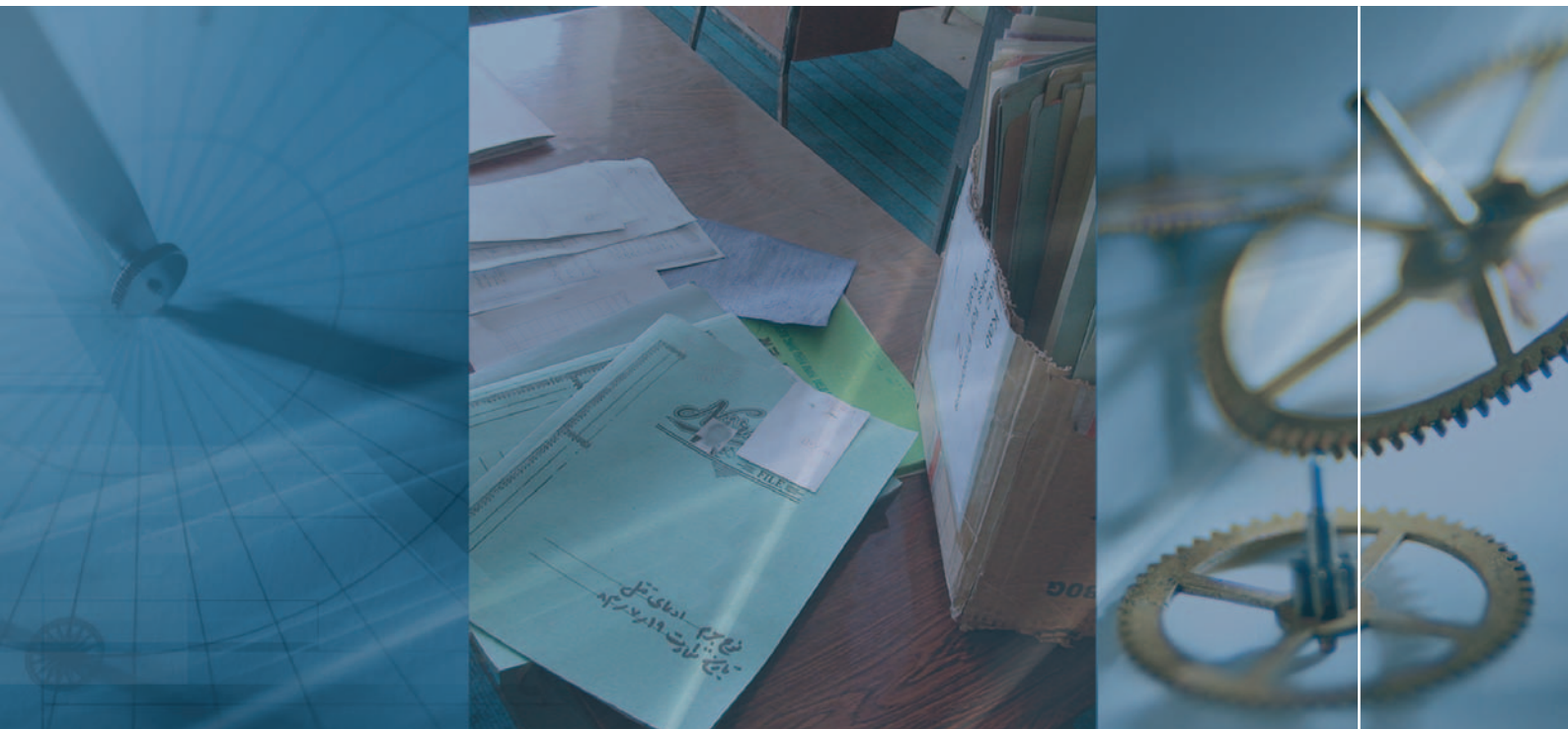




UNITED NATIONS  
*Office on Drugs and Crime*



# Handbook on **prisoner file** management

CRIMINAL JUSTICE HANDBOOK SERIES



UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

# **Handbook on prisoner file management**

CRIMINAL JUSTICE HANDBOOK SERIES



UNITED NATIONS  
New York, 2008

***Experience shows that detainees who are not properly documented are extremely vulnerable to gross violations of their human rights. One of the most effective strategies to prevent and combat those violations is to use the methods outlined in this very valuable manual.***

*Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions*

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# Introduction



The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.<sup>1</sup>

The maintenance of prisoner files is easily associated with the realms of prison administration and bureaucracy—often a burdensome task for overworked prison staff. The role of prisoner files in relation to the protection and promotion of human rights, however, is rather less obvious.

The presence of complete, accurate and accessible prisoner files is not only a prerequisite for effective prison management and strategic planning, it is also an essential tool for ensuring the human rights of prisoners are respected and upheld. If prison systems deny such rights, the rehabilitative purpose of imprisonment is necessarily undermined, along with public confidence in the criminal justice system and the rule of law in general.

The realities of prison systems worldwide are characterized by limited resources. However, effective prisoner file management is not entirely dependent on financial investment; it is more about having a clear and workable system for recording information, accompanied by procedures that are respected and followed by prison staff.

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<sup>1</sup>Standard Minimum Rules for the Treatment of Prisoners, standard 58.

## Prisoner files: a tool for human rights

When a person is detained or sentenced to imprisonment they are deprived of one of their most basic human rights: the right to liberty. The deprivation of liberty necessarily results in prisoners becoming dependant on the detaining authorities for the realization of their other basic human rights. As the Basic Principles for the Treatment of Prisoners sets out:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic and Social Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants.

