



HM Inspectorate of Prisons – Human Rights Scoping for Scrutiny Visits Methodology undertaken during COVID-19

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Introduction¹

All of HMI Prisons' *Expectations*, the independent criteria against which we inspect outcomes for those in detention, are underpinned by relevant international and regional human rights standards.² The *Expectations* therefore promote treatment and conditions in detention which ensure that the human rights of those detained are met. In addition, as one of 21 members of the United Kingdom's National Preventive Mechanism (NPM), we ensure when developing our inspection methodology that we are able to exercise our NPM mandate as set out in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT recognises the vulnerability of those in detention and therefore provides for a system of independent scrutiny of places of detention, including by NPMs.³

Independent scrutiny continues to be essential during times of crisis, including during the current COVID-19 outbreak. Those in detention must still be afforded their human rights, and in particular, the prohibition on ill-treatment is absolute at any time. In addition, those in detention are likely to be more vulnerable to COVID-19 for a range of reasons, including the close confines in which they live and prior poor health outcomes. Restrictions on those detained to prevent the spread of COVID-19 may also take a significant toll on their well-being, given the already restricted nature of the detention environment.⁴

HMI Prisons therefore considered it essential that we undertook a human rights scoping exercise to assist us in developing our Scrutiny Visits methodology, as we would do in the development of other aspects of our methodology and inspection criteria in normal times. Scrutiny Visits are short inspections of individual establishments which consider both the progress towards recovery made by establishments and the treatment of and conditions for detainees. In developing the Scrutiny Visits methodology, this scoping document assisted us to: identify restrictions which cannot be imposed at any time; ensure that other restrictions are lawful, proportionate, necessary and non-discriminatory; and identify any new standards or commentary specific to COVID-19. The scoping

¹ Questions about this scoping should be directed to HMI Prisons' Senior Policy Officer, Jade Glenister, who can be reached at Jade.Glenister@hmiprisons.gov.uk.

² Each detention setting has its own set of *Expectations*, all of which are available at <https://www.justiceinspectrates.gov.uk/hmiprisons/our-expectations/>.

³ The full text of the treaty is available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.

⁴ World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, pp. 2-5, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf; Association for the Prevention of Torture and OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidance: Monitoring Places of Detention through the COVID-19 Pandemic*, 2020, pp. 4-4, <https://www.ap.t.ch/en/resources/publications/guidance-monitoring-places-detention-through-covid-19-pandemic>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [2]-[5], <https://undocs.org/CAT/OP/10>; Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 19 and 23, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

assisted us in determining which of our existing *Expectations* would be considered during a Scrutiny Visit and in developing the accompanying guidance questions.⁵

This scoping paper begins in section one by briefly setting out considerations in relation to exercising our OPCAT powers at the current time. This section benefits from the extensive consideration of this topic elsewhere and is therefore deliberately brief. The paper then turns to focus on key inspection criteria during the COVID-19 outbreak in section two, summarising the key minimum standards (both generally and specific to COVID-19) and also the key principles for assessing restrictions. Annexes provide the supporting detail to this summary. Given the UK context in which HMI Prisons works, the focus of the scoping is on the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. However, the scoping also draws on other international treaties and standards, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights.

This document will continue to be revised and updated as time moves on and circumstances change. It is a reflection of the current circumstances and not a new status quo; HMI Prisons continues to review when we can return to utilising our full *Expectations* and carrying out full inspections. Finally, we hope that the COVID-19 pandemic provides impetus for long-term improvements to treatment and conditions in detention settings and we will continue to work to improve our *Expectations* and inspection methodology with the aim of encouraging such change.

⁵ The full methodology is available at <https://www.justiceinspectrates.gov.uk/hmiprison/about-hmi-prison/covid-19/>.

1. Considerations relating to inspection methodology

The functioning of NPMs is itself one part of the torture prevention mechanism that a State must have in place at all times, including during times of crisis. As recognised by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the World Health Organization (WHO), it is therefore crucial that NPMs can continue to exercise their mandate, as set out in OPCAT, throughout the COVID-19 outbreak, particularly in light of the risks the outbreak poses to those detained.⁶

The aim of OPCAT is to prevent ill-treatment from occurring by putting in place a system of regular visits by independent bodies to places where people are deprived of their liberty.⁷ OPCAT sets out the minimum powers of an NPM as follows:

- To regularly examine the treatment of the persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against ill-treatment;
- To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent ill-treatment; and
- To submit proposals and observations concerning existing or draft legislation.⁸

In order for an NPM to carry out this mandate, the State must ensure the NPM:

- Access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- Access to all information referring to the treatment of those persons as well as their conditions of detention;
- Access to all places of detention and their installations and facilities;
- The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the NPM believes may supply relevant information; and

⁶ World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 5, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>; and Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [5], [7], <https://undocs.org/CAT/OP/10>. See also, United Nations Special Rapporteurs, "COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs", 17 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25802&LangID=E>, noting the absolute nature of the prohibition on torture and other ill-treatment; and Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>.

⁷ Articles 1 and 3, OPCAT.

⁸ Article 19, OPCAT. See also Rules 9 and 93, *European Prison Rules* (EPR) and Rule 83, United Nations Standard Minimum Rules for the Treatment of Prisoners (the 'Mandela Rules') (SMR).

- The liberty to choose the places they want to visit and the persons they want to interview.⁹

In addition, “the competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.”¹⁰

Further guidance on what preventive scrutiny entails has been developed. Such scrutiny is:

- “Regular visits rather than one-off visits - These visits are part of a systematic and ongoing process, which means that visits to any given place of detention will occur on a regular basis.
- Proactive rather than reactive - These visits take place before, rather than in response to, a specific event or a complaint from a detainee. They can take place at any time, even when there is no apparent problem.
- Global rather than individual - These visits do not attempt to respond to individual cases. Instead the focus is to analyse the place of detention as a system and assess all aspects related to the deprivation of liberty. The aim is to identify those aspects of detention which could lead to the torture or ill-treatment of detainees or other forms of human rights violations.
- Based on cooperation rather than denunciation - The visits are part of an ongoing and constructive dialogue with the relevant authorities, providing concrete recommendations to improve the detention system over the long term.”¹¹

As noted above, NPMs provide an essential safeguard for detainees and should continue to exercise their preventive mandate during the COVID-19 outbreak. However, this mandate must be exercised in line with another key principle underpinning the work of NPMs; the principle to do no harm, which requires NPMs to take health and safety measures to minimise the spread of COVID-19 amongst detainees, staff in places of detention and their own staff. As a result, and also to ensure that they are exercising their preventive role, NPMs will need to adapt their working methods during the COVID-19 outbreak.¹² In addition to the principle of do no harm, considerations which are of particular importance for undertaking scrutiny during the outbreak include:

- Ensuring that those who are particularly vulnerable within detention settings are able to voice their concerns;

⁹ Article 20, OPCAT. See also Rules 56.2 and 84, SMR.

¹⁰ Article 22, OPCAT.

¹¹ Association for the Prevention of Torture, Asia Pacific Forum and Office of the High Commissioner for Human Rights, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, 2010, p. 83, https://www.ohchr.org/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf.

¹² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [7], [11], [12], <https://undocs.org/CAT/OP/10>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>; and

Association for the Prevention of Torture, Asia Pacific Forum and Office of the High Commissioner for Human Rights, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, 2010, p. 9, https://www.ohchr.org/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf.

- In the interests of transparency, particularly given other restrictions on access to detention settings, publishing as much data and information as possible, including about scrutiny approaches and any visits, in a timely manner, as widely as possible and in an accessible way;¹³
- Seeking data and information, including via electronic and other means, about what is occurring in places of detention from a wide range of sources both official and otherwise, including detainees, their family and friends, and civil society;
- Enhancing cooperation with civil society; and
- Assessing restrictive measures put in place and discussing these with the relevant national authorities.¹⁴

¹³ See also Rule 93.1, EPR and Rule 85, SMR.

¹⁴ Association for the Prevention of Torture, Asia Pacific Forum and Office of the High Commissioner for Human Rights, *Preventing Torture: An Operational Guide for National Human Rights Institutions*, 2010, pp. 6, 12, 18, 19 and 83, https://www.ohchr.org/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf; and Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [13], <https://undocs.org/CAT/OP/10>.

2. Considerations relating to inspection criteria

2.1. Background

The obligation to respect human rights, including those rights set out in the European Convention on Human Rights, continues during a time of crisis.¹⁵ However, the way in which some rights are met may differ in times of crisis or changing circumstances. Rights are divided into three types:

- Qualified rights – these are rights which can be interfered with when strictly necessary to protect other’s rights or in the public interest. A balance is struck between the rights of one person and the rights of another or the wider community. Examples include the rights to freedom of expression, assembly and association and the rights to private and family life.
- Limited rights – these are rights which can only be interfered with in specific circumstances. For example, Article 5 of the European Convention provides a list of reasons why a person may be deprived. Deprivation of liberty outside of these reasons is prohibited.
- Absolute rights – these are rights which cannot be restricted at any time or limited for any reason. These rights cannot be balanced against other rights (except in circumstances when they are balanced against one another). These include the right to life, the prohibition on torture and other ill-treatment and the right not to be subject to punishment without law.¹⁶

As can be seen from the above, absolute rights must always be met whereas limited and qualified rights allow for some interferences. In the case of limited rights, these interferences are only those specified within the relevant treaty provision. In the case of qualified rights, the relevant treaty provisions prescribe the circumstances in which an interference may be permissible, for example, the right to family life may be interfered with if it is in accordance with law and necessary in a democratic society in the interests of health. Judgments of the European Court of Human Rights provide guidance on how to determine when an interference is “necessary in a democratic society” (see section 2.2.2 below).

There is both a negative and positive obligation to rights. The negative aspect requires States to refrain from doing something, for example, not to torture someone, whereas the positive aspect requires States to take action to secure and safeguard a person’s rights, including by protecting them from interference by a third party. For example, the positive obligations relating to the right to life require authorities to take all steps that could reasonably be expected to prevent a prisoner from taking their own life.¹⁷

In many cases, similar or the same positive obligations can be drawn from a number of rights independently or cumulatively. For example, the requirement to provide prisoners with healthcare may be drawn from Article 2 of the European Convention (in order to protect life) and Article 3 of

¹⁵ Articles 1 and 17, European Convention on Human Rights. Article 15 of the Convention does allow for derogations from some rights during a “public emergency threatening the life of the nation.” There has been no such derogation in the United Kingdom. See also Rules 1-4, EPR.

¹⁶ See Article 15, European Convention on Human Rights. See also Article 4, International Covenant on Civil and Political Rights and Article 2(2) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁷ See, for example *Keenan v United Kingdom*, Application no. 27229/95, 2001, <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22Keenan%20v.%20the%20United%20Kingdom%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D%7D>.

the convention (in order to prevent inhuman suffering from a lack of care). In addition, there may be circumstances in which the positive and negative aspects of rights are both relevant. For example, while Article 2 clearly requires steps to be taken to prevent a prisoner from taking their own life, Article 3 prevents this from being done in such a way as to be degrading or inhuman.

