



**MONITORING PLACES
OF DETENTION
TO PREVENT TORTURE
AND OTHER CRUEL,
INHUMAN
OR DEGRADING TREATMENT
OR PUNISHMENT:
*A PRACTICAL GUIDE***

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or Punishment:**
A Practical Guide

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This Guide is a reference designed to help human rights defenders and civil society activists, as well as members and experts of national preventive mechanisms, when visiting places of detention, to monitor human rights standards in these institutions.

Abbreviations

OPCAT – the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

NPM – National Preventive Mechanism, a body of experts empowered under the OPCAT to regularly visit places of detention and monitor the conditions there, as well as treatment of persons deprived of their liberty; with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment

CPT – the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

SPT – the Sub-Committee of the Committee against Torture on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

POCs – Public Oversight Commissions, voluntary bodies created in Russia to monitor places of detention

UNCRPD – the United Nations Convention on the Rights of Persons with Disabilities

NGOs – Non-Governmental Organisations

Introduction

› What is this publication?

It is a practical guide for monitoring places of detention to prevent torture and other cruel, inhuman or degrading treatment or punishment. The guide is presented in the form of general questions and answers with examples of local practices in four countries: Russia, Lithuania, Norway and Sweden. The guide is intended to be easy to use and cover the basics. For more details on specific subjects, please refer to the useful links section provided in the last part of the guide.

The guide is divided into three parts as follows:

- the main part is presented in the form of frequently asked questions and answers about visiting and monitoring places of detention;
- the second part (the list of practical questions) contains examples of potential questions to be posed to the administration of places of detention and persons deprived of their liberty during monitoring visits, and which a monitor can ask him/herself, as well as the types of documents he/she might want to review;
- the final part (useful links and references) provides online links to existing manuals and toolkits in the field of monitoring of places of detention.

› Who is it for?

- for NGOs, NPMs and other professionals who have a mandate or permission to visit and monitor places of detention for the prevention of torture in any country;
- for those who would like to start monitoring places where people are deprived of their liberty, such as prisons, migrant detention centres, residential social care homes for the disabled, residential homes for the elderly, psychiatric hospitals, children's homes and other places of detention;
- for those who wish to better understand how the monitoring of places of detention works in general.

› What is the main purpose of this publication?

- it is presented in a user-friendly format of questions and answers intended to be used in practice;
- it takes into account practical examples and experiences of monitoring of places of detention in four different countries;
- it is not country specific, thus intended to provide information to practitioners in various different national contexts;
- it provides references to more detailed or thematic manuals and tool kits for those interested in exploring certain topics in more depth.

Frequently Asked Questions

1 How do I decide which specific places of detention to visit for monitoring purposes?

In theory, monitoring visits should be performed regularly in all places of detention, i.e. in all places where persons are, or may be, deprived of their liberty, meaning that they are not free to leave. You may choose those, which have not yet been visited at all, or were visited a long time ago. You may also want to take into account information available from the mass

media, reports by NGOs, and any existing complaints or reports of other monitoring bodies about problems in specific places of detention. When visiting a place of detention, it is worth noting whether the administration allows you to enter all of the rooms/floors/buildings and whether you have access to the whole facility.

2 Do I need to notify the administration of the place of detention about the planned visit?

As a general rule, it is not necessary. You should be able to make either announced or unannounced monitoring visits. In some cases it might be more appropriate and effective to make an unannounced visit, for example, in cases of grave human rights violations reported in mass media or an individual complaint. For instance, in Sweden, the OPCAT unit of the Parliamentary Ombudsman received complaints regarding the treatment of inmates by the staff of a youth institution of temporary confinement, and the Parliamentary Ombudsman made an announced visit in December 2018. This provided the monitoring team with an opportunity to gather evidence of inappropriate treatment. As a result, some of the detained children who had kept silent for a long time prior to this visit, opened up and complained about the use of excessive force against them by the staff. This al-

lowed the monitoring team to gather the necessary evidence to handle and address that specific situation.

If an announced visit is being conducted, the administration should be informed about the monitoring visit at least a few days in advance. The notification does not mean that you seek approval for your visit from the administration; however, the administration might indicate potential problems for visiting on a certain day or at certain hours of the day. This approach is more suitable for routine monitoring visits, not prompted by specific reports of violations. Also, it is appropriate for visits to institutions that have a good track record and can be afforded a reasonable degree of trust.

In urgent and serious cases it is generally advisable to consider making unannounced visits such as those described above.

3 Whom should I take with me on monitoring visits?

In order to ensure a fair and objective assessment, and in some circumstances everyone's safety, it is advisable to carry out monitoring visits in pairs or as a team; in some cases this is a legal requirement. While most members of a monitoring team are often lawyers, it is recommended that experts in mental health, social affairs, medicine or other relevant professions also form part of monitoring teams. If you

are visiting a place of detention for children, an expert in child development, behaviour and psychology might be needed. If you are planning to interview persons deprived of their liberty who are non-native speakers, you will probably need an interpreter. It is advisable to share tasks among the team members, according to their knowledge and experience.