The police, prison service and other State bodies responsible for detaining individuals therefore have a responsibility to ensure not only that the decision to detain an individual is lawful, but also that their treatment and care whilst in detention is both fair and compliant with human rights standards. Creating and maintaining prisoner and detainee files is an essential tool for protecting and upholding these standards.<sup>2</sup>

***When the state deprives a person of liberty, it assumes a duty of care for that person. The primary duty of care is to maintain the safety of persons deprived of their liberty. The duty of care also embraces a duty to safeguard the welfare of the individual.***

*Making Standards Work (2001)  
Penal Reform International (PRI)*

Consider the example of a person who has been detained without charge by the police. If there is no file, what record exists of the arrest? How can one know that the detained person has not been subjected to torture or ill treatment if there is no recorded medical observation? How can one even know where the person has been held? If there is no file recording the classification of detainees or prisoners as juveniles, how can one be sure that they will be separated from adults? How can one be sure that safeguards that exist in international law for the protection of children are being respected? Consider also the case of female detainees and prisoners. If there is no formal record of medical examinations, how can one be sure

<sup>2</sup>Principle 5.



that they are not subject to abuse whilst in detention? If they have children, what records are kept of those who accompany their mothers into custody and those who do not?

## Prisoner files: a tool for effective prison management

*The collection and maintenance of a comprehensive prison register is one of the essential elements of an effective prison system. Prisoner file systems not only provide important information, such as when the date of imprisonment starts, the place of imprisonment and results of medical examinations, they also act as an important tool for the prevention of torture and other cruel, degrading treatment and punishment.*

*Mr Bakhrom Abdulkhadov,  
Deputy Prison Director General of the Republic of Tajikistan*

Creating and maintaining prisoner files is also an essential component of effective prison management and plays an important part in improving the transparency and accountability of prison administrations. The careful collection of information about those being held in custody is critical to informing both day to day prison administration and long-term prison planning. The total number of people held in custody, their classification, along with their health and rehabilitative needs provides important information for prison managers to identify resource requirements, set budgets, manage health and safety, and develop appropriate rehabilitative and treatment programmes. At the operational level, for example, prisoner information enables prison managers to plan daily activities such as meals, medical treatment and cell allocations, as well as determine appropriate staffing levels and the deployment of individual responsibilities. At the strategic level, the size and profile of the prison population guides managers in planning the development and delivery of prison services, such as health care, vocational training, education, and rehabilitation programmes, as well as relevant personnel support.

For prisoners themselves, accurate and well-maintained files can mean they receive fair and timely access to justice; it will help ensure they receive appropriate legal and medical assistance, as well as regular contact with their families.

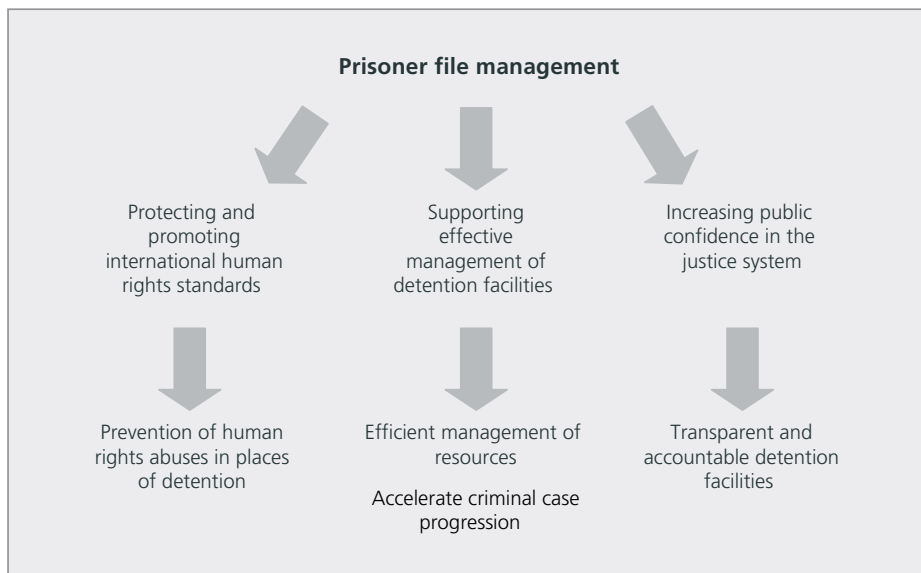
## Prisoner files: a tool for public confidence in the justice system

The presence of an effective and functioning system for creating and maintaining prisoner files has implications for public confidence in the criminal justice system. It sends out important signals regarding the prison system's commitment to improving transparency and accountability and in turn, supports the fair and impartial delivery of justice. It also marks a public commitment to monitor and prevent human rights abuses in places of detention.

*The prison system should be regarded as a public service. It should be transparent and open to public scrutiny.*

*A New Agenda for Penal Reform (1999)  
PRI/ICPS*

**Figure 1. The importance of effective prisoner file management**



## Purpose of the Handbook

The purpose of this Handbook is three-fold:

- To demonstrate the importance of effective prisoner file management, illustrating the consequences of poor or non-existent management;

- To outline the key international human rights standards that apply to prisoner and detainee file management;
- To summarize the key requirements of prison systems in relation to prisoner and detainee file management in order to meet international human rights standards, illustrating how these might be met.

## Who this Handbook is aimed at

This Handbook is aimed at those who hold responsibility, at any level, for people in custody. It is of particular relevance to prison systems that do not have electronic systems for maintaining prisoner files.

## Terminology

Unless stated otherwise, the word “prisoner” refers to both untried and convicted prisoners. This therefore includes the following:<sup>3</sup>

- Persons detained without arrest by the police or military (where the military is acting as a police force);
- Persons arrested but not yet charged;
- Persons arrested and charged with an offence;
- Persons remanded into custody by a court pending a trial;
- Persons remanded into custody pending an administrative procedure (i.e. immigration hearing);
- Persons who have been sentenced;
- Determinately sentenced (a specific time to be served);
- Indeterminately sentenced (full sentence);
- Death sentenced (held in custody until the sentence is carried out);
- Male and female persons;
- Children of female persons who are detained with their mother;
- Juvenile persons (generally considered to be between the ages of about 12 and 18 years) (sometimes called “young offenders”);
- Children (generally considered to be under the age of 12).

