MONITORING PRISON
VIOLENCE

A Handbook for National Preventive Mechanisms

LUDWIG
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Monitoring Prison Violence

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Table of contents

What contributes to the prevention of violence the most are not heavy security measures but a dynamic concept of security and quality of life in prison

EXECUTIVE SUMMARY

Violence in prison may not only amount to a serious violation of human rights, including torture, but is often part of a much broader and systemic problem in penal institutions. In the majority of cases, the occurrence of violence can in fact be linked to structural factors, such as deplorable living conditions, understaffing and lengthy lock-up times in cells. These factors, as well as the prevailing cultural norms and attitudes of persons working and living in prison, are of extreme importance to prevent violence.

Yet many States and prison administrations limit themselves to treating only the symptoms and not the structural causes of prison violence, thereby failing to provide a long-term solution to the problem. Indeed, violence is often countered only with the creation of a more coercive prison environment with higher security levels, for example, by upgrading the equipment of prison officers (e.g. pepper spray or other weapons, and protective gear, body cams) or by building new prisons.

One of the principle finding of this Project, however, is that prison violence is an extremely complex phenomenon and thus policies and strategies designed to effectively prevent it must look beyond the direct causes of each incident of violence and adopt a holistic approach that also considers other, less visible factors enabling violence. For these reasons, this Handbook works with a broad definition of violence, including not only direct but also structural and cultural violence. National Preventive Mechanisms (NPMs) can play an important role in this regard. They are in an ideal position to observe

NPMs are in an ideal position to monitor violence and its root causes

the implementation of international standards that support and reinforce the prohibition of torture and ill-treatment. Their role is all the more important, because with their strong powers to access places of detention, official records and persons deprived of their liberty, NPMs are able to assess if these standards are met in law and in practice.

This Project draws on previous research of the Ludwig Boltzmann Institute of Fundamental and Human Rights.[1] In particular, it adopts the assumption that improving prison conditions 'at home' can contribute to increased mutual trust between the European Union (EU) Member States. Based on this, the Project focuses on how NPMs can effectively improve detention conditions across the EU as well as contribute to the consolidation and harmonisation of detention standards.

To support NPMs in this task, this Handbook provides a practical tool for improving the understanding of:

· The thematic issue of violence and the risks associated with it
· The existing international standards on violence and those pertaining to its prevention
· How to apply these international standards in practice and effectively prevent and monitor violence

The Handbook was written with the aim to raise awareness among NPMs on certain topics which,

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1. Ludwig Boltzmann Institute of Human Rights and Human Rights Implementation Centre, Enhancing Impact of National Preventive Mechanisms. *Strengthening the Follow-up on NPM Recommendations in the EU: Strategic Development, Current Practices and the Way Forward* (2015); Ludwig Boltzmann Institute of Human Rights and Academy of European Law (ERA), *The Future of Mutual Trust and the Prevention of Ill-treatment – Judicial cooperation and the Engagement of National Preventive Mechanisms (2017)*.

during the course of the Project, were identified as important factors for enhancing their work and their impact in terms of preventing violence.

The overall idea is to support NPMs in finding effective tools to investigate the root causes of violence, or in other words, the more indirect or hidden aspects that enable violence, such as structural, situational and cultural factors. To this end, the Handbook incorporates innovative methodologies, such as systemic questions and appreciative inquiry, as these can be particularly effective for the monitoring of violence and its prevention.

We hope the Handbook will contribute to enhancing the impact of the work that NPMs undertake for the prevention of violence in prisons and, ultimately, support the improvement of prison conditions in the EU.

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> *NPMs are actors of change*
> *and can contribute to*
> *improving prison conditions*
> *in the EU*

1. INTRODUCTION

Project background

This Handbook is written in the framework of the **EU Project 'Improving judicial cooperation across the EU through harmonised detention standards – the role of National Preventive Mechanisms'** implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights, in cooperation with the Associazione Antigone, the Bulgarian Helsinki Committee and the Hungarian Helsinki Committee.

The latest case-law of the **European Court of Human Rights (ECtHR)** as well as recommendations by international and national torture prevention bodies show that no European Union (EU) Member State (MS) has eradicated the problem of ill-treatment in prisons and that there are significant disparities between penal systems within the EU.[2] This raises a major challenge for EU cross border cooperation. Judges must verify that fundamental rights, especially the prohibition of torture and ill-treatment, are respected before they can implement mutual recognition instruments.[3] The latest available statistics concerning the European Arrest Warrant (EAW) are exemplary: EU

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2. See European Court of Human Rights (ECtHR), 'The European Court of Human Rights in Facts and Figures: 2019' (2020) 10-11. There are 180 cases of violations of Art 3 of the European Convention of Human Rights (ECHR) in the Council of Europe Member States, 70 of which (as correctly stated in the text) concern EU countries. Those 70 cases translate into 55 direct cases of torture or ill-treatment (under Art 3), 10 cases where states have not conducted effective investigations (under Art 3) and 5 cases where a conditional violation was found (under Art 2/3).

3. Relevant EU instruments are: Justice and Home Affairs Council (JHA Council), Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures (2002/584/JHA) Recital 12; and the JHA Council, Council Framework Decision, on the Application of the Principle of Mutual Recognition to Judgments in Criminal Matters Imposing Custodial Sentences or Measures Involving Deprivation of Liberty for the Purpose of their Enforcement in the European Union, 27 November 2008, 2008/909/JHA, Recital 13 and Art 3. See also, Court of Justice of the European Union (CJEU), Aranyosi and Căldăraru; Joined Cases C-404/15 and C-659/15 PPU, 5 April 2016; CJEU, ML, C-220/18 PPU, 25 July 2018; CJEU, Dumitru-Tudor Dorobantu. C-128/18, 15 October 2019; and for a more detailed overview EUROJUST, 'Case law by the Court of Justice of the European Union on the European Arrest Warrant' (2020).

Member States have refused execution on grounds of fundamental rights issues in close to two hundred cases throughout 2017-18 alone.[4] The compatibility of prison conditions with fundamental human rights is thus a problem that goes beyond national contexts and has practical relevance for the EU.

EU binding minimum standards for detention conditions are urgently needed. However, as the political will to implement such change is currently lacking, this Project looks at alternative paths for facilitating the consolidation and harmonisation of detention standards, at least to the extent that it is realistically possible without actions from the EU. The Project thus explores the role of **National Preventive Mechanisms (NPMs)** in improving detention conditions across the EU, departing from the assumption that improving detention conditions "at home" can contribute to increased mutual trust between the MSs.

NPMs are in an ideal position to observe the implementation of international standards that support and reinforce the prohibition of torture and ill-treatment. Their role is all the more important because with their strong powers to access places, documentations, and persons, NPMs are able to assess if these standards are met in law and in practice.[5]

Further, according to the **United Nations Subcommittee for the Prevention of Torture (SPT)** '*the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires ... that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.*'[6] This means that NPMs have a broad mandate that allows them to identify all factors that may be relevant for the prevention of torture and ill-treatment in the

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4. European Commission, 'Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2018' (2020) SWD(2020) 127 final, 6.
5. Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), 'The Approach of the Subcommittee on Prevention of Torture to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2010) CAT/OP/12/6, § 4.
6. Ibid, § 3.

concrete cases and, thus, have all it takes to investigate the root causes of the problems.

For these reasons, NPMs can and should go beyond mere inspection and monitoring of compliance. Rather they should offer recommendations on how to reduce the likelihood or risk of torture or ill-treatment that aim to support the State in the identification of forward-looking solutions and achieve change. By adopting this role, NPMs can be key players in upholding and harmonising EU standards on detention conditions.

Project objectives

To facilitate the NPMs work, this Project produced a **Series of Handbooks** that collect relevant international standards and guidance on how to monitor detention conditions.

The Handbooks are intended as a practical tool for NPMs to get a better understanding on:

· Main thematic issues and the risks for the prevention of torture and ill-treatment connected to them
· The existing international standards on selected thematic issues
· How to apply these international standards in practice and monitor the selected thematic issues

Overall, the Project aims to support NPMs in putting forward recommendations on how to reduce the likelihood or risk of torture or ill-treatment and, ultimately, contribute to prison conditions in full compliance with fundamental rights in the EU.

Project methodology

The EU funded Project began in January 2019 and covered four thematic issues identified based on results from previous projects and in direct consultations with EU NPMs. Under the overall coordination of the Ludwig Boltzmann Institute of Fundamental and Human Rights, each Project Partner was responsible for the research on one particular thematic issue,

namely: the Ludwig Boltzmann Institute of Fundamental and Human Rights for prison violence; the Hungarian Helsinki Committee for **requests and complaints**; the Bulgarian Helsinki Committee for **persons in a situation of vulnerability**; and the Associazione Antigone for **solitary confinement.**

The Project started with a desk research phase on existing international standards related to the four thematic issues, as well as on how EU NPMs monitor and contribute to the development of the standards in these thematic areas.[7] The research began after a brief initial consultation with NPMs to refine the Project focus.[8] Within the framework of the Project **several consultations** took place. Representatives of NPMs and other experts exchanged experiences and best practices in four Workshops – one per each thematic issue – as well as a Final Conference during a FinalConference, which took place on 3 and 4 November 2020.[9] In addition, each Project Partner conducted several bilateral interviews with representatives of NPMs, as well as other national or international experts and practitioners.

The Project findings resulted into **four thematic Handbooks.** While there are strong interlinkages between the Handbooks, the Consortium found it necessary to have four separate Handbooks in order to address the specific international standards and monitoring challenges for each thematic issue in depth. Accordingly, each Handbook was authored by the staff of the Project Partner in charge of the respective thematic issue. The Handbooks are complemented by a Dossier on systemic thinking in preventive human rights monitoring (Dossier), produced by the Ludwig Boltzmann Institute

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7. The Project covered 22 EU Member States. 4 EU Member States (Belgium, Ireland, Latvia and Slovakia) were not covered because they have not yet ratified the OPCAT; 2 EU Member States (Denmark and the United Kingdom) were not covered because they do not to participate in the European Commission Justice Programme. The United Kingdom withdrew from the EU on 31 January 2020 and therefore since 1 February 2020 is no longer an EU Member State.
8. The online survey was conducted in March 2019. 14 out of 22 NPMs participated.
9. The first Workshop "Treatment of certain groups of prisoners in a situation of vulnerability Goal" took pace in Sofia on 18 – 19 November 2019; the second Workshop 'Isolation and solitary confinement in prison' took place in Rome on 27 – 28 January 2020; the third Workshop 'Requests, complaint procedures and the right to information in prisons" took place online due to the Covid-19 pandemic on 27 – 30 April 2020; the fourth Workshop 'Preventive Monitoring of Violence in Prisons" took place also online on 20, 27 May and 3 June 2020. Moreover in July 2020 an online consultation on the Systemic Approach to NPM work was held.

of Fundamental and Human Rights, that explores how to apply systemic approach in the work of National Preventive Mechanisms to enhance their impact.

Introduction to the Handbook: Monitoring Prison Violence

There is no EU-wide study on prison violence, hence, it is difficult to assess the overall situation concerning this issue in the EU area. However, various sources unambiguously point to a conspicuous and steady increase in violent incidents in prisons across the European Union.[10]

Violence in prison may not only amount to a serious violation of human rights, including torture and ill-treatment, but is often a symptom of much broader and systemic problems in penal institutions. In the majority of cases, the occurrence of violence can in fact be linked to other causes, such as deplorable living conditions, understaffing and lengthy lock-up times in cells as well as the cultural norms and attitudes of persons working and living in prison. All such factors are of extreme importance, yet many States and prison administrations limit themselves to treating only the symptoms and not the causes of this complex problem, thereby failing to provide a long-term solution to the problem.

But in order to understand prison violence and to effectively prevent it, one must look beyond the direct causes of each incident, and take a holistic approach that also considers underlying factors that enable violence, such as structural, situational and cultural issues.

NPMs can have an important role in this regard. In practice, however, monitoring a complex phenomenon like violence, identifying its forms and

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10. But see Jens Modvig 'Violence, sexual abuse and torture in prisons' in WHO/Europe, 'Prison and Health: World Health organization Regional Office for Europe' (2014) 19ff <https://apps.who.int/iris/bitstream/handle/10665/128603/Prisons%20and%20Health.pdf?sequence=1&isAllowed=y>;   Dignity, 'Monitoring Health in Places of Detention: An Overview for Health Professionals' (Dignity 2020) 236 [hereinafter: Dignity 2020]; Eurostat Statistics Explained, 'Prison Statistics: Overcrowding and Empty Cells' (July 2020) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Prison_statistics#Overcrowding_and_empty_cells>; European Committee for the Prevention of Torture (CPT), '27th General Report of the CPT' Activities, 1 January – 31 December 2017' (2018) CPT/Inf(2018)4, 16ff; European Union Agency for Fundamental Rights (FRA), *Criminal Detention Conditions in the European Union: Rules and Reality* (Publications Office of the European Union 2019) 43; CPT, '28th General Report of the CPT's Activities, 1 January - 31 December 2018' (2019) CPT/Inf(2019)9, 18 ff; CPT, '29th General Report of the CPT's Activities, 1 January-31 December 2019' (2020) CPT/Inf(2020)17, 22ff.

causes as well as the international standards relevant for its prevention is not an easy task. This Handbook is thus intended as a practical guide to assist NPMs, who are planning to tackle violence in their respective countries.

It is composed of four Parts. Part 2 aims at defining violence, giving an overview of its main forms, causes and contributing factors. Part 3 illustrates the international legal standards relevant for the prevention of violence in prison. Part 4 provides an overview of the monitoring tools NPMs can use in the prevention of violence. Finally, Part 5 includes concrete practical guidance for the effective monitoring of prison violence and its prevention. The latter aims to raise the awareness of NPMs on certain topics and methodologies that, according to the Project findings, have proved to be particularly effective for the monitoring of violence and its prevention.