4 What do I take with me on monitoring visits?

The choice depends on what is allowed by the monitored institution's internal rules:

- You may bring a notebook into some institutions, in others it is prohibited.
- The agreed survey form or other relevant tool kit(s), such as standards or questionnaires, from which you will collect your data. Be sure to have a hardback notebook or clipboard, so you can comfortably take down any additional notes, comments, or make sketches.
- A photo camera; typically mobile phones must be left behind when entering certain detention facilities but these rules do not necessarily apply to cameras.
- An audio recording device for interviews.
- Instruments for measuring room temperature, humidity and light if you are doing an in-depth analysis of physical living conditions.

5 Can the administration of places of detention perform a physical inspection on me?

It depends on each country's legislation, as well as on internal rules of specific facilities.

For example, in Russia, the law regulating the work of Public Oversight Commissions (POCs) does not specify whether members of POCs can enter places of detention without having undergone a physical inspection. This right is established in the Secret Instruction for the protection of correctional institutions and detention centres of the penitentiary system. However, a physical inspection is only possible when there are sufficient grounds to suspect that a member of the POC is carrying items prohibited by the place of detention. In this respect, the status of members of POCs is similar to the status of defence lawyers.

In Lithuania, persons entering and leaving penitentiary institutions can be screened by fixed or portable metal detectors. If this initial check of the person raises suspicions, an additional check can be done, i.e. a pat-down or inspection of any items carried. The only persons exempt from these checks are the president, members of the parliament and the government, and judges. However, in practice NPM representatives are afforded trust and are not subjected to checks; and are also permitted to bring in mobile phones should they wish to take pictures or audio recordings.

6 What is the usual program of a monitoring visit?

A typical visit might start with meeting the head of the institution and/or other representatives of the administration. Then the monitoring team proceeds with inspections of the premises, including higher security areas such as isolation cells, video surveillance rooms, etc.

When appropriate, monitoring team members conduct interviews with persons deprived of their liberty, as well as guards and other staff.

The monitoring team reviews reports, journals, floor plans of the facilities and other relevant documents. The team can also request copies of these documents, so they can be reviewed at a later stage and compared to the data collected first-hand during the visit. Team members also observe the overall atmosphere inside the monitored facility.

7 Which documents may I have access to at the monitored place of detention?

All required documents containing information on the persons deprived of their liberty. The information is of course confidential and must be treated as such by all monitoring team members. Relevant information may be found in documents such as the register of admissions and releases, the register of sanctions and disciplinary measures, the register of solitary confinement and/or restraints, the register of incidents/accidents, the register of complaints, medical records, etc.

Access will also be given to all required documents regarding the physical conditions of the places of detention: the floor plans, including measurements of rooms, cells, exercise yards

and specific areas; the results on hygiene or similar inspections conducted by other institutions; and the daily routine schedules for persons deprived of their liberty, so as to determine where and how much time is spent in different areas of the institution. Bear in mind that these documents are also likely to carry confidential information and must be treated accordingly.

It is worth noting that there may not be an open and complete list of the documents which can be accessed. For instance, in Russia members of POCs have to learn in practice what records are kept by the administration of places of detention and what other documents are available elsewhere in the monitored facility.

8 What is the minimum standard for the size of a prison cell or a person's room in residential care institutions or psychiatric hospitals?

The CPT recommends 6 m² of living space for a single-occupancy cell, excluding the sanitary facility; and 4 m² of living space per prisoner in a multiple-occupancy cell, excluding the sanitary facility, which in the latter case should be fully partitioned. While anything below 3 m² of living space per person is typically considered a human rights violation by the European Court of Human Rights. However, different states often use different criteria for measurement.

For example, in Russia, according to the Penal Enforcement Code, the living space depends on the type of place of detention: in correctional colonies it cannot be smaller than 2 m², in prisons 2.5 m², in women's colonies and medical correctional institutions 3 m², in educational colonies 3.5 m², in medical institutions 3 m², in pre-trial detention facilities (SIZO) 4 m², in medical preventative treatment institutions of the penitentiary system 5 m². Thus, Russia

mostly does not comply with regional standards. In Lithuania, the minimum living space provided to a single prisoner or pre-trial detainee in dormitory-type rooms must be 3 m² and in cell-type rooms the minimum is 3.6 m². However, this is further complicated by the fact that the living space can be taken up with furniture and in-cell toilets. So the same standard may lead to significantly varying living conditions in practice, even if the standard is met.

The space in cells is not the only requirement to take into account when evaluating conditions of detention; other factors should also be considered: light, heating, ventilation, bedding, hygiene and whether the person is locked in the cell/room most of the time or can regularly enjoy activities outside it.

9 What else to look for when inspecting a prison, residential care institution or a psychiatric hospital?

The following is a representative but by no means complete list of what to potentially look for/at during the monitoring visit.