The Handbook refers to both international treaty and non-treaty human rights standards. Treaty standards comprise international human rights law and have been adopted by the United Nations and accepted by

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<sup>3</sup>This list does not include reference to internal military disciplinary processes, including any form of detention that the armed forces of a country might impose on one of their members.

individual states—either through signature and ratification, or accession, or succession. Links to the status lists of individual treaties are included in footnotes. Not all States have accepted all of the international treaties. However, some of the provisions contained in the treaties have a basis in customary law. This means that they are binding for all States within the international community even if they have not ratified the treaties. In addition, there is nothing to prevent non-party States from using international treaties as a guideline for its domestic law and policy; in fact, it should be encouraged.

Non-treaty standards are not legally binding, but offer practical guidance to States on how to ensure compliance with international law. As with international law, there is nothing to prevent any State from using international standards as guidance in developing any element of their detention legislation, policy or procedure.

The international treaties and standards referenced in this handbook are as follows:

- Universal Declaration of Human Rights\*
- International Covenant on Economic, Social and Cultural Rights\*\*
- International Covenant on Civil and Political Rights\*\*
- International Convention on the Elimination of All Forms of Racial Discrimination\*\*
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*\*
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\*\*
- Convention on the Elimination of All Forms of Discrimination against Women\*\*
- Convention on the Rights of the Child\*\*
- Standard Minimum Rules for the Treatment of Prisoners\*
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment\*
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice\*
- Declaration on the Protection of all Persons from Enforced Disappearance\*
- Declaration on the Rights of Disabled Persons\*
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions\*

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\*Treaty standards

\*\*Non-treaty standards.

# 1. Non-derogable rights of prisoners

Certain human rights have been considered so important that they are non-derogable, meaning that they must be fully respected and implemented at all times and under all circumstances. These are contained within the International Covenant on Civil and Political Rights (ICCPR). They include the right to life, the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, the right to be free from slavery or servitude and the right to be free from retroactive application of penal laws.<sup>4</sup>

As with any State institution, prison systems are responsible for ensuring that they do not violate any of these rights, at any time or under any circumstance. The presence of accurate and accessible prisoner files is an important measure to support both the prevention and investigation of such violations.

## Protection of the right to life

Article 6 of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

<sup>4</sup>Article 4 states the circumstances under which a State may derogate from certain rights and those rights that are non-derogable at any time under any circumstances. Non-derogable rights are contained in articles 6, 7, 8 (paragraphs 1 and 2), 11, 15 and 18.

This right necessarily applies to all deaths in custody, including extra-legal, arbitrary and summary executions. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions outlines the guiding principles for the prevention and investigation of such executions and subsequent legal proceedings. Article 6 makes explicit reference to the accurate recording of information relating to prisoners as a preventative measure:

Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

This requirement also applies to the investigation of alleged killings in custody:

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about the death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses ...

***There is no surer way to facilitate torture, disappearances or extrajudicial killings than failing to keep adequate records of detainees.***

*Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.*

Enforced disappearance similarly constitutes a violation of the right to life, as well as the right to not be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Enforced disappearance also violates the rights to recognition as a person before the law and the right to liberty and security of the person. The Declaration on the Protection of all Persons from Enforced Disappearance<sup>5</sup> includes the following provisions:

2. No State shall practice, permit or tolerate enforced disappearances. States shall act at the national and regional levels and in

<sup>5</sup>The Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly on 20 December 2006 and is now open for signature and ratification, or accession.

cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

3. Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction

The presence of an accurate, complete, and accessible prisoner filing system is therefore a requirement to prevent acts of enforced disappearance.

***An essential element in protecting the rights of prisoners is good record keeping so they can be located.***

*Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.*

## Prevention and protection against torture and other cruel, inhuman or degrading treatment or punishment

Article 7 of the ICPPR states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

It is the responsibility of the detaining authority to demonstrate that the detained person has been treated in accordance with the law. A file which contains evidence of the physical and mental health of the detained person is necessary to confirm that no abuses have been committed against the individual. In support of this, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>6</sup> contains the following requirement:

2(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a State of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

<sup>6</sup>For countries that have ratified the Convention: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/chapterIV.asp>

11. Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

This means that every State is required to put into place measures that will prevent acts of torture from occurring. While keeping an accurate, complete, dependable and accessible record of the life of the prisoner while in custody will not in itself prevent acts of torture, there can be little doubt that it acts as a deterrent. Furthermore, where torture does occur, the documentation of the results of such torture is crucial to the eventual conviction of those responsible.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>7</sup> additionally creates the requirement for State parties to the treaty to permit domestic and international inspection of places of custody to determine whether or not such treatment or punishment is occurring. In these cases, the availability of prisoner records is essential to enabling both the domestic and international mechanisms to assess the State's compliance with the provisions of international law that prohibit torture and ill-treatment.

Article 14 states the following:

14. 1. In order for the subcommittee on Prevention to fulfil its mandate, the State Parties to the present protocol undertake to grant it:

- (a) unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention ...

***The compilation and maintenance of an official register of persons deprived of their liberty is the basic precondition for any outside control of treatment of detainees. The UN Convention on Enforced Disappearance obliges States to keep an official register of persons deprived of their liberty, including information such as the person's identity, the date, time and place of detention, any medical examinations as well as date of release or transfer to another place of detention. Given that torture often takes place during incommunicado detention, a proper prison register is a very effective tool for the prevention of incommunicado detention and therefore for the prevention of torture.***

*Manfred Nowak, United Nations Special Rapporteur on Torture*

<sup>7</sup>For countries that have ratified OPCAT see: [www.ohchr.org/english/law/pdf/cat-one.pdf](http://www.ohchr.org/english/law/pdf/cat-one.pdf)



## 2. Rights of prisoners

In addition to the non-derogable rights mentioned in the previous section, people deprived of their liberty have additional rights enshrined in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

There are also specific non-treaty standards applicable to prisoners, notably the Standard Minimum Rules for the Treatment of Prisoners [the “Standard Minimum Rules”], the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment [the “Body of Principles”], and the Basic Principles for the Treatment of Prisoners [the “Basic Principles”]

In essence, compliance with these rights depends on systems that record information about prisoners and their treatment whilst in detention. Effective prisoner file management is as much about awareness of these rights as it is having functioning systems and procedures in place. The sections below illustrate the standards that should be met by detaining authorities.

