rest; strict separation of juveniles from adult detainees; special training for staff to be alert to and deal with such incidents effectively).

## 6.8 OVERSIGHT

Inspections of detention facilities are an important safeguard against malpractice and abuse in prisons, as recognised by international standards (e.g. **SMR Rule 55, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29**, among others). Independent inspections are also in the interest of prison managements and staff, as a means of protection against unfair accusations or reports. They are also useful for central prison authorities to receive information about aspects of practice of which they may have been unaware. Authorities responsible for the management of pre-trial detention facilities have a duty to cooperate with inspection bodies.

Regular inspections are vital to safeguard detainees against abuse of legal rights, and physical abuse or ill treatment, as well as to monitor the quality of living conditions, and regime in pre-trial detention institutions.

The external oversight of places of detention is a particularly important safeguard against improper practices. National independent inspection bodies may include commissions or persons appointed by the government, presidential human rights commissions, inspection bodies appointed by parliament, such a human rights

commissions, the judiciary, or lay inspection bodies (sometimes referred to as monitoring boards).

In most systems there will be a body responsible for internal oversight, which might be inspectors appointed by the ministry responsible, as well as bodies responsible for administrative inspections.

Ideally there should be a combination of internal and external inspections to ensure maximum oversight.

Inspections may also be carried out by international and regional bodies such as the Special Rapporteur on Torture of the UN and the Committee for the Prevention of Torture and Inhuman and Degrading Punishment of the Council of Europe.

(Please see **SMR 55, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29**).

### 6.8.1 Internal Oversight

- A. What provisions relate to internal inspection procedures of temporary places of detention, police custody etc? If there is more than one inspection body – what are they and what are their different responsibilities? How often do they inspect? Can they and do they inspect unannounced? Who do they report to? What are the outcomes?
- B. Is there a system of internal inspection for pre-trial detention facilities? Who is responsible? How often does the body/person visit? What are its responsibilities? Who does it report to? What are the outcomes?

### 6.8.2 External Oversight

- A. What provisions govern the inspection of places of detention by judicial officers? What do they do? Do they check the legality of detention, possibilities for bail? Do they release people who have exceeded time limits?

In Bihar, India, judicial officials periodically visit prisons to review cases and dispense rulings on the spot. These 'camp courts' only handle matters involving minor offenders. The courts are seen as a useful way to reduce overcrowding, speed up justice delivery, and restore the 'hope' factor in the life of prisoners.<sup>17</sup>

- B. How often do other independent inspection bodies--human rights commissions, parliamentary prison inspectors, etc.--visit temporary detention or pre-trial detention facilities? What are their roles? Can they and do they inspect unannounced? What happens with the inspection reports? Are they made public? Do referrals to other competent authorities lead to action?
- C. Does a lay inspection body have access to police custody cells and other temporary detention facilities? What is the membership? How often do they visit? Who do they report to? What action is taken, if any, in response to their reports? Do inspection bodies publish their reports? It would be helpful to obtain copies of such reports, if possible. If there is no regular inspection by independent civil bodies, there may have been projects carried out, involving inspection for a specific period – inquiring among the NGOs may provide access to reports of such projects.
- D. Does a lay inspection body visit pre-trial detention facilities? Same follow up questions and comments as C. above.
- E. If a referral mechanism exists, to whom does the body refer matters and with what outcome, e.g. referring specific cases to judicial authorities, to the Ombudsman?

- F. Do international and/or regional bodies inspect detention facilities, e.g. UN Special Rapporteur on Torture, CPT, etc.? Are their reports published? What are their findings?

## 6.9 PUBLIC OPINION AND ACCOUNTABILITY

Public opinion is extremely important in the context of prisons and penal reform. Public opinion can drive politicians to adopt harsher criminal justice legislation and measures, it can prevent them from undertaking necessary reforms to reduce overcrowding in pre-trial detention and prisons, it can push them to give law enforcement agencies more powers to arrest and detain, to restrict legal safeguards for detainees, among others. Therefore, programmes for reform should never underestimate the crucial role public opinion and political climate plays in success or failure. SMR express this in a narrower sense, within the context of the status and duties of prison personnel: "The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used." (**SMR, 46 (2)**). Other UN documents, such as the Tokyo Rules, stress the vital place of public support and cooperation in the success of the implementation of non-custodial measure and sanctions (**Rule 18**). Indeed, increasing possibilities for alternatives to pre-trial detention must have public support to ensure success.

In addition, the public must understand the concept of bail for example, among other measures, in order to utilise this right and be aware of their other legal rights at the stage of detention, in order to safeguard themselves against abuse and gain access to justice.