The question of scarce resources is of particular relevance during a time of crisis. In relation to assessing whether conditions of detention are so poor as to constitute a violation of Article 3 of the European Convention, the European Court of Human Rights has confirmed that the absolute nature of Article 3 means that the limited resources available to a State do not absolve a State of an Article 3 violation and therefore cannot be taken into account.¹⁸ The State must organise its prison system in such a way as to avoid conditions which violate Article 3 from arising, regardless of logistical or financial difficulties.¹⁹ Similarly, given the absolute nature of the right to life, a lack of resources could not excuse the State from responsibility when, for example, death occurred as a result of unnecessary or unlawful force. However, neither Article 3 nor Article 2 require the State to take positive steps to protect an individual from every possible risk – the obligation is to take all reasonable steps to address known or foreseeable risks.²⁰ In relation to assisting prisoners to maintain their private and family lives, resources may be a consideration, such as when considering whether to allow a prisoner to attend a funeral some distance away under escort on a weekend.²¹

The content of the human rights which are of particular relevance in places of detention²² is set out in more detail in Annex A, with a particular focus on the European Convention on Human Rights and related jurisprudence but also with reference to other international treaties. These treaty provisions are complemented by a range of standards, such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the 'Mandela Rules')* and the *European Prison Rules*, which although they are non-binding, provide authoritative guidance on how to protect and promote human rights in detention settings.²³ In addition, a range of guidance has been developed by human rights bodies and intergovernmental organisations on how to ensure human rights in light of COVID-19, which is also referenced in Annex A.

The key principles that can be drawn from these rights and standards in relation to places of detention during the COVID-19 outbreak are summarised below. The key principles cover both minimum standards that should be met generally at this time and additional standards specifically relating to COVID-19. These key principles are focussed on long term detention, such as in prisons

¹⁸ The case concerned the scarce resources available to deal with the influx of migrants into Greece, *MSS v Belgium and Greece*, Application no. 30696/09, 2011, [223]-[224].

¹⁹ See *Neshkov and Others v Bulgaria*, Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 2015, [229], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-150771%22>].

²⁰ See, *Premniny v Russia*, Application No 44973/04, 2011, [83]-[84], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-103350%22>], where the Court noted in relation to Article 3 that “it would be sufficient for an applicant to demonstrate that the authorities had not taken all steps which could have been reasonably expected of them to prevent real and immediate risks to the applicant’s physical integrity, of which the authorities had or ought to have had knowledge.” See also *Paul and Audrey Edwards v. the United Kingdom*, Application no. 46477/99, 2002, [55]-[56], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-60323%22>].

²¹ *Vestev v Bulgaria*, Application No. 54558/15, 2019, [21]-[25], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-192784%22>].

²² This document is not intended to cover standards relating to detention in secure mental health settings as these do not fall within the remit of HMI Prisons.

²³ See, *Nusret Kaya and Others v Turkey*, Applications nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, 2014, [55], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-142739%22>].

or immigration removal centres, but are largely applicable across the different detention settings inspected by HMI Prisons. Further scoping will be carried out for specific detention settings, including immigration detention, and in relation to particular groups, such as women and children. This additional scoping will be summarised within each specific methodology document and added to Annex D to this document as it is completed.

2.2. Key human rights principles and assessment of restrictions

This section sets out the minimum standards that must be met in places of detention at all times and the key principles for assessing other restrictions.

2.2.1. Key principles – minimum standards

In order to protect the human rights of detainees, the following are prohibited at any time, including during an outbreak of COVID-19:

- Arbitrarily taking the life of a detainee, for example, through unnecessary or disproportionate use of force or denial of available medical care.
- Torture or other ill-treatment, including indefinite or prolonged solitary confinement. See below Annex A and B for more details. For this reason, detainees must not be denied the essential safeguards against torture and other ill-treatment of informing a third party of their whereabouts, being able to see a healthcare professional and being able to contact a lawyer.
- Unofficial or collective punishments.
- Detention staff over-riding the clinical decisions of healthcare professionals.
- Restrictions on a detainee's private and family life, freedom of expression or freedom of thought, conscience and religion that go beyond those which are necessary and proportionate.
- Discrimination, harassment or victimisation.
- Deprivations of liberty that are not in accordance with law.
- Convicting a person of a criminal offence without providing them with a fair trial. This includes for offences that are criminal in nature in a detention setting, for example, additional days cannot be added to a sentence other than through an independent and impartial judicial process.

The following must be done at all times to promote and fulfil the rights of those in detention:

Safety

- Ensure detention only takes place when there is a proper committal order and record all instances of detention. In relation to the use of immigration detention, see Annex A below in relation to Article 5 of the European Convention.
- Allow a detainee to inform a third party of their whereabouts and inform next of kin of serious illness (unless a detainee does not consent to this).
- Monitor detainees' health and well-being to identify risks of harm to themselves and take positive steps to minimise that risk, including ensuring detainees are held in appropriate conditions in light of their mental health.

- Ensure medical isolation is in accordance with independent healthcare advice and is subject to procedural safeguards, including to ensure meaningful human contact each day and monitor health and well-being.
- Put in place measures to counter the impact of isolation on all detainees.
- Provide all detainees with meaningful human contact each day (see Annex C for further information about meaningful human contact).
- Independently investigate all deaths or near-deaths that occur in detention, including as a result of medical negligence.
- Ensure that force and searching are only used when absolutely necessary and proportionate, and when procedural safeguards are in place to prevent abuse, including through the investigation of possible unlawful instances. Searches should be conducted in a way that respects dignity.
- Ensure physical or close contact, such as use of force or searching, is carried out in the safest way possible to minimise the spread of COVID-19.
- Ensure that segregation is only used exceptionally and on genuine grounds and is subject to regular reassessment. Safeguards must be in place to monitor detainee's health and well-being, the length of time spent in segregation and to demonstrate reassessment. The prisoner must be informed of the reason(s) for segregation on an ongoing basis.
- Ensure there are sufficient safeguards in place such that the use of surveillance and monitoring is necessary and proportionate and does not arbitrarily interfere with privacy. Legal communications must be treated as privileged.
- Identify and address risks posed to detainees by other detainees and staff and take all reasonable steps to protect detainees from violence or other forms of harm.
- Ensure effective complaints mechanisms are in place.
- Provide a means by which a detainee can raise the alarm in an emergency.
- Provide detainees and those significant to them such as relatives with comprehensive, reliable and up-to-date information about the reason for measures introduced in response to COVID-19 and the duration of those measures. Information should be provided in a language and format that they can access and understand.
- Put measures in place to address understaffing as a result of COVID-19, including re-allocating staff from other places of detention and departments.

Respect/care (including health)

- Take all possible steps to protect the health of those in detention. Provide community equivalent healthcare that takes into account a detainee's particular needs, including transfer to community healthcare facilities when necessary. Provide additional psychological support to assist detainees to cope with the impact of the COVID-19 outbreak and any consequent restrictive measures introduced.
- Provide detainees, staff and visitors with information in a language and format they understand about how to protect their health, including how to minimise the spread of COVID-19 in detention and on release.
- Healthcare professionals should report to the Governor/Director if they believe that ongoing detention or a particular condition of detention will injuriously affect a detainee's physical or mental health.

- Take steps to reduce the spread of COVID-19 in line with independent health guidance.²⁴
- Ensure detainees' access to healthcare staff when requested.
- Treat the body of a deceased detainee with respect and dignity, including in line with any cultural or religious beliefs held by the detainee.
- Hold detainees in conditions which respect their human dignity, allow for rehabilitation and which do not inhibit their ability to defend themselves in any pending court proceedings, including ensuring that conditions are not over-crowded, the cells/rooms have adequate natural light and air and that they are adequately heated and cooled.
- Detainees must have access to properly equipped sanitary and hygiene facilities that can be used in privacy and be provided with sufficient hygiene supplies.
- Provide sufficient clean bedding to maintain hygiene.
- Ensure detainees can seek and receive legal advice and representation as and when needed and on request and that this can be done in confidence. Inform detainees of their right to seek legal advice and to apply for legal aid. Alternative means of communicating with legal representatives must be provided if visits are not able to take place and the use of alternate means should be free of charge.
- Ensure detainees understand the reasons for their arrest or detention.
- Provide a detainee with interpretation when needed to ensure their understanding and participation in the determination of criminal charges against them.
- Provide a defendant with adequate time and facilities to prepare their defence.
- Allow detainees to seek judicial review of their detention or conditions of detention. Reviews of the lawfulness of detention must continue to be carried out speedily.
- Assess the merits for applications for release to attend a funeral or visit an unwell relative.
- Provide detainees with writing materials and pay postage where necessary due to lack of financial means.
- Prevent and redress discrimination, victimisation and harassment, including taking positive steps to protect those experiencing such treatment and investigating whether there are discriminatory motives behind actions.
- Explain why disproportionate outcomes are not due to discrimination.
- Make reasonable adjustments based on a clear assessment of the needs of the detainee and the detriment they are experiencing.
- Allow detainees to observe and practice their religion, including providing meals that meet religious requirements.

Purposeful Activity / Rehabilitation and release planning

- Detainees must have at least one hour in the open air each day.
- Ensure detainees who have COVID-19 on release are able to safely quarantine in the community and receive healthcare.
- Provide detainees with subsistence on release and put in place appropriate measures for those who are particularly vulnerable to contracting COVID-19, including ensuring adequate accommodation and social security is in place where necessary.

²⁴ The World Health Organization has provided a checklist of what these steps may entail, see World Health Organization, *Checklist to evaluate preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 2020, https://www.euro.who.int/_data/assets/pdf_file/0020/438041/Covid19-PrisonsChecklist-eng.pdf.

- Identify the risk a detainee may pose to the public on release and take all reasonable steps to protect the public from that risk, with particular regard to those who may be made vulnerable such as children or those in situations of domestic abuse.
- Consider releasing a detainee who is extremely unwell or frail and when the conditions of detention and care available mean they experience undue suffering.
- Provide prisoners with sufficient opportunities to rehabilitate themselves, such as through therapy and offending behaviour courses.
- Take positive steps to assist those detained to maintain contact with the outside world, including visits with friends and family. Provide alternative means to maintain contact when visits are not possible, encourage the use of these measures and provide them frequently and free of charge.
- Ensure that detainees are located within a distance from home which allows for visits having had consideration of the individual circumstances.
- Provide detainees with fundamental education as far as possible and equal access to existing educational institutions unless there is a necessary and proportionate reason to restrict access (such as security considerations).

While the above focuses on the situation of detainees, it is also particularly important at the current moment in relation to staff that:

- Appropriate measures are taken to protect the health of staff, including ensuring they have adequate hygiene supplies and are otherwise properly equipped;
- Staff availability is reinforced;
- Staff receive up-to-date and reliable information about emergency planning; and
- Staff have adequate training and are supported to carry out their roles, including in developing new skills and behaviours relating to health and hygiene.²⁵

2.2.2. Key principles – assessing restrictions

Beyond the minimum standards set out above, other aspects of detainee’s human rights should be ensured to the greatest extent possible. This means that any restrictions on rights, including the right to private and family life, the right to freedom of expression and the right to thought, conscience and belief, are only permissible when the restriction:

²⁵ Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, p.6, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(q)-(s)], <https://undocs.org/CAT/OP/10>; and Association for the Prevention of Torture and OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidance: Monitoring Places of Detention through the COVID-19 Pandemic*, 2020, pp. 20-21, <https://www.apt.ch/en/resources/publications/guidance-monitoring-places-detention-through-covid-19-pandemic>.

- a) Has a legal basis;
- b) Seeks to achieve a legitimate aim (national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others);
- c) Is necessary to achieve that aim. This includes considering whether the restriction actually achieves the aim it purports to (i.e. is the restriction fit for purpose) and whether any less restrictive alternatives could be put in place instead; and
- d) Is proportionate to achieving the aim. This includes considering the severity of the restriction and its impact on the detainee (including over time). There must also be a discernible and sufficient link between the restriction imposed and the actions or circumstances of the detainee, for example, intelligence about the escape risk of a particular prisoner.