General issues:

- are buildings in a good state of repair;
 - are buildings and rooms accessible to persons with disabilities;
 - is a toilet isolated from the rest of the room/cell or is it open and visible from the rest of the room/cell or the front door;
 - do bathing and toilet facilities allow privacy, and are there separate facilities for men and women;
 - are the personal needs of those who are either unable to sit out of bed or have impaired mobility, accommodated for;
 - are there measures in place to protect people in the case of fire;
 - are inmates able to communicate in the language of their choice, and does the facility provide support (e.g. interpreters, translations of documents, Easy-to-Read format, etc.) to ensure that they can all express their needs and understand their rights.
- ### Specific issues in prisons:
- are the furniture, the toilet and the sink unbreakable;
 - are visitors allowed and under what specific arrangements, how often, and what are the conditions in the visiting rooms;
 - are there outdoors and indoors exercise areas, are detainees allowed to use them, how frequently, are they adequately equipped and what is their state of repair;
 - what out-of-cell activities and how many of them are available to detainees;
 - are the internal prison rules made clear and available to detainees;
 - are coercion measures used and their use registered, what type (isolation, physical restraint, physical and/or psychological violence);
 - can detainees file complaints with the administration and are these complaints registered and responded to;
 - are detainees free to send and receive physical correspondence;
 - can detainees make phone calls, are the facilities to make phone calls sufficient and is the cost of a call reasonable;
 - are detainees allowed to access the internet and if so, what restrictions apply and are they justified;
 - do detainees serving sentences work towards their own rehabilitation and are they supported in this endeavour;
 - depending on the type of institution are the doors locked at all times.

Specific issues in residential social care institutions and psychiatric hospitals:

- can people wear their own clothing and shoes (day-wear and night-wear);
- are telephones, letters, e-mails and the internet freely available to people, without censorship;
- if there is censorship – what is the scope of it and what are the specific reasons for it being enforced;
- are visitors allowed and under what specific arrangements, how often, and how are the facilities for meetings arranged;
- can people move freely inside the premises and outside;
- are coercion measures used and what type (isolation, chemical restraint, physical restraint, forced hospitalisation and treatment, etc.);
- if there are restraint measures in use, what are the rules of monitoring and supervision during the restraint procedures;
- are forms requesting informed consent for medical interventions in place;
- are any medical interventions used without informed consent.

10 Can I accept complaints from persons deprived of their liberty during monitoring visits?

Although CPT emphasises that it is not the role of NPMs to investigate complaints, you can accept them if they relate to conditions of detention, cases of the use of excessive force or ill-treatment by staff, inter-prisoner or resident violence, failure to provide or poor quality of medical care, etc.

How the system operates nationally should also be considered, as in some countries the NPM may be in a good position to accept these complaints. For example, in Lithuania the NPM is also the Ombudsman institution, whose primary function is to deal with complaints, and thus can conduct additional investigations based on any complaints received.

11 How to handle complaints?

The procedure for processing complaints might differ according to the internal rules of the monitoring team: there might be a separate unit in place for the assessment and investigation of complaints in addition to the visiting and monitoring of places of detention by a unit. All complaints should be registered while maintaining the principles of confidentiality.

To start with, all complaints should be discussed with the authorities of the place of detention. If the latter fail to handle the complaints, it might be necessary, with the inmate's consent, to draw public attention to the matter. For example, in Russia in October 2018, members of the POC of St. Petersburg published a report, which aimed to inform the general public about atrocities and human rights violations that took place in certain places of detention. This re-

port was based on complaints, medical documents and some other sources on torture by the Federal Security Service, featuring the names of some of the persons deprived of their liberty. Another example comes from Moscow: journalist Elena Masyuk published articles in *Novaya Gazeta* covering her work as a member of the POC, where she focused on the systematic problems in the penitentiary system leading to the violation of inmates' rights.

In Lithuania, the Parliamentary Ombudsman's Office, which is both the national NPM, as well as the National Human Rights Institution, accepts and investigates individual complaints. They also have power as an independent body and occasionally start investigations on their own initiative, based on received information about possible violations.

12 How to interview persons deprived of their liberty?

First of all, it is important to ask for their informed consent to be interviewed. Interviews must be confidential and often need to be completely anonymised at the stage of reporting. The interviewee should understand your main aims, status and its limitations. The staff of the place of detention should not listen in on the interview. The information obtained during the interview is confidential. If you assume that you may need to pass on some of the information obtained during the interview to the media or that you may need access to medical records, you need to obtain consent from the interviewee for this.

During interviews it is advisable to use open-ended questions and to avoid leading questions. For more details on interviewing, see the WHO QualityRights tool kit and ITHACA tool kit on monitoring social care and mental health care institutions; also see the Defence for Children International (DCI) Practical Guide on places of detention for children; and the Practical Manual on Monitoring Immigration Detention (see links below in the Useful Links section).