An assessor seeking to identify entry points for prison reform, must be aware that the political climate, the existence or lack of political will to reform, the openness or otherwise of the ministry responsible for prisons and the general director of the prison service are important aspects of his/her inquiry.

- A. Does the government support reform? Is there political will to reform? How is this evident?
- B. What is the political climate like in the country where assessment is taking place? Are politicians introducing harsher penal legislation in an effort to "fight against crime"? If so, what is driving these policies?
- C. Are there any efforts by the ministries responsible for detention and prisons to change public opinion in favour or against harsher legislation and measures? What kind of activities are they undertaking? Does the police or prison service have someone responsible for informing the media for example? Do they organise conferences and seminars?
- D. Are there any efforts by civil society NGOs to change public opinion? In what way? What do they do? Do they organise conferences, seminars, and meetings? Do they utilise the media? How?
- E. Have any public opinion surveys been carried out to find out what the public thinks about harsher criminal justice legislation? How were the questions formulated? What were the results?
- F. What, if any, steps are being taken to sensitize the public on the meaning of bail?
- G. What, if any, steps are being taken to address prejudices and preconceptions with regard to foreigners and minority groups?
- H. What, if any steps are being taken to inform the public about their legal rights with regard to detention, access to legal counsel and appeal procedures?

## 7. PARTNERSHIPS AND COORDINATION

Co-ordination between criminal justice agencies involved in the detention, investigation and trial of persons suspected of having committed an offence is essential to tackle the problems relating to detention before trial. It would be impossible to achieve a reduction in the pre-trial prison population, for example, without coordination between decision makers, law enforcement agencies, prosecuting/investigating authorities, judicial authorities and authorities responsible for detaining suspects. In order to overcome obstacles, there needs to be a coordinated strategy and mechanisms for implementing that strategy at the senior level. Much can also be done at the local level to improve communication, co-operation and co-ordination between the various criminal justice actors so that scarce resources can be applied more effectively.

Where pre-trial detention facilities are located under a separate ministry to that of the prison system for sentenced prisoners, coordination is essential between the two management authorities to ensure efficiency – for example, procedures for transfer of offenders from pre-trial detention facilities to prisons, transfer of files and information, coordination in healthcare (especially TB, where uninterrupted treatment is vital), among others.

Many governments rely on support of external donor/development assistance and increasingly look to forging partnerships with responsible NGOs and civil society groups. The 'resource crunch' faced by low income countries who have to determine how to allocate the scarce funds to meet a range of competing priorities places a priority on good co-ordination between these agencies and actors.

### 7.1 SYSTEM COORDINATION

- A. At what level do the criminal justice agencies co-ordinate their activities – national, regional, local? What form does this take (i.e. monthly meetings or otherwise)? Which criminal justice agencies take part?
- B. Is there a policy and strategic plan, for a coordinated approach to tackling problems relating to the detention of persons awaiting trial? Who was involved in formulating it? Did the police, prosecutors, the judiciary and authorities responsible for pre-trial detention participate? What are the problems addressed? What is the strategy put forwards to resolve them?

The Caseflow Management Committees, in a project implemented in Malawi, Kenya, Uganda and Tanzania operate at the local, regional/provincial and national levels to identify problems and come up with local solutions. They meet regularly at the local level (monthly), quarterly at the regional/provincial level and annually at the national level. They have proved effective in improving communication, co-ordination and communication between criminal justice agencies and settling local crises<sup>18</sup>

- C. Do courts meet with the police, prosecutor and prison officials at the local level on a regular basis to discuss case management and other issues?
- D. Do prison officials have a mechanism for raising issues with local decision makers and national policy makers? What are these mechanisms?
- E. Is there a legal aid scheme in operation with lawyers or qualified non-lawyers in police and prisons? Who provides the service?

In Kenya in January 2004, the Kenya Prison Paralegal Project cut the remand population in Thyika women's prison from 80 to 20 prisoners following a case-by-case review of the prisoners<sup>19</sup>

- F. If pre-trial detention facilities and prisons are under separate jurisdictions/ministries especially, but even if they are under the same authority, is there a mechanism for

cooperation between the two authorities/administrations? What does this mechanism consist of and what issues does it cover? Are the responsibilities of each party clear? Does it include, for example, issues relating to the speedy transfer of sentenced pre-trial detainees to prison facilities? Does it include clear rules on the transfer of prisoner files to prison facilities? Are there special rules relating to medical files to ensure they do not get lost? Are there provisions for uninterrupted treatment for TB and HIV particularly, as well as other medical conditions?