In addition:

- e) Restrictions should be time bound and must not be indefinite;
- f) Restrictions must not be discriminatory;
- g) Detainees should receive information about the restrictions and the reasons for them in a language and format they understand; and
- h) Mitigations should be put in place to minimise the impact of restrictions.²⁶

It is important to identify the separate aims of restrictions in order to properly assess whether they are necessary and proportionate. For example, a restriction may have multiple aims such as preventing the spread of COVID-19, ensuring the stability of the establishment and ensuring sufficient staffing numbers. The necessity and proportionality of restrictions when considered against each of these separate aims may differ.

The prohibition on restrictions which amount to ill-treatment or which arbitrarily risk life is absolute. The proportionality and necessity of restrictions which amount to ill-treatment should therefore not be considered because these types of restrictions are not permissible at any time (see Annex B for an explanation of what amounts to ill-treatment).

²⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(g)], <https://undocs.org/CAT/OP/10>. Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, p.5, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>; and Association for the Prevention of Torture and OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidance: Monitoring Places of Detention through the COVID-19 Pandemic*, 2020, pp. 24 and 28, <https://www.apt.ch/en/resources/publications/guidance-monitoring-places-detention-through-covid-19-pandemic>. See also *Lind v Russia*, Application no. 25664/05, 2007, [94]-[99], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83817%22%5D%7D>; and, *Khoroshenko v Russia*, Application no. 41418/04, 2015, [106]-[149], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-156006%22%5D%7D>.

Annex A - Human Rights in the context of Detention

Right	Negative Obligations (What must not be done)	Positive Obligations (What must be done) ²⁷
<p>Right to life</p> <p>Article 2, European Convention on Human Rights (ECHR)</p> <p>1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.</p> <p>2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:</p> <p>(a) in defence of any person from unlawful violence;</p> <p>(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;</p> <p>(c) in action lawfully taken for the purpose of quelling a riot or insurrection.</p> <p>NB: the United Kingdom has ratified Protocols 6 and 13, abolishing the death penalty absolutely.</p> <p>See also Article 6, International Covenant on Civil and Political Rights (ICCPR); Article 10, Convention on the Rights of Persons with Disabilities (CRPD).</p>	<p>The State must not intentionally deprive someone of their life other than in accordance with Article 2(2), i.e. use of force which is strictly necessary to defend a person from violence, arrest someone or prevent them from escaping or to quell a riot or insurrection. In all cases, the force used must be only that which is absolutely necessary in the circumstances. For example, using lethal force to arrest someone who poses no known risk to life or limb cannot be justified.²⁸</p>	<p>The State must:</p> <ul style="list-style-type: none"> • Protect the lives of those in custody. The particular vulnerabilities of the detainee, such as any disabilities, must be taken into account when keeping them safe.²⁹ • Secure the wellbeing of prisoners given the practical demands of imprisonment.³⁰ • Provide necessary medical care, including prompt and accurate diagnosis and care and, where necessary, regular supervision and therapeutic treatments.³¹ • Take steps to prevent a detainee from harming themselves when that risk of harm is known or ought to be known, including as a result of mental health problems, previous attempts to harm themselves, suicidal thoughts or threats and signs of physical or mental distress. In addition, special care must be taken when detaining those with mental health issues to provide them with conditions which meet their needs.³² • Have in place safeguards to identify and address risks to those detained from other detainees and take all reasonable steps to avoid real risks to life. Detainees risks to others should be assessed and there should be a means for detainees to raise the alarm in an emergency.³³ • Take all reasonable steps to protect the public when it is known or ought to be known that the release of a detainee may pose a real risk to life.³⁴ • Have in place a legal and administrative framework which defines the circumstances in which force can be used, including that this can only be when absolutely necessary, proportionate and in full consideration of the surrounding circumstances, including the risks posed by the individual.³⁵ • Have in place safeguards to prevent arbitrary and abusive use of force and hold persons to account for such instances.³⁶

²⁷ This table is not intended to provide an indication of the strict division between positive and negative obligations, but rather to assist in making clear what actions the State must not take and which it must take.

²⁸ See, *Nachova and Others v Bulgaria*, Application Nos. 43577/98 and 43579/98, 2005, [93]-[97] <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-69630%22%7D>. See also Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 12 and 20, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

²⁹ See *Jasinskis v Latvia*, Application no. 45744/08, 2010, [56]-[68], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-102393%22%7D>. The case concerned the failure of police to seek medical assistance for a detainee who had fallen and been unconscious prior to being detained for a period of fourteen hours, despite not being able to wake him for seven hours. Nor did the police provide the detainee, who was deaf and unable to speak, with any means by which to communicate with them. See also Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(a)], <https://undocs.org/CAT/OP/10>.

³⁰ See, *Dzieciak v. Poland*, Application no. 77766/01, 2008, [91], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90165%22%7D>.

³¹ See, *Dzieciak v. Poland*, Application no. 77766/01, 2008, [89]-[91], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-90165%22%7D>; and *Pitalev v Russia*, Application no. 34393/03, 2008, [54], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-93874%22%7D>. See also Rules 16(a), 39, 40.4, 40.5 and 43, EPR and Rule 27, SMR ; World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, pp. 3-5, https://www.euro.who.int/data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf; Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), pp. 12-13 and 20, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

³² See, *Fernandes de Oliveira v Portugal*, Application no. 78103/14, 2019, [108]-[115], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-189426%22%7D>; and *Keenan v United Kingdom*, Application no. 27229/95, 2001, [89]-[102], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22Keenan%20v.%20the%20United%20Kingdom%22%7D%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22CHAMBER%22%7D%7D>. See also Rules 12.1 and 47.2, EPR.

³³ See, for example, *Paul and Audrey Edwards v. the United Kingdom*, Application no. 46477/99, 2002, [54]-[64], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60323%22%7D>. The case concerned a prisoner being killed by his cell mate when information about the risks posed by the cell mate had not been passed on to the prison by other authorities and the prison had not undertaken an adequate screening of the cell mate on arrival to identify his risk to others. The Court particularly noted that the cell call bell was not working. See also Rule 18.2(c), EPR.

³⁴ See, *Mastromatteo v Italy*, Application no. 37703/97, 2002, [67]-[69], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60707%22%7D>.

³⁵ See, *Nachova and Others v Bulgaria*, Application Nos. 43577/98 and 43579/98, 2005, [93]-[97] <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-69630%22%7D>; *Makaratzis v Greece*, Application no. 50385/99, 2004, [56]-[58], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-67820%22%7D>. See also United Nations Special Rapporteurs, “COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs”, 17 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25802&LangID=E>.

³⁶ *Ibid.*

		<ul style="list-style-type: none"> Investigate deaths or near-deaths, including those arising from negligence. Investigations must be independent, effective in that they are able to ascertain the facts and establish whether anyone is responsible, prompt, involve the next-of-kin and involve an element of public scrutiny.³⁷ Treat the body of a deceased detainee with respect and dignity and return the body to their next of kin as soon as possible. State funerals shall be facilitated in a culturally appropriate manner.³⁸ <p>In the context of C-19, the CPT has stated that “The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff.” Further, “WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty.”³⁹ The SPT has urged States to: “Consider that release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive for COVID-19 virus or are particularly vulnerable to infection”; “Accommodate those who are a greatest risk within the remaining detained populations in ways that reflect that enhanced risk, while fully respecting their rights within the detention setting”; and ensure “(...) medical isolation [is] on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards.”⁴⁰ The World Health Organization’s <i>Checklist to evaluate preparedness, prevention and control of COVID-19 in prisons and other places of detention</i>, includes ensuring that detainee’s with COVID-19 who are released have a place to go to maintain quarantine.⁴¹</p>
<p>Prohibition of torture and other ill-treatment</p> <p>Article 3, ECHR: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p>See also Articles 7 and 10 ICCPR; Articles 1(1), 2, 4 and 10-16 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 15 CRPD.</p>	<p>The State must not subject or allow a detainee to be subjected to torture or other ill-treatment.⁴² Treatment must reach a certain level of severity in order for it to be considered ill-treatment (see Annex B for further detail).</p> <p>Examples of treatment which may violate Article 3 include:</p> <ul style="list-style-type: none"> Deliberately inflicting severe pain on a detainee in order to get them to confess to something. Causing suffering to a detainee by denying them medical treatment.⁴³ 	<p>Positive obligations on the State arising from Article 3 can broadly be divided into three types: obligations relating to conditions; obligations relating to healthcare and well-being; and obligations to safeguard detainees from ill-treatment.</p> <p>The State must:</p> <p><i>Conditions</i></p>

³⁷ See, *Armani da Silva v the United Kingdom*, Application no. 5878/08, 206, [229]-[239], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-161975%22%7D%7B%22docname%22:%5B%22CASE%20OF%20BLOKHIN%20v.%20RUSSIA%22%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-161822%22%7D%7D%7B%22appno%22:%5B%2226853%2F04%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-76341%22%7D%7D%7D%7D>; *Giuliani and Gaggio v. Italy*, Application no. 23458/02, 2011, [298]-[306], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-104098%22%7D%7B%22docname%22:%5B%22CASE%20OF%20GIULIANI%20AND%20GAGGIO%20V.%20ITALY%22%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-104098%22%7D%7D%7B%22appno%22:%5B%2223458%2F02%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-200546%22%7D%7D%7D%7D>; and *Zinatullin v. Russia*, Application no. 10551/10, 2020, [32]-[37], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-200546%22%7D%7B%22docname%22:%5B%22CASE%20OF%20ZINATULLIN%20V.%20RUSSIA%22%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-200546%22%7D%7D%7B%22appno%22:%5B%2210551%2F10%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-200546%22%7D%7D%7D%7D>.

³⁸ Rule 72, SMR.

³⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>.

⁴⁰ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9], <https://undocs.org/CAT/OP/10>.

⁴¹ World Health Organization, *Checklist to evaluate preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 2020, https://www.euro.who.int/_data/assets/pdf_file/0020/438041/Covid19-PrisonsChecklist-eng.pdf. See also Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, p.4, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>.

⁴² This includes during the COVID-19 pandemic, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [5], <https://undocs.org/CAT/OP/10>; and World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 5, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

⁴³ See *Blokhin v Russia*, Application no. 47152/06, 2016, [136], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22CASE%20OF%20BLOKHIN%20v.%20RUSSIA%22%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-161822%22%7D%7D%7B%22appno%22:%5B%2247152%2F06%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-161822%22%7D%7D%7D%7D>; and, for example, *Popov v Russia*, Application no. 26853/04, 2006, [207]-[220], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2226853%2F04%22%7D%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22%7D%7B%22itemid%22:%5B%22001-76341%22%7D%7D%7D%7D>.

	<ul style="list-style-type: none"> • Prolonged or indefinite solitary confinement. Solitary confinement which is not prolonged or indefinite will not necessarily reach this threshold, whether it does will depend on the individual circumstances of the detainee and the impact on them of the conditions in which they are held (see Annex C for further information about solitary confinement).⁴⁴ • Subjecting a detainee to treatment which is inherently degrading, such as the use of leg chains.⁴⁵ • Using force on a detainee which is not necessary in the circumstances, such as slapping a detainee across the face.⁴⁶ • Strip searching which is not necessary or which is carried out in a way which aggravates the humiliation involved.⁴⁷ • The arbitrary use of restrictive measures, such as segregation, which leads to feelings of subordination, powerlessness and humiliation.⁴⁸ • Punishing a detainee for reasons unrelated to their own behaviour (including collective punishments).⁴⁹ 	<ul style="list-style-type: none"> • Hold detainees in conditions which are compatible with respect for their human dignity and which do not cause distress or hardship beyond that inherent in the nature of detention.⁵⁰ This includes ensuring that conditions are not overcrowded, that detainees have at least one hour in the fresh air each day, that cells have access to open air and natural light, and are adequately heated and cooled.⁵¹ • Provide properly equipped sanitary and hygiene facilities that can be accessed in privacy. These are considered of paramount importance to maintaining personal dignity and also health. Sufficient clean bedding to maintain hygiene must also be provided.⁵² • Provide life prisoners with conditions and regimes which are compatible with the aim of rehabilitation and provide them with an opportunity to rehabilitate themselves.⁵³ <p>In relation to C-19, the CPT has noted that “While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour).”⁵⁴ The SPT has urged States to “Ensure that any restrictions on existing regimes are minimized, proportionate to the nature of the health emergency, and in accordance with law” and “Ensure that all</p>
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⁴⁴ See, *Rohde v Denmark*, Application no. 69332/01, 2005, [97], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2269332%2F01%22%2C%22itemid%22:%5B%22001-69794%22%5D%7D>. See also Rules 43-45, SMR.