As specified in the Project methodology, the findings of this Handbook are based on desk research and consultations with NPMs and experts conducted by the Ludwig Boltzmann Institute of Fundamental and Human Rights. Additionally, bilateral interviews were conducted with representatives of the NPMs of Austria, Estonia, France, United Kingdom, Portugal, and Romania and several experts.

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2 . U N D E R S T A N D I N G   P R I S O N   V I O L E N C E

2.1. Defining violence

The World Health Organisation (WHO) defines violence as '[t]he intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.'[11]

This definition of violence includes **physical force**, but also the threat of physical violence, sexual violence, psychological harm or manipulation. By referring to 'the use of power', it also includes acts that result from power relationships, such as neglect or acts of omission, which are not always directly visible. When thinking of prison violence, physical violence is the first thing that comes to mind. Yet, especially when addressing the prevention of violence in places of detention, it is important to think of violence from a holistic perspective, acknowledging all relevant factors that contribute to its occurrence. This handbook thus works with a broad definition of violence, including not only direct but also **structural** and **cultural violence**.[12]

Figure 1: Triangle of violence
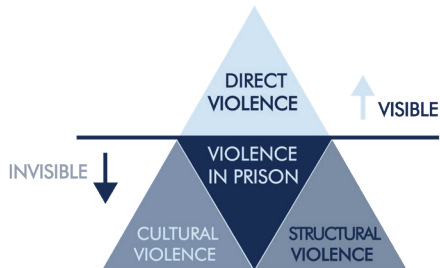
11. WHO, *World Report on Violence and Health* (2002) 5. The same definition is used in parts to define violence in Council of Europe (CoE), Committee of Ministers (CM), Recommendation CM/REC (2014)3 Concerning Dangerous Offenders (2014) CM/Rec (2014)3 [hereinafter: CM/Rec (2014)3].
12. Johan Galtung, 'Violence, Peace, and Peace Research' (1969) 6(3) Journal of Peace Research (JPR) 167−191.

2.1.1. Direct violence

Direct violence is always perpetrated directly by an aggressor that intends to harm others physically (e.g. beatings, murders, assaults, excessive use of force) or psychologically (e.g. bullying,[13] humiliation, discrimination) or aims to damage things. It also includes sexual violence (e.g. acts of a sexual nature committed by any person against another by coercion)[14] and gender based violence (e.g. any type of violence perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation and/or gender identity).[15] The WHO refers to three categories of victim-perpetrator relationships:

- **Self-directed violence** - Violence committed against oneself (e.g. suicide and non-suicidal self-injury, self-inflicted violence, self-neglect)

- **Interpersonal violence** - Violence committed by one individual against another

- **Collective violence** - Violence committed by a group of individuals against one or more persons (e.g. gang violence, violence related to religious conflicts, fights among different wings of the prison, riots, excessive use of force carried out by correctional emergency response teams).

In a prison context, interpersonal violence and collective violence can further be categorised as:

- **Inter-prisoner violence**
- **Violence committed by prisoners against staff**
- **Violence by staff against prisoners**

13. Her Majesty's Prison Service (HMPS), *Prison Service Order 2750: Violence Reduction* (2004) PSO 2750, which defines bullying as: 'Conduct motivated by a desire to hurt, threaten or frighten someone. It can be physical, verbal, psychological, emotional, or economical and of the very subtle. It is usually repeated behaviour, unprovoked and intended to cause fear or harm of the victim. Bullying cannot be mutual: it always involves a power imbalance. This distinguishes bullying from fights and assaults.'

14. See the International Committee of the Red Cross (ICRC), 'Sexual Violence in Detention' (2017), where the ICRC defines sexual violence in detention as follows *''the term 'sexual violence' is used to describe acts of a sexual nature committed by any person against another by coercion. Coercion can be caused by circumstances such as the fear of violence, duress, force, threat of force, psychological oppression or abuse of power. Sexual violence also comprises acts of a sexual nature committed by taking advantage of a coercive environment or a person's incapacity to give genuine consent."*

15. Committee on the Elimination of Discrimination against Women (CEDAW), 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (2017) CEDAW/C/GC/35; Convention on Preventing and Combating Violence Against Women and Domestic Violence (adopted 7 April 2011, entered into force 1 August 2014) (Istanbul Convention) Art 3: '*gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately'*; as well as the Inter-Agency Standing Committee (IASC), 'Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies' (2005) 7, which define violence as 'an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females' (2005). Such definition is also adopted by the UNHCR.

2.1.2. Structural Violence

Structural violence (or indirect violence) implies systematic, structural or institutional ways through which people are kept from accessing the resources needed to meet their basic needs and from 'achieving the quality of life that would otherwise be possible.'[16] Thus, prisons are places of structural violence per se, as in prisons 'autonomy and choices are severely curtailed; human wellbeing, potentials and development are undermined; feelings of safety and sense of security are weak; and human needs are systematically denied through the restrictive and inequitable distribution of resources.'[17]

Examples of structural violence occurring in prison are often linked to inadequate detention conditions. This includes the lack of separated toilets, over-crowding and insufficient living space, understaffing, lack of privacy and intimacy, budget constraints, overuse of security restrictions and insufficient personal possessions, insufficient access to educational and treatment programmes, insufficient opportunities to engage in work, religious activities, sports and other leisure provisions, inadequate training of staff as well as limited meaningful human contact and relationships. Furthermore, structural violence exists if rules or sentences are applied disproportionately or if they are discriminating against a prisoner or group of prisoners.

2.1.3. Cultural violence

Cultural violence has its roots in the values, religion and ideology of a society. It exists if social norms justify or legitimize direct or structural violence. In prison, it plays a key role in naturalizing violent behaviour or neglect, shaping how conflicts are handled, and whether violence in prison is celebrated, condoned, or condemned. Cultural violence may include a cynical attitude by staff towards prisoners, feelings of superiority of one group over the other, a culture of 'them against us', as well as language

16. Bandy X. Lee, *Violence: An Interdisciplinary Approach to Causes, Consequences, and Cures* (Wiley-Blackwell 2019) 123-142.
17. David Scott, 'Eating Your Insides Out: Cultural, Physical and Institutionally-Structured Violence in the Prison Place'(2015)221, Prison Service Journal (PSJ) 58-62.

or symbols used within a group to diminish others and to prepare for or justify violence, marginalization and dehumanization of 'others'. Dehumanization is a process in which people divide human beings into good and evil, worthy or unworthy of humane treatment, and thereby come to accept violations against the human dignity and rights of the 'unworthy' group. Dehumanisation creates moral exclusion. Persons that are seen as the 'others' are devalued and targeted based on their identity (gender, ideology, group affiliation, skin color, ethnicity, religion or age) and eventually are no longer protected by the predominant moral code.[18]

All three forms of violence are **interrelated and mutually reinforcing.** Direct violence manifests out of conditions created by the other two forms and cannot be prevented or eliminated without addressing them. In other words, cultural and structural violence can cause direct violence.[19] Direct violence, in turn, reinforces structural and cultural violence. 'Violence can start at any corner in the direct-structural-cultural violence triangle and is easily transmitted to the other corners. With the violent structure institutionalized and the violent culture internalized, direct violence also tends to become institutionalized, repetitive, ritualistic, like a vendetta.'[20]

2.2. Relevant factors for prison violence

Research identified multiple factors that influence the emergence of violence,[21] including:

- Individuals who have a tendency to violence
- Individuals who feel threatened and unsafe
- Individuals who belong to a prison gang or were member of a gang before imprisonment

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18. Ibid.
19. Mette Skar and others, 'Quality of Prison Life, Violence and Mental Health in Dubrava Prison' (2019) 15(3) International Journal of Prisoner Health (IJPH) 262-272 [hereinafter: Mette Skar and others]. The study showed that there is a high correlation between a negative aspects of prison environment and the occurrence of physical and psychological inter-prisoner violence. And that a prison environment with higher levels of respect, fairness, humanity and good relations between staff and prisoners lead to lower levels of violence.
20. Johan Galtung, 'Cultural Violence' (1990) 27(3) JPR, 302 <https://www.galtung-institut.de/wp-content/uploads/2015/12/Cultural-Violence-Galtung.pdf>.
21. HM Prison and Probation Service (HMPPS), 'Understanding Prison Violence: A Rapid Evidence Assessment' (2018); HMPPS, 'Guidance: Violence Reduction in Prisons' (2019) with further references.

- Unkept environments that leave people feeling uncared for.
- Cultural norms that accept violence as a solution to difficulties or as a way of establishing respect
- Lack of activity and illicit prison trade as well as related debts.
- Use of drugs and alcohol. Their use may lead to physical and psychological dependence, mental health problems and related acts of (self-directed) violence
- Interactions with staff in which prisoners feel mistreated, wrongfully accused or punished, and are neither treated kindly, fairly or justly, nor have decisions explained to them.

In general, factors relevant for the emergence of prison violence can be grouped as followed:

- Prisoner characteristics prior and during imprisonment (e.g. age and gender, history of violence, personality, use of psychoactive substances, vulnerability to violence and victimisation)
- Structural or situational factors (e.g. prison architecture and design; level of security, prison size, time out of cell, freedom of movement, the availability of different resources and facilities, the extent of choice over daily activities, communication difficulties due to language barriers, staff shortage, trafficking of drugs and contrabands)
- Administrative, procedural and managerial factors (e.g. management style; staff skills, experience and training; prison culture; lack of prison officer discipline and morale; staff violence; conflict resolution skills; accountability; functioning of a complaint mechanism; perception of safety and fairness; procedure for recording incidents)
- Outside environmental influences (e.g. political mood, political pressure on prison administration, racial tensions, criminal policies).

2.3. What works to prevent prison violence

Because of its complexity, many States and prison administrations often struggle to **provide a long-term solution to the problem of violence.** Often violence is countered by focusing only on its immediate causes and by adopting a more coercive prison environment with higher security levels, for example by upgrading equipment of prison officers (e.g. pepper spray

or other weapons, and protective gear, body cams) or building new prisons. The need for a tougher approach is often justified by prison guards' unions or prison officers' associations as an immediate reaction to incidents of violence that harmed or endangered prison officers.[22] It is understandable that prison guards seek to maintain safety, security, good order and control trough traditional security measures before going down new, untried paths.

However, research has shown time and again that heightened security measures are not the solution and that, on the contrary, a more coercive prison environment is often followed by even higher rates of violence.[23] Instead, research suggests that the existence of a **'light-present regime'**, as opposed to a 'heavy-absent prison' is to be recommended.[24] As illustrated in Figure 2 below, contrary to a 'heavy-absent prison' characterised by oppression, confrontation and intimidation but unavailable and unengaged staff, a 'light-present regime' is a regime where the power of staff is present and staff is confident in solving conflicts and resolving all kinds of incidents. Security, safety and good order are ensured through the concept of dynamic security. Staff have close and good relationships with prisoners, are supportive and provide a just and fair regime that feels relaxed and purposeful and in which boundaries and expectations are clear.

22. Alison Liebling, *Prisons and their Moral Performance. A Study of Values, Quality and Prison Life* (OUP 2004) 402 [hereinafter: Liebling, Prisons]; Göran Schattauer, *Gewalt in Gefängnissen: JVA-Beamte fühlen sich wie 'Fußabtreter von Kriminellen* (Focus Online 2019); see also the news articles ,GÖD will härtere Gangart im Gefängnis' of 8 February 2017 in tirol@orf.at <https://tirol.orf.at/v2/news/stories/2824592/>; ,Schlagabtausch zwischen Volksanwaltschaft und Justizwachegewerkschaft' of 9 February 2017 in derStandard 2017 <https://www.derstandard.at/story/2000052373431/schlagabtausch-zwischen-volksanwaltschaft-und-justizwachegewerkschaft>; and ,Die Schwierigkeit, etwas dazuzulernen' of 28 February 2017 in Wiener Zeitung < https://www.wienerzeitung.at/themen/stadt-und-land/876666-Die-Schwierigkeit-etwas-dazuzulernen.html>.
23. Lisa Gadon and others, 'Situational Variables and Institutional Violence: A Systematic Review of the Literature' (2006) 26(5) Clinical Psychology Review (CPR) 515-534.
24. Ben Crewe, Alison Liebling and Susie Hulley 'Heavy-light, absent-present: rethinking the 'weight' of imprisonment' (2014) 65(3) British Journal of Criminology 387-410; Ben Crewe and Alison Liebling (2015) 'Staff culture, authority and prison violence', (2015) 221 Prison Service Journal 9-14.