- G. What cooperation mechanisms are in place with social services or the probation service where it exists? Is there a service responsible for preparing pre-sentence enquiry reports? Are probation officers or social services staff allowed easy access to pre-trial facilities to meet with their clients? Are there frequent delays throughout the process? What are the reasons for delay, e.g. inadequate exchange of information or poor cooperation/coordination?
- H. To what extent do authorities responsible for pre-trial detention cooperate with civil health services? Is there a protocol or agreement at ministerial level between the two ministries? What does this agreement include and is it applied in practice? Can and do civil health services assist with the treatment of TB and HIV patients in pre-trial detention? Do they monitor treatment? Do they provide training for prison health staff?
- I. Does the authority responsible for pre-trial detention facilities have a strategy for cooperation with NGOs? What does it consist of? Is there a person or unit responsible for managing such coordination? Are there any signed partnerships protocols with selected national or international NGOs? What areas do they cover? Which NGOs?
- J. Do any civil society organizations have access to places of detention, e.g. NGOs and community based organizations? It may be helpful to list them and the type of activity.

## **7.2 DONOR COORDINATION**

- A. Who are the principal donors in this sector? What annual value is placed on their programme? Where direct budget support is supplied, identify how much has been set aside for the justice sector in general and for prisons in particular.
- B. Is the approach targeted to the institution concerned, i.e. prisons, police, judiciary, and divided between donors, or sector wide, i.e. taking the criminal justice as a whole?
- C. Is this subject discussed in individual donor country action plans/or strategy papers?
- D. Is there a policy of coordination between different donors to ensure program coherence? What mechanisms exist to co-ordinate donor support? Which agency leads this co-ordination?
- E. What program support has been provided by donors in the last 5 years? What were the outcomes of these programmes?
- F. Does the government or ministry/ministries responsible for detention and pre-trial detention facilities have a cooperation strategy with donors working in this sector? What period does it cover? What does it consist of?

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<sup>1</sup> Coyle, A., *Managing Prisons in a Time of Change*, International Centre for Prison Studies, 2002, p. 27

<sup>2</sup> Lectric Law Library website: [www.LectLaw.com](http://www.LectLaw.com)

<sup>3</sup> CPT/Inf (93) 12, para. 55

<sup>4</sup> Council of Europe Rec R (98) 7, Rule 39; CPT/Inf (93) 12, para. 56

<sup>5</sup> For a discussion of these forms of administrative detention see, for example, "Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 October 2002", pp. 18, 32; "Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004", p. 27 and "An Imitation of Law: The Use of Administrative Detention in the 2003 Armenian Presidential Election", Human Rights Watch Briefing Paper, May 23, 2003.

<sup>6</sup> See, for example, "An Imitation of Law: The Use of Administrative Detention in the 2003 Armenian Presidential Election", Human Rights Watch Briefing Paper, May 23, 2003, p. 4

<sup>7</sup> See "The System of Administrative Justice in Armenia", Helsinki Committee of Armenia, p. 2, where it is stated that: "In case of dispensation of administrative justice, the final decision-making power rests with the court of first instance, its judgment is final. The person subjected to administrative justice does not have recourse either to the court of appeal or to the Court of Cassation".

<sup>8</sup> e.g. "Re-education through Labour", which is a form of administrative detention used in China. At the time of writing this form of detention was under review, with "Illegal Behaviour Correction Law" being drafted to replace "Re-education through Labour". Reports indicated that, under the new law, the maximum term of detention imposed would be reduced to 18 months. See "People's Republic of China Abolishing 'Re-education through Labour' and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights. Memorandum to the State Council and the Legislative Committee of the National People's Congress of the People's Republic of China". Amnesty International, AI Index: ASA 17/016/2006, 12/05/2006, p.7

<sup>9</sup> Ibid., p. 6

<sup>10</sup> Ibid., p. 3,4

<sup>11</sup> Walmsley, R., *World Female Imprisonment List 2006*, International Centre for Prison Studies, [www.prisonstudies.org](http://www.prisonstudies.org).

<sup>12</sup> In Pakistan, for example, a large percentage of women are in prison or in pre-trial detention, under Islamic legislation which penalises rape victims.

<sup>13</sup> Principle 7.1 of the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. G A Res 46/119 of 17 December 1991.

<sup>14</sup> UN Doc. E/CONF.82.15.

<sup>15</sup> A/RES/S-20/3 of 8 September 1998.

<sup>16</sup> See Neil Boister, *Penal Aspects of the UN Drug Conventions*, Kluwer, The Hague 2001.

<sup>17</sup> Index of good practices in reducing pre-trial detention, Penal Reform International, November 2004

<sup>18</sup> Index of good practices in reducing pre-trial detention, Penal Reform International, November 2004

<sup>19</sup> Ibid.