⁴⁵ See Rule 68.6, EPR and Rule 47(1), SMR.

⁴⁶ *Bouyid v Belgium*, Application No. 23380/09, 2015, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-157670%22%5D%7D>.

⁴⁷ See, *Wainright v United Kingdom*, Application no. 12350/04, 2006, [42], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-76999%22%5D%7D>.

⁴⁸ See, *Csüllög v Hungary*, Application no. 30042/08, 2011, [37], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-104963%22%5D%7D>.

⁴⁹ See Rule 60.3, EPR.

⁵⁰ See *Rooman v Belgium*, (Application no. 18052/11), 2019, [141]-[148], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-189902%22%5D%7D>; *Neshkov and Others v Bulgaria*, Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 2015, [225]-[230], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-150771%22%5D%7D>; and *Kudla v Poland*, Application no. 30210/96, 2000, [94], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2230210%2F96%22%2C%22itemid%22:%5B%22001-58920%22%5D%7D>. See also Rules 1, 3, 5 and 42, SMR; Human Rights Committee, “Statement on derogations from the Covenant in connection with the COVID-19 pandemic”, UN Doc. CCPR/C/128/2, April 2020, [2(e)], <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 13 and 20, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

⁵¹ The absence of one of these aspects alone for a short period of time will not be sufficient to amount to a violation of Article 3, rather it is the cumulative impact on the individual of all conditions considered over a period of time. The European Court of Human Rights has considered that there is a presumption of an Article 3 violation in cases where detainees have less than 3 square metres of living space in a multi-occupancy cell, which can be rebutted by factors including sufficient time out of cell. See *Neshkov and Others v Bulgaria*, Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 2015, [225]-[239], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-150771%22%5D%7D>. See also Rules 18.1, 27.1 and 27.3 EPR and Rules 13 and 23, SMR; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(i)], <https://undocs.org/CAT/OP/10>; and World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 9, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

⁵² See *Neshkov and Others v Bulgaria*, Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 2015, [240]-[243], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-150771%22%5D%7D>; and, for example, *Ananyev and Others v Russia*, Applications nos. 42525/07 and 60800/08, 2012, [139]-[166], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-108465%22%5D%7D>. The Court noted that “the time for taking a shower which has normally been afforded to inmates in Russian remand prisons has been limited to fifteen to twenty minutes once a week and has been manifestly insufficient for maintaining proper bodily hygiene” and found a violation of Article 3 in light of that restriction, the severe lack of personal space and the close proximity of the toilet to other cell fittings and its inadequate privacy screening, in combination with being only able to leave a cell for one hour per day. See also Rules 19 and 21, EPR and Rules 15-18 and 21, SMR. Rule 19 provides that prisoners should be able to shower daily if possible or otherwise at least twice weekly or as necessary for hygiene.

⁵³ See, *Murray v the Netherlands*, Application no. 10511/10, 2016, [103]-[104], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-162614%22%5D%7D>; and *Harakchiev and Tolumov v Bulgaria*, Applications nos. 15018/11 and 61199/12, 2014, [262]-[268], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22Harakchiev%20and%20Tolumov%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%22%2C%22itemid%22:%5B%22001-145442%22%5D%7D>. In the latter case, the Court found a violation of Article 3 in respect of life prisoner, noting that “in spite of some variations in his prison regime, in practice Mr Harakchiev remained in permanently locked cells and isolated from the rest of the prison community, with very limited possibilities to engage in social contact or work, throughout the entire period of his incarceration. In the Court’s view, the deleterious effects of that impoverished regime, coupled with the unsatisfactory material conditions in which Mr Harakchiev was kept, must have seriously damaged his chances of reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. To that should be added the lack of consistent periodical assessment of his progress towards rehabilitation.”

⁵⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>. See also Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(j)], <https://undocs.org/CAT/OP/10>.

		<p>detainees and staff receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them.”⁵⁵</p> <p><i>Health and well-being</i></p> <ul style="list-style-type: none"> • Adequately secure a detainee’s health and well-being, including by providing them with community-equivalent healthcare and transferring them to community healthcare facilities where necessary for reasons of either physical or mental ill-health.⁵⁶ Clinical decisions must only be taken by appropriate healthcare professionals and cannot be over-ridden by other detention staff.⁵⁷ • Have regard to the vulnerability of detainees, including as a result of any disability, mental health problem or age, and hold them in appropriate physical and medical conditions.⁵⁸ Detainees who are extremely unwell or frail should be considered for release where conditions and care available mean they experience undue suffering.⁵⁹ • Allow healthcare professionals to report to the Governor/Director if they believe ongoing detention or a condition of detention will injuriously affect a detainee’s physical or mental health.⁶⁰ • Provide detainees with meaningful human contact each day.⁶¹ (See Annex C for an explanation of meaningful human contact) • Put in place measures to counter the effects of isolation/segregation.⁶² • See also above in relation to conditions of detention, particularly time in the open air and sanitary and hygiene facilities. • Provide detainees with subsistence on release.⁶³ <p>The CPT has noted that, at this time, “As regards the provision of health care, special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for COVID-19 and pathways to intensive care as required. Further, detained persons should receive additional psychological support from staff at this time.” In addition, “in cases of</p>
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⁵⁵ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9], <https://undocs.org/CAT/OP/10>. See also Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, p. 5, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>.

⁵⁶ See *Rooman v Belgium*, (Application no. 18052/11), 2019, [141]-[148], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-189902%22%7D>; and, for example, *Claes v Belgium*, Application no. 43418/09, 2013, [88]-[102], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2243418/09%22%7D%22itemid%22:%5B%22001-115981%22%7D%7D>. See also Rule 40.3, 43 and 46.1, EPR and Rules 30-35 and 109-110, SMR, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [8, 9(m), (o) and (t)], <https://undocs.org/CAT/OP/10>; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 13 and 20, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

⁵⁷ Rule 27(2), SMR; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(n), (p) and (r)], <https://undocs.org/CAT/OP/10>; and Committee on Economic, Social and Cultural Rights, “Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights”, UN Doc. E/C.12/2020/1, April 2020, [13], <https://undocs.org/E/C.12/2020/1>.

⁵⁸ *Ibid.* See also, *Price v UK*, Application no. 33394/96, 2001, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-59565%22%7D>.

⁵⁹ See, *Enea v Italy*, Application no. 74912/01, 2009, [55]-[59], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94072%22%7D>.

⁶⁰ Rule 43.3, EPR and Rule 33, SMR.

⁶¹ See, for example, *Rohde v Denmark*, Application no. 69332/01, 2005, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2269332/01%22%7D%22itemid%22:%5B%22001-69794%22%7D%7D>. See also Rules 25 and 27.7, EPR and Rule 105, SMR; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(m), (s) and (r)], <https://undocs.org/CAT/OP/10>; and World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 5, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

⁶² See, *Csüllög v Hungary*, Application no. 30042/08, 2011, [37], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-104963%22%7D>; and, for example, *Onoufriou v Cyprus*, Application no. 24407/04, 2010, [78], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-96547%22%7D>. See also Rules 28.1, 28.5 and 28.6, EPR.

⁶³ Rule 33.8, EPR and Rules 90 and 108, SMR. See also Article 9, ICCPR, which recognizes that everyone has the right to social security.

		<p>isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day.”⁶⁴ The SPT has urged States to “Make available appropriate psychological support to all detainees and staff who are affected by (...) measures [taken to protect health].”⁶⁵</p> <p><i>Safeguarding</i></p> <ul style="list-style-type: none"> • Safeguard detainees from staff and other detainees by having systems and processes in place to identify and address risks. Safeguards should include the ability for staff to raise concerns, such as whistleblowing processes and referral mechanisms, and the ability for detainees to raise concerns, through complaints processes and also by ensuring that three fundamental safeguards are in place for detainees to prevent ill-treatment: the right to inform someone of whereabouts; the right to seek a medical examination; and the right to speak to a lawyer.⁶⁶ • Take all reasonable steps to protect detainees from a real risk of violence from others that is known about or ought to be known about.⁶⁷ • Ensure that measures such as strip-searching, segregation and use of force are only used when strictly necessary and proportionate and are subject to procedural safeguards.⁶⁸ • In relation to isolation/segregation, ensure that this is used only exceptionally and on genuine grounds, with substantive reasons for the measures provided to the detainee initially and over time. The detainee’s health must be taken into account in imposing measures and should be monitored over time to ensure the detainee’s mental and physical health condition does not prevent ongoing segregation. Procedural safeguards must be in place to monitor health and conditions and to ensure that there is a record of the length of time of segregation. Records should clearly demonstrate reassessment when circumstances and behaviour change and the detainee must be allowed to challenge their confinement.⁶⁹ • Prohibit and prevent unofficial or collective punishments.⁷⁰ • Carry out thorough, prompt and independent investigations of allegations of treatment which might violate Article 3.⁷¹ <p>The CPT has commented that during the C-19 crisis, “Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a</p>
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⁶⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>.

⁶⁵ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9], <https://undocs.org/CAT/OP/10>.

⁶⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Combating Immunity* CPT/Inf(2004)28-part, *Developments concerning CPT standards in respect of police custody* CPT/Inf(2002)15-part, and *Police Custody*, CPT/Inf(92)3-part1. All available at: <https://www.coe.int/en/web/cpt/standards>. See also Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(h)], <https://undocs.org/CAT/OP/10>; Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 21, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf; Rules 24.8, 24.9 and 70, EPR and Rules 34, 56 and 57, SMR. Foreign nationals are entitled to contact their embassy or other diplomatic representative, see Rules 37.3 and 37.4, EPR and Rules 62 and 68, SMR.

⁶⁷ *Premininy v Russia*, Application No 44973/04, 2011, [83]-[84], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-103350%22%5D%7D>.

⁶⁸ *Bouyid v Belgium*, Application No. 23380/09, 2015, [87], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-157670%22%5D%7D>; *Milić and Nikezić v Montenegro*, Applications nos. 54999/10 and 10609/11, 2015 [80], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-154149%22%5D%7D>. See also Rules 54.1-54.5, 54.8, and 64-68, EPR and Rules 47(2)-50 and 82, SMR.

⁶⁹ See, *Jeanty v Belgium*, Application No. 82284/17, 2020, [95]-[99], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202125%22%5D%7D>; *Onoufriou v Cyprus*, Application no. 24407/04, 2010, [70], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-96547%22%5D%7D>; and *Ramirez Sanchez v France*, Application no. 59450/00, 2006, [139], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-76169%22%5D%7D>. See also Rules 53A and 60.6, EPR and Rules 37(d), 38(2) and 44-46, SMR.

⁷⁰ Rules 37 and 39, SMR.