### Admission and registration

The Body of Principles applies to all persons, juvenile or adult. It states:

2. Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

In order to meet the provisions of the law, relevant documentation must record and demonstrate that arrest, detention or imprisonment is lawful.

12(1) There shall be duly recorded:

- (a) The reasons for the arrest;
- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- (c) The identity of the law enforcement officials concerned;
- (d) Precise information concerning the place of custody.

(2) Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

13. Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

These principles not only require that information pertaining to an individual's arrest, detention or imprisonment is recorded, but also that this information is made available to the individual, including an explanation of their rights and how to access them.

These requirements are supported by the Standard Minimum Rules, which state:

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefore;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

These provisions militate against the practice of arbitrary arrest and detention as enshrined in Articles 3 and 9 of the Universal Declaration on Human Rights (1948):

- 3. Everyone has the right to life, liberty and security of person.
- 9. No one shall be subjected to arbitrary arrest, detention or exile.

These are reinforced by Article 9 of the International Covenant on Civil and Political Rights.<sup>8</sup>

*We cannot guarantee that justice is administered lawfully unless there is clear written information about an individual's imprisonment. For example, if there is no record of a detainee's arrival at a place of custody, then it may be that they have been detained for longer than the law permits. A single register of information for each detainee must record not only when the individual arrived and left, but also who arrested them, who warranted the arrest, who questioned them, and when these events took place. It should also record who is in charge of the investigation. This will help ensure detainees' protection under the rule of law.*

*Leila Zerrougi, Chair/Rapporteur of the United Nations Working Group on Arbitrary Detention*

## Access to justice

The presence of detainee files can also assist in bringing the individual before a judge in a timely manner and record the decision to either grant bail or remand in custody. Articles 9 and 14 of the ICCPR make provisions to ensure fair and timely access to justice:

9(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

9(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

9(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

14(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

...

<sup>8</sup>9(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

9(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

14(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

...

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

...

14(6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

14(7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

These provisions require, among other things: that defendants will have access to an interpreter if they do not speak the language spoken in court; that acquittals will be recorded, thereby preventing defendants from being tried for the same offence again; that unlawful arrests will be recorded and individuals duly compensated; and that reversals of convictions or pardons will similarly be recorded, allowing for the release of the prisoner and provision of compensation.

Additionally, the Body of Principles states,

18(1) A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

(2) A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

(3) The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or

lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

The documentation of the procedures contained in Principle 18 is the only way that a State can demonstrate compliance with the standard. Visiting records should form a part of the detainee/prisoner file, in particular when the visit is an “official” visit, such as that of a foreign consulate, or defence counsel.

## Classification and placement

The Standard Minimum Rules require that different categories of prisoner are separated, and in some cases, are held in different institutions:

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.

The classification and placement of prisoners is dependent on accurate and accessible files that record their sex and age, their criminal record, the legal basis for their detention and their programme of rehabilitation. It follows reasonably that re-classification decisions would also need to be recorded on a file as time passes during a sentence.

## Discipline

Section 30 of the Standard Minimum Rules establishes the requirement for a disciplinary file for any prisoner on whom disciplinary action is imposed. Files should contain the details of the transgression, and also the sanction imposed.

30(1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

## Rehabilitation

The Standard Minimum Rules underline the rehabilitative purpose of imprisonment and the need for every prisoner to receive an appropriate programme of treatment:

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

This is dependent on assessing and recording the individual needs of a prisoner and their programme of treatment. This information should be kept in the prisoner's file.

66(1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

## Employment

The Standard Minimum Rules also contain requirements about employment. Section 76 stresses the importance of recording earnings within a prisoner's file, along with transactions:

- 76(1) There shall be a system of equitable remuneration of the work of prisoners.
- (2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
- (3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

## Health and well-being

Section 24 of the Standard Minimum Rules requires the existence of a medical file on every prisoner which documents their condition upon arrival and any medical interventions that may occur thereafter:

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

The Body of Principles similarly outlines requirements for the documentation of medical examination results, and the care and treatment that follow:

24. A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the



place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

26. The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Not only does this demonstrate compliance with the standard to provide proper treatment, it also serves to address allegations of physical or mental torture.

The Standard Minimum Rules make the following recommendations for prisoners' accommodation, clothing, food and water:

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being made to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heat and ventilation.

17(1) Every prisoner ... shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating ...

20(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Adherence to these standards will ensure prisons are compliant with Articles 11 and 12 of the ICCPR, which recognize the rights to and adequate standard of living, including adequate food, clothing and housing, the right to be free from hunger and the right to the highest attainable standard of physical and mental health.

***The compilation and maintenance of register information about the health of prisoners is required in order to protect their right to health and ensure they continue specific treatment on release.***

*Mrs Lubov Rubenzhanskaya, Chair of the Akmola Oblast Public Monitoring Commission of Penitentiary Facilities, and Director of the Public Foundation for the Protection of Human Rights and Fight Against Tuberculosis, Kokchetau, Kazakhstan*



## Belongings and personal effects

Section 43 of the Standard Minimum Rules establishes the requirement to carefully record all items belonging to the prisoner, information which is to be included in the prisoner file:

43(1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

This record will ensure that all personal effects are returned to the prisoner on release.

## External contact

Prisoners have certain rights to have contact with the outside world. As such, visits and correspondence should be recorded to confirm these rights are respected by the detaining authorities. The Standard Minimum Rules state that:

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits

38(1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless person shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interest or any national or international authority whose task it is to protect such persons.

Section 44 establishes the requirement for communication with the prisoner and/or family in the event of a death or illness, or the transfer of the prisoner to another institution. Records should be kept to confirm that the prisoner and/or the family have been notified of these circumstances.

44(1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative ...