13 What should I do to avoid reprisals on persons deprived of their liberty?

Reprisals might follow if the administration of the place of detention is not satisfied with the complaints made by the person deprived of his/her liberty. In Russia, inmates do not always complain for fear of reprisals or because they do not believe that their complaints would be considered fairly. The risk of reprisals is especially high for persons held in psycho-neurological internats (PNI), where they might be barred by law from applying for legal assistance on their own.

If a person deprived of his/her liberty submits a complaint, he/she will most likely understand its potential consequences and will be ready for possible reprisals. If reprisals are conceivable, you should give him/her your contacts and/or ensure that he/she has access to legal assistance or the help of a defence lawyer who regularly visits him/her in the place of detention in question. In such cases the authorities of the place of detention would likely become aware that the situation is being monitored. For example, in a correctional colony in Karelia (North-West Russia) in 2017, 10 persons deprived of their liberty submitted complaints concerning inhuman and degrading treatment by the staff of the colony. They were subsequently regular-

ly visited by defence lawyers and for the majority of them this treatment stopped. However, one inmate was also charged with false accusations. Alternatively, if a person does not speak about the conditions in the place of detention for fear of reprisals, you can ask him/her about his previous places of detention where the administration is unlikely to be able to harm the inmate. Another option is to not include the name of the inmate, who is in fear of reprisals, in the report on the visit of the place of detention and refer to him/her as an anonymous source of complaint.

In Lithuania, similar patterns can be observed in residential social care homes. Inmates and their families often do not complain about inhuman or degrading treatment, nor about the use of force or restraints, because they fear reprisals by either the institutions in question and/or specific services, which they very much depend on, and where they have no other possible alternatives to fall back on. For example, in 2015, a Lithuanian NGO was approached by the mother of a son with a learning disability who lives in a social care institution. In situations of acute emotional distress, her son had been admitted to a psychiatric hos-

pital from time to time. Following one of these admissions, his mother, during a visit to the hospital, found a restriction belt under his bed with his name and surname marked on it. She then complained that her son seemed to be regularly physically restrained with this belt and took several photos of it, which she then sent to the NGO. Pictures clearly demonstrated harm induced by prolonged use of restraints: the man had bruises and swollen hands. Both the social care home and psychiatric hospital are licensed

allowing them to carry out psychiatric treatment, which also permits physical restraint, but it is not clearly regulated. The NGO proposed to litigate this case, however, this was out of the question for the mother as her son had to continue living in the institution in question and she feared potential repercussions. She was extremely cautious as she felt that such a litigation might have resulted in potentially harming the well-being of her son even more.

14 Which national and international organisations and mechanisms can help me in my work?

The CPT visits places of detention in the countries of the Council of Europe. You can consult and cooperate with the CPT with a view to avoiding duplication and to sharing information.

The SPT is established under the OPCAT and acts only in countries which have signed and ratified the OPCAT. The SPT visits places of detention in various countries and provides assistance and training for NPMs also established under the OPCAT. If your country has signed and ratified the OPCAT you may apply to the SPT for assistance.

The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment transmits urgent appeals to those states where there is concern for individuals reported to be at risk of torture, as well as sending communications on past cases of alleged torture. The UN Special Rapporteur may also visit states with the aim of carrying out fact-finding missions.

The International Committee of the Red Cross (ICRC – local offices) visits those de-

tained during an armed conflict or other situations of violence under the Geneva Conventions. The ICRC might visit those places of detention where your access is restricted due to violent situations.

In Russia, you can cooperate with national human rights mechanisms – the Ombudsman of the Russian Federation and ombudsmen in each subject of the Russian Federation. Moreover, there are ombudsmen on the rights of children at both federal and regional levels. You can also interact with the public councils of the Federal Penitentiary Service of the Russian Federation, members of federal and local parliaments as well as consuls on the issues concerning foreign citizens deprived of their liberty in Russia.

In Lithuania, collaboration is possible with the NPM – the Parliamentary Ombudsman's Office – which is open to involving NGOs and individual experts on their monitoring visits and the subsequent reporting.

15 When is it legal to use solitary confinement (seclusion)?

The SPT highlights that solitary confinement should always be used as a measure of last resort. A person placed in isolation might well be left without necessary medical assistance and supervision. Seclusion should not be confused with medical isolation. Medical isolation means daily monitoring by medical staff; meanwhile persons deprived of their liberty should,

with certain precautions, have the opportunity to have contact with others. Cases of seclusion should be properly documented and monitored.

In psychiatric hospitals and residential social care institutions, isolation and seclusion are considered a form of restraint, thus, a coercive measure (see questions No. 29 – 33, below).

16 What does ‘informed consent’ to medical treatment mean?

The SPT clarifies that “informed consent is a decision made voluntarily on the basis of comprehensible and sufficient information regarding the potential effects and side effects of treatment/action, and the likely results of refraining from treatment/action” (CAT/OP/27/2).

Persons deprived of their liberty should have this information explained to them in a way most suitable for their individual circumstances and needs, and in an appropriate and understandable language, and/or other means of both verbal and non-verbal communication.

17 Can medical treatment be applied without informed consent?

This may differ in individual countries, depending on local legislation.