## ANNEX A. KEY DOCUMENTS

### United Nations

- Universal Declaration of Human Rights 1948
- International Covenant on Civil and Political Rights 1966
- Geneva Convention relating to the Status of Refugees 1951
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Convention on the Rights of the Child 1989
- Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for the Treatment of Prisoners 1955
- Basic Principles on the Role of Lawyers, 1990
- Guidelines on the Role of Prosecutors, 1990
- Code of Conduct for Law Enforcement Officials, 1979
- Basic Principles on the Independence of the Judiciary, 1985
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
- Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Rules for the Protection of Children Deprived of their Liberty 1990
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare 1991
- Guiding Principles on Drug Demand Reduction of the General Assembly of the UN 1998
- International Convention on the Elimination of All Forms of Racial Discrimination, 1969
- Convention on the Elimination of All Forms of Discrimination Against Women 1981
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- UNHCR Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers

As well as:

- Reports by the UN Special Rapporteur on Torture;
- Reports by the UN Working Group on Arbitrary Detention.

### Draft

- Model Code of Criminal Procedure
- Model Criminal Code

**PLEASE NOTE:** *The Model Code of Criminal Procedure (MCCP) and the Model Criminal Code (MCC) are being cited as models of codes that fully integrate international standards and norms. At the time of publication, the MCCP and MCC were still in DRAFT form and were being finalised. Assessors wishing to cite the MCCP and MCC with accuracy should check the following websites to determine whether the finalised Codes have been issued and to obtain the finalised text, as referenced Articles or their numbers may have been added, deleted, moved, or changed:*

<http://www.usip.org/ruleoflaw/index.html>

or [http://www.nuigalway.ie/human\\_rights/Projects/model\\_codes.html](http://www.nuigalway.ie/human_rights/Projects/model_codes.html).

*The electronic version of the Criminal Justice Assessment Toolkit will be updated upon the issuance of the finalized codes.*

### Regional

- African Charter on Human and Peoples' Rights 1986
- African Charter on the Rights and Welfare of the Child 1990
- American Convention on Human Rights 1978
- The European Convention on Human Rights and Fundamental Freedoms, 1953

- European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment, 1989
- Council of Europe Committee of Ministers Recommendation Rec (2006) 2 on the European Prison Rules, 2006
- Council of Europe, Committee of Ministers Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures, 1992
- Council of Europe Committee of Ministers Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 2000
- Council of Europe Committee of Ministers Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, 1999
- Council of Europe Committee of Ministers Recommendation No. R (2001) 10 on the European Code of Police Ethics, 2001
- Council of Europe Committee of Ministers Recommendation concerning the protection of the human rights and dignity of persons with mental disorder, Rec. (2004) 10.
- Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison

#### **Other Useful Sources**

- Making Standards Work, Penal Reform International, March 2001
- Reports by African Union Special Rapporteur on Conditions in Prison and Other Places of Detention;
- Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- The Treatment of Offenders under International Law, Nigel S Rodley, Clarendon Press, Oxford, Second Edition, 1999
- Monitoring Places of Detention, A Practical Guide for NGOs. APT.
- Index of Good Practices in Reducing Pre-Trial Detention. PRI. 2006
- 10 Point Plan for Reducing the Use of Imprisonment. PRI, on PRI website: [www.penalreform.org](http://www.penalreform.org)
- Guidance Note 5, Pre-trial Detention, International Centre for Prison Studies, King's College London, ICPS website: [www.prisonstudies.org](http://www.prisonstudies.org)
- Coyle, A., A Human Rights Approach to Prison Management, International Centre for Prison Studies, London, 2002, available on ICPS website.
- Coyle, A., Managing Prisons in a Time of Change, International Centre for Prison Studies, 2006, available on ICPS website.
- Amnesty International, Human Rights Watch, and US State Department human rights reports;

#### **National**

- Constitution
- Criminal/Penal statutes and procedure codes
- Strategic plans for the criminal justice system, the judiciary, and the penal system
- Research and evaluation reports by independent bodies, NGOs, academicians

## ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

The following are designed to assist the assessor in keeping track of what topics have been covered, with what sources and with whom.