⁷¹ See, *Milić and Nikezić v Montenegro*, Applications nos. 54999/10 and 10609/11, 2015, [93]-[97], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-154149%22%5D%7D>. See also Rule 71, SMR.

		lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times.” ⁷² The SPT has urged States to “Ensure that the existing complaints mechanisms remain functioning and effective.” ⁷³
<p>Right to respect for private and family life</p> <p>Article 8, ECHR:</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>See also Article 17, ICCPR.</p>	<p>The State must not interfere with a person’s private life, family life, home or correspondence except when: this is done in accordance with the law; and it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>This list of reasons is an exhaustive list (i.e. interferences for other reasons are not permissible).</p> <p>The right to private life is not just limited to the idea of privacy, it is intended to “ensure the development, without outside interference, of the personality of each individual in his relations with other human beings.”⁷⁴ It therefore encompasses physical, psychological and moral integrity and personal identity and autonomy.</p> <p>Article 8 allows for restrictions to be placed on detainee’s private and family life and correspondence. However, as with all other interferences with Article 8, any restriction must be based on the individual circumstances and:</p> <ul style="list-style-type: none"> • Be in accordance with law which is accessible and has foreseeable effects; • Have a legitimate aim (which must be in accordance with one of the interests listed in Article 8(2)); • Be necessary to achieve that aim; and • Be proportionate to the aim pursued.⁷⁵ 	<p>Examples of positive obligations on the State which have been considered necessary given the interests at stake are as follows.</p> <p><i>Privacy and personal integrity, identity and autonomy</i></p> <ul style="list-style-type: none"> • Implement a legal framework and processes that can protect persons from violence from others, with special regard to protecting those who may be vulnerable, such as children or those in situations of domestic violence.⁷⁶ • Have in place a regulatory system that ensures healthcare providers protect their patient’s physical integrity, and a means for seeking compensation in cases of medical negligence.⁷⁷ • Ensure detainees are able to use sanitary facilities in private.⁷⁸ • Conduct searches of detainees only when necessary and proportionate to achieving a legitimate aim.⁷⁹ • Develop and comply with strict procedures for conduct searches of visitors only when necessary and in a way which respects their dignity.⁸⁰ • Ensure there are sufficient safeguards in place such that the use of video surveillance in places of detention is necessary and proportionate and does not lead to arbitrary interferences with privacy. Safeguards should include specifying permissible grounds for surveillance, where it should be used and who can review footage.⁸¹ • Ensure that the use of handcuffs is necessary and proportionate.⁸² <p><i>Family life and contact with the outside world</i></p>

⁷² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>. See also World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 5, https://www.euro.who.int/data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 20, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

⁷³ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9], <https://undocs.org/CAT/OP/10>.

⁷⁴ See, *Von Hannover v Germany*, Applications nos. 40660/08 and 60641/08, 2012, [42], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-109029%22>].

⁷⁵ See, *Khoroshenko v Russia*, Application no. 41418/04, 2015, [106]-[149], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-156006%22>]; and *Vestev v Bulgaria*, Application No. 54558/15, 2019, [21]-[25], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-192784%22>].

⁷⁶ See, *Sandra Janković v. Croatia*, Application no. 38478/05, 2009, [44]-[45], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-91608%22>]; [65], *Bevacqua and S. v Bulgaria*, Application no. 71127/01, 2008, [64]-[84], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-86875%22>]; and *M.C. v Bulgaria*, Application no. 39272/98, 2003, [148]-[153], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-61521%22>]. See also Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), pp. 15-16, 18, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

⁷⁷ See *Jurica v Croatia*, Application no. 30376/13, 2017, [84]-[88], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-173261%22>].

⁷⁸ See, *Szafrański v Poland*, Application no. 17249/12)2015, [37]-[41], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-159205%22>].

⁷⁹ See, *Wainright v the United Kingdom*, Application no. 12350/04, 2006, [41]-[49], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-76999%22>].

⁸⁰ See, *Wainright v the United Kingdom*, Application no. 12350/04, 2006, [43]-[49], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-76999%22>]. See also Rule 54.9, EPR.

⁸¹ See, *Gorlov and Others v Russia*, Applications nos. 27057/06 and 2 others, 2019, [85]-[100], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-194247%22>].

⁸² See, *Mouisel v France*, Application no. 67263/01, 2002, [47], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-60732%22>].

		<ul style="list-style-type: none"> • Assist prisoner’s as far as possible to create and maintain ties with those outside of prison in order to promote their rehabilitation.⁸³ • Assist a prisoner to maintain contact with his family, bearing in mind the importance of this to rehabilitation and reintegration,⁸⁴ including by allowing for visits from family and friends.⁸⁵ • Ensure prisoners are placed within a distance of home that allows for family visits, taking into account the individual circumstances of the case, including the difficulties of transport and the financial situation and age of the family members and allowing the prisoner to make representations about their allocation.⁸⁶ • Assess the merits of an application made by a prisoner to visit a sick relative or attend a relative’s funeral and provide alternate opportunities for contact when release is not possible.⁸⁷ • Inform a detainee’s family of the serious illness of a detainee (unless the detainee has requested them not to be informed).⁸⁸ • Provide prisoners with writing materials and pay postage costs as necessary due to a lack of financial means.⁸⁹ • Ensure that the monitoring of communications and correspondence is based on individual circumstances and put in place safeguards to ensure monitoring of communications is not abused.⁹⁰ • Ensure that communications with lawyers are treated as privileged; legal correspondence should only be opened when there is reasonable cause to believe it contains illicit materials which normal means of detection have failed to disclose or to believe privilege is being abused and the contents of the letter may endanger prison security or the safety of others.⁹¹ <p>In relation to C-19, the SPT has noted that the State must “Provide sufficient compensatory alternative methods, where visiting regimes are restricted for health-related reasons, for detainees to maintain contact with families and the outside world, including telephone, Internet and email, video communication and other appropriate electronic means. Such methods of contact should be both facilitated and encouraged, as well as frequent and provided free of charge.”⁹²</p>
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⁸³ *Khodorkovskiy and Lebedev v. Russia*, Applications nos. 11082/06 and 13772/05, 2013, [835]-[838], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-122697%22%7D%7B%22appno%22:%5B%2215817/89%22%2C%22itemid%22:%5B%22001-757%22%7D%7D>; and *Wakefield v the United Kingdom*, Application No. 15817/89, 1980, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2215817/89%22%2C%22itemid%22:%5B%22001-757%22%7D%7D>. See also Rule 24.5, EPR.

⁸⁴ See, *Khoroshenko v Russia*, Application no. 41418/04, 2015, [106], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-156006%22%7D%7B%22appno%22:%5B%2241418/04%22%7D%7D>; and *Trosin v Ukraine*, Application no. 39758/05, 2012, [39]-[47], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-109197%22%7D%7B%22appno%22:%5B%2239758/05%22%7D%7D>. See also Rule 24.1, EPR and Rules 106-107, SMR.

⁸⁵ See, *A v the United Kingdom*, Application No. 9054/80, 1992, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%229054/80%22%7D%7B%22itemid%22:%5B%22001-757%22%7D%7D>; and *Polyakova and others v Russia*, Applications nos. 35090/09 and 3 others, 2017, [87]-[89], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2215817/89%22%2C%22itemid%22:%5B%22001-757%22%7D%7D>. See also Rule 24.4, EPR and Rule 58, SMR.

⁸⁶ See, *Khodorkovskiy and Lebedev v. Russia*, Applications nos. 11082/06 and 13772/05, 2013, [835]-[838], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-122697%22%7D%7B%22appno%22:%5B%2215817/89%22%2C%22itemid%22:%5B%22001-757%22%7D%7D>; and *Wakefield v the United Kingdom*, Application No. 15817/89, 1980, <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2215817/89%22%2C%22itemid%22:%5B%22001-757%22%7D%7D>. See also Rule 59, SMR.

⁸⁷ *Lind v Russia*, Application no. 25664/05, 2007, [94]-[99], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83817%22%7D%7B%22appno%22:%5B%2225664/05%22%7D%7D>. See also Rule 24.6 and 24.7, EPR and Rule 70, SMR.

⁸⁸ Rule 24.9, EPR and Rule 69, SMR.

⁸⁹ *Gagiu v Romania*, Application No. 63258/00, 2009, [91]-[93], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-91438%22%7D%7B%22appno%22:%5B%2263258/00%22%7D%7D>.

⁹⁰ *Petrov v Bulgaria*, Application no. 15197/02, 2008, [35]-[44], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-86454%22%7D%7B%22appno%22:%5B%2215197/02%22%7D%7D>; and *Tsonyo Tsonov v Bulgaria*, Application no. 33726/03, 2009, [41]-[42], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94581%22%7D%7B%22appno%22:%5B%2233726/03%22%7D%7D>.

⁹¹ See, *Campbell v the United Kingdom*, Application no. 13590/88, 1992, [42], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57771%22%7D%7B%22appno%22:%5B%2213590/88%22%7D%7D>.

⁹² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(k)], <https://undocs.org/CAT/OP/10>. Similarly, the CPT has stated that “any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over Internet-Protocol communication)”, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>. And see also World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, pp. 5, 21-22, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf; and Inter-Agency Standing Committee, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, 2020, p. 5, <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>

<p>Right to liberty and security</p> <p>Article 5, ECHR:</p> <p>1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p>(a) the lawful detention of a person after conviction by a competent court;</p> <p>(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;</p> <p>(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;</p> <p>(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;</p> <p>(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;</p> <p>(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.</p>	<p>The State must not deprive someone of their liberty other than for one of the reasons set out in Article 5(1) and in accordance with law.⁹³</p> <p>Deprivation of liberty must not be arbitrary; there must be no bad faith or deception on the part of the authorities; it must be necessary (i.e. it is a last resort when other measures will not be sufficient) and proportionate (in that it strikes the right balance between the aim to be achieved and the importance of the right to liberty); and there must be a relationship between the grounds for deprivation and the place and conditions of detention.⁹⁴</p> <p>In addition, deprivation of liberty pending deportation is only permissible while deportation is being pursued with due diligence and there is a realistic prospect of removal.⁹⁵</p> <p>For a person to be deprived of their liberty to prevent the spread of infectious disease, the spreading of the disease must be a danger to public health and safety, and the detention must be a last resort to prevent that spread (i.e. less restrictive measures have been considered but will not ensure public safety).⁹⁶</p> <p>NB: Article 5 does not generally apply to disciplinary measures taken within a prison such as segregation (i.e. to a further deprivation of liberty when already detained).⁹⁷</p>	<p>The State must:</p> <ul style="list-style-type: none"> • Ensure detention only takes place when there is a proper committal order and properly record all instances of detention.⁹⁸ • Provide reasons for arrest or detention promptly in a language and format that the detainee understands. An explanation in simple, non-technical terms should be given of the essential legal and factual basis for detention in a language and format that the detainee understands.⁹⁹ If the detainee has difficulties understanding, the information should be given to the person who represents their interests (e.g. a lawyer or guardian).¹⁰⁰ • Bring persons arrested on suspicion of having committed an offence promptly before a judge who is able to review the lawfulness of detention and whether there is a reasonable suspicion that the person has committed an offence.¹⁰¹ • Ensure ongoing pre-trial detention is maintained only when: other alternatives have been considered; there continues to be a reasonable suspicion the detainee has committed an offence; there are sufficient reasons why the public interest outweighs the right to liberty based on the risks of absconding, obstructing the proceedings, reoffending or actual disruption to public order; and the authorities have displayed special diligence in bringing the matter to trial.¹⁰² • Allow a detainee to seek speedy judicial review of the lawfulness of their detention, including in light of new factors emerging (i.e. habeas corpus proceedings).¹⁰³ <p>In addition, the State must:</p> <ul style="list-style-type: none"> • Allow detainees access to legal advice and representation in order to challenge their detention.¹⁰⁴ • When the risk posed by offenders to the public is the reason for ongoing detention, the rehabilitation of prisoners must be encouraged; prisoners must be provided with the necessary means, such as therapy or offending behaviour courses, to demonstrate that they are no longer a risk of reoffending on release.¹⁰⁵
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⁹³ See, *Merabishvili v Georgia*, Application no. 72508/13, 2017, [298], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-178753%22%7D>, where the Court noted that “If a given instance of deprivation of liberty does not fit within the confines of one of the sub-paragraphs of that provision, as interpreted by the Court, it cannot be made to fit by an appeal to the need to balance the interests of the State against those of the detainee.”