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

## Inspection, complaints and grievances

The documentation of the complaint and grievance procedures in the place of imprisonment, and the use of such procedures by any particular prisoner is critical, not only to the individual person, but also in a more general way, to those external observers who visit the prison from time to time. Information contained in the prisoner file will be of considerable value to any person reviewing the situation. Where authorities have clearly chosen to not document procedures, external authorities may well draw inferences about their intent in failing to do so. Principle 33 of the Body of Principles states:

33(1) A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

(2) In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

34. Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or report thereon shall be

made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

The choice by authorities to maintain accurate, complete, dependable and accessible prisoner files enables external review to occur in a manner that is professional and proper. The failure of authorities to do so as a matter of choice, can often be seen as an indictment, because they have failed to ensure that their actions can be reviewed by higher authority. In doing so, it is most often the case that their actions will be viewed with great suspicion and distrust, even where it may not be entirely deserved. It is always the responsibility of those in authority to ensure accountability and transparency.

***In order to strengthen human rights protection, it is essential that civil society has access to places of detention. NGOs should have the opportunity to see and read prison procedures, along with register information. As long as prisoner files are withheld from public access, the risk of human rights violations will remain.***

*Mrs Svetlana Kovlyagina, Chairperson of the Public Monitoring Commission of places of detention, Pavlodar Oblast, Kazakhstan, and President of the Public Foundation Monitoring Committee for Penal Reform and Human Rights in Prisons*

## Transfer and release

In relation to the transfer of detainees or prisoners, the Body of Principles contains the following requirements:

Principle 16.1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

Transfer details of prisoners should be duly recorded to ensure these rights are exercised and to ensure against disappearances. Accurate records should also contain parole eligibility and/or release dates.

**Figure 2. Summary of information to collect for prisoner files**

<i>Activity</i>	<i>Information to obtain and record</i>
Classification and placement	<ul style="list-style-type: none"> <li>• Sex of prisoner</li> <li>• Age of prisoner</li> <li>• Criminal record</li> <li>• Legal grounds for detention</li> <li>• Prisoner category</li> <li>• Cell and block allocation</li> </ul>
Discipline	<ul style="list-style-type: none"> <li>• Nature of transgression</li> <li>• Investigation and sanction imposed</li> <li>• Prisoner's defence and/or appeal</li> </ul>
Rehabilitation	<ul style="list-style-type: none"> <li>• Individual needs assessment</li> <li>• Treatment programme</li> <li>• Progress reports</li> </ul>
Employment	<ul style="list-style-type: none"> <li>• Employment details</li> <li>• Earnings received</li> <li>• Earnings spent</li> </ul>
Health and well-being	<ul style="list-style-type: none"> <li>• Medical examination report</li> <li>• Medical treatment and medication prescribed and received</li> <li>• Hospitalization and transfers to medical wings</li> <li>• Inventory of clothing provided</li> <li>• Dietary requirements</li> </ul>
Belongings and personal effects	<ul style="list-style-type: none"> <li>• Inventory of personal belongings placed in safe custody, including signature of prisoner</li> <li>• Receipt of belongings returned to prisoner on release</li> </ul>
External contact	<ul style="list-style-type: none"> <li>• Prisoner contact with family</li> <li>• Prisoner contact with legal counsel</li> <li>• Prisoner contact with consular representatives</li> <li>• Prisoner contact with an interpreter</li> <li>• Notification of family in cases of serious illness or injury</li> <li>• Notification of family in cases of transfer</li> </ul>
Inspection, complaints and grievances	<ul style="list-style-type: none"> <li>• Requests or complaints received from prisoner or counsel</li> <li>• Investigation of request or complaint and action taken by authorities</li> <li>• Findings of inquiries into deaths or disappearances in custody</li> </ul>

## Protection of children

The Convention on the Rights of the Child<sup>9</sup> includes provisions for children who are detained for any reason. Article 37 requires State parties to ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The existence of an accurate, complete and accessible prisoner file system assures that the age and sex of the detained person is recorded, and consequently, that the juveniles (under the treaty, those under 18 years of age) are detained in accordance with law, separate from adults.

Principles and procedures to demonstrate respect for and compliance with the Convention of the Rights of the Child, are contained within the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules) and more recently, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

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<sup>9</sup>For countries that are party to the Convention see: [www.ohchr.org/english/countries/ratification/11.htm](http://www.ohchr.org/english/countries/ratification/11.htm)

## **Records**

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1985) clearly establishes a strong duty of care on the part of the State in the case of any child in conflict with the law. The wellbeing of the child is in fact the predominant State responsibility throughout any proceedings.

7(1) Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

8(1) The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8(2) In principle, no information that may lead to the identification of a juvenile offender shall be published

21(1) Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21(2) Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Accurate and accessible files are essential to demonstrate the existence of these safeguards and compliance by the detaining authorities. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) also identifies the need for proper prisoner file systems:

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in

the register. No juvenile should be detained in any facility where there is no such register.

### ***Admission, registration, movement and transfer***

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefore;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

### ***Classification and placement***

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the

facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

Sections 20 through 27 further define the material that one should be able to find on a proper file about a juvenile person who is a detainee/prisoner in an institution. These sections also define a number of processes that require documentation in a file so that compliance can be demonstrated.

### ***Medical care***

Sections 49 through 55 detail the requirement for medical care for juvenile prisoners. The concurrent requirement to document the provision of such care, the results of such care and any treatment required going into the future is obvious.

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmologic and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

Where detention is used, the State has a greater responsibility to the juvenile than to the adult person. The documentation necessary to demonstrate the appropriate level of care must be complete and accurate. Without the file system, the State cannot demonstrate that it meets this standard. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice state:

13(5) While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

### ***Discipline***

Section 70 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty clearly identifies the requirement to document disciplinary offences, procedures and outcomes:



70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

### ***Inspection and complaints***

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty state:

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

Sections 72 and 73 address the issue of external inspection. While speaking with persons is a significant part of any inspection, the examination of prisoner records is critical to the process. The importance of accurate, complete, dependable and accessible prisoner files to any process of inspection cannot be overstated.

### ***Release***

Conditional release is entirely based upon an assessment of the person's risk and needs, including what progress may have occurred during incarceration. The existence of this kind of documentation requires the maintenance of an accurate, complete, dependable and accessible prisoner file system. The United Nations Standard Minimum Rules for the Administration for Juvenile Justice state:

28(1) Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

(2) Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

## Protection against discrimination

Paragraphs 1 and 2 of the Basic Principles for the Treatment of Prisoners state:

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The presence of complete, accurate and accessible prisoner files can provide an effective measure to prevent or investigate cases of discrimination in places of detention.