|     | TOPIC  | SOURCES   | CONTACTS  | COMPLETED |
|-----|--|---|---|-----------|
| 2.  | OVERVIEW: GENERAL STATISTICAL AND DATA           | <ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Ministry of Interior reports</li> <li>▪ Penal System Reports</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ Reports by international and national prison inspection bodies</li> <li>▪ Reports by Prisons Ombudsman</li> <li>▪ Reports by Law Society or Bar Association</li> <li>▪ NGO reports</li> <li>▪ Donor reports</li> <li>▪ Research reports by independent academic institutions</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Interior</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Senior Police Service Officers</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards, UN Special Rapporteur, CPT, UN Working Group on Arbitrary Detention.</li> <li>▪ Prisons Ombudsman</li> <li>▪ Law Society or Bar Association</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Donor organisations working on the criminal justice sector</li> <li>▪ Academicians working on criminal justice issues</li> </ul> |           |
| 3.  | LEGAL AND REGULATORY FRAMEWORK: LAW AND PRACTICE | <ul style="list-style-type: none"> <li>▪ The Constitution</li> <li>▪ Penal/Criminal Code</li> <li>▪ Penal/Criminal Procedure Code</li> <li>▪ Penal Enforcement Code/Prison Act</li> <li>▪ Probation Act or similar</li> <li>▪ Regulations to these codes and acts</li> <li>▪ Court Annual Reports</li> <li>▪ Judicial Practice Directions: Circulars and Sentencing Guidelines</li> <li>▪ Government policy documents/ National Reform Programmes</li> <li>▪ Independent reports made by non-governmental organisations.</li> <li>▪ Legal textbooks or academic research papers.</li> <li>▪ SITE VISITS</li> <li>▪ Statistics and information at different administrative levels and in different parts of the country (urban, rural, rich, poor)</li> <li>▪ Case examples</li> </ul> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Interior</li> <li>▪ Senior and local prison service officers</li> <li>▪ Senior and local probation service staff</li> <li>▪ Senior and local prosecutors</li> <li>▪ Senior and local police officers</li> <li>▪ High Court Judges, other senior judges, local judges and magistrates</li> <li>▪ Senior and local prosecutors</li> <li>▪ Legislative offices</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Bar Associations</li> <li>▪ Academicians working on criminal justice issues</li> </ul>   |           |
| 3.1 | LAW REFORM                                       | See 2 and 3 above   | See 2 and 3 above   |           |

|       | TOPIC  | SOURCES  | CONTACTS   | COMPLETED |
|-------|--|--|--|-----------|
| 3.2.1 | ARREST, DIVERSION AND POLICE CUSTODY         | See 2 and 3 above  | See 2 and 3 above  |           |
| 3.2.2 | POLICE CUSTODY: LEGAL PROCESS AND SAFEGUARDS | See 2 and 3, plus:<br><br>SITE VISITS<br><ul style="list-style-type: none"> <li>▪ To police custody cells/ temporary detention facilities</li> </ul>   | See 2 and 3, plus:<br><ul style="list-style-type: none"> <li>▪ Former detainees</li> <li>▪ Families of detainees and former detainees</li> <li>▪ Lawyers representing or who have represented detainees</li> <li>▪ Bar Associations and others providing legal aid.</li> </ul>   |           |
| 3.2.3 | DETENTION CONDITIONS                         | See above  | See above, plus:<br><ul style="list-style-type: none"> <li>▪ Doctors involved in the medical examination of detainees</li> </ul>   |           |
| 3.3   | PRE-TRIAL DETENTION                          | See 2 and 3, plus:<br>SITE VISITS<br><ul style="list-style-type: none"> <li>▪ Pre-trial detention facilities</li> </ul>  | See 2 and 3, plus:<br><ul style="list-style-type: none"> <li>▪ Staff of pre-trial detention facilities</li> <li>▪ Families of pre-trial detainees</li> <li>▪ Lawyers of pre-trial detainees</li> <li>▪ Former prisoners/pre-trial detainees</li> <li>▪ Probation staff or other body responsible for preparing social enquiry reports</li> </ul> |           |
| 3.3.1 | ADMISSION AND LEGAL PROCEEDINGS              | See above  | See above, plus:<br><ul style="list-style-type: none"> <li>▪ Interviews should include Senior and Local Prosecutors; Senior and Local Judges; Senior and local prison staff as a priority</li> </ul>   |           |
| 3.3.2 | ACCOMMODATION                                | See above  | See above  |           |
| 3.3.3 | HEALTHCARE                                   | See above, plus:<br><ul style="list-style-type: none"> <li>▪ Prison healthcare policy documents and strategy papers;</li> <li>▪ Specific strategic plans relating to the management of TB and HIV;</li> <li>▪ Medical Association reports</li> </ul> | See above, plus:<br><ul style="list-style-type: none"> <li>▪ Senior and local prison healthcare staff (responsible for pre-trial detention facilities)</li> <li>▪ Any independent doctor involved in the treatment of detainees</li> <li>▪ Medical Association or similar</li> </ul>   |           |
| 3.3.4 | REGIME AND OTHER RIGHTS                      | See above  | See 3.3  |           |
| 3.3.5 | PROFILE OF PRE-TRIAL DETAINEES               | See above  | See 3.3  |           |