⁹⁴ See, *Saadi v the United Kingdom*, Application no. 13229/03, 2008, [67]-[74], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-84709%22%7D>.

⁹⁵ See, *Al Husin v Bosnia and Herzegovina (No. 2)*, Application no. 10112/16, 2019, [99]-[106], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-194065%22%7D>.

⁹⁶ See, *Enhorn v Sweden*, Application no. 56529/00, [44], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-68077%22%7D>. Article 5(1)(e) only applies to deprivations of liberty and not to restrictions on freedom of movement.

⁹⁷ See, *Munjaz v the United Kingdom*, Application no. 2913/06, 2012, [63]-[73], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-112198%22%7D>.

⁹⁸ See, *Mooren v Germany*, Application no. 11364/03, 2009, [74], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-93528%22%7D>; and *El-Masri v the Former Yugoslav Republic of Macedonia*, Application no. 39630/09, 2012, [233], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-115621%22%7D>. See also Rules 14, 15.1 and 33.1, EPR and Rule 7, SMR.

⁹⁹ See, *S., V. and A. v Denmark*, Applications nos. 35553/12, 36678/12 and 36711/12, 2018, [92], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-187391%22%7D>; *Murray v the United Kingdom*, Application no. 14310/88, 1994, [72], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57895%22%7D>; *Z.H. v Hungary*, Application no. 28973/11, 2012, [41], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114276%22%7D>.

¹⁰⁰ See, *X v the United Kingdom*, Application no. 6998/75, 1980, [106], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-73537%22%7D>.

¹⁰¹ See, *McKay v the United Kingdom*, Application no. 543/03, 2006, [30]-[40], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-77177%22%7D>.

¹⁰² See, *Scott v Spain*, Application no. 21335/93, 1996, [74]-[84], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-58010%22%7D>; and *Merabishvili v Georgia*, Application no. 72508/13, 2017, [222]-[225], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-178753%22%7D>.

¹⁰³ See, *Azimov v Russia*, Application no. 67474/11, 2013, [149]-155], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-118605%22%7D>.

¹⁰⁴ See, *Černák v Slovakia*, Application no. 36997/08, 2013, [78], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-139277%22%7D>. See also Rule 23, EPR.

¹⁰⁵ See, for example, *Klinkenbuss v Germany*, Application no. 53157/11, [45]-[63], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-160826%22%7D>; *James, Wells and Lee v the United Kingdom*, Applications nos. 25119/09, 57715/09 and 57877/09, 2012, [218], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22James,%20Wells%20and%20Lee%22,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%7D,%22itemid%22:%5B%22001-113127%22%7D%7D>. The latter case concerned prisoners serving indeterminate sentences for the public protection (‘IPP sentences’). See also Rules 4, 92, 94, 96, 98, 99, 101 SMR.

<p>2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.</p> <p>3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.</p> <p>4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.</p> <p>(Article 5.5, entitlement to compensation, omitted)</p> <p>See also Article 9 ICCPR.</p>		<p>In relation to C-19, the CPT has noted that “As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.”¹⁰⁶</p>
<p>Right to a fair trial</p> <p>Article 6, ECHR:</p> <p>1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.</p>	<p>The State must not convict someone of a criminal offence without providing them with a fair trial.</p> <p>Some disciplinary charges in prison may by the nature of the offence and the degree of severity of the punishment be regarded as criminal and therefore subject to the safeguards of a fair trial. This is the case with charges which may lead to the imposition of additional days.¹⁰⁷</p>	<p>The State must:</p> <ul style="list-style-type: none"> • Promptly provide a defendant to a criminal charge with information about the nature and cause of the accusation(s) against them in a language and format they understand, providing assistance to those who may have difficulty understanding the charges against them.¹⁰⁸ • Inform someone suspected of an offence of their right to silence, to legal advice and representation and the privilege against self-incrimination.¹⁰⁹ • Inform someone suspected of an offence of their right to have the assistance of an interpreter and provide that assistance for free from investigation stage and throughout criminal proceedings.¹¹⁰ • Provide the defendant to a criminal charge with adequate time and facilities to prepare their defence, including allowing the defendant to take and refer to notes and to consult with their lawyer.¹¹¹ • Ensure that conditions of detention, including time spent travelling to and from court, do not inhibit the detainee’s ability to defend themselves, for example, due to tiredness or inability to concentrate.¹¹²

¹⁰⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, March 2020, <https://rm.coe.int/16809cfa4b>. See also Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10, April 2020, [9(b) to (f)], <https://undocs.org/CAT/OP/10>; and World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance*, March 2020, p. 4, https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

¹⁰⁷ See, *Ezeh and Connors v the United Kingdom*, Applications nos. 39665/98 and 40086/98, 2003, [120]-[130], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-61333%22>. See also Rules 55, 59, 60.1 and 60.2, EPR and Rule 41, SMR.

¹⁰⁸ See, *Vaudelle v France*, Application no. 35683/97, 2001, [62]-[65], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-59167%22>. See also Rule 30.3, EPR and Rule 119, SMR.

¹⁰⁹ See, *Ibrahim and Others v the United Kingdom*, Applications nos. 50541/08, 50571/08, 50573/08 and 40351/09, 2016, [270]-[273], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-166680%22>.

¹¹⁰ See, *Baytar v Turkey*, Application no. 45440/04, 2014, [46]-[59], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-147468%22>.

¹¹¹ See, *Borisova v Bulgaria*, Application no. 56891/00, 2006, [41]-[45], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-78794%22>; *Rasmussen v Poland*, Application no. 38886/05, 2009, [46]-[51], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-92429%22>; and *Campbell and Fell v the United Kingdom*, Application no. 7819/77; 7878/77, 1984, [99], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-57456%22>. See also Rule 53, SMR.

¹¹² See, *Razvozhayev v Russia and Ukraine and Udaltsov v Russia*, 2019, Applications nos. 75734/12 and 2 others [251]-[255], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-198480%22>.

<p>2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.</p> <p>3. Everyone charged with a criminal offence has the following minimum rights:</p> <p>a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;</p> <p>(b) to have adequate time and facilities for the preparation of his defence;</p> <p>(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;</p> <p>(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.</p> <p>See also Article 7 ECHR (no punishment without law) and Articles 14 and 15 ICCPR.</p>		<ul style="list-style-type: none"> • Ensure persons suspected of involvement of a criminal offence can avail themselves of the assistance of a lawyer of their own choosing.¹¹³ Legal aid must be provided when the person lacks financial means and when required in the interests of justice in light of the severity of the penalty, the complexity of the case and the capacity of the accused to represent themselves. Where a deprivation of liberty is in question, the interests of justice will in principle require legal representation.¹¹⁴ • Ensure the confidentiality of lawyer-client communications unless exceptional circumstances warrant limiting this, such as a risk to the safety of others.¹¹⁵ • Ensure that criminal charges are tried within a reasonable time.¹¹⁶ • Take into account the fact that someone is remanded or in custody when prioritising the hearing of criminal charges and sentencing proceedings.¹¹⁷ • Allow detainees to challenge their treatment and conditions of detention (such as visitation rights, disciplinary procedures and placement in certain units) in judicial proceedings which are fair and impartial.¹¹⁸ Legal aid should be provided in such civil proceedings when it is necessary to ensure a fair hearing in light of the complexity of the case, the importance of the interest at stake and the capacity of the detainee to represent themselves.¹¹⁹
<p>Prohibition of discrimination</p> <p>Article 14, ECHR</p> <p>The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national</p>	<p>The State must not discriminate in the provision of services or the way in which it carries out its public functions.¹²¹</p> <p>Discrimination may be direct, when a person treats another person less favourably/disadvantages them because of a protected/minority characteristic, or indirect. Indirect discrimination occurs when the same provision, criteria or practice is applied to all but it puts people with a particular characteristic at a disadvantage compared to those without that characteristic, and this cannot be shown to be a</p>	<p>The State must:</p> <ul style="list-style-type: none"> • Ensure all persons can enjoy their rights without discrimination. • Prohibit, prevent and redress discrimination, victimisation and harassment, and protect those experiencing these from further violations.¹²³ • Take all reasonable steps to investigate whether there are discriminatory motives to actions such as violence or crimes.¹²⁴

¹¹³ *Truten v Ukraine*, Application no. 18041/08, 2016, [63]-[67], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-163912%22%7D>.

¹¹⁴ See, *Benham v the United Kingdom*, Application no. 19380/92, 1996, [54]-[64], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57990%22%7D>; and *Quaranta v Switzerland*, Application no. 12744/87, 1991, [30]-[38], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57677%22%7D>. See also Rule 23, EPR and Rule 54 and 55, SMR.

¹¹⁵ See, *Khodorkovskiy and Lebedev v. Russia*, Applications nos. 11082/06 and 13772/05, 2013, [640]-[641], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-122697%22%7D>; and *Wakefield v the United Kingdom*, Application No. 15817/89, 1980, <https://hudoc.echr.coe.int/eng#%7B%22appidno%22:%5B%2215817/89%22%7D,%22itemid%22:%5B%22001-757%22%7D%7D>. See also Rule 23, EPR and Rules 61 and 120, SMR.

¹¹⁶ See, *Eckle v Germany*, Application no. 8130/78, 1998, [92]-[95], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57476%22%7D>; and *Milasi v Italy*, Application no. 10527/83, 1987, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57539%22%7D>.

¹¹⁷ See, *Abdoella v the Netherlands*, Application no. 12728/87, 1992, [24], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57765%22%7D>; and

¹¹⁸ See, *Enea v Italy*, Application no. 74912/01, 2009, [85]-[107], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94072%22%7D>; and *Gulmez v Turkey*, Application no. 16330/02, 2008, [24]-[39], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-86368%22%7D>. This is a separate and additional avenue of redress to the requirement of States to pursue criminal charges if a detainee is mistreated. See also Rule 61, EPR and Rules 55-57, SMR.

¹¹⁹ The financial means of the detainee and the prospects of success may also be considered when determining if legal aid should be granted. See *Steel and Morris v the United Kingdom*, Application no. 68416/01, 2005, [59]-[72], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-68224%22%7D>; and *Airey v Ireland*, Application no. 6289/73, 1979, [20]-[28], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57420%22%7D>.

¹²¹ See also Rule 13, EPR.

¹²³ See, *Bekos and Koutropoulos v Greece*, Application no. 15250/02, 2005, [63], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-71594%22%7D>, in relation to racism.

¹²⁴ See, *Bekos and Koutropoulos v Greece*, Application no. 15250/02, 2005, [69]-[75], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-71594%22%7D>; and *Abdu v Bulgaria*, Application no. 26827/08, 2014, [41]-[45], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-141908%22%7D>.