### *Discrimination against women*

While all the above standards apply equally to women and men, the Convention on the Elimination of All Forms of Discrimination against Women<sup>10</sup> requires that:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national

<sup>10</sup>For countries that have ratified the Convention see: [www.un.org/womenwatch/daw/cedaw/states.htm](http://www.un.org/womenwatch/daw/cedaw/states.htm)

tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

***Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as person deprived of their liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.***

*Human Rights Committee CCPR General Comment No. 21 concerning humane treatment of persons deprived of liberty (Art. 10) (1992)*

Specifically, the Standard Minimum Rules state that:

8(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.

53(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

Women in prison are made vulnerable in a number of ways, particularly to violence and this will often constitute a violation of the non-derogable right not to be subjected to torture or ill-treatment. The Convention on the Elimination of All Forms of Discrimination against Women requires that State parties act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life.

In addition, the Declaration on Violence against Women states that

1. For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

2. Violence against women shall be understood to encompass, but not be limited to, the following:

...

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Women who are pregnant or who have recently given birth are afforded special protection under Article 10(2) of the International Covenant on Economic, Social and Cultural Rights. In addition, the Standard Minimum Rules state that:

23(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

In addition, the Convention on the Rights of the Child requires that:

24(1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties

shall strive to ensure that no child is deprived of his or her right of access to such health care services.

The presence of complete, accurate and accessible prisoner files can provide an effective measure to prevent or investigate cases of discrimination against women in places of detention. In the case of pregnant women or those who have recently given birth, prisoner files can provide a formal record that they have received appropriate pre- and post-natal care and treatment. Prisoner files can also document the care arrangements provided for their children.

### ***Racial Discrimination***

The International Convention on the Elimination of All Forms of Racial Discrimination<sup>11</sup> contains the following provisions:

Article 2:

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Article 2 requires nations to not only not act in or tolerate any form of racial discrimination, but also to take effective measures to change any law, policy, regulation or local procedure that has the effect of perpetuating racial discrimination. The existence of an accurate, complete, dependable and accessible prisoner file system is a prerequisite to enabling any nation to meet this requirement. If a State does not know the impact of its law, policy, regulation or local procedures on the prisoner population, how can it know whether or not it is in fact promoting racial discrimination? The short answer, of course, is that it cannot. Thus, again, the file system is crucial to support of this international law.

<sup>11</sup>For countries that have ratified the Convention see: [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf)

**Article 5:**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

The requirements of this convention apply equally to all persons, including those who are considered detainees or prisoners. Consequently, there is an assumption that a State will have and maintain a prisoner file system that would enable that State to demonstrate that its treatment of individual prisoners was not differentiated on the basis of race. Examination of not only individual records, but of large numbers of detainee and prisoner records is a requirement for any State to understand if, and to what extent, racial discrimination exists within the population for which it is legally responsible. The presence of such records enables the kind of research that can establish the presence or absence of racially motivated decisions about sentencing, classification, length of time spent in remanded custody, and various forms of alternative sentencing or conditional release.

***Disabled persons***

The Declaration on the Rights of Disabled Persons<sup>12</sup> clearly emphasizes the following points:

- 5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.
- 8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
- 10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

All of the sections in this law are relevant, however sections 5, 8 and 10 in particular depend upon the existence of an accurate, complete and accessible prisoner file system to enable a State to demonstrate, first of all, the

<sup>12</sup>The Convention for the protection and Promotion of the Rights and Dignity of Persons with Disabilities was adopted by the General Assembly on 6 December 2006 and opened for signature and ratification, and accession on 30 March 2007.

extent to which mentally and/or physically disabled people are incarcerated, and secondly, what measures are taken to ensure that their rights are fully protected.

### ***Foreign nationals***

Under the Vienna Convention on Consular Relations, consular officials have the right to seek access to nationals of their State who are in custody, prison or detention.<sup>13</sup> Article 36 states the following:

(a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them ...;

(b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communications addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this said subparagraph;

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him, and to arrange for his legal representation ...

The Body of Principles similarly states the rights of foreign nationals who are in custody, prison or detention to seek access to consular assistance, and for prisoners who do not speak the language of the authorities, to receive information in a language that they understand:

14. A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1 and principle 13 and to have assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