|     | TOPIC                    | SOURCES  | CONTACTS  | COMPLETED |
|-----|--------------------------|--|---|-----------|
| 4.1 | ADMINISTRATIVE DETENTION | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Administrative Code/Code of Administrative Violations/Administration of Punishment Law or similar</li> </ul> <p>SITE VISITS:<br/>To administrative detention centres</p>  | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Former detainees</li> <li>▪ Families of detainees and former detainees</li> <li>▪ Lawyers representing or who have represented detainees</li> <li>▪ Bar Associations and/or other bodies providing Legal Aid to detainees.</li> </ul>  |           |
| 4.2 | PSYCHIATRIC DETENTION    | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Civil Code or similar</li> <li>▪ Health Act</li> <li>▪ Ministry of Health Reports</li> <li>▪ Reports by Association of Psychiatrists</li> <li>▪ Reports by international human rights/medical rights organisations</li> </ul> <p>SITE VISITS</p> <ul style="list-style-type: none"> <li>▪ Mental health facilities/psychiatric hospitals where persons forcefully hospitalised</li> </ul> | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Senior Ministry of Health Officials</li> <li>▪ Mental health facility doctors and other staff;</li> <li>▪ Families of detainees</li> <li>▪ Ex-detainees</li> <li>▪ NGOs working on human rights and medical rights (e.g. national NGOs, plus Amnesty International, Mental Disability Rights International)</li> </ul>   |           |
| 5.1 | JUVENILES                | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Juvenile Court Act or similar</li> <li>▪ Juvenile Probation Act</li> <li>▪ Regulations to these acts</li> </ul>   | <p>See 2 and 3, plus</p> <ul style="list-style-type: none"> <li>▪ Juvenile police</li> <li>▪ Juvenile courts</li> <li>▪ Police/prison staff where juveniles detainees are held</li> <li>▪ Juvenile probation staff</li> <li>▪ Former juvenile detainees</li> <li>▪ Families of juvenile detainees</li> <li>▪ NGOs and community groups running support programmes for juveniles in detention</li> <li>▪ Bar Associations and lawyers working on juvenile cases</li> </ul> |           |
| 5.2 | WOMEN                    | See 2 and 3  | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Police/prison staff where women pre-trial detainees are held</li> <li>▪ Former prisoners/detainees</li> <li>▪ NGOs and community groups running support programmes for female detainees/prisoners</li> <li>▪ Bar Associations and Lawyers working on women's cases</li> </ul>  |           |

|     | TOPIC                  | SOURCES   | CONTACTS  | COMPLETED |
|-----|------------------------|---|---|-----------|
| 5.3 | THE MENTALLY ILL       | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Health Act</li> <li>▪ Regulations to the health act</li> <li>▪ Prison Service Health Policy/Strategy Paper;</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> <li>▪ Psychiatrists' Association Reports</li> </ul>  | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Ministry of Health</li> <li>▪ Head of Prison Health Department/Unit</li> <li>▪ Health services involved in the treatment of mentally ill offenders</li> <li>▪ Prison medical and psychiatric staff</li> <li>▪ Families of Mentally ill detainees</li> <li>▪ NGOs</li> <li>▪ Medical Associations</li> <li>▪ Psychiatrists' Associations</li> </ul> |           |
| 5.4 | DRUG RELATED OFFENCES  | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Health Act and regulations</li> <li>▪ Act governing Drug Courts</li> <li>▪ Regulations to this act</li> <li>▪ Prison Service Health Policy/Strategy Paper;</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> </ul> | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ Drug courts</li> <li>▪ Families of detainees charged with drug related offences</li> <li>▪ Prison medical staff</li> <li>▪ Medical Associations</li> </ul>   |           |
| 5.5 | OVERREPRESENTED GROUPS | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ UNHCR reports on the country assessed</li> <li>▪ Reports on minority groups by NGOs and others working on minority groups' and asylum seekers' rights</li> </ul>   | <p>See 2 and 3, plus:</p> <ul style="list-style-type: none"> <li>▪ UNHCR staff</li> <li>▪ Consular representatives and/or families of foreign prisoners</li> <li>▪ Families of minority group pre-trial detainees</li> <li>▪ Former detainees/prisoners from these groups</li> <li>▪ NGOs working on minorities' and asylum seekers' rights</li> </ul>  |           |