OPPRESSIVE , CONFRONTATIONAL, INTIMIDATING

HEAVY

OPPRESSIVE

TRADITIONAL
CYNICAL

INVISIBLE
UNAVAILABLE
UN-ENGAGED
LAISSEZ-FAIRE
INSECURE
WEAK

PROFESSIONAL-
POWERLESS

ABSENT

PRESENT

VISIBLE
AVAILABLE
ENGAGED
INTERVENTIONIST
CONFIDENT
AUTHORATIVE

TRADITIONAL -
PROFESSIONAL

NAIVE
PERMISSIVE

INSECURE

LIGHT

RELAXED, CO-OPERATIVE, APPROACHABLE
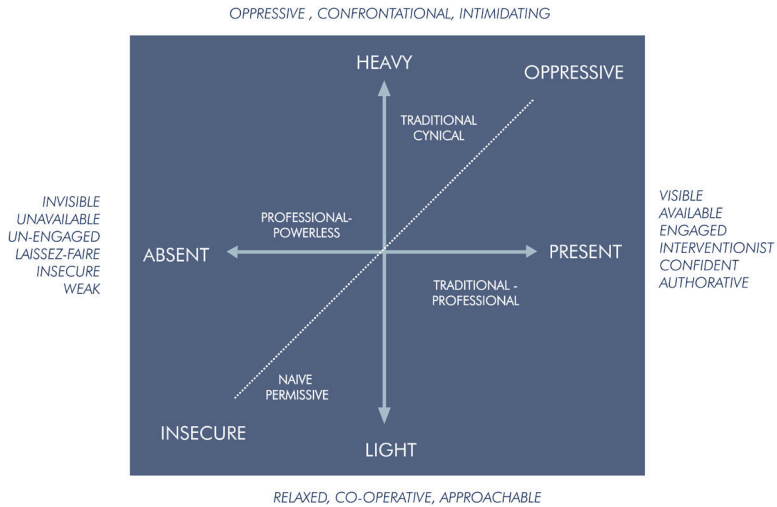
Figure 2:'Heavy-light, absent-present'

In other words, what contributes to the prevention of violence the most, are not heavy security measures but a **dynamic concept of security and quality of life in prison.** The quality of life in a prison is particularly influenced by the following factors:

- Safety, decency and fairness within the prison
- The type of regime and conditions of imprisonment
- The possibility to maintain contact with family and engage in personal development
- Good relationships between prisoners and prison staff. Only if prisoners and staff feel safe and prisoners feel treated decently and fairly, can good staff-prisoner relationships be established that are of capital importance for initiating trust and support as well as for maintaining a stable equilibrium in the prison.
- Good working conditions for staff
- Drug control and health care, including special care for groups with special needs and those in a situation of vulnerability
- A positive and rehabilitative prison culture

3. STANDARDS

Having adopted a broad definition of prison violence, identifying key standards relevant to prevent it is not an easy task. Violence being a complex phenomenon with a variety of causes, almost all prison standards are somehow relevant to its prevention. An additional difficulty is that there is not one comprehensive instrument setting out guidelines for addressing violence in prison, but that relevant standards are dispersed across a multitude of different documents, often providing different levels of protection. Moreover, international standards are frequently phrased in a broad manner that is not precise enough and may be difficult to apply in practice.

Nevertheless, knowing international standards on prison violence is a precondition for effective monitoring. The following section thus aims to collate all relevant standards applicable to prison violence in one place to offer a brief and easily accessible overview for NPMs.

Part 3 starts by illustrating the relationship between violence and the prohibition of torture and other forms of ill-treatment. Part 3.2 further collects all international standards that were identified as particularly important in the prevention of violence and thus as relevant factors to consider when investigating prison violence and its root causes. These include, amongst others, standards on the maintenance of safety and security (§ 3.2.1), on ensuring accountability and victim protection (§ 3.2.2) as well as on living conditions of prisoners and staff in prison that were identified as particularly relevant for the prevention of violence (§ 3.2.3 and 3.2.4).

3.1. When does violence amount to torture and other forms of ill-treatment?

The prohibition of torture and other forms of ill-treatment not only requires prison officials to refrain from acts of torture or other ill-treatment but also to take measures to prevent and protect prisoners from risks to their safety and personal security. When a state deprives a person of their liberty, it has a positive obligation, a duty of care, towards them. This means that the authorities must maintain his/her safety by exercising effective control over places of deprivation of liberty and protecting them from all types of physical, sexual or emotional abuse. This obligation covers risks arising from the prison estate and its management, such as excessive violence committed by prison staff towards prisoners (see also below § 3.2.1.4).

It also implies, however, that state authorities may be held accountable for acts of torture and other forms of ill-treatment perpetrated by private actors, if they know or should have known that acts of torture or ill treatment were being committed and they failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State or private actors in accordance with the Convention.[25] This may, for example, be the case with inter-prisoner violence, self-harm and suicide. Finally, it is important to remember that also mental anxiety caused by the threat of violence and the anticipation of such can amount to a form of ill-treatment.[26]

3.2. Standards to prevent the risk of violence

3.2.1. Security and safety

The term security in the context of deprivation of liberty is generally understood as the risk of escape of the detainees and the potential risk

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25. See Committee against Torture (CAT Committee), 'General Comment No 2 on the Implementation of Article 2 by the States parties' (2008) CAT/C/GC/2, § 18; for a commentary on Arts 1 and 16 of the CAT see also Manfred Nowak, Moritz Birk, Giuliana Monina, *The United Nations Convention Against Torture and its Optional Protocol* (OUP 2019) 23ff and 441 ff [hereinafter: Nowak/Birk/Monina]; for an overview of the ECtHR jurisprudence see CoE, 'The Prohibition of Torture: A Guide to the Implementation of Article 3 of the European Convention on Human Rights. Human Rights Handbooks, No 6' (CoE 2002) and ECtHR, 'Guide on the Case-Law of the European Convention on Human Rights: Prisoners' Rights' (2021) [hereinafter: ECtHR, Guide: Prisoners' Rights].

26. E.g. CAT Committee, *Dadar v Canada,* No 258/2004, 23 November 2005, §§ 2.3 and 8.6; Human Rights Committee (HRC) *Njaru v Cameroon*, No 1353/2005, 19 March 2007, §§ 3.1, 6.1; ECtHR, *D.F. v Latvia*, No 11160/07, 29 October 2013, § 85; ECtHR, *Rodić and Others v Bosnia and Herzegovina*, No 22893/05, 27 May 2008.

they posed to the community.[27] Prison security is a complex issue which encompass several aspects, such as physical security (walls, grilles, bars, gates, CCTV) and procedural security (searches, controlled movement, alarms, communications, management of keys and categorisation). Physical and procedural security are crucial, but not sufficient in themselves. Recent standards provide that to be secure prisons must also respect the principle of **dynamic security.**

STANDARDS IN FOCUS

Rule 51.2 EPR establishes that 'The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners under their control.'

The **Mandela Rules** acknowledge the concept of dynamic security under Rule 76(c) providing that training of prison staff must include notions of 'security and safety, including the concept of dynamic security …'.[28]

Dynamic security is also explicitly referred to in several **Recommendations and Handbooks.**[29]

The concept implies that the respect of human rights, positive and fair staff-prisoner relationships and purposeful activities are equally essential aspects of a secure prison. It is based on the assumption that security in practice also depends on **'dynamic factors'**, such as:

- to what extent staff knows how to interact with prisoners and does so on a regular basis,
- to what extent staff is aware of what is going on in the prison and can make sure that prisoners are kept active in a positive way.

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27. A definition of the term '*security*' can be found in the EPR, Rule 51.1.
28. See also PRI and ODIHR, 'Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners' (2018) 41 [PRI and others, Guidance Document].
29. E.g. CoE, CM, 'Recommendation CM/Rec(2012)12 for the Committee of Ministers Concerning Foreign Prisoners' (2012) § 31.1; CoE, European Committee On Crime Problems (CDPC), Handbook for Prison and Probation Services Regarding Radicalisation and Violent Extremism PC-CP (2016) 2 rev 4, 31; for more general information see also United Nations Office on Drugs and Crime (UNODC), 'Handbook on Dynamic Security and Prison Intelligence' (2015) 29; CoE, 'Strengthening the Protection of the Rights of Sentenced Persons: Trainer's Manual on Dynamic Security' (2018).

Only if these conditions are fulfilled can staff be in a position to recognise a threat to security at a very early stage and take timely action to prevent it.

The term '**safety**', on the other hand, is linked to the obligation to protect against the risks that prisoners may pose to themselves in terms of self-harm, to other prisoners as well as to prison staff and other persons working in or visiting the prison.[30]

Ensuring security and safety is of outmost importance, but must be done in the full respect of the **dignity and fundamental rights of the persons concerned.** To this extent, all measures aiming at ensuring security and safety in prison that interfere with human rights need to respect the following principles:

- **Legality:** All restrictive measures imposed upon a prisoner should be in accordance with international and national law, and have a legitimate objective.

- **Necessity:** The measures must be necessary, i.e. it should be clear that using less restrictive means would not fulfil the objective of ensuring safety and security.

- **Proportionality:** The restrictive measure should be proportional to the risk posed, with an appropriate balance between the protection of the fundamental rights of the prisoner and the State's lawful interference in the exercise of these rights. Such interference should be the least intrusive possible to fulfil the aim of ensuring security and order in prison and be imposed for the shortest possible duration.

- **Accountability:** The decision-making process should be transparent and records should be kept of the assessment justifying the need for the restrictions imposed.

- **Non-discrimination:** Decisions should be objective and impartial, taking into account only the relevant factors. There should be no discrimination against certain groups of prisoners based on race, colour, religion, ethnicity, nationality, gender, gender identity, sexual orientation, political views or any other factor.[31]

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30. A definition of the term 'security' can be found in the EPR, Rule 52.1.
31. See CoE, Protection; see CPT, 'Solitary Confinement of Prisoners: Extract from the 21st General Report of the CPT Published in 2011' (2011) CPT/Inf(2011)28-part2, § 55; CoE, CM, 'Explanatory Memorandum to Recommendation CM/Rec (2014) 3 of the Committee of Ministers to Member States Concerning Dangerous Prisoners', §§ 52-54.

In practice, concrete security and safety measures may entail inter alia: an individualised assessment of the risks and needs of each prisoners soon after their admission and the classification of prisoners, the adoption of security regimes and protective measures for the safety of prisoners, prison staff and others working in or visiting prisons as well as the use of restraints, force and other means of coercion. The following section contains a brief overview of each of these measures.

3.2.1.1. Risk assessment, individual needs and classification

Authorities should conduct an individualised risk and needs assessment soon after the admission of each prisoner. Prisoner assessments should, however, never be based solely on safety and security risks. They must always also encompass an assessment of the prisoner's needs, giving due consideration to all the activities that a prisoner should be able to engage in during their sentence, including rehabilitation programmes. Such an assessment should be reviewed at regular intervals and modified as necessary. These assessments will ensure that each prisoner is held in security conditions appropriate to the individual levels of risk.[32]

Certain prisoners are in a particular situation of vulnerability in detention, such as persons with intellectual and psychosocial impairments, young as well as elderly detainees, foreign prisoners and others faced with difficulties in terms of communication, prisoners belonging to an ethnic minority or an indigenous group and LGBTIQ prisoners (see also in this series, the Handbook on Prisoners in a Situation of Vulnerability). It is thus especially important that persons in a situation of vulnerability are identified and their individual needs assessed by qualified staff. To this end, different categories of prisoners shall be kept in separate institutions or parts of institutions, taking into account their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.[33]

3.2.1.2. Security or safety procedures as well as special high security regimes and protective measures

If the prisoner poses a particular threat to security a special high security

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32. EPR, Rules 16 and 51; see Mandela Rules, Rules 2, 4(2), 89, 93, 94; see also CPT, 'Report on the visit to Cyprus' (2018) CPT/Inf (2018) 16.
33. EPR Rule 17; Mandela Rules 11, 89, 93, 94.

regime may be applied. High security regimes may include a special high security prison ward, the prohibition of contact with other prisoners, constant monitoring of the cell – including sanitary facilities – via close circuit television cameras, increased supervision of movement within and outside the remand centre, limitations on contact with family together with special arrangements for family visits and inspections of body and clothes. Rule 53.2 of the EPR emphasises that special security measures should only be applied in exceptional circumstances and reviewed regularly. Similar rules are provided by a number of Council of Europe recommendations for prisoners under a life-sentence and other long term prisoners,[34] dangerous prisoners[35] as well as prisoners sentenced for terrorist-related crimes.[36] The UN Committee against Torture (CAT Committee) has also expressed concerns at the severe conditions of detention imposed on prisoners in the highest security category.[37]

STANDARDS IN FOCUS

The issue of security regimes was addressed by the ECtHR in several cases concerning Art 3 ECHR.[38] In its assessment, the ECHR took into account.

- The stringency of the measure
- Its duration
- The objectives pursued
- The cumulative effect on the person concerned.

Public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees, e.g. dangerous detainees. However, in applying those regimes the State must ensure that:

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34. CoE, 'Recommendation Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners' (2003) Rec(2003)23 § 20.

35. CM/Rec (2014)3 § 41; and CoE, 'Recommendation No Rec (82) 17 Concerning Custody and Treatment of Dangerous Prisoners' (2005) R (82) 17.

36. CoE, CM, 'Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism' (2016) § 21.

37. E.g. CAT Committee, Concluding Observations: Spain (2002) CAT/C/CR/29/3; CAT Committee, Concluding Observations: Italy (2017) CAT/C/ITA/CO/5-6.

38. ECtHR, *Indelicato v Italy*, No 31143/96, 18 October 2001; ECtHR, *Labita v Italy*, No 26772/95, 6 April 2000; ECtHR, *Van der Ven v the Netherlands*, No 50901/99, 4 February 2003 and ECtHR, *Lorsé and Others v the Netherlands*, No 52750/99, 4 February 2003; ECtHR, *Piechowicz v Poland*, No 20071/07, 17 April 2012, paras 161–162.

> - The person is detained in conditions which are compatible with respect for his/her human dignity
> - The methods of execution of the measures do not subject him/her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention;
> - The detainee's health and well-being are adequately secured.