<p>or social origin, association with a national minority, property, birth or other status.</p> <p>See also Articles 2 and 26, ICCPR; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the CRPD.¹²⁰</p>	<p>proportionate way of achieving a legitimate aim. The prohibition on discrimination covers situations in which discrimination takes place against a person because of their association with another person who has a particular characteristic, and when discrimination occurs due to an incorrect belief that someone has a particular characteristic. Discrimination does not need to be intentional.¹²²</p> <p>A failure to provide someone with a reasonable adjustment is also discrimination. A reasonable adjustment involves taking reasonable steps to try to avoid the disadvantage experienced by someone because of a particular characteristic.</p> <p>Victimisation, subjecting someone to detriment because they complain about discrimination that happened to them or another person, and harassment are also prohibited. Harassment occurs when a person behaves in a way which violates another person's dignity or create an intimidating, degrading, humiliating or offensive environment for that person, and the behaviour relates to a particular characteristic of the person being harassed.</p>	<ul style="list-style-type: none"> • Ensure reasonable adjustments are made and undertake an assessment of whether reasonable adjustments need to be made based on a clear assessment of the needs of the detainee and the detriment they are experiencing.¹²⁵ • Take positive steps to correct past disadvantage, for example, by assisting students from a particular group to attend school.¹²⁶ • Explain why disproportionate outcomes are not due to discrimination.¹²⁷ • Ensure information about COVID-19 is provided in a range of languages and formats suitable for all.¹²⁸ <p>In its COVID-19 Toolkit, the OHCHR has noted:</p> <p>“In responding to the health emergency generated by the COVID-19 pandemic, States parties should adopt adequate measures to ensure that racially discriminated groups, have access without discrimination to quality and acceptable health care services including mental health. Language and cultural needs should be taken into account.”</p> <p>“States parties should pay attention to the specific needs of individuals and groups, whose rights might be at risk, particularly: (a) Persons in detention that belong to ethnic minority groups, particularly those that are overrepresented in the penitentiary system, are at higher risk of discrimination, and denial of medical care.”¹²⁹</p>
<p>Right to health</p> <p>Article 12, International Covenant on Economic, Social and Cultural Rights (ICESCR)</p> <p>1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:</p>	<p>The State must not deny persons available health care or discriminate in the provision of health care, including in relation to detainees.¹³⁰ The State must not withhold or misrepresent information critical to the protection of health.¹³¹</p>	<p>At a minimum, the right to health requires that the State must:</p> <ul style="list-style-type: none"> • Ensure the right of access to health facilities, goods and services on a non-discriminatory basis and equitable distribution of health facilities, goods and services. • Ensure access to nutritionally adequate food and prevent hunger. • Ensure an adequate supply of safe, potable water and access to basic shelter, housing and sanitation. • Provide essential medications. • Implement a public health strategy addressing the health concerns of the population. <p>In addition, the State should:</p>

¹²⁰ For further information on COVID-19 and the rights of persons with disabilities see United Nations, “Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility”, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E>.

¹²² See, *D.H. and Others v the Czech Republic*, Application no. 57325/00, 2007, [175]-[184], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-83256%22%7D>.

¹²⁵ Articles 5, 9 and 25 CRPD. See, for example, *Enver Şahin v Turkey*, Application no. 23065/12, 2018, [65]-[69], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-180499%22%7D>; and *Çam v Turkey*, Application no. 51500/08, 2016, [64]-[69], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-161149%22%7D>. See also Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 31, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf; Rule 38.3, EPR and Rule 5(2), SMR.

¹²⁶ See, *Horváth and Kiss v Hungary*, Application no. 11146/11, 2013, [101]-[104], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116124%22%7D>.

¹²⁷ See, *Horváth and Kiss v Hungary*, Application no. 11146/11, 2013, [105]-[108], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116124%22%7D>.

¹²⁸ Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 5, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹²⁹ Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 5, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf. Articles 1,2 and 5, International Convention on the Elimination of All Forms of Racial Discrimination.

¹³⁰ Committee on Economic, Cultural and Social Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4, 2000, [34], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en; Article 10 and 25, CRPD; Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 33, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹³¹ Committee on Economic, Cultural and Social Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4, 2000, [50], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en.

<p>(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p> <p>See also Article 5 (e) (iv) of the ICERD, Articles 11.1 (f) and 12 of CEDAW and Article 10 CRPD.</p> <p>See also above in relation to Articles 2 and 3 of the ECHR.</p>		<ul style="list-style-type: none"> • Ensure reproductive, pre and post-natal and child health care. • Immunise against major infectious diseases occurring in the community. • Prevent, treat and control epidemic and endemic diseases. • Provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them. • Provide appropriate training for health personnel.¹³² <p>In its COVID-19 Toolkit, the OHCHR noted:</p> <p>“States parties must ensure that health facilities, goods and services are available, physically and economically accessible, adequate, and of good quality, whether privately or publicly provided. Equal and timely access to basic preventive and curative goods and services, such as screening, protective equipment, drugs and treatments as well as an adequate system of urgent medical care must be guaranteed. (...) Additional demands in times of health emergencies and epidemics require the injection of supplementary resources for the provision of goods and services, but also to ensure health-related social protection.”¹³³</p>
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In addition to the above, the following are also relevant in places of detention:

- Persons in detention continue to have the right to freedom of expression recognised in Article 10 of the ECHR, which includes the “freedom to hold opinions and to receive and impart information and ideas without interference.”¹³⁴ This freedom may be subject to restrictions that are provided for by law and which are necessary and proportionate “in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” For example, it may be necessary and proportionate to prohibit prisoners from wearing political symbols which would be likely to spark violence and disorder or which are discriminatory.¹³⁵ Prohibitions of hate speech and other discriminatory speech are also likely to be necessary and proportionate restrictions on freedom of expression (and may be required in conjunction with Article 14).¹³⁶ The Human Rights Committee has reiterated the importance of the right to access information in the context of measures introduced in response to COVID-19.¹³⁷
- Persons in detention continue to have the right to freedom of thought, conscience and religion recognised in Article 9 of the ECHR, including the freedom “either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”.¹³⁸ This freedom may be subject to restrictions which are provided for by law and which are necessary and proportionate “in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Examples of impermissible restrictions include refusing to allow a prisoner visits from a priest without any reason,¹³⁹ and seizing religious materials and preventing visits to the prison chapel without reason.¹⁴⁰ The State may also be required to take steps to assist someone to enjoy religious observance, for example, by providing meals to a prisoner which meet their religious requirements.¹⁴¹

¹³² Committee on Economic, Cultural and Social Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/2000/4, 2000, [43]-[44], https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en.

¹³³ Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), pp. 10-11, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹³⁴ See also Article 19, ICCPR, Rules 24.10 and 24.12, EPR; Rule 63-64, SMR; and Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 14, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹³⁵ See, for example, *Donaldson v the United Kingdom*, Application no 56975/09, 2011, [18]-[33], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-103349%22>].

¹³⁶ See, for example, *Vejdeland and Others v Sweden*, Application no. 1813/07)2012, [47]-[60], <https://hudoc.echr.coe.int/eng#%22docname%22:%22%22CASE%20OF%20VEJDELAND%20AND%20OTHERS%20v.%20SWEDEN%22%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-109046%22>].

¹³⁷ Human Rights Committee, “Statement on derogations from the Covenant in connection with the COVID-19 pandemic”, UN Doc. CCPR/C/128/2, April 2020, [2(f)], <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>.

¹³⁸ See also Rule 29, EPR and Rules 65-66, SMR.

¹³⁹ *Mozer v the Republic of Moldova and Russia*, Application no. 11138/10), 2016, [197]-[199], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-161055%22>].

¹⁴⁰ *Moroz v Ukraine*, Application no. 5187/07, 2017, [104]-[109], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-171501%22>].

¹⁴¹ *Jakóbski v Poland*, Application no. 18429/06) 2010, [42]-[55], <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-102121%22>].

- Article 13 requires that everyone whose rights under the ECHR have been violated shall have an effective remedy before the national authority. In relation to Article 3 violations, including conditions of detention, this means that a remedy which has an immediate impact to prevent the situation continuing must be available. An application to a Governor for transfer may be a sufficient avenue to pursue a remedy for poor conditions if this decision is reviewable by a court.¹⁴² Compensation should also be made, either financial or in a reduction in sentence, to remedy time spent in poor conditions.¹⁴³
- Article 2 of Protocol 1 to the ECHR provides that no person may be denied the right to education. This has been found to require that prisoners be given access to existing educational institutions unless restrictions are necessary and proportionate in the pursuit of a legitimate aim.¹⁴⁴ The right to education is also provided for in Articles 13 and 14 of the ICESCR, which provide for free primary education for all, the provision of fundamental education as far as possible for those who did not receive or complete primary education, and equal access to higher and secondary education.¹⁴⁵ In its COVID-19 Toolkit, the OHCHR noted that access to education should continue to be ensured.¹⁴⁶
- The right to peaceful enjoyment of a person's possessions (Article 1 of Protocol 1 to the ECHR), has been found to require the State to look after property taken from a prisoner with due care.¹⁴⁷
- Those detainees who carry out work must be guaranteed safe and hygienic conditions of work.¹⁴⁸
- Article 9 of the ICESCR, which recognises the right of everyone to social security, and Article 11, which includes recognition of the right to adequate housing, are particularly relevant to detainees being released. In its COVID-19 Toolkit, the OHCHR, has noted in relation to Article 9 that "Basic social security guarantees including universal access to the necessary health services and basic income security (e.g. in case of sickness, death, unemployment and loss of livelihood) should be ensured in the COVID-19 pandemic response. Social protection measures should ensure a minimum essential level that will provide for at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education." In relation to Article 11, the OHCHR notes that minimum core content of the right to housing is that those who are homeless must be provided with adequate shelter on an urgent basis.¹⁴⁹

¹⁴² See, *Domján v Hungary*, Application no. 5433/17, 2017, [21]-[23], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-179045%22%7D>.

¹⁴³ See, *Ulemek v Croatia*, Application no. 21613/16, 2019, [71]-[74], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-197253%22%7D>.

¹⁴⁴ *Velyo Velez v Bulgaria*, Application no. 16032/07, 2014, [34], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-144131%22%7D>. Where a prison has audio-visual materials, computers and electronic devices available, prisoners should be able to sue these to further their education unless restrictions are necessary and proportionate, see *Mehmet Reşit Arslan and Orhan Bingöl v Turkey*, Application nos 47121/06, 13988/07 and 34750/07, 2019, [51]-[54], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-193741%22%7D>. See also Rule 104, SMR.

¹⁴⁵ See, generally, Committee on Economic, Cultural and Social Rights, *General Comment No. 13, The right to education (article 13 of the Covenant)*, UN Doc. E/C.12/1999/10, 1999, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f10&Lang=en.

¹⁴⁶ Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 11, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹⁴⁷ *Tendam v Spain*, Application no. 25720/05, 2010, [50]-[57], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-99896%22%7D>. See also Rule 31, EPR and Rule 67, SMR.

¹⁴⁸ Article 7, ICCPR. See also Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), p. 8, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf.

¹⁴⁹ Office of the High Commissioner of Human Rights, *Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19*, May 2020 (updated 15 July 2020), pp. 9-10, https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf. See generally, Committee on Economic, Social and Cultural Rights, *General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant)*, 1996, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en.

Annex B: Torture and other Ill-Treatment

Article 3 of the European Convention on Human Rights prohibits:

- torture; and
- inhuman and degrading treatment or punishment (often referred to as “other ill-treatment”).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also prohibits torture and other ill-treatment and provides a definition of torture in Article 1(1). For treatment (which includes acts, omissions and conditions of detention) to amount to torture it must:

- Be Intentional (i.e. deliberate rather than accidental);
- Cause severe pain and suffering;
- Be inflicted for a purpose (purposes include things such as confession, punishment, intimidation, coercion, discrimination); and
- Be inflicted by or with the consent or acquiescence of a public official (this includes contractors carrying out public functions).