However, the SPT clarifies that it may be necessary to give medical treatment to persons deprived of liberty without their consent if the person concerned is unable to:

- (a) Understand the given information concerning the characteristics of the threat to her or his life or personal integrity, or its consequences;
- (b) Understand the information about the medical treatment proposed, including its purpose, its means, its direct effects and its possible side effects;
- (c) Communicate effectively with others” (CAT/OP/27/2).

In Russia, if a person is deprived of legal capacity and has no relatives, or his/her relatives have refused to become their guardian, he/she is placed into a mental health institution, i.e. a psycho-neurological internat (PNI), which becomes his/her guardian. In this situation, the administration of the place of detention might face a conflict of interest. For instance, PNIs refuse persons deprived of their liberty to leave the facility in order to visit family and friends, which contradicts their rights under the UN Convention on the Rights of the Persons with Disabilities.

18 How can I understand whether medical treatment was applied legally?

You should talk with the person, learn his/her opinion and check medical records whether they contain information on informed consent to

medical treatment or, alternatively, whether they show that there were grounds to apply treatment without the person's informed consent.

19 Can force-feeding be applied during a hunger strike?

There is no international rule on the legality of force-feeding. Recommendation N° R (98) 74 by the Committee of Ministers concerning the ethical and organisational aspects of health care in prison notes that a doctor should inform a hunger striker about potential medical consequences and possible treatment if the condition of the hunger striker seriously deteriorates. The doctor should act in accordance with the national law in each country. In its country reports the CPT

stresses that decisions on force-feeding should be properly documented in a written form.

In Russia, the Penal Enforcement Code stipulates that force-feeding is possible when there is a threat to the life of the person. Similarly, in Lithuania force-feeding can be applied in prisons if the detainee suffers unconsciousness or mental health impairments and there is a direct threat to their life because of the hunger strike.

20 Is it legal to limit religious rights in places of detention?

The Basic Principles for the Treatment of Prisoners declares that, except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights. This means that religious beliefs and cultural precepts of the group to which prisoners belong must be respected.

In Russia, persons deprived of their liberty are often prevented from exercising religious rights. In Karelia (North West Russia), due to the

schedule of the place of detention, Muslim inmates cannot pray five times a day as their religion prescribes: the schedule does not include time for prayer, and if an inmate prays, he automatically violates the schedule, and as a consequence he faces disciplinary sanctions. Similarly, women are not allowed to wear a headscarf while working in the premises of the place of detention. Moreover, often the food provided in places of detention might not meet rules of religious compliance.

21 What should I do after a monitoring visit?

Produce and disseminate a monitoring report and recommendations, and perform follow-up actions regarding the implementation of these recommendations.

22 What should I include in the report?

It is recommended that the report is structured and produced in accordance with a specific methodology, according to which the monitoring visit was carried out. You should include in the report all problems and issues raised dur-

ing the visit as well as any improvements made since the previous visit. The report should be objective. Reports can be periodic, thematic and annual.

23 Can I produce recommendations to the administration of the visited place of detention?

Yes, it is precisely your role to make recommendations to the relevant authorities: ministries, police, and administration of places of detention on the improvement of human rights

conditions. You can also submit proposals to change laws or adopt new ones. The report and recommendations should be made publicly accessible.

24 What does a follow-up include?

The administration of the place of detention can respond to the report and recommendations in a personal discussion and/or in a written form. If the administration declares that it

will implement certain changes according to recommendations, these should be examined during the next visit and the relevant evaluation should be included in the next report.

25 How to interact with mass media and whether I should do it?

It is good practice to inform the public so that they know and understand your work, and the media are one of the best suited channels to fulfil that role. You may use the media to inform the public about your work, reports, recommendations, follow-ups, your ideas on relevant thematic changes in policy and legislation, etc. Naturally, no confidential information may be disclosed in this process.

Be prepared to defend your opinion in publications or other media, in case the administration of the monitored place of detention disagrees with your findings and reproaches the monitoring team for making false accusations. Your best defence is to follow the law and not to breach the principle of confidentiality.

Children and Women

26 Will I come across children in places of detention?

Yes, children may be held in police detention facilities, pre-trial detention centres, prisons, closed educational institutions, social care

institutions, psychiatric hospitals and other establishments for children with disabilities, reception or deportation centres for migrants, etc.

27 How should I talk to a child?

It is recommended to communicate with a child in a language and manner appropriate for his/her age but without patronizing the child. Before the interview, you must get the informed

consent of the child who is to be interviewed. The consent of his/her parents or legal representative might also be required. The content of the interview is, of course, confidential.

28 Should I pay special attention to women deprived of their liberty?

Yes, women face a high risk of torture or degrading treatment in places of detention; moreover, they have specific gender-related needs and may have dependent children. For more in-

formation on this issue, see the Guide to gender-sensitive monitoring of places that detain women (see Useful Links section below).