|     | TOPIC                | SOURCES   | CONTACTS  | COMPLETED |
|-----|----------------------|---|---|-----------|
| 6.1 | MANAGEMENT AUTHORITY | <ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Ministry of Interior reports</li> <li>▪ Penal System Reports</li> <li>▪ Criminal/Penal Code and Penal Enforcement Code</li> <li>▪ Penal Enforcement Code and regulations</li> <li>▪ Reports by international and national prison inspection bodies</li> <li>▪ Reports by Prisons Ombudsman</li> <li>▪ Reports by Law Society or Bar Association</li> <li>▪ NGO reports</li> <li>▪ Research reports by independent academic institutions</li> </ul> <p>SITE VISITS</p> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Interior</li> <li>▪ Headquarters, regional and local prison service officers</li> <li>▪ Prison inspectors, human rights commission, judiciary with responsibility of prison inspections, prosecutors, monitoring boards,</li> <li>▪ Prisons Ombudsman</li> <li>▪ Law Society or Bar Association</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Academicians working on criminal justice issues</li> </ul> |           |
| 6.2 | STRUCTURE            | See above   | See above   |           |
| 6.3 | BUDGET               | <p>See 6.1, plus:</p> <ul style="list-style-type: none"> <li>▪ Government policy documents/National Reform programmes;</li> <li>▪ Budget documents and financial reports of the prison service</li> <li>▪ SITE visits to be used to gather information on the disbursement of funds</li> </ul>  | <p>See 6.1, plus:</p> <ul style="list-style-type: none"> <li>▪ Headquarters, regional and local prison staff responsible for finances</li> </ul>  |           |
| 6.4 | PROCUREMENT          | <p>See above, plus:</p> <ul style="list-style-type: none"> <li>▪ Strategic plans and reports on procurement and distribution</li> </ul>   | <p>See above, plus:</p> <ul style="list-style-type: none"> <li>▪ Headquarters, regional and local prison staff responsible for procurement and distribution</li> </ul>  |           |
| 6.5 | PERSONNEL            | <p>See 6.1, plus:</p> <ul style="list-style-type: none"> <li>▪ Samples of Recruitment/ Human resources/interview questions</li> <li>▪ Training materials</li> <li>▪ Staff terms of reference, contracts</li> <li>▪ Staff ethics code</li> <li>▪ Disciplinary board Policy/Procedures</li> </ul>   | <p>See 6.1, plus:</p> <ul style="list-style-type: none"> <li>▪ Staff Training Centre</li> <li>▪ Pre-trial prison governors</li> <li>▪ Other prison staff (security staff, those involved in assisting with legal problems, health staff)</li> <li>▪ Detainees, as appropriate, their families, ex-detainees</li> <li>▪ Bar Associations and lawyers working with pre-trial prisoners</li> <li>▪ Prison inspection bodies</li> <li>▪ NGOs</li> </ul>   |           |

|     | TOPIC                             | SOURCES   | CONTACTS  | COMPLETED |
|-----|-----------------------------------|---|---|-----------|
| 6.6 | RESEARCH AND PLANNING             | <ul style="list-style-type: none"> <li>▪ Government policy documents/National Development Plan, including the penal system</li> <li>▪ Prison headquarters planning department reports/strategic plans</li> <li>▪ Research reports relating to pre-trial detention: On overcrowding, TB, HIV/AIDS, overrepresentation of certain groups, use of alternatives etc).</li> <li>▪ Reports/interviews: Judicial authorities</li> <li>▪ Evaluations of alternatives to pre-trial detention.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Interior</li> <li>▪ Prison Service Headquarters</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Academicians and legal specialists working on criminal justice matters</li> <li>▪ High court judges and other senior level judicial authority staff</li> </ul> |           |
| 6.7 | CORRUPTION                        | <p>See 2, 6.3, 6.4 and 6.5 plus:</p> <ul style="list-style-type: none"> <li>▪ Any internal audit reports, if available</li> </ul>   | <p>See 2, 6.3, 6.4 and 6.5, plus:</p> <ul style="list-style-type: none"> <li>▪ Ex-detainees and their families</li> </ul>   |           |
| 6.8 | OVERSIGHT                         | <ul style="list-style-type: none"> <li>▪ Penal System Reports</li> <li>▪ Reports by external, independent inspection bodies</li> <li>▪ Reports by NGOs working on criminal justice matters</li> <li>▪ Reports by independent academicians and researchers working on criminal justice</li> <li>▪ Reports by regional and international inspection bodies (UN Rapporteur, CPT etc).</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Ministry of Interior or Justice</li> <li>▪ Independent inspection bodies</li> <li>▪ NGOs</li> <li>▪ Academicians, researchers</li> <li>▪ Websites of regional and international inspection bodies</li> </ul>   |           |
| 6.9 | PUBLIC OPINION AND ACCOUNTABILITY | <ul style="list-style-type: none"> <li>▪ Government policy documents/National Development Plan, including the penal system</li> <li>▪ Ministry of Justice/Ministry of Interior reports</li> <li>▪ Penal System Reports and policy documents</li> <li>▪ Press reports</li> <li>▪ Reports by NGOs working on criminal justice issues</li> <li>▪ Public surveys and research reports</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Ministry of Justice/Interior</li> <li>▪ Senior Prison System officials</li> <li>▪ Media representatives</li> <li>▪ NGOs working on criminal justice issues</li> <li>▪ Bar Associations and lawyers</li> <li>▪ Ex-detainees, ex-prisoners, families of detainees and prisoners</li> </ul>                                 |           |