There is no definition of the other types of ill-treatment but the decisions of the European Court of Human Rights provide guidance in relation to Article 3. The Court has noted that treatment must meet a minimum level of severity to amount to a violation of Article 3.¹⁵⁰ The Court has considered treatment to be inhuman “because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering”.¹⁵¹ In relation to degrading treatment, the Court has noted that “where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading”.¹⁵² It is not necessary that the person carrying out the act intended to humiliate the person or that others believe the person has been humiliated (although if the purpose was to humiliate then this will contribute to finding an Article 3 violation).¹⁵³ The view of the Court is that, “in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3.”¹⁵⁴

The duration of the treatment and the cumulative effect of a series of acts and/or conditions of detention must be considered when determining whether an act amounts to torture or other ill-treatment. For example, if a person is struck with a baton and then later restrained, the effect of both the use of the baton and the later restraint should be considered. The subjective effect on the particular individual involved should also be considered, (rather than the effect on a “reasonable person”), so that, for example, a person’s

¹⁵⁰ *Semikhvostov v Russia*, Application No. 2689/12, 2014, [69], <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%222689%2F12%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%222001-140404%22%5D%7D>.

¹⁵¹ *Labita v Italy*, Application No.26772/95, 2000, [120], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22labita%20v%20italy%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%222001-58559%22%5D%7D>.

¹⁵² *Bouyid v Belgium*, Application No. 23380/09, 2015, [87], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%222001-157670%22%5D%7D>.

¹⁵³ *Labita v Italy*, Application No.26772/95, 2000, [120], <https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22labita%20v%20italy%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%222001-58559%22%5D%7D>.

¹⁵⁴ *Bouyid v Belgium*, Application No. 23380/09, 2015, [88], <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%222001-157670%22%5D%7D>.

age, gender and health condition will all be relevant in determining the pain and suffering they experienced.¹⁵⁵ Discrimination, including a failure to provide reasonable accommodation, is therefore relevant to the determination of pain and suffering.¹⁵⁶

Examples¹⁵⁷

Acts that have been considered to amount to torture include rape, falanga (beating on the soles of the feet), extensive beatings causing physical injuries and threats of execution and/or torture (where these were believed to be true).

Shackling a prisoner by the ankle to a hospital bed has been found to be inhuman.

Acts found to be degrading include forcibly shaving a detainee's head, verbally abusing and deriding a detainee during a strip search, and being slapped by a police officer while in custody.¹⁵⁸ Discrimination in and of itself may be capable of amounting to degrading treatment.

Acts found to be other ill-treatment (without specifying which kind) include injuries inflicted on an individual when excessive force was used during an arrest by the police, including bruising to the kidneys, and holding an individual in a two-by-three metre cell with continuous light for three months without access to a bathroom.

The Court found that detaining a man with an intellectual disability who was also hearing and speech impaired for three months without providing sufficient reasonable accommodation to him to be able to understand his situation and overcome his feelings of isolation amounted to inhuman and degrading treatment. The Court noted that "in particular that the inevitable feeling of isolation and helplessness flowing from the applicant's disabilities, coupled with the presumable lack of comprehension of his own situation and of that of the prison order, must have caused the applicant to experience anguish and inferiority attaining the threshold of inhuman and degrading treatment, especially in the face of the fact that he had been severed from the only person (his mother) with whom he could effectively communicate."¹⁵⁹ In another case, the fact that "the applicant, paraplegic, was left at the mercy of his cellmates in receiving assistance to relieve himself, bathe and get dressed or undressed" has contributed to the finding of being subjected to degrading treatment.¹⁶⁰

In extreme cases, the sense of hopelessness arising from prolonged arbitrary detention in and of itself may lead to severe pain and suffering.

¹⁵⁵ *Labita v Italy*, Application No.26772/95, 2000, [120],

<https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22labita%20v%20italy%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-58559%22%5D%7D>.

¹⁵⁶ *Semikhvostov v Russia*, Application No. 2689/12, 2014, [74] and [84]-[86],

<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%222689%2F%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-140404%22%5D%7D>.

¹⁵⁷ This section is not intended to be comprehensive and will continue to be updated. For detailed discussion and examples see, generally, Rodley, N. and Pollard, M., *The Treatment of Prisoners under International Law*, 3rd ed., ch. 3; and European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights: Prisoners' rights*, updated 30 April 2020, https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf.

¹⁵⁸ *Bouyid v Belgium*, Application No. 23380/09, 2015, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-157670%22%5D%7D>.

¹⁵⁹ *Z.H. v Hungary*, Application No. 28973/11, 2012, [30]-[33],

<https://hudoc.echr.coe.int/eng#%7B%22docname%22:%5B%22%22CASE%20OF%20Z.H.%20v.%20HUNGARY%22%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-114276%22%5D%7D>.

¹⁶⁰ *Engel v Hungary*, Application No. 46857/06, 2010, [27]-[30],

<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-98814%22%5D%7D>.

Investigating violations of Article 3

Article 3 requires authorities to conduct an investigation that is effective both in practice in law into possible torture or other ill-treatment. This requires the following:

- Investigations must be capable of identifying who is responsible.
- The difficulties that the individual may have in making a complaint of ill-treatment due to their vulnerabilities and the distressing nature of the incidents must be taken into account.
- An investigation must be started even if no complaint is made if it is sufficiently clear there is ill-treatment.
- All reasonable steps must be taken to secure the evidence of what occurred as soon as possible, such as witness statements, medical examinations.
- Anyone implicated in the events should not be involved in the investigation.¹⁶¹

¹⁶¹ See, generally, *Gafgen v Germany*, Application No. 22978/05, 2010, [117]-[125], [https://hudoc.echr.coe.int/eng#{"docname":\["gafgen v germany"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-99015"\]}](https://hudoc.echr.coe.int/eng#{).

Annex C: Solitary Confinement and Meaningful Human Contact

Definition of solitary confinement

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provide the following definition of solitary confinement:

Rule 44: For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact.

The European Prison Rules provide in Rule 60.6a that solitary confinement is “is the confinement of a prisoner for more than 22 hours a day without meaningful human contact”. Rule 60.6a carries on to note that solitary confinement “shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.” The European Prison Rules also provide that solitary confinement cannot be used where it would amount to torture or inhuman or degrading treatment or punishment (Rule 60.6c). The Mandela Rules state that prolonged solitary confinement (in excess of 15 days) and indefinite solitary confinement (when someone doesn’t know when their confinement will end) should be prohibited.

Meaningful human contact

There is no definition of meaningful human contact, however, there is guidance which notes that both the amount and quality of contact need to be considered.¹⁶² Based on the guidance, the following should be considered when assessing the quality of contact (i.e. whether it is meaningful):

- Is the contact monotonous and repetitive (i.e. the same thing day in day out)? Will it become monotonous and repetitive as time moves on?
- Does the detainee have any degree in choice of type of contact and who they speak to?
- Are a variety of people, including staff, involved in the contact?
- Is the contact what we would consider meaningful ourselves? Does it contribute to well-being? Does it contribute to building relationships? Is there a genuine dialogue happening?
 - The guidance refers to empathetic contact that is more than fleeting or incidental.
 - Contact must not be limited to those interactions determined by prison routines, the course of criminal investigations or medical necessity, for example, if prison staff deliver a food tray, mail or medication to the cell door that is not meaningful of itself (but would become meaningful if they engaged in genuine conversation while doing so).
 - Process driven contact, such as to meet requirements to carry out observations on prisoners, without real engagement will not be meaningful, whereas ongoing discussions about how a prisoner is feeling and engaging them in plans about their mental health etc would be.
- Is the contact face-to-face?
 - The guidance states that contact should be face-to-face and direct (without physical barriers). However, during COVID-19, physical distancing will necessarily make this challenging; instead consider whether contact is as direct and face-to-face as possible while following health guidance on physical distancing (i.e. are efforts being made to maintain as much contact as possible within the limits of health guidance).

¹⁶² *The Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted 19 December 2007, available at: <https://irct.org/assets/uploads/Opinion.pdf>; and University of Essex and Penal Reform International, *Essex paper 3 Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, 2017, available at: <https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf>.

- In these circumstances, video link and phone calls with families, friends and significant others may fall within what can be considered as meaningful contact if in-person visits are not possible (i.e. if it is strictly necessary to stop visits for the individual concerned). However, such facilities alone won't mitigate for being locked up for long-periods without other meaningful in-person contact.

Annex D: Summaries of additional scoping specific to detention settings and groups

This annex provides brief summaries of additional human rights considerations relevant to specific detention settings inspected by HMI Prisons which were taken into account in the development of the Scrutiny Visit methodology in each setting. These summaries are not intended to provide a comprehensive overview of applicable human rights standards in each setting as these can be found in each relevant set of Expectations (which can be found at <https://www.justiceinspectors.gov.uk/hmiprisons/our-expectations/>).

Immigration detention

Human rights standards specific to immigration detention include the following:

- deprivation of liberty pending deportation is only permissible while deportation is being pursued with due diligence and there is a realistic prospect of removal. Detention must be a last resort and used for as short a time as possible. Individuals must be provided with reasons for their detention in a language and format they understand;¹⁶³
- the individual needs and circumstances of detainees must be assessed and regularly reviewed to identify their vulnerabilities, monitor the impact of detention on them and safeguard them from harm. Some individuals should not be held in immigration detention due to their vulnerability;¹⁶⁴
- the immigration detention environment must be non-carceral and provide an open regime which allows for as much freedom of movement as possible;¹⁶⁵
- detainees must be able to access independent legal advice in confidence;¹⁶⁶
- detainees must be able to contact their consulate should they wish to do so;¹⁶⁷
- interpretation must be provided when necessary;¹⁶⁸
- detainees must be able to remain in frequent contact with family, friends and the outside world, including through electronic/digital means. This includes regular access to news and information about the country to which they may be returned and their home country;¹⁶⁹
- detainees must be provided with adequate clothing and sufficient means to reach their destination and to maintain themselves in the period immediately following their release;¹⁷⁰
- any removal order must be issued in accordance with law and detainees must be informed in advance of their removal. They must be treated at all times with dignity and respect for their human rights.¹⁷¹

¹⁶³ Article 5, ECHR; Guideline 6, 7 and 8, Council of Europe, *Twenty Guidelines on Forced Return*, 2005, available at: https://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf (TGFR); Guidelines 1-3, United Nations High Commissioner for Refugees (UNHCR), *Detention Guidelines (Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention)*, 2012, available at: <https://www.unhcr.org/uk/publications/legal/505b10ee9/unhcr-detention-guidelines.html> (UNHCR-DG). See also CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017, available at: <https://rm.coe.int/16806fbf12>.

¹⁶⁴ Guidelines 8 and 10, TGFR; Guidelines 4, 5 and 9, UNHCR-DG. See also CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017.

¹⁶⁵ Article 5, ECHR; Guideline 10, TGFR; Guideline 8, UNHCR-DG. See also CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017; Rule 36, SMR; and Rule 18.1, EPR.

¹⁶⁶ Article 5, ECHR; Guidelines 2,5 and 9, TGRF; Guidelines 7 and 8, UNHCR-DG. See also CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017; EPR 23; and SMR 61.

¹⁶⁷ Guideline 10, TGFR; CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017; EPR 37.3-37.7; and SMR 62.

¹⁶⁸ Guideline 10, TGFR; CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017; and EPR 38.

¹⁶⁹ Guideline 10, TGFR; and Guideline 8, UNHCR-DG. See also CPT, *Factsheet: Immigration Detention*, CPT/Inf(2017)3, 2017; Rule 24, EPR; and Rules 58 and 63, SMR.

¹⁷⁰ Rule 108, SMR; and Rules 33.7 and 33.8, EPR.

¹⁷¹ Guidelines 2, 4 and 15, TGRF; Rule 1, EPR; Rule 1, SMR.