Similarly, where there is a particular risk for other prisoners, prison staff or other persons working in or visiting the prison or the risk of self-harm, the authorities are required to adopt **protective measures to ensure the safety of the concerned individuals.** Protective measures may include: facility arrangements (e.g. providing single cells to prisoners under threat or to violent prisoners), technical measures (e.g. real-time camera monitoring, locks and special walls) as well as organisational measures (including the transfer of prisoners within the same or to other facilities, special prisoner regimes, exclusion from or restriction of activities, disciplinary measures, irregular checks, including during the night, and special training for officials). They are often applied to prisoners who are in a situation of particular vulnerability in detention, such as foreign prisoners and minorities, prisoners suspected or convicted of sexual offences, and prisoners who have previously collaborated with law-enforcement authorities. If the authorities fail to take any such preventive measures, a violation of the prohibition of torture and ill-treatment may be found.

> **STANDARDS IN FOCUS**
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> **In Rodić and Others**[39] **v Bosnia and Herzegovina and D.F. v Latvia,**[40] the ECtHR found a violation of Art 3 ECHR due to the fact that the applicant was not adequately protected from inter-prisoner violence. The Court reaffirmed the following State obligations:
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> - State authorities must ensure that foreign prisoners, minorities and prisoner who have previously collaborated with law-enforcement

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39. ECtHR, *Rodić and Others v Bosnia and Herzegovina* No 22893/05 27, May 2008, paras 69-7; see also ECtHR, 'Factsheet: Detention Conditions and Treatment of Prisoners' (2020) § 237.
40. ECtHR, *D.F. v Latvia*, No 11160/07, 29 October 2013.

authorities are protected from violence or intimidation by other prisoners, for example by placing the applicants in separate accommodation.

· The authorities must deal with a prisoner's request for a transfer with the necessary urgency and in a manner proportionate to the perceived risk faced by the person concerned.

· Any transfers of persons in a situation of vulnerability should be part of a carefully designed strategy for dealing with inter-prisoner violence.

When security and safety measures and regimes are applied, prisoners pay a heavy price, as these measures may result in involuntary separation from the general prison population and/or reduced activities programmes, compared to those available under the normal prison regime.[41] Hence, special security and safety measures should be applied only if there is no other choice. Generally, prison authorities should therefore '*strive to create environments in which all prisoners can be safe and free from abuse and should have a set of procedures that enable all prisoners to mix without fear of assault or other violence, namely to ensure that prisoners are able to contact staff at all times, including at night*',[42] and allow prisoners to take part in daily activities as much as possible. In other words, all efforts should be made to ensure that the security and safety measures, including those taken for protective purposes, entail only the minimum necessary restriction and do not amount to a violation of the international standards on solitary confinement (see also in this series the Handbook on Solitary Confinement in Prison).

3.2.1.3. Instruments of restraint

Other measures that may be adopted are means of restraints. All restraints that are inherently degrading (e.g. use of chains, irons and others) are absolutely prohibited, and restraints should never be used on women during labor, childbirth or immediately after childbirth.[43] Both the European Prison Rules (EPR) and Mandela Rules make clear that

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41. CPT, 'Developments Concerning CPT Standards in Respect of Imprisonment: Extract from the 11th General Report of the CPT' (2001) CPT/Inf(2001)16-part, § 27.
42. Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (2006) p 74 < https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>; and the draft Commentary to the revised EPR (2020) <https://cdn.penalreform.org/wp-content/uploads/2020/07/EPR-Commentary.pdf> p 32.
43. EPR Rules 68.5-68.6; see also Mandela Rules, Rule 47; UNGA, 'United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders', Res 65/229 of 21 December 2010 (Bangkok Rules) Rule 24.

instruments of restraints must be used only if authorized by law, as a last resort, and in a proportionate manner.[44] According to the EPR, handcuffs, restraint jackets and other body restraints shall not be used except for specific grounds: if necessary as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise, or in order to protect a prisoner from self-injury, prevent injury to others or serious damage to property, provided that in such instances the director shall immediately inform a medical practitioner and report to a higher prison authority.[45] Prisoners should, however, never be restricted for reasons of punishment, mere convenience of staff, because of staff shortages or as a substitute for proper care or treatment.[46]

STANDARDS IN FOCUS

In **Tali v Estonia** the ECtHR found that the use of handcuffs as well as measures of passive defense, such as shields, flak jackets and helmets as well as immobilization techniques by prison guards in response to a prisoner, who had refused to comply with staff orders to move to a punishment cell, did not amount to a violation of Art 3 ECHR. However, the use by prison staff of handcuffs, telescopic baton, pepper spray and a restraint bed on a prisoner who had refused to comply with a lawful order by the prison staff and had behaved aggressively towards them, did constitute a breach of Art 3 ECHR.

The ECtHR recognized the difficulties States might encounter in maintaining order and discipline in penal institution, but nonetheless found a breach of Art 3 ECHR, especially considering the cumulative effect of the measures used as well as the use of pepper spray in a confined space, in contravention of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).[47]

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44. EPR Rule 68; Mandela Rules, Rules 47 – 49.
45. EPR Rule 68.4; similar grounds are set up by the SMR at Rule 47.2.
46. EPR Rule 60.5; Mandela Rules, Rule 43(2); see also CPT, 'Means of Restraint in Psychiatric Establishments for Adults' (Revised CPT Standards) (2017) CPT/Inf(2017)6.
47. ECtHR, *Tali v Estonia*, No 66393/10, 13 February 2014, §§ 78ff. For CPT standards on pepper spray see eg CPT, 'Report on the Visit to the Czech Republic' (2009) CPT/Inf (2009) 8 § 46.

> **CPT standards:** The CPT has also set out specific standards on instruments of restraint in psychiatric establishments for adults.[48]

3.2.1.4. Conflict resolution, use of force and other means of coercion

The use of force can be considered as a legitimate method for restoring security and order in prison, only if it is used as a last resort. In practice, this means that prison authorities must first and foremost aim to prevent and resolve conflicts[49] before they escalate. To this extent, both the EPR and the Mandela Rules explicitly state that prison administrations are encouraged to use, to the extent possible, 'conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts'. Both instruments also refer to dynamic security, which is based on the idea that a good relationship between staff and prisoners can ensure that security threats are detected at an early stage and addressed through a process of dialogue and negotiation.[50]

Occasionally, situations may occur where staff are faced with incidents that require the use of force. Under international law, the use of force by law enforcement authorities is permitted only if in line with the four cumulative principles mentioned above: the principle of legality, the principle of necessity, the principle of proportionality and the principle of precaution. When it comes to the use of force, these principles are further spelled out by the UN Basic Principles on the Use of Force and Firearms, the Mandela Rules and the EPR.[51]

The ECtHR accepted that on occasion it may be necessary to use force in order to ensure prison security and to maintain order or prevent crime in detention facilities. However, it affirmed that violence can only be used if indispensable and in so far as it is not excessive. Hence, when a person

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48. CPT, 'Means of restraint in psychiatric establishments for adults' CPT/Inf(2017)6 < https://rm.coe.int/16807001c3.>

49. Mandela Rules, Rules 38(1) and 76.1; EPR Rule 56.2, referring to the 'use mechanisms of restoration and mediation to resolve disputes with and among prisoners'.

50. EPR Rules 64, 51.2; and Mandela Rules, Rule 76(c), where the concept of dynamic security is acknowledged under Art. 76(c) in relation to training for staff.

51. Mandela Rules, Rule 82; EPR 64-67; the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) A/C0NF.144/28/Rev.l, Arts 15ff; UNGA, 'Code of Conduct for Law Enforcement Officials', Res 34/169 of 17 December 1979. For more details see SRT (Melzer) 'Extra-Custodial Use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2017) A/72/178, §§ 5ff and 16.

is deprived of liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of Article 3 ECHR.[52]

 As soon as force is used against a prisoner for one of the purposes indicated under Art 1 of the United Nations Convention against Torture (CAT), i.e. extracting a confession, intimidation, punishment and discrimination, any infliction of severe pain or suffering is to be qualified as torture, which means that it will be absolutely prohibited under any circumstances and no proportionality test will be allowed.[53]

3.2.2. *Ensuring accountability and protecting victims of violence*

Establishing an effective complaint mechanism as well as investigating and prosecuting instances of violence are crucial steps to ensure accountability according to international standards and to foster a climate of trust in prison (see in this series the Handbook on Complaints).[54] Equally important to this end are the establishment of appropriate procedures, such as the systematic recording and documentation of injuries, closed circuit television (CCTV) monitoring as well as guaranteeing victims' rights and protection against reprisals.

Medical personnel plays a central role in this regard. They can contribute to the prevention of violence against detained persons and more specifically of torture and ill-treatment, through the systematic recording and documentation of injuries.[55] Access to medical examinations by a qualified health-care professional should be granted as soon as possible after a person is admitted to a place of detention or whenever they were involved in a violent incident.[56]

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52. ECtHR, *Tali v Estonia*, No 66393/10, 13 February 2014, § 59; ECtHR, *Artyomov v Russia*, No 14146/02, 27 May 2010, § 145; ECtHR, *Bouyid v Belgium*, No 23380/09, 28 September 2015, § 101; see also ECtHR, Guide: Prisoners' Rights.
53. Nowak/Birk/Monina 58ff.
54. Detailed guidance on the modalities of such investigations can be found in the following documents: *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Istanbul Protocol* (United Nations Publication 2004) HR/P/PT/8/Rev.1. See also *the CoE, Effective Investigation of Ill-Treatment: Guidelines on European Standards* (CoE 2014).
55. UNGA, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', Res 43/173 of 9 December 1988 (Body of Principles) Principle 24; EPR Rules 16 and 42; and Mandela Rules, Rules 34 and 46. See also CoE, CM, 'Recommendation No R(98) 7 of the committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison' (1998) R(98)7; and by the CPT standards regarding health care services in prisons, particularly CPT, '3rd General Report on the CPT's Activities, 1 January-31 December 1992' (1993) CPT/Inf (93) 12, 13ff. For more details see also Dignity 2020, and PRI and others, Guidance Document, 157ff.
56. See EPR Rule 42.3(c);Mandela Rules; CPT, 'Developments Concerning CPT Standards in Respect

STANDARDS IN FOCUS

For cases of alleged or suspected torture or other ill-treatment, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**'Istanbul Protocol'**) provides key guidance on documentation and investigation.

The **CPT** has similarly given concrete recommendations on how to ensure appropriate recording, especially of traumatic injuries in prisons (e.g. use of a special assessment forms with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner, photographs, the keeping of a special trauma register).[57] The CPT also recommends that the health care service compile periodic statistics concerning injuries observed for review by prison managements, the Ministries of Justice, etc.[58]

To avoid putting individuals at further risk of ill-treatment, it is particularly important to put in place effective measures to protect them against reprisals. The CAT requires specific protection for torture victims as a corollary of the right to complain under Art 13 CAT. To this end, it recommends suspending the suspected officials from duty, ensuring they have no involvement with the investigations and no contact with witnesses, the victim or the victim's family, moving the person to an alternative accommodation as well as assigning special personnel to victims and/or arranging for regular examinations by doctors.[59] Victim protection is also required under international standards as well as EU law. The latter regulates the rights of victims of crimes under two specific instruments: the Directive 2012/29/EU establishing minimum standards on the

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of Police Custody: Extract from the 12th General Report of the CPT published in 2002' (2002) CPT/Inf(2002)15-part, § 42; CPT/Inf(2001)16-part; SPT, 'Report on the Visit to Macedonia' (2019) CAT/OP/MKD/1/Add.1, § 21; SPT, 'Report on the Visit to Gabon' (2015) CAT/OP/GAB/1, § 41.

57. CPT, 'Documenting and Reporting Medical Evidence of Ill-Treatment: Extract from the 23rd General Report of the CPT' (2013) CPT/Inf(2013)29-part, § 73.

58. CPT/Inf (93) 12, § 62.

59. e.g. CAT Committee, Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners (2014) CAT/C/51/4, § 55; CAT Committee, Concluding Observations: Bosnia and Herzegovina (2011) CAT/C/BIH/CO/2-5, § 17. But see also Mandela Rules, Rule 71(3); CPT/Inf (93) 12, § 62.

rights, support and protection of victims of crime and Directive 2004/80/EC relating to compensation of crime victims. These instruments spell out the following rights: the right to information; the right of access to justice; the right to protection measures, including measures against repeat victimisation; the right to Victim Support Services; as well as the right to compensation.[60]

3.2.3. Living conditions of prisoners

Material detention conditions and, more generally, the quality of life in prison, are important factors to consider when investigating prison violence and its root causes. More specifically, the following factors have been identified as particularly relevant for the prevention of violence: overcrowding/capacity of dormitories; the type of prison regime and activities offered to prisoners; contact with family and the outside world; the relationships between staff and prisoners and staff professionalism and working conditions.

3.2.3.1. Overcrowding and shared accommodation

The level of overcrowding in a prison, or in a particular part of it, might be such as constitute inhuman or degrading treatment in itself. Overcrowding, however, also creates a fertile environment for various forms of direct and indirect violence. As acknowledged by the CPT: 'An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy [...]; reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff.'[61]

> **STANDARDS IN FOCUS**
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> In **Muršić v Croatia**, the **ECHR** stated that when a detainee has **less than 3 square metres of personal space in multi-occupancy**

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60. E.g. Fair Trials, 'Rights Behind Bars: Access to Justice for Victims of Violent Crime Suffered in Pre-Trial or Immigration Detention' (2019); *FRA, Victims' Rights as Standards of Criminal Justice: Justice for Victims of Violent Crime: Part 1* (Publications Office of the European Union 2019).
61. CPT, '7th General Report on the CPT's Activities, 1 January -31 December 1996' (1997) CPT/Inf (97) 10, § 13. On overcrowding see also the comprehensive research conducted by the FRA: FRA, Detention Conditions, 15ff; and FRA, 'Detention Conditions Database' <https://fra.europa.eu/en/databases/criminal-detention/criminal-detention >.

accommodation, a strong presumption of a violation of Art 3 ECHR arises. This presumption of a violation can be rebutted by the Government only if the following factors are cumulatively met:

- The reductions in the required minimum personal space of 3 square metres are short, occasional and minor;

- Such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and

- The applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention.