|     | TOPIC               | SOURCES  | CONTACTS   | COMPLETED |
|-----|---------------------|--|--|-----------|
| 7.1 | SYSTEM COORDINATION | <ul style="list-style-type: none"> <li>▪ Ministry of Justice reports</li> <li>▪ Ministry of Interior reports</li> <li>▪ Ministry of Health reports</li> <li>▪ Penal System Reports (Pre-trial, prison and probation services)</li> <li>▪ National Police Crime reports</li> <li>▪ Court Annual Reports</li> <li>▪ NGO reports: penal system, including pre-trial facilities</li> <li>▪ Donor reports</li> <li>▪ The Constitution</li> <li>▪ Criminal/Penal Code</li> <li>▪ Criminal/Penal Procedure Code</li> <li>▪ Penal Enforcement Code</li> <li>▪ Probation Act and any other relevant acts of parliament</li> <li>▪ Regulations to these codes and acts</li> <li>▪ Judicial Sentencing Policy Document</li> <li>▪ Judicial Practice Directions, Circulars and Sentencing Guidelines</li> <li>▪ Government policy documents/ National Reform Programmes</li> <li>▪ Independent reports made by non-governmental organisations.</li> <li>▪ Legal textbooks or academic research papers.</li> <br/> <li>▪ Juvenile Court Act</li> <li>▪ Regulations to this act</li> <br/> <li>▪ Health Act</li> <li>▪ Act governing drug courts</li> <li>▪ Regulations to Health Acts</li> <li>▪ Probation Service Health Policy/Strategy Paper</li> <li>▪ Medical Association Reports</li> <li>▪ Psychiatrists' Association Reports</li> <li>▪ UNHCR reports on the country assessed;</li> <li>▪ Reports on minority groups by NGOs and others working on minority rights</li> <li>▪ Reports/Minutes of coordinating meetings</li> <li>▪ Reports on special joint initiatives</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> </ul> <p>SITE VISITS</p> | <ul style="list-style-type: none"> <li>▪ Ministry of Justice /Ministry of Interior</li> <li>▪ Ministry of Health</li> <li>▪ Senior Prison Service Officers</li> <li>▪ Senior Probation Service Officers</li> <li>▪ High Court Judges and other senior judges</li> <li>▪ NGOs working on criminal justice matters</li> <li>▪ Donor organisations working on the criminal justice sector</li> <li>▪ Senior Probation Service Staff</li> <li>▪ Senior Prison Service Staff</li> <li>▪ Legislative offices</li> <li>▪ Bar Associations</li> <li>▪ Donor organisations working on the criminal justice sector</li> <li>▪ Regional and local prison staff</li> <li>▪ Regional and local police staff</li> <li>▪ Regional and local judges and magistrates</li> <li>▪ Local probation service offices or other bodies responsible for preparing social enquiry reports and for supervising those who received alternatives to pre-trial detention</li> <li>▪ Former detainees/prisoners, and their families,</li> <br/> <li>▪ Juvenile courts /Juvenile police</li> <li>▪ Juvenile probation staff</li> <br/> <li>▪ Health services providing treatment for mentally ill offenders</li> <li>▪ Medical Association</li> <li>▪ Psychiatrists' Association</li> <br/> <li>▪ Drug courts</li> <li>▪ Health services providing treatment for drug addicted offenders</li> <li>▪ Offenders on treatment for drug addiction and their families</li> <li>▪ UNHCR staff;</li> <li>▪ Consular representatives and/or families of foreign offenders</li> <li>▪ Families of minority group detainees</li> <li>▪ NGOs working on minority rights</li> <li>▪ Donor organisations</li> </ul> |           |

|     | TOPIC              | SOURCES   | CONTACTS  | COMPLETED |
|-----|--------------------|---|---|-----------|
| 7.2 | DONOR COORDINATION | <ul style="list-style-type: none"> <li>▪ Donor Strategy papers</li> <li>▪ Progress reports by donor organizations</li> <li>▪ Independent studies conducted by universities/NGOs</li> <li>▪ Ministry of Interior/Justice strategy papers relating to cooperation and coordination with donors</li> </ul> | <ul style="list-style-type: none"> <li>▪ Donor organisations</li> <li>▪ Ministry of Justice</li> <li>▪ Universities and NGOs</li> </ul> |           |





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