People with psychosocial and/or cognitive disabilities

29 Why should I pay special attention to persons with psychosocial and/or cognitive disabilities?

People with psycho-social and/or cognitive disabilities and people with mental health problems are among the most marginalised and vulnerable groups. They are often excluded from mainstream social and economic activities, as

well as from decision-making processes on issues that affect their lives. A major public and institutional stigmatisation and discrimination towards persons with disabilities are widely prevalent.

30 Are segregated closed institutions appropriate places to live for people with disabilities?

No, people with psycho-social and/or cognitive disabilities have the right to live in the community; it is the foundation for all other rights. The right to live independently and to be includ-

ed in the society is closely linked with other fundamental human rights, such as personal liberty, private and family life, freedom from ill-treatment or punishment, equal recognition before

the law, and others. These standards of full inclusion and participation in the community life have been captured in the overarching objective of Article 19 of the 2006 United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol. The right to live independently is generally violated when people have been confined and for long peri-

ods, sometimes even decades, have been kept in segregated residential institutions or psychiatric hospitals. The right to health might be also compromised by placing people in psychiatric institutions, especially when this is against their will instead of providing the necessary support and services to them in the community.

31 What does the UNCRPD say about the legal capacity of persons with disabilities?

Article 12 of the UNCRPD recognises that ‘persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.’ Article 12 also refers to exercising legal capacity. In the past, ‘legal capacity’ was generally conflated with the term ‘mental capacity,’ which the UNCRPD Committee defines as ‘the decision-making skills of a person.’ In the General Comment on Article 12 “Equal recognition before the law” the UN Committee on the Rights of Persons with Disabilities states that the concepts of mental and legal capacity have been conflated, so that where an individual is thought to have impaired decision-making skills, often because of a cognitive or psycho-social disability, his/her legal capacity to make a particular decision is removed. An individual’s disability and/ or decision-making skills are usually accepted as a legitimate basis for denying him/her legal capacity and lowering the person’s status before the law. Article 12 does not permit this discriminatory denial of legal capacity. Thus, the UN Committee emphasises that the laws which enable involuntary treatment on the basis of a loss of

decision-making capacity in this view are, therefore, discriminatory. Mental capacity should no longer be intrinsically linked to legal capacity.

Due to the lack of UNCRPD compliant legislation and the absence or poor implementation of it, in practice in some countries legal capacity issues are deeply rooted in the social care system. For example, in Russia the majority of people with disabilities living in social care homes are under plenary guardianship. This means that their rights to exercise legal capacity are totally restricted and their civil rights are taken away. In Lithuania, living in social services care does not require the restriction of legal capacity; thus, the majority of those living there can exercise their civil rights, though some are under partial guardianship. Being able to exercise legal capacity allows the person to exercise civil rights, one of which is the right to participate in political and public life, which is enshrined in Article 29 of the UNCRPD. Thus, for example, in Lithuania voting procedures are organised in social care institutions as they are in all other places of detention.

32 Which type of threats do people with disabilities face in places of detention?

Coercive measures are often applied in places of detention, such as residential social care homes or psychiatric hospitals: involuntary hospitalisation and treatment, various forms of restraint (i.e. psychological, chemical and isolation). For example, in Lithuania and in Russia these

coercive measures are in compliance with national legislation, as well as with the CPT regulations, and are not prohibited; however, this is not in line with the UNCRPD Articles 3, 12, 14, and 15. The CPT standards may also differ from national legislation in terms of procedures to be

applied while executing coercive measures. Nevertheless, the CPT standards might be beneficial when monitoring the application of coercive measures – if these continue to be applied

in social care homes or psychiatric hospitals, regardless of the contrary fundamental standards set out in the UNCRPD.

33 What are the alternatives to deprivation of liberty or detention of people with disabilities?

Article 12 of the UNCRPD recognises people with disabilities as being equal to others before the law and promotes safeguards to ensure measures for exercising their legal capacity. Thus, according to the UNCRPD, supported decision making schemes have to be applied instead of substitute decision making and guardianship, which is rarely applied and often is not in line with national legislation, where plenary or partial guardianship is embedded. There usually are even more discrepancies between the UNCRPD, the CPT and national legislation of each country, which have been undergoing discussions at the global level. This indicates a slow pace of change in relevant policies, common understanding and public opinion with re-

gards to vulnerable groups such as people with psycho-social and/or cognitive disabilities and those with mental health problems. The World Health Organisation's QualityRights Tool Kit (see the Useful Links section below) provides standards of mental health care and services in line with the UNCRPD and could be beneficial when monitoring all places of detention.

It is important to note that the rights of persons with disabilities should not only be respected and monitored in specialised places of detention, such as social care homes and psychiatric hospitals, but should also not be forgotten anywhere else, be it in a prison, a migrant detention facility or any other generic place of detention.