When the **personal space is between 3 and 4 square metres and above**, a violation of Article 3 will be found if that factor is coupled with other aspects of inappropriate physical conditions of detention (e.g. inadequacy in terms of access to outdoor exercise, natural light or air, ventilation, room temperature, the possibility of using the toilet in private and compliance with basic sanitary and hygiene requirements).[62]

In its role as a preventive monitoring body, the **CPT** has set higher standard than the European Convention on Human Rights (ECHR), recommending that **6m2** should be the minimum amount of living space for prisoners **in single occupancy**,[63] and **10m2** per prisoner in case of **multi-occupancy cells**.[64]

The **EPR** also requires States to establish mechanisms and strategies for ensuring that these minimum requirements are not breached through overcrowding. To this extent, as highlighted by several international bodies, the importance of using deprivation of liberty as a measure of last resort is emphasised.[65]

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62. ECtHR, *Muršić v Croatia*, No 7334/13, 20 October 2016, §§ 138-139 and in that judgment also the Partly Dissenting Opinion of Judges Sajó, López Guerra And Wojtyczek, Joint Partly Dissenting Opinion of Judges Lazarova Trajkovska, De Gaetano And Grozev and Partly Dissenting Opinion Of Judge Pinto De Albuquerque, with critical remarks on the majority decision; see also ECtHR, *Ananyev and Others v Russia*, No 42525/07 and 60800/08, 10 Junary 2012, §§ 149-159;ECtHR, Neshkov and Others v Bulgaria, No 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015) §§ 233-243; see also ECtHR, Varga and Others v Hungary, No 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 March 2015, §§ 75-78.
63. CPT, 'Living Space per Prisoner in Prison Establishments: CPT-Standards' (2015) CPT/Inf (2015) 44.
64. Ibid.
65. EPR, Rule 18.4.

Large capacity dormitories – units containing all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities – are also often identified as factors conducive to violence.

> **STANDARDS IN FOCUS**
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> According to **CPT**, 'Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures, and facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise.'[66] The **CPT** has thus consistently recommended moving away from this type of accommodation towards smaller units to be accompanied by measures to ensure that prisoners spend a reasonable part of their day engaged in purposeful activities outside their living units.
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> The **EPR** go beyond this and explicitly state that 'prisoners shall normally be accommodated during the night in individual cells', and an exception to this rule may only be required if this is in the own interest of the prisoners.[67] Existing prison architecture along with other factors may make it difficult to accommodate prisoners in single cells. However, the requirement of accommodation in single cells should be taken into account for new prisons.

3.2.3.2. Prison regime and purposeful activities

The activities and opportunities offered to prisoners are as important in preventing violence as security and safety measures or material conditions.

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66. CPT/Inf(2001)16-part, § 29.
67. EPR, Rule 18.5; see also Mandela Rules, Rule 12; European Committee on Crime Problems (CDPC), Council for Penological Co-Operation (PC-CP), Revised Commentary to Recommendation CM/Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules (2018) PC-CP (2018) 1 rev 2, 12-13.

A satisfactory programme of activities is of crucial importance for the well-being of all detainees. Prison regime should therefore offer a balanced programme of activities, including work, exercise, recreation and education.[68]

According to international standards, all prisoners (including those subject to disciplinary punishment) must be allowed **at least one hour of exercise in the open air every day** if they want to and preferably as part of a broader programme of out-of-cell activities.[69]

In addition, the **CPT** considers that all prisoners (untried as well as sentenced) should be able to spend **a reasonable part of the day (i.e. 8 hours or more) outside their cells** engaged in purposeful activity of a varied nature.[70] If the weather is inclement, alternative arrangements shall be made to allow prisoners to exercise. CPT recommends shelter against poor weather and protection from the sun.[71] As stated by the EPR, the aim of the prison regime should be to allow all prisoners to spend as many hours a day outside of their cells as possible in order to ensure an adequate level of human and social interaction (Rule 25).

3.2.4. Staff-prisoners relationships, staff professionalism and working conditions

Prison rules strongly depend on the ability of prison staff to implement them. Hence, it is of outmost importance that **management and staff** are recruited, trained and put in a position to translate fundamental rights and standards into practice, including those concerning violence.[72]

Particular attention should be paid to the **relationship between first line prison staff and the prisoners under their care.** As observed by the CPT:

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68. EPR Rules 25, 26 (work), 27 (exercise and recreation), 28 (education); Mandela Rules, Rules 96-103 (work), 104-105 (education and recreation), 106-108 (social relations and aftercare).
69. EPR Rule 27; Mandela Rules, Rule 23; ECtHR, Neshkov and Others v Bulgaria, No 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015, § 234; ECtHR, Ananyev and Others v Russia No 42525/07 and 60800/08, 10 Junary 2012, § 150; see also ECtHR, Muršić v Croatia, No 7334/13, 20 October 2016, § 133. On time spent outside cell and outdoors see also the comprehensive research conducted by the FRA: FRA, Detention Conditions, 27ff and FRA, Database.
70. CPT/Inf(2001)16-part, § 33. CPT, '25th General Report of the CPT's Activities, 1 January-31 December 2015 (2016) § 58.
71.E.g. CPT, 'Report on the visit to the United Kingdom' (2014) CPT/Inf (2014) 11 § 39. See also EPR Rule 27.1 and the Mandela Rules, Rule 23 stating that 'every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits'.
72. EPR Rules 71-91; Mandela Rules, Rules 74-82. See also CPT/Inf(2001)16-part, § 26 stating: '*The cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job. Building positive relations with prisoners should be recognised as a key feature of that vocation.*'

'[T]he promotion of constructive as opposed to confrontational relations between prisoners and staff will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment. In short, the CPT wishes to see a spirit of communication and care accompany measures of control and containment. Such an approach, far from undermining security in the establishment, might well enhance it.'[73]

STANDARDS IN FOCUS

The concept of security in detention is increasingly recognised as '**dynamic**' rather than static. This means that security does not depend only on static factors, such as physical (walls, grilles, bars, gates, CCTV) or procedural aspects (searches, controlled movement, alarms, communications, management of keys and categorisation), but is also inherently dependent on dynamic factors, **above all the behaviour of prison staff and their relationship with prisoners** (see also above § 3.2.1).[74]

Moreover, staff should operate to **high professional and personal standards.** It is important that they adopt an **ethical approach** that values the obligation to treat all prisoners with humanity and with respect for their inherent dignity.[75] The **European Code of Ethics for Prison Staff** provides additional guidance on the overall objectives, performance and accountability of prison staff, based on the following dimensions: accountability, integrity, respect for and protection of human dignity, care and assistance, fairness, impartiality and non-discrimination, co-operation, confidentiality and data protection.[76]

Prison managements have a duty to ensure that staff are **carefully selected.**[77] Selection criteria should include inter alia integrity, humanity, professional capacity and personal suitability for the complex work as

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73. CPT, '2nd General Report of the CPT's Activities, 1 January-31 December 1991' (1992) CPT/Inf (92) 3, § 45; see also CPT/Inf(2001)16-part, § 26.
74. EPR Rule 51.2.
75. EPR Rules 72ff.
76. CoE, Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff (2012) s IV.
77. EPR Rule 76-80; Mandela Rules, Rule 75.

well as cultural sensitivity, interaction skills and linguistic abilities.[78] Special selection processes should additionally be established for staff working with specific groups of prisoners such as juveniles.[79] Staff should include as much as possible **specialist personnel that is trained to promote prisoners**' physical and mental wellbeing, including psychiatrists, psychologists, social and welfare workers, teachers and vocational, physical education and sports instructors.[80]

Training for staff before entering into duty as well as throughout their career should be provided.[81] It should cover the prohibition of torture and ill-treatment as well as prevention and evidence-based instruction on legal standards, security and safety (incl. dynamic security, conflict resolution and alternatives to use of force and restraints), basic medical skills as well as general principles of social care, criminology, psychology and mental health and professional ethics.[82] More focused training should be offered for staff working with specific categories of prisoners such as juveniles or women and specialised staff such as health care professionals.[83]

How the staff perceives the leadership qualities of the prison management and how satisfied they are with their jobs, plays a crucial role for prison culture and the level of violence in the prison, including staff-prisoner violence.[84] To ensure appropriate working conditions, staff should be appointed on a permanent basis and have public service status with security of employment, adequate salary and benefits that reflect their work responsibilities.[85] The **number of staff in prison should be appropriate**.[86]

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78. EPR Rule 77; Mandela Rules, Rule 74; see also CM/Rec(2012)12 § 38; CoE, 'Guidelines Regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff' (2019) § 4 [hereinafter: CoE, Guidelines Regarding Staff].

79. CoE, Guidelines Regarding Staff (2019) § 4(c).

80. EPR Rule 89; Mandela Rules, Rule 78.

81. EPR Rule 71; Mandela Rules, Rule 75(2); CoE, Guidelines Regarding Staff, § 2.

82. Art 10 CAT; EPR Rules 81.4 and 69.3; Mandela Rules, Rule 76(1); see also CoE, 'Guidelines Regarding Staff' §§ 7.2-7.3; CPT, 'Juveniles Deprived of Their Liberty Under Criminal Legislation: Extract from the 24th General Report of the CPT', Published in 2015 (2015) CPT/Inf(2015)1-part rev1, § 120; on staff training see also: Sharon Shalev, Kimmet Edgar, Deep Custody: *Segregation Units and Close Supervision Centres in England and Wales* (Prison Reform Trust 2010) 7-12.

83. EPR Rule 81.3; Mandela Rules Rule 76(1)(d) and 76(2); see also CPT, 'Women in Prison' (2018) CPT/Inf(2018)5, § 7; CPT/Inf(2015)1-part rev1, paras 100 and 120; CPT/Inf(2013)29-part, § 82; CoE, 'Guidelines Regarding Staff', paras 7.2-7.3.

84. Michael J. Gilbert, 'The Illusion of Structure: A Critique of the Classical Model of Organisation and the Discretionary Power of Correctional Officers' (1997) 22(1) Criminal Justice Review, 49-64.

85. EPR Rules 78-79; Mandela Rules, Rule 74(3).

86. EPR Rule 83; Mandela Rules, Rule 81.

Where staff is inadequate significant amount of overtime will be required to maintain basic level of security, which may result in high levels of stress among staff and an exacerbation of the tensions in the prison.[87]

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87. CPT/Inf(2001)16-part, § 26; see also CPT, 'Report on the visit to Latvia' (2017) CPT/Inf (2017) 16); FRA, Detention Conditions, 43.

4 . M O N I T O R I N G   V I O L E N C E   I N   P R I S O N

As explained above, violence is a complex and widespread phenomenon and therefore difficult to monitor effectively. The following section aims to offer practical guidance to NPMs on monitoring methodologies.

4.1. Setting the basis for the effective monitoring of prison violence

4.1.1. *Gaining a good understanding of prison violence*

From the outset, it is important for NPMs to have a good understanding of prison violence and all factors contributing to it in general, but also in specific country contexts. This understanding should go beyond the number of violent incidents and other visible aspects contributing to violence and focus also on non-material aspects that are often hidden but equally relevant for preventing violence and ultimately ill-treatment.

The research conducted in the framework of this Project, however, showed that NPMs tend to monitor only the measurable dimensions, such as incidents of direct violence and material detention conditions, and rarely address the factors indirectly causing and facilitating prison violence, such as structural violence, the prison culture as well as dynamic security and the elements underpinning it, including staff-prisoner relationships. To effectively monitor violence, however, it is essential to take into consideration all relevant aspects, also those that are less visible.

The iceberg model illustrated in Figure 3 can be a useful tool for NPMs to visualise and map all the different dimensions relevant to understanding the problem of prison violence and its root causes. The model shows that only a limited fraction of the factors contributing to prison violence are visible, while

a much larger part is 'hidden under the waterline' (see also below § 5).[88]

DIRECT VIOLENCE

EVENTS AND OUTCOMES

CULTURAL VIOLENCE

PATTERNS AND STRUCTURES

MENTAL MODELS

STRUCTURAL VIOLENCE
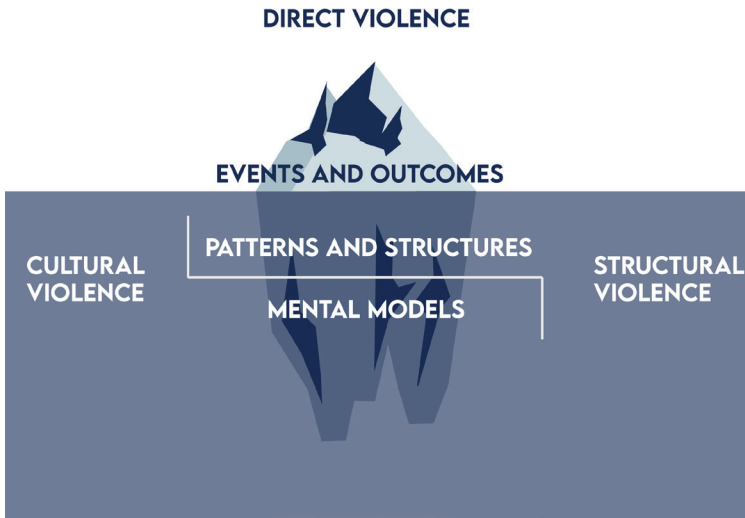
Figure 3: Iceberg model – Monitoring prison violence

On the tip of the iceberg there are **events and outcomes (direct violence)** such as violent acts between prisoners, assaults on prison staff, incidents of self-harm and suicide as well as other custodial deaths.