16(2) If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate

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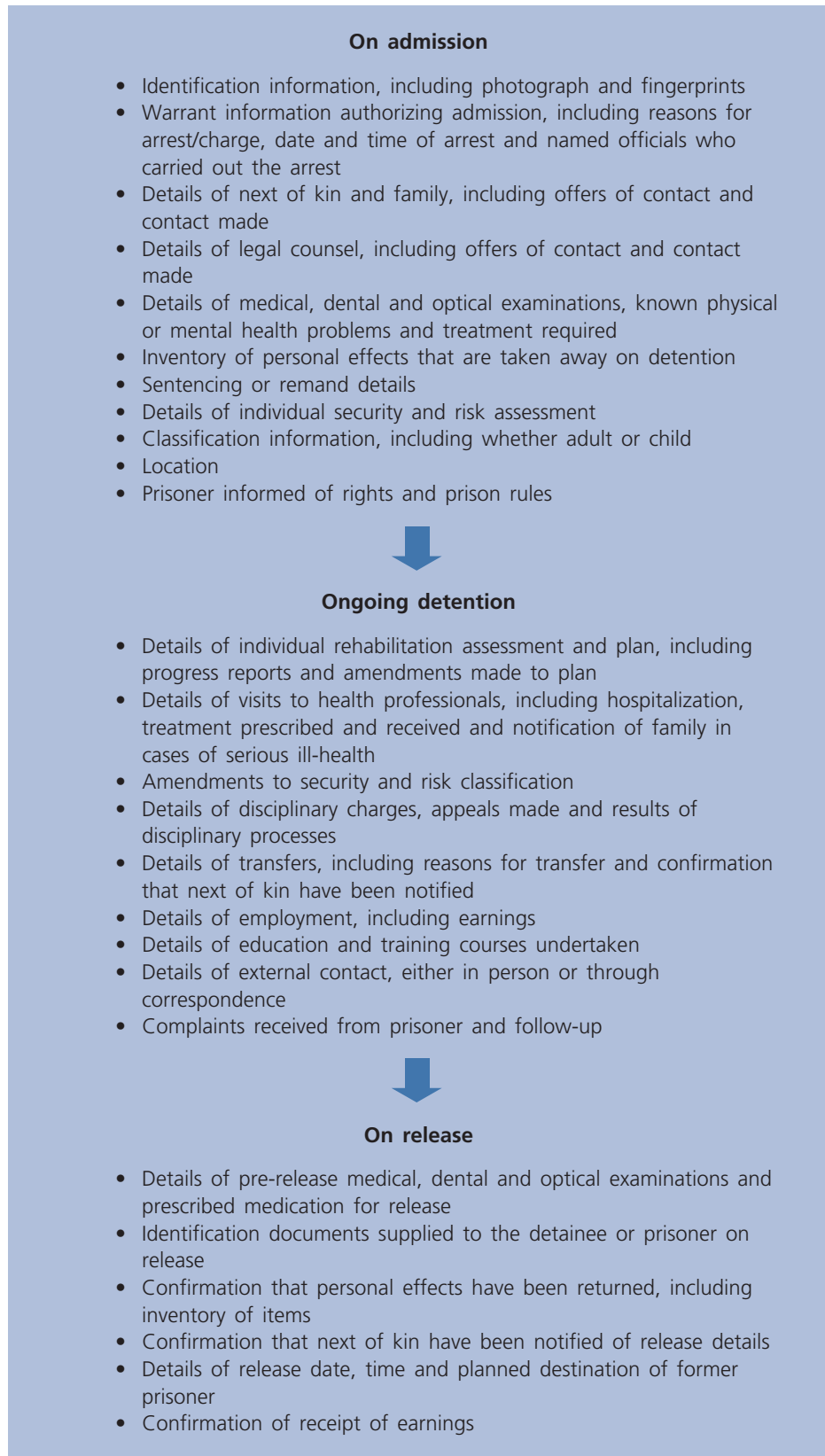
<sup>13</sup>See, for example, the 2004 ruling of the International Court of Justice in the case of Mexico v. United States of America, where the court found that the USA had breached its obligations to Mr Avena and 50 other Mexican nationals, and to Mexico, under Article 36 of the Vienna Convention on Consular Relations.

means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

Prisoner files provide a formal record to confirm that contact with consular officers has been offered to the prisoner, along with details of such contact. They can also record whether interpreters are required for legal proceedings and whether the prisoner has received information about their detention in a language they understand.



**Figure 3. Recording requirements of detention facilities during the detention process**





# 3. Prison file management in practice

As outlined in the previous chapter, the existence of accurate, complete, and accessible prisoner files are a necessity for states to demonstrate compliance with the international human rights law and standards.

Although the majority of prison systems around the world have established prison file management systems, practice on the ground often suggests that the procedures for creating or updating prisoner files are non-existent, ineffective or simply not followed.

Lost or incomplete files for example have caused delays in bringing criminal cases to trial, resulting in the over-use of pre-trial detention and a slow and ineffective justice system. In Nigeria, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recently found that 3.7 per cent of an estimated prison population of 44,000 remain in prison because of lost case files.<sup>14</sup>

Absent or incomplete files can also mask abuses committed against prisoners whilst in detention. Following a recent visit to Nepal, the Special Rapporteur on Torture reported that “Detainee registers are poorly kept, if at all. One of the recommendations from the visit stated:

The maintenance of custody registers be scrupulously ensured, including recording the time and place of arrest, the identity of the

<sup>14</sup>United Nations Special Rapporteur on extrajudicial, summary and arbitrary execution (January 2006). Report of the United Nations Special Rapporteur on extrajudicial, summary and arbitrary execution mission to Nigeria. United Nations Document E/CN.4/2006/53/Add.4.

personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacts and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.<sup>15</sup>

In more extreme cases, poor file management can be attributed to deaths in custody. A public inquiry into the death of Zahid Mubarak<sup>16</sup> at Feltham Young Offenders Institution in the United Kingdom, found that incomplete prisoner file information and delays in the transmission of information between detaining authorities meant that the institution concerned was unable to make an informed and timely assessment of the risk posed to Zahid Mubarak by his violent and racist cellmate who had a history of mental health problems.<sup>17</sup>

There are often common factors accounting for or associated with the absence of an effective prisoner file management system:

- *An absence of law requiring the creation and maintenance of prisoner files.* In some cases, the law has not been written at all; in others it is inadequate to be meaningless. Sometimes the law will only provide for certain categories of detainees or prisoners, to the effect of excluding important high risk people, such as those under investigation who have not yet been formally charged. In other situations, the law is contained in so many different pieces of legislation that it is impossible to accurately gauge the real requirements.
- *An absence of effective remedy.* There may not be adequate remedy in law if officials are not respectful of the law. Failure to comply must have logical and serious consequences that provide for immediate remedy for the incarcerated person. For example, if an arrest or acquisition of evidence was found to be unlawful, the subsequent proceedings against the accused should not be possible.
- *Lack of procedures for creating, updating and transferring files.* Where obligations of detaining authorities and officials to create and maintain files may be written in law, they may not be accompanied by the necessary systems and procedures, or guidelines for implementation.
- *Lack of oversight to ensure procedures are being followed.* Administrative oversight is required to ensure that procedures are followed. This may be through an ongoing or periodic audit, which reviews current practice and identifies areas of non-compliance.

<sup>15</sup>United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (January 2006) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment mission to Nepal. United Nations Document E/CN.4/2006/6/Add.5.

<sup>16</sup>Zahid Mubarak was beaten to death at Feltham in March 2000 by his cellmate, Robert Stewart.

<sup>17</sup>Keith, B (2006) Report of the Zahid Mubarak Inquiry. London: HMSO.