Migrants

34 What should I pay attention to when monitoring places where migrants are detained?

Migrants, refugees, stateless persons and foreign citizens can be deprived of their liberty not only because they have been charged with a crime or convicted, but also because for some reason they do not have a valid permit to stay in a specific country, or they are waiting for a decision on their application for asylum, or they are facing deportation. In such situations, the conditions of their detention are often similar to those of traditional places of detention, but persons deprived of their liberty have specific rights and specific needs. For example, they have the right to contact the consul of the coun-

try of their origin; you can ask whether they have exercised this right (or why not). You should pay special attention to their right to communicate in a language they understand, therefore, translators and/or translations of documents should be provided in situations concerning important legal matters. Moreover, sometimes in violation of international standards, the authorities separate children from their parents, when the latter have been detained. For more details on the issue, please consult the Practical Manual of the UN Refugee Agency on monitoring immigration detention (see the Useful Links section, below).

Table of Practical Questions

Ask the Administration of the place of detention	Ask the person deprived of liberty	Ask yourself
Conditions in the cells/rooms		
<p>What is the number of beds in each cell or room?</p> <p>What is the number of persons in one cell or room?</p> <p>Is there a place for storage of personal items? Is it lockable (if in social care facility)?</p>	<p>How many people sleep in the cell/room?</p> <p>Is there enough light? Ventilation? Heating?</p> <p>Are there any insects?</p> <p>Do you have a place for storage of personal items? Is it lockable?</p>	<p>Does the cell look overcrowded?</p> <p>Check the number of persons with the register of admissions and releases.</p> <p>Are toilets isolated?</p> <p>Are there any cells accessible to persons with disabilities?</p> <p>Are furniture, toilet and sink unbreakable?</p> <p>Is there enough light? Ventilation? Heating?</p>
Hygiene		
<p>Is hot water provided?</p> <p>How can persons deprived of their liberty use the shower?</p> <p>How can persons deprived of their liberty wash and dry their clothes?</p> <p>Are toilet and bath facilities separate for men and women?</p>	<p>Is hot water provided?</p> <p>Are bathing and toilet facilities available? Where are they?</p> <p>Do you have a place for washing and drying clothes?</p>	<p>You can consult the register of complaints for more information on the issue.</p>
Nutrition		
<p>Are special diets available for religious believers, vegetarians and those with medical conditions?</p>	<p>Is the food of appropriate quality?</p> <p>Do you have access to drinking water?</p> <p>Is it possible to keep a vegetarian, religious and/or medical diet?</p>	<p>You can consult the register of complaints for more information on the issue</p>

Ask the Administration of the place of detention	Ask the person deprived of liberty	Ask yourself
Visitors and communication		
<p>When and under what conditions can visitors come to see persons deprived of their liberty?</p> <p>Can persons deprived of their liberty make telephone calls and use internet? Under which conditions?</p>	<p>Did you experience any obstacles preventing you from sending and receiving letters and receiving parcels? (if available) is it affordable to make calls and use the internet?</p> <p>Is it possible to meet with defence lawyer confidentially?</p> <p>Are there any obstacles to meeting with relatives and other visitors?</p>	<p>Are the conditions in visiting rooms appropriate?</p> <p>You can consult the register of complaints for more information on the issue.</p>
Seclusion and measures of restraint		
<p>What measures of restraint are used?</p> <p>How regularly do you use measures of restraint and seclusion?</p> <p>For what reason?</p> <p>For how long?</p> <p>How do you document the cases when measures of restraint and seclusion are used?</p>	<p>Have you experienced measures of restraint and/or seclusion?</p> <p>What was the reason?</p> <p>For how long?</p> <p>Did you complain and what was the reaction to your complaint?</p>	<p>Look at the register of sanctions and disciplinary measures and the register of solitary confinement and/or restraints: are instances of applied seclusion and restraints registered?</p>
Medical assistance		
<p>How many medical workers (external and internal) do you have?</p> <p>What is the death rate? What are the reasons for the deaths?</p> <p>Is informed consent on medical treatment properly recorded? How is it usually explained to persons with limited verbal communication?</p>	<p>Are you satisfied with the medical assistance?</p> <p>When was the last time you were examined by a doctor?</p> <p>Did he/she prescribe any treatment? Do you have any difficulties receiving treatment?</p>	<p>Look at the medical records of a particular inmate if necessary.</p>