High numbers of violent incidents can alert NPMs and signal the need for a more in-depth investigation.[89] However, as violence often happens behind closed cell doors and remains unreported, such numbers should not be the only indicator for prison violence.

Underneath the waterline there are **patterns and underlying structures (structural violence)**, such as trends in how authority and leadership are exercised, regulations, procedures, programmes and policies as well as measures for their implementation and

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88. A useful tool for monitoring in this regard is the: PRI and APT, *Institutional Culture in Detention: A Framework for Preventive Monitoring* (PRI and APT 2015) [PRI and APT, Institutional Culture].
89. Such as the ad hoc visit of the Council of Europe's CPT to the United Kingdom, which took place from 13 to 23 May 2019 due to persistently high levels of violence in the local male adult prisons and juvenile detention centres, as well as broader concerns regarding regimes, the use of force, segregation and use of means of restraint.: CPT, 'Report on the Visit to the United Kingdom' (2020) CPT/Inf (2020) 18.

recurrent practices as well as unwritten rules in all relationships (prisoners–staff, among staff, among prisoners). Further there are mental **models (cultural violence)**, such as the beliefs, attitudes and values of everybody working and living in prison. These factors provide information on how prisons are organised and why things are happening in a certain way, which is essential for an in depth understanding of the problem of prison violence and its root causes and for putting forward recommendations for change. A thorough understanding of patterns, underlying structures and mental models can furthermore help monitors look beyond statics and recognise the hidden dimensions of violence, such as fear of reprisals, retaliation, shame, hesitation to disclose vulnerabilities and weaknesses or, more generally, a lack of trust in prison authorities and the judicial system.

NPMs should further complement their understanding of prison violence by **integrating multiple perspectives and gathering data and information about prison violence from other stakeholders involved,** such as an Ombudsperson's office (if established), NGOs and volunteers, the probation services, lawyers, journalists and media, families of detainees, prison chaplains, former detainees and prison researchers.

Cooperating with several stakeholders can be key to fully grasping the problem of violence in a country's prisons, understanding what works best to prevent prison violence and, ultimately, developing a monitoring strategy as well as establishing adequate processes and procedures for encouraging change (see also below, § 4.2).

4.1.2. Gaining a good knowledge of standards and clarifying them when they are too vague

NPMs should have a good knowledge of all standards relevant to preventing violence in prisons to assess whether the legal and policy framework for violence prevention of a particular MS is in line with international standards and, if necessary, put forward recommendations for change to the authorities. Moreover, if international standards are too general and not clear enough, NPMs can also suggest own, more precise criteria to

clarify and concretise their meaning. Examples of this practice have been found with the NPMs in France and the UK.

> *GOOD PRACTICE*
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> **NPM United Kingdom – Her Majesty's Inspectorate of Prisons of England and Wales** (HMIP) published inspection criteria known as **'Expectations'** that are based on international standards, but adapted to the UK context and, in certain aspects, go beyond them pushing towards higher standards rather than internationally defined minimum (see also below, § 4.1.3).
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> In 2019 the French **NPM** published **"Minimum Recommendations to Respect the Dignity and Fundamental Rights of People Deprived of Liberty"**. The document summarises and organises the essence of the doctrine developed by the French NPM since 2008, including recommendations relevant for the prevention of violence (e.g. preventing any undermining of prisoner's physical or mental integrity and limiting checks and constraints in addition to deprivation of liberty).[90] Although the document does not include any specific indicators for monitors, it gives a good overview of the standards as used by the French NPMs in its recommendations.

4.1.3. A systemic approach to monitoring prison violence

To be effective, NPMs need to adopt a **systemic approach.** They should start by formulating the desired outcome they try to accomplish with their preventive monitoring, or in other words, '**begin with the end in mind" and 'visualize the desired change"**.[91] This helps the monitoring team maintain a clear and common understanding of 'what should be" and define specific objectives. The decision which matters a NPM will investigate, will depend on what it wants to achieve (see also in this series the Dossier). To find a common approach, especially regarding the complex topic of violence, members of the visiting team might find it useful to

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90. French NPM (Contrôleur Général des Lieux de Privation de Liberté), *Contrôleur Général des Lieux de Privation de Liberté's Minimum Recommendations to Respect the Dignity and Fundamental Rights of People Deprived of Liberty* (Contrôleur Général des Lieux de Privation de Liberté 2019).
91.Ludwig Boltzmann Institute of Human Rights (BIM) and Human Rights Implementation Centre (HRIC) a, *Enhancing Impact of National Preventive Mechanisms. Strengthening the Follow-up on NPM Recommendations in the EU: Strategic Development, Current Practices and the Way Forward* (2015) 92.

discuss their own assumptions concerning the causes of violence and ideas for how change can be achieved. As it is not possible to examine all aspects relevant to violence during a single visit, the objectives for each one should be embedded in a **broader long-term strategy for the monitoring of prison violence**. If several visits at one prison are planned, the NPM could start with examining physical aspects of the prison facility with regards to violence prevention and at the same time acquire more information on the prevalence of violence, to possibly identify a specifically problematic form of pattern of violence. During subsequent visits, the prevailing culture and staff-prisoner relationships could in turn become the focus to find out more about the less visible root causes 'underneath the waterline'.

GOOD PRACTICE

NPM United Kingdom – The HMIP developed 'Healthy Prison Tests' and on this basis Expectations.[92] Each expectation is in turn composed of a number of indicators that need to be met to 'fulfil' the standard. These methods give a clear picture of 'how things should be', thereby focusing the monitoring process and giving precise guidance to the prison authorities. Although not specifically established for the monitoring of prison violence, these tests support further quality assurance and better quality of life in prison, both of which are important factors for reducing violence. The HMIP inspects four main areas:

- **Safety** – Whether prisoners, particularly the most vulnerable, are held safely.

- **Respect** – Whether prisoners are treated with respect for their human dignity.

- **Purposeful activity** – Whether prisoners are able and expected to engage in activity that is likely to benefit them.

- **Rehabilitation and release planning** – Whether prisoners are supported in maintaining and developing relationships with their family and friends, are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively and whether they are prepared for their release back into the community.

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92. HMIP, Expectations. The inspections and reviews of the HMIP are based on the healthy prison concept which was first set out by the World Health Organisation (WHO), for more details see WHO, 'Healthy Settings' <https://www.who.int/healthpromotion/healthy-settings/en/>.

4.2. Preparing a visit

4.2.1. Gathering data and information before the visit

NPMs should strive to gather as much specific information and data about violence in a particular prison as possible. This information can then be compared with that of other prisons and be used to formulate hypotheses on the situation as well as define the objectives and priorities of the visit. This can be useful for fostering a better understanding of the degree of violence happening taking place inside a prison and allow NPMs to effectively monitor hidden dimensions of violence.

At the outset, NPMs can examine the **operational framework of a prison,** i.e. documents such as:

- The legislation relating to prisons (e.g. laws, and regulations)
- Policies and procedures (e.g. directives, orders)
- Staff instructions and professional education of prison staff (e.g. code of conduct, disciplinary processes, job descriptions, training content)
- Prisoner instructions (e.g. rules, disciplinary processes)
- Information that is publicly available on the homepage of the prison (e.g. which languages are available? Which information is provided and in which way? Are frequently asked questions answered?)

The information collected prior to a visit should also include information obtained during previous monitoring visits (of national and international monitoring bodies), information acquired through parliamentary interpellations or data disclosed by the government, as well as information that can be derived from consultations with other stakeholders (see also above, § 4.1.1.).

Either in advance of a visit or on the first day of an unannounced visit, NPMs could request/access[93] **statistics, data, or reports** from the prison administration or the respective prison that are relevant for monitoring prison violence. If any required data is not available yet, the NPM should recommend that it is collected.

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93. E.g. the Romanian NPM is granted access to general statistics of the prison administration from its offices and has special access to the internal prisoner file management system while visiting a prison (interview with NPM Romania of 30.6.2020). Also the Austrian NPM, Austrian Ombudsman Board has access to parts of the prisoner file management system while visiting a prison.

What data can be helpful for monitoring prison violence?
- Capacity of the prison/number of prisoners, number of certain groups of inmates, number of staff and their responsibilities, staff-prisoner ratio, gender breakdown
- Incident reports
- Type of violence against staff by prisoners
- Type of inter-prisoner violence
- Incidents of self-harm and suicide
- Use of control and restraint / use of force / solitary confinement
- Escapes or attempted escapes
- Deaths in custody
- Reports of staff misconduct
- Type and number of complaints
- Contraband finds, specifying the type and amount
- Number of prisoners accessing substitution drugs
- Number/hours of prisoners with constructive activity (work, education, others)
- Number of prisoners who spent 22 hours or more (alone) in their cells

4.2.2. Length of the visits

The duration of a visit usually depends on the objectives set by the NPMs as well as on factors such as the size of the prison, knowledge about the place to be visited or if interpreters are needed to interview prisoners. In this context, NPMs should consider that monitoring violence might need more time than usual. Especially if NPMs want to monitor cultural issues, a visit of a couple of hours may not be sufficient. Moreover, prisoners might need some time before being willing to talk about staff-prisoner violence. Hence, in order to have sufficient time to gain a good understanding of all aspects relevant to violence, including those that are less visible, NPMs should consider conducting longer visits, at least three to four days. Some NPMs, such as the UK NPM (HMIP), have previously conduct visits of up to two weeks in one prison.

4.2.3. Composition of the visiting team

The visiting team should ideally be composed of an **interdisciplinary**

team to cover various required skills. At least one person with a legal, and one with a medical background should be represented. Furthermore, it is beneficial if a professional with a psycho-social background is part of the team as well as persons with first-hand experience, such as former prison staff or prisoners.[94] Gender balance and diversity between monitors is of advantage, particularly where a prisoner or staff member might feel more comfortable talking to a monitor of the same gender.

4.3. Conducting a visit

4.3.1. Observation of prison conditions and culture

The design of a prison contributes to determining whether its environment is humane, rehabilitative and respectful of the physical and moral integrity of a person. Poor prison conditions have immediate and long-term consequences for the safety and wellbeing of prisoners and are also associated with reduced staff wellbeing. Thus, NPMs should put a particular focus on the **visible/physical prison environment but also on the prevailing culture and how people interact with each other.**

A **walk through the prison** gives NPMs the possibility to inform prisoners and staff that a visit is taking place. Monitors may focus on **areas that are not under constant surveillance**, such as cells and showers. They may inquire about how safety and security is ensured or can be heightened and assess whether there are areas that are **'blind spots'**, which would allow incidents of violence without anyone noticing. This includes, for example, cases in which high security prisoners or persons in a situation of vulnerability, especially those for protective and disciplinary reasons, are detained separately from the rest of the prison population. These areas should be visited at an early stage of the visit, to ensure that people are not moved.

From the moment they enter through the prison gates, monitors should start observing the **atmosphere** and take note of what they feel, hear, smell and see. This includes the noise environment when entering a cell block, cleanliness, signs of vandalism and any first impressions upon entering shower rooms, cells, leisure rooms or library. Leaflets, printed rules, information material and the availability of legal texts displayed or given to

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94. PRI and APT, Institutional Culture, 19.

prisoners may shed a light on the culture within the prison. Remaining in a department or wing for a sufficient period of time allows NPMs to watch daily procedures and operations, security measures and practices and to get an impression of the culture, climate, as well as of whether and how safety, security and good order are ensured in practice. These observations may also give monitors a good idea of the relationships between staff and prisoners, but also between members of staff and among prisoners themselves.

4.3.2. Interviews

Interviews with prisoners and staff, including management, can be considered as the main source for NPMs to find out about violence in prison, including structural and cultural violence.

A **talk with the prison head** could be the start of every visit, especially to inquire about specific up-to-date information or to engage in a discussion on current challenges or latest relevant news. NPMs may ask questions aimed at finding out more about the attitude, leadership and dynamics between staff and management.

For **interviews with prisoners**, but also with **staff**, it is important to create an atmosphere in which the interviewees feel safe and comfortable enough to talk about their situation. It is therefore necessary that the interview room is chosen carefully to keep others from overhearing what is being said and avoid interruptions. It is also important for monitors to show that they are ready to listen and clearly interested. It may help to repeat what was heard, but not to judge. Acknowledging the feelings of the interviewee and asking open or clarification questions about the prisoners' viewpoint will further encourage the interviewee to speak about his prison experience. Interrogation-like questioning should be avoided, as well as complicated descriptions and questions. The NPM should also consider using interpreters.

Another possibility to acquire information from prisoners are **group discussions**. Such tool may be useful especially to find out more on general prison conditions and the quality of prison life. NPMs should be attentive

to issues raised by prisoners, but also to those topics prisoners avoid talking about. Very sensitive issues should be addressed in individual talks. NPMs must be mindful of the principle of 'do no harm", in order not to further jeopardize the safety of the prisoners.

Research has found that a key performance indicator is that prisoners **feel safe and secure**.[95] In interviews, NPMs may find out more about the individual safety of prisoners (and the feeling of order as well as the absence of abuse and violence) but also about job satisfaction, challenges and good practices of staff. Thus, it is important that NPMs include the perception of safety of prisoners and staff in their monitoring (see also below § 5.1).

Innovative methods, developed through systemic thinking and research, can be very useful tools for NPMs to more effectively gather information from prisoners and staff and to find out more not only about the challenges and about 'what works' in prisons but also about stakeholder perceptions of safety in prison. To this end, two methods are of particular relevance:

1. **Systemic questions** are a tool of systemic thinking that could be used by NPMs to efficiently interview prisoners and staff, as well as to better understand connections and relationships within the system 'prison'. There are various types of questions, such as scaling, circular or hypothetical questions (see also below § 5; and in this series the Dossier § 3.3).[96]

2. **The appreciative inquiry** is a method designed to identify 'what matters" to staff and prisoners, to explore the 'positive resources, experiences and imaginations of staff and prisoners', their relationships and these factors' overall effect on the quality of life and safety in prisons.[97] It concentrates on strengths and

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95. Liebling, Prisons, 302.

96. Systemic questions are derived from the field of family therapy and are also used in the Solution-Focused Therapy. See also Stefan Hölscher, Systemic Questions (2000) <https://metrionconsulting.de/site/assets/files/1198/metrion_article_20000115_systemic_questions.pdf>; Stefan Hölscher, 'Questions' (2006) in Stefan Hölscher and others (eds), *The Art of Joined Action. Professional Handling of Social Processes* (Springer Verlag 2006).

97. Appreciative inquiry is a model that seeks to engage stakeholders in self-determined change developed by David Cooperrider and Suresh Srivastva at Case Western Reserve University's department of organizational behaviour. The authors felt that the overuse of problem solving hampered any kind of social improvement, and what was needed were new methods of inquiry that would help generate new ideas and models for how to organize: David L. Cooperride and Suresh Srivastva, 'Appreciative Inquiry in Organizational Life' in Richard W. Woodman, William A. Pasmore (eds) *Research in Organizational Change and Development* (JAI Press Incorporated 1987) 129–169.

best practices, rather than on problems and what is not. As Liebling describes it: 'We found, through this method, that we could dig deeper into a prison, if we were sensitive to people's achievements as well as to their problems and difficulties.'[98] For these reasons, the appreciative inquiry method could be an efficient tool to better understand and monitor the prevailing climate and the quality of life in a prison, but also identify practices for solution oriented recommendations (see also below §5, and in this series the Dossier).

4.3.3. Review of prisoner files, documentation and registers

Prisoner files (electronic/paper) and the **documentation of measures** taken shall be reviewed to assess whether the decision-making process can be justified and all relevant information was documented. Prisoner files could be used during interviews with prisoners for further inquiries, especially regarding any violent incidents in which they were involved.

Registers and reports of incidents (violence, self-harm and suicide attempts, use of force), **CCTV and (if used) on-body camera footage and registers of disciplinary measures** are of particular importance. These resources may provide detailed information on the prevalence and type of violence or violation, the prison guards involved in it as well as the time and the location of incidents, all of which may be used to identify patterns of violence and possible structural deficiencies. NPMs should inquire whether prisons compile such **statistics** and have internal procedures in place to **identify lessons learned** after every serious incident.

Other relevant sources are **medical files**, especially **records of injuries.** Therefore, NPMs must review medical files, but also inquire with medical staff to see if they are aware of their obligations concerning the documentation of signs of potential ill-treatment.

Additionally, the review of requests and applications of prisoners as well as of complaint registers, especially for those prisoners who were involved in any form of violence, could indicate whether the duty of

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98. Alison Liebling and others, Appreciative Inquiry and Relationships in Prison, Punishment and Society (1999)1(1) The International Journal of Penology, 71-98.

care of prison staff was violated through omission or negligence, for instance, if the prisoner mentioned many times that he needed help or that he was threatened, or point towards structural deficiencies that the prison management should address.

4.3.4. Surveys

Surveys for prisoners and staff help to gather more evidence on certain aspects of prison life, because they make it possible to reach a higher number of persons. Furthermore, anonymized multiple-choice questionnaires may allow NPMs to ask more sensitive questions, such as if prisoners have been victims of violence by staff or other prisoners. Questions like these are normally harder for prisoners to answer truthfully in interviews, as their answers might be conflicting with the 'the normalcy of violence in prison and the related necessity to demonstrate a strong 'masculine' identity.[99] To make sure prisoners and staff feel free to express their opinions, the NPM should make sure that the envelopes for returning the survey can be sealed and that they are collected by a member of the NPM team. If conducted and analysed during the course of a visit, the results of the survey can be used to refocus on issues indicated or serve as an information source for acquiring additional evidence during interviews with prisoners and prison staff.

> *GOOD PRACTICE*
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> NPM Romania – During the COVID-19 pandemic in 2020, the Romanian NPM started to use anonymous questionnaires to ask prisoners (and other person in places of deprivation of liberty) about various conditions in prison and the impact of the coronavirus pandemic.[100]

Useful examples are the **questionnaires** developed by the HMIP and the OIP Ireland, as well as the **Measuring the Quality of Prison Life (MQPL)**

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99. Veronika Hofinger and Andreas Fritsche, 'I'm Strong so Nothing Will Happen to Me' – Practical and Methodological Findings from a Victimization Survey in Prison' (2020) 103(1) Monatsschrift für Kriminologie und Strafrechtsreform, 15–27.

100. The information was obtained through an interview with a member of the Romanian NPM. The questionnaire can be accessed here: Institutia Acovatul Poporului: Romanian Ombudsmen,Questionnaire<http://old.avpoporului.ro/index.php?option=com_content&view=article&id=528&Itemid=311&lang=ro-ro >.

25

survey[101] for prisoners that adheres to the appreciative inquiry principles and was developed to identify the important qualities of a prison from the point of view of inmates or, i.e. the 'things that really matter' to prisoners (see also above, § 3.3.2; and in this series the Dossier).[102] The idea is to better understand and improve prison life and its effects. To do so, the MQPL focuses on the dimensions of 'respect, humanity, decency, help and assistance, staff–prisoner relationships, fairness, staff professionalism, security, prisoner safety, well-being and distress, personal development, family contact, and regime decency'.[103]

The MQPL survey that was used in a number of prison researches, including in Chile,[104] Norway,[105] Tunisia and France,[106] can be used by NPMs to diagnose the presence of violence in prisons, to understand and document its negative effects[107] and to find out 'what really matters" for prisoners and their quality of life in prisons. NPMs could also dig deeper into the concepts behind the above-mentioned dimensions to better understand their interdependency and impact on everybody who lives and works in prison.

> *GOOD PRACTICE*
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> **NPM UK** – The multiple-choice questionnaires for prisoners used by the HMIP of England and Wales during the course of each inspection, include, for example, detailed multiple-choice answer options for several questions on safety which are 'ticked' by the prisoners, thereby facilitating a consistent evaluation of the questionnaires according to common criteria. Questions

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101. Alison Liebling and others, 'Conceptualising and Measuring the Quality of Prison Life', in David Gadd Susanne Karstedt and Steven F. Messner (eds.) *The Sage Handbook of Criminological Research Methods* (Sage Publications Ltd. 2011).

102. There is also a questionnaire for staff see Prison Research Center of the University of Cambridge, 'MQPL+: Analyses of Quality, Culture, and Values in Individual Prisons' <https://www.prc.crim.cam.ac.uk/directory/research-themes/mqpl>.

103. Alison Liebling, 'What is 'MQPL'? Solving Puzzles about the Prison' (2012) 202, Prison Service Journal, 3-5 [hereinafter: Liebling, MQPL].

104. Guilermo Sanhueza and Francisca Pérez, Explorando el '*desempeño moral' en cárceles chilenas y su potencial en la reinserción.* (2019)65(236) Revista Mexicana de Ciencias Políticas y Sociales, 83-110.

105. Alison Liebling and others, 'Where Two 'Exceptional' Prison Cultures Meet: Negotiating Order in a Transnational Prison (2021) 61(1) The British Journal of Criminology (BJC)'.

106. Bethany Schmidt, 'MQPL+ Exploring the Moral Quality of Prisons through Ethnography-led Measurement', Presentation: *Scottish Prison Service Conference* (5 November 2015) <http://www.sps.gov.uk/nmsruntime/saveasdialog.aspx?lID=2126&sID=1105 >.

107. Mette Skar and others, 262-272.

raised are for example: *'Have you ever felt unsafe here? Do you feel unsafe now? In which areas have you felt unsafe? Have you ever been victimized by staff here? If yes, what did the incident(s) involve?'*. The United Nations Office on Drugs and Crime (UNODC) has published simplified excerpts of the survey for prisoners used in England and Wales and encourages inspection mechanisms to develop their own questionnaires tailored to their particular national context.[108]

NPM Portugal – The Portuguese NPM has adapted the Measuring the Quality of Prison Life questionnaire and has been using the tool since the end of 2018 to complement its monitoring observations. It states that it has receiving very positive feedback from prisoners, who consider it a rare opportunity to express their opinion and be heard on relatively taboo topics of life in prison, like their emotions or the support received in prison. It allows comparisons of monitoring observations with survey results, points to issues to consider in future visits and allows for the analysis of long-term developments in prisons. However, it was also noted, that resources for analysing the information received through the surveys are tight.[109]

4.3.5. Triangulation of sources

All information acquired throughout the visit (or during the preparation), for instance, survey responses, prison records and collected data as well as information collected through interviews with prison staff or managements should, if possible, be cross-checked and verified in interviews with prisoner and vice versa. This process is called triangulation.[110] A final assessment should only be made at the end of the triangulation process, after enough evidence has been gathered.

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108. Simplified excerpts of the survey can be seen in the UNODC, 'Assessing Compliance with the Nelson Mandela Rules – A Checklist for Internal Inspection Mechanisms' (2017) 75.
109. NPM Portugal, Annual Report 2018 (2019); interview with Portuguese NPM representative, 30 June 2020.
110. For more guidance on triangulation see APT, *Monitoring Police Custody: A practical guide* (APT 2013) 34.

5. GUIDANCE FOR THE EFFECTIVE MONITORING OF PRISON VIOLENCE

The following Part of the Handbook seeks to provide concrete monitoring guidance on five main thematic issues that were identified as key for preventing violence: 1) Safety and security and their perception by prisoners and staff; 2) Ensuring accountability and protecting persons at risks; 3) Living conditions of prisoners; 4) Staff-prisoners relations; 5) Staff professionalism and working conditions. This is not intended as a comprehensive checklist but rather to raise awareness with NPMs on certain topics that the Project findings showed to be important factors for preventing violence in prisons. The guidance further aims to incorporate innovative methodologies, such as systemic questions and appreciative inquiry, as these can be particularly effective for the monitoring of violence. It is based on several existing tools, which were further developed and adapted by the authors to the topic of violence prevention.[111] To improve its accessibility, the guidance was arranged in 'Key points' and 'Guiding questions'. The 'Key points' aim at pinpointing aspects that might serve as useful indicators. The 'Guiding questions' offer concrete examples of questions that NPMs may find useful to look at for their own assessments, for preparing interviews as well as for surveys.

5.1. Safety and security: The perception of safety and security of prisoners and staff

KEY POINTS

» **ASPECTS TO MONITOR:** To monitor prison violence a key performance indicator is whether prisoners and staff feel safe and secure, or in other

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111. The guidance is based on HMIP, Expectations; the questionnaire of the HMIP - simplified excerpts of which are available in the UNODC, 'Assessing Compliance with the Nelson Mandela Rules – A Checklist for Internal Inspection Mechanisms' (2017) 75; as well as on Liebling, Prisons. Steve de Shazer, 'What is Solution-Focused Therapy?' (24 January 2021) <https://solutionfocused.net/what-is-solution-focused-therapy/ >.

words their perception of safety.

» **MONITORING TOOLS:** The perception of safety is best measured empirically through a survey, but should also be an inherent part of interviews (see above § 4.3.4 on surveys and § 4.3.2 on interviews).

» **STANDARDS:** For an overview of standards on security and safety relevant to prison violence see above §3.2.1

GUIDING QUESTIONS

Example questions for interviews with staff (e.g. management, guards, medical and psychosocial staff)

· What factors in this prison are the most likely to lead to violence?

· Which group of inmates is the most vulnerable to violence in this prison? Why? Is there a group of prisoners that is particularly challenging in their behaviour? Why?

· Have prisoners become more/ less violent over time? Why?

· Can you describe a concrete situation in which you stopped violence between inmates?

· What do you consider your personal best practice for the prevention of violence?

· In a worst case scenario, how do you think your professional group can contribute to violence?

· What is your best memory of the prison?

· If you were in charge, what would you do first to reduce the level of violence? Which policy should the prison follow to reduce prison violence?

Example questions for interviews with prisoners

· What do you think is the most common reason for violence in this prison?

· Where is the safest place/least safe place in this prison?

· How safe do you feel in this prison (on a scale from 1-10)? From 1-10, how safe (or how violent) is this prison? Why do you assess it this way? What needs to change to rate it better?

· Who runs this prison, prisoners or staff?

- Do you need to protect yourself? Are you convinced that staff will protect you from other prisoners when needed?
- Have you been victimized by other prisoners or staff? What happened?
- How do you stay out of trouble?
- Have you ever not reported any violence that happened to you because you think it is pointless or because you were afraid of reprisals?
- Imagine that in the middle of the night, without your realising, a miracle happens and the prison is suddenly a safe place without violence. How would you notice this first, after you opened your eyes? When leaving your cell, what else would be different? After the miracle, you might rate the prison's safety at 10, how would you rate it now? Why do you rate it this way? What would need to happen in order to move up on the scale?

5.2. Ensuring accountability and protecting protecting persons at risk

KEY POINTS

» **ASPECTS TO MONITOR:** Security, safety and good order as well as violence prevention are ensured through appropriate procedures and policies. Such procedures must guarantee that all prisoners – and especially persons in a situation of vulnerability and/or at risk of (self-) harm, suicide and neglect – are adequately supported and protected from all kinds of violence, including those types of violence that receive less attention in prisons, such as psychological violence/ bullying (see above § 2.3).