Ask the Administration of the place of detention	Ask the person deprived of liberty	Ask yourself
<p>Are there mental health professionals available? Psychologists? Psychiatrists? Psychotherapists?</p> <p>Are people with infectious diseases isolated?</p>	<p>Are there substance addiction and/or psychosocial rehabilitation programmes available?</p> <p>Are people with infectious diseases isolated?</p>	
Suicide and self-harm		
<p>Have there been cases of suicide or self-harm?</p> <p>How was the last suicide crisis dealt with? Did other persons, as well as staff, receive any form of counselling, psychological or emotional support?</p> <p>Are there suicide prevention programmes or plans in place?</p>	<p>Are you aware of any cases of suicide or self-harm?</p> <p>What measures are taken to prevent suicides or self-harm?</p> <p>What measures are taken following any acts of suicide or self-harm?</p>	<p>Look at the register of incidents/accidents: are instances of self-harm and suicides registered?</p>
Religious beliefs and cultural perceptions		
<p>Does the institution hold religious services or meetings?</p> <p>What is the procedure for visit by a priest or any other religious leader?</p> <p>What are the religions practised by the persons deprived of their liberty?</p> <p>Is there a chapel or any other house of worship on the territory of the institution?</p>	<p>When was the last time you were visited by a priest or any other religious leader?</p> <p>How often do you visit the house of worship of your choice?</p> <p>Do you have access to religious texts?</p> <p>Do you communicate with your fellow religious believers and by what means?</p> <p>Where is the place for prayer which you use?</p>	<p>Look at the register of visitors to see the religious leaders' visits, if any.</p> <p>Look at the walls in the person's cell/room – do you see any religious posters or items?</p> <p>Can you see any religious books in the library and cells/rooms?</p> <p>How are persons deprived of their liberty dressed? Do they have rosaries, national objects, religious clothing?</p>
Occupation and education		
<p>What out-of-cell activities do you provide?</p> <p>Can persons deprived of their liberty work?</p>	<p>Do you participate in any out-of-cell activities?</p> <p>Do you work?</p>	<p>You can consult the register of complaints for more information on the issue.</p>

Ask the Administration of the place of detention	Ask the person deprived of liberty	Ask yourself
<p>How are the persons deprived of their liberty paid?</p> <p>Do persons deprived of their liberty have opportunities for studying?</p>	<p>What salary do you receive?</p> <p>Do you/ can you study?</p>	
Conditions for rehabilitation		
<p>What means of social rehabilitation do you provide?</p>	<p>Do you use any means of rehabilitation? (Why not?)</p>	<p>You can consult the register of complaints for more information on the issue.</p>
Women and children		
<p>How many women with children are there in the facility?</p> <p>How many expectant mothers?</p> <p>What measures are adopted to meet their individual needs?</p> <p>How regularly does a gynaecologist conduct examinations?</p>	<p>Do women receive all the necessary sanitary products?</p> <p>Are there any hindrances preventing communication between women and children?</p>	<p>Are there adequate measures put in place to mitigate the effect of detention on children and mother-child relationships?</p>
Specifics of social care institutions and psychiatric hospitals		
<p>Can people wear their own clothing and shoes?</p> <p>Is it possible to move freely inside the premises and outside?</p>	<p>Try to start the conversation with small talk: how was your breakfast/ are you enjoying the nice weather etc. For more tips on conversation see useful links below.</p>	<p>Check medical records: are forms giving informed consent for medical interventions in place.</p> <p>Can you see signs of malnutrition, neglect and/or abuse?</p>

NOTES

Useful Links and References

- Standards and tools of the CPT:
<https://www.coe.int/en/web/cpt/standards>
- Documents of the SPT:
<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Documents.aspx>
- World Health Organisation QualityRights Tool Kit:
https://www.who.int/mental_health/publications/QualityRights_toolkit/en/
- ITHACA Tool Kit for monitoring human rights and general health care in mental health and social care institutions:
http://www.mdac.info/sites/mdac.info/files/ithaca_toolkit_english.pdf
- Practical Guide on monitoring places where children are deprived of liberty by the Defence for Children International (DCI) with partners:
<http://www.childrensrightsbehindbars.eu/en/outputs/practical-guide>
- Practical Manual of the UN Refugee Agency on monitoring immigration detention:
<https://www.apr.ch/en/resources/monitoring-immigration-detention-practical-manual>
- OSCE guide on monitoring places of detention:
<https://www.osce.org/odihr/29845>
- Women in detention: a Guide to Gender-Sensitive Monitoring by the Association for the Prevention of Torture:
<https://www.apr.ch/en/resources/women-in-detention/>

About Project Partners

Citizens' Watch (Russia) is a human rights NGO initiated in 1992 by a group of Russian human rights activists, lawyers, journalists, and deputies to the Russian Parliament and to the St. Petersburg City Council. Citizens' Watch sees its strategic priority in bringing the Russian legislation related to human rights and the practice of its application in line with the international legal standards. In 2014, Citizens' Watch was registered as a foreign agent by the Ministry of Justice of the Russian Federation.

<http://www.citwatch.org/>

Human Rights Monitoring Institute (Lithuania) is a non-governmental, not-for-profit public advocacy organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working both in Lithuania and internationally to ensure that human rights are real and effective in practice.

<https://hrmi.lt/en/>

Norwegian Helsinki Committee is a non-governmental organisation working to ensure that human rights are respected in practice. NHC does this through monitoring, reporting, teaching and support for democracy.

<https://www.nhc.no>

Civil Rights Defenders (Sweden) partners with and supports human rights defenders who work in some of the world's most repressive regions on four continents. Through advocacy, litigation, and public campaigns Civil Rights Defenders advances people's rights globally. The NGO also acts as a Sweden's watchdog civil rights group.

<https://crd.org/>