» **MONITORING TOOLS:** The availability and quality of the procedures and policies can be monitored by gathering data and information before the visit (see above § 4.2.1) as well as by reviewing prisoners' files, records and registers (see above § 4.3.3).

» **STANDARDS:** For relevant standards on the risk assessment as well as on security and safety more generally, see above § 3.2.1 and the Handbook on prisoners in a situation of vulnerability in this handbook series. On accountability and the protection of persons at risk see above § 3.2.2, and in the Handbook on Complaints.

GUIDING QUESTIONS

Example questions for NPMs' own assessment – identification and individual needs assessment

- How are prisoners in a situation of vulnerability identified, managed and protected?
- Is there an appropriate environment for prisoners in a vulnerable situation/with special needs?
- Is staff appropriately trained to meet the needs of prisoners? Is there sufficient awareness for signs/symptoms of victimisation through bullying among staff?
- Has medical staff received sufficient training? Are all injuries appropriately recorded?

Example questions for NPMs' own assessment – the protection of prisoners

- In which way is inappropriate conduct by prisoners challenged?
- Are there any procedures to solve conflicts other than separating and punishing prisoners?
- Are serious incidents (e.g. deaths, suicides, serious injuries, allegations of torture and other forms of ill-treatment, inadequate medical care, drug overdoses) investigated by an independent body or, if relevant, by other competent authorities?
- Are prisoners informed of and able to exercise their rights as victims? Do prisoners know how to file confidential complaints? Do they think these will be effective?
- How long are CCTV recordings saved for? Who has access? Which areas are not covered? How can prisoners, who claim to be victims of violence, make sure that the recordings can be used as evidence?
- Is there a policy/procedure for the treatment of victims? Which measures are there for the support and care of victims? Are violent incidents evaluated and lessons learned drawn?

See also below, § 5.3, the Guiding questions for interviews with prisoners, power/authority and fairness of the regime.

5.3. Living conditions of prisoners

» **ASPECTS TO MONITOR:** By carefully designing prison space for work, educational and recreational activities, serving a sentence in prison can be more rehabilitative and purposeful, thereby reducing stress and aggressive behaviour. That is why assessing the conditions of the prison environment, the regime and purposeful activities as well as the possibility of keeping in contact with the outside world are key.

» **MONITORING TOOLS:** All monitoring tools are relevant to monitor the living conditions of prisoners (see above § 4.3).

» **STANDARDS:** For an overview of standards on living conditions of prisoners that were identified as particularly relevant for the prevention of violence see above § 3.2.3.

GUIDING QUESTIONS

Example questions for NPMs' own assessment – the nature of the prison environment

· Is the environment for prisoners safe, clean and decent? (e.g. state of repair, lack of or broken furniture, heating, litter, insects and rodents, fresh air, views and greenery)

· Is the prison overcrowded? Is multi- or shared occupancy accommodation being used? Are large capacity dormitories used?

· How are dignified environment and space for privacy respected? Do shared shower rooms have modesty screens? Is the toilet separated from the rest of the cell? Is the toilet area blurred on the monitoring screen of CCTV cameras?

· Are there lockers in the cell to secure the private belongings of prisoners and prevent theft? Is there an effective way to identify the private property of prisoners?

Example questions for NPMs' own assessment – out of cell activity/ purposeful activity

· What are the maximum hours prisoners spend inside cells? Are any

prisoners in their cells for more than 22 hours a day? Since when (how many weeks/months)? Why?

- Do prisoners have regular, predictable and equitable access to a range of out of cell activities that are not cancelled unnecessarily? Do prisoners receive information on this? If not, why?

- Is there a standard on how often prisoners should be able to use e.g. the library and the room for recreational activities or should be able to take part in sports/fitness or cultural activities?

- Are there any offers for purposeful in-cell activities for prisoners who have not been allocated a work placement?

- Is there a system for allowing equitable access to activities?

- How long is the waiting time for prisoners for taking part in daily activities such as work?

- Are any groups of prisoners discriminated against? What are the reasons?

- Are there any activities which promote learning, well-being and rehabilitation?

- Do prisoners feel safe and secure and are free from physical and verbal abuse during their education, work and other activities? Which activities are overseen by the staff to ensure their safety and why?

- Do rehabilitative programmes offer sufficient space for those who have to/would like to participate?

- Are offender rehabilitation plans designed for each prisoner to address their specific needs, manage any risk of harm and reduce their risk of reoffending?

- How is the prison management encouraging a rehabilitative culture among staff?

Example questions for NPMs' own assessment – contact with the outside world

- Are there a sufficient number of telephones available? Do prisoners have easy access and can speak in privacy for a reasonable time without having to fight over the phone? Can prisoners also use phones during the evening?

- Is there a possibility for family visits? Are visiting areas sensitive to the needs and the safety of children? How are visitors treated by staff?

Are they searched respectfully? Are visiting times family-friendly (i.e. including weekends and evenings)?

· What is the procedure for applying for day-leave? Is it known to prisoners?

Example questions for interviews with prisoners

· On a scale from 1-10, how do you rate the quality of life in prison?

· On a scale from 1-10, how stressful would you consider your life in this prison to be?

· What is the biggest challenge for you in this prison?

· How were you treated/welcomed upon arrival in this prison?

· Have you experienced any language barriers in communicating with the prisoners in your cell?

· Do you feel that you have all information regarding prison life that you need to know?

· Do you consider this prison clean?

· Is it normally quiet enough for you to sleep at night?

· Do you consider your personal things safe in your cell?

· Do you have access to the library, fitness room and sport facilities? How often per week?

· Do you feel treated fairly? If not, do you feel discriminated against?

· Do you feel supported in maintaining contact with your relatives?

· Do you have access to a phone every day? Did you experience problems with sending/receiving mail?

· Is it difficult for your friends and family to come here?

· How do they feel treated by staff?

5.4. Staff-prisoner relationships

KEY POINTS

» **ASPECTS TO MONITOR:** Positive relationships among everybody in prison, but especially those between staff and prisoners, are key for maintaining safety, security and good order and thus for reducing

incidents of violence. Violent conflicts may erupt when prisoners feel treated unkindly by staff or do not have decisions explained. The quality of relationships with staff is often what makes prisoners' lives either tolerable or unbearable. Positive relationships are often developed in a 'light-present regime' (see above § 2.3).

» **MONITORING TOOLS:** Staff-prisoner relationships and more generally the type of regime adopted in the prison can best be monitored by observing the prison conditions and culture (see above § 4.3.1) as well as through interviews and surveys (see above § 4.3.2 and § 4.3.4).

» **STANDARDS:** Positive relationships between staff and prisoners are at the core of the concept of dynamic security as well as the standards on professionalisms and ethics of prison staff (see above § 3.2.4).

GUIDING QUESTIONS

Example questions for NPMs' own assessment

· Are the staff present in the prison and have a close and good relationship with prisoners? Is the relationship between staff and prisoners characterized by principles of accountability, integrity, respect for and protection of human dignity, care and assistance, fairness, impartiality and non-discrimination, co-operation, confidentiality and data protection? How does staff treat and address prisoners (e.g. does staff normally knock on prisoners' doors before entering to respect their? Is derogatory language used)? How do the two groups interact among themselves?

· Is there an official vision statement that may contribute to strengthening a positive and rehabilitative culture?

Example questions for interviews with prison staff

· What matters most in the professional relationship with a prisoner?

· If you put yourself in the shoes of a prisoner, how would you feel about the current prison conditions?

· How would you describe the culture in this prison? What makes it

different to other prisons you have worked in?

· Do you consider this prison a strict or rather a lenient prison? What do you prefer? What is important in this regard? How does it affect the relationships between staff and prisoners?

· In a scale from 1-10, how fair do you consider this prison to be?

Example questions for interviews with prisoners

Humane and respectful treatment

· On a scale from 1-10, how do you rate the quality of your relationship with staff?

· How do prison officers most often address you? Do you feel addressed in a respectful manner? Can you give an example of when you felt treated with respect? Do you feel treated with humanity in prison? What does it mean for you?

· Can you tell us about a situation in prison in which you felt heard, seen and treated as an individual?

· Do you get along with officers in your department? Do you know the names of staff members?

· Does anybody in the prison really know you as a person, or want to get to know you?

· If you could change one thing about how prison staff treats prisoners, what would it be?

· On a scale from 1-10, how much do you feel that 'things get done' in this prison?

· Are there situations in which staff just does not react to your questions and simply looks away?

· What makes a good prison guard?

· Here in this prison, do you feel there is a strong culture of 'them against us' between prisoners and staff?

· Have you heard racist comments towards foreign prisoners?

Trust, support and accessibility

· How approachable/friendly/helpful is the staff to you?

· Do you feel that the staff cares about your needs? Tell us about a situation in which your felt supported.

· Do you trust the staff in your wing? Do you feel like the staff trusts you?

· Is there a member of staff you can turn to for help if you have a problem?

Power/authority and fairness of the regime

· On a scale from 1-10, how fairly would you say you are treated?

· Do you feel treated differently or discriminated against by staff? Why? In which situations?

· Do you feel that staff is hiding behind formal rules and regulations so they do not have to interact informally with prisoners? Can you give an example?

· Have you ever felt that decisions are taken arbitrarily? Why did you feel that way?

· On a scale from 1-10, how fairly do you feel that the disciplinary procedure are?

· Can you think of a situation in which the staff over-used their power?

· Did staff every threaten you will the refusal of certain services?

· How does the staff show their authority the most?

· Do you feel that you have some power over your own life or are things just happening to you?

· What is your experience with requests and replies/ decisions?

· Is it easy to make a request? Are requests dealt with fairly/quickly?

· Do you think that requests get lost or disappear?

· Did you ever apply to speak to the director or some other member of the prison management? If someone came to see you, how long did it take?

· Do you receive answers and reasons for decisions taken?

5.5. Staff professionalism and working conditions

KEY POINTS

ASPECTS TO MONITOR: Working in prison, especially as a prison guard, is a challenging job. The competencies, attitudes and conduct as well as the display of authority by prison staff shapes the prison's morale and therefore the working conditions and relationships between staff and the prison management. How the staff perceives the leadership and how satisfied they are with their job plays a crucial role for prison culture and the level of violence, including staff-prisoner violence.

MONITORING TOOLS: Staff professionalism and working conditions can be effectively monitored by gathering data and information (see above § 4.2.1) as well as through interviews and surveys with staff (see above § 4.3.2 and 4.3.4).

STANDARDS: For an overview of standards on staff professionalism and working conditions see above § 3.2.4.

GUIDING QUESTIONS

Example questions for NPMs' own assessment – staff professionalism and working conditions

- Is the prison understaffed with regards to prison guards? (staff/prisoner ratio; number of psycho-social staff members such as social workers, psychologists etc.)

- How is the recruitment and staff selection organized? Which competencies are envisaged for a prison guard?

- Do staff records reflect appropriate training and professional development about violence reduction? What topics does staff training cover (e.g. human rights, the treatment of persons in a vulnerable situation, conflict resolution, prevention and mediation skills, use of authority and force, dynamic security, balancing security measures, suicide prevention, mental health)? Is it evaluated regularly?

· How do staff offices look like in terms of lighting, space, fresh air? Does staff appear stressed?

· Is adequate protective equipment available?

· What public picture exists about the profession of a prison guard?

Example questions for interviews with staff

· What would you recommend to a new colleague? What did you miss when you arrived at this prison?

· What makes a successful working day for you? What keeps you motivated?

· If you were in charge, what would you change about your working conditions?

· What are the biggest challenges regarding your responsibilities towards prisoners? What would you need to improve your interactions? What is the biggest challenge for this prison?

· How do you experience the management of the prison?

· How do you deal emotionally with the violence you see in your daily work?

Further Readings

- A Human Rights Approach to Prison Management (International Centre for Prison Studies)
- Balancing security and dignity in prisons: a framework for preventive monitoring (PRI/APT)
- Combating ill-treatment in prisons (CoE)
- Dignity and safety in restrictive detention Regimes (ICRC)
- European Prison Rules (CoE)
- Factsheet: Body searches (PRI/APT)
- Factsheet: Incident management and independent investigations (PRI/APT)
- Factsheet: Instruments of restraints (PRI/APT)
- Factsheet: Staff working conditions (PRI/APT)
- Guidance Document on the Nelson Mandela Rules (OSCE/ODIHR, PRI)
- Handbook on 'Dynamic Security and Prison Intelligence' (UNODC)
- Handbook on 'Management of High-Risk Prisoners (UNODC)
- Handbook for 'Prison Leaders' (UNODC)
- Handbook on 'The Classification of Prisoners' (UNODC)
- Institutional culture in detention (PRI/APT)
- Omerta, opacite, impunite (Observatoire international des prisons-section française)
- Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty (OSCE/ODHIR)
- Prison Bullying and Vicitimisation (University of Birmingham)
- Prison health care and medical ethics (CoE)
- Prison Incident Management Handbook – Corrections (UN)
- Prisons and health (WHO/UNODC/ICRC/CoE)
- Reducing Prison Violence (Prison Service Journal)
- Rights behind bars. Access to justice for victims of violent crime suffered

in pre-trial or immigration detention. Findings and recommendations (Fair Trials)

- Sexual Violence in Detention (ICRC)
- Technical Guidance for Prison Planning (UNOPS)
- Towards humane prisons - Prison Planning (ICRC)
- Trainer's Manual on Dynamic Security (CoE)
- Understanding prison violence: a rapid evidence assessment (HMPPS)

A Handbook for National Preventive Mechanisms

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