- *Absence of recourse if procedures are not followed.* There is often no consequence for the failure to comply, either for the personal officials involved, or for the authorities at large. Responsibilities are often diffuse, with the result that it is difficult to determine who in fact failed to comply.

As the cases above illustrate, the failures of effective file management can have profound consequences for the prisoner. They also have important consequences for the prison system, and more generally, the criminal justice system and the State as a whole.

## Consequences for the prisoner

Without the presence of an accurate and accessible prisoner file system, there is at best, an unreliable information base on which decisions by the authorities will be made. This limits the ability for detaining authorities to ensure that human rights are fully respected.

*All states have a duty to respect, protect and fulfil the right to the highest attainable standard of health for all. This includes the duty to refrain from denying or limiting equal access for all persons, including prisoners, to preventive, curative and palliative health services. Prisoner medical records provide an important mechanism to ensure this duty is upheld. They demonstrate whether prisoners are receiving the medical treatment and care they require. They also serve to monitor the health status of prisoners whilst in detention. Medical records therefore provide an essential tool for realising prisoners' right to health.*

*Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health*

### ***Prisoners who have not been charged***

Absent or incomplete files for prisoners who have not been charged can have the following consequences:

- The reason for their arrest and detention may not be recorded or made available to the detainee or their lawyer.
- The location of their detention or details of transfer to other institutions may not be documented.

- Lack of records will leave detainees vulnerable to abuses in detention, such as torture, and other cruel, inhuman or degrading treatment, or to disappearance.
- Medical examinations may not be documented or even take place, limiting access to appropriate health care and treatment.
- Access to external contacts, including legal counsel may be limited.

### ***Remand prisoners***

Absent or incomplete files for remand prisoners can have the following consequences:

- The charges against them may not be documented and case information not be made available to the detainees or their lawyer.
- Access to legal counsel may not be documented or even offered.
- Incomplete or missing case files may result in delays in being brought before a judge or to trial. This may result in excessive periods of detention as they await trial.
- If remand detainees are not classified as such they may not be separated from sentenced prisoners and treated in accordance with their un-convicted status.

### ***Sentenced prisoners***

Absent or incomplete files for sentenced prisoners can have the following consequences:

- The lack of a documented assessment of their individual needs will hinder efforts to plan a programme of treatment or rehabilitation.
- The lack of a recorded risk assessment will prevent officials making informed decisions about what risk they may pose to themselves and to others whilst in prison. It will also compromise efforts to review parole.
- Lack of sentencing information, including dates to review sentences and consider for parole may result in prisoners exceeding their prison terms.

### ***Vulnerable categories of prisoner***

Absent or incomplete files for vulnerable categories of prisoners can have the following consequences:

- Their individual needs may not be assessed or recorded, thereby preventing them from receiving appropriate treatment and care.

- They may not be classified as vulnerable, or their vulnerable status may not be recorded. This might result in them not being held in the correct type of institution or treated according to their classified status. Children, for example, may end up in adult detention facilities.
- Detaining authorities may neglect the needs of dependents of the prisoner or detainee where they are not recorded or assessed.

### ***Foreign nationals***

Absent or incomplete files for foreign nationals can have the following consequences:

- Prisoners may be denied access to consular assistance.
- Where they do not speak the language of the detaining authorities and their language is not identified and recorded, they may not receive information about their detention or criminal proceedings.

***All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.***

*Article 10(1) of the International Covenant on Civil and Political Rights  
(1966)*

## **Consequences for the detaining authority**

The absence of prisoner files can have important consequences for the detaining authority, particularly with respect to planning and delivering services and ensuring the safety and well-being of those under their responsibility.

### ***Admissions***

An absent or ineffective file management system can have the following consequences:

- It is not known how many prisoners are received into the place of detention, consequently making it difficult to know the total prison population at any given time.
- With incomplete information on the classification of prisoners or detainees, authorities are unable to correctly segregate different categories of prisoner and detainees.

***Treatment and rehabilitation***

An absent or ineffective file management system can have the following consequences:

- Without a record of whether a medical examination and needs assessments have taken place, including their findings and recommendations, authorities are unable to plan and resource rehabilitation programmes or medical treatment.

***Security and risk management***

An absent or ineffective file management system can have the following consequences:

- Authorities are ill-informed of the risk that prisoners present to themselves or to others whilst in detention and are therefore unable to protect prisoners and staff from harm. Authorities will be unable to identify the level of security or observation needed for individual prisoners, which may be a particular problem if individual behaviour is not subject to regular or ongoing monitoring.

***Transfer and release***

An absent or ineffective file management system can have the following consequences:

- Prisoner information does not accompany the prisoner as they move from one institution to another; receiving institution does not have information to inform them about the prisoner's needs and thus the appropriate treatment and care. Will not know about medical needs, behavioural history, etc.

***Resource planning***

An absent or ineffective file management system can have the following consequences:

- Prison authorities are unable to effectively plan the allocation of resources, both in terms of finance and personnel.

**Consequences for the justice system**

Looking beyond the prison environment, the consequences of poor file management can have wider political ramifications.



### ***Public accountability***

Prisoner file management is an essential tool for demonstrating open and transparent institutions, and notably: that arrest and detention are lawful; that the rehabilitative purpose of imprisonment is respected and carried out; that imprisonment is serving to protect the public; and that prisons and detention facilities are not subjecting inmates to abuses such as torture and ill-treatment.

### ***Public confidence in criminal justice and the rule of law***

Openness and transparency in turn contributed to public confidence in the police, prison and other detaining authorities, as well as the justice system as a whole and the systems of government. Public confidence has direct implications on political stability and public willingness to interact and cooperate with the criminal justice system.

### ***Oversight and professionalism***

Increasingly the conditions under which prisoners are held, and the records of their detention, are the subject of oversight from independent national, regional and international bodies.

The compulsory system of inspection by national and international bodies established under the Optional Protocol to the United Nations Convention against Torture (OPCAT) is described on pages 10 to 11. Other United Nations procedures may be invited by the government and given access to places of detention. Some regional systems, notably the European Committee for the Prevention of Torture,<sup>18</sup> carry out on-site inspections. Many States are now appointing lay inspection bodies that visit by appointment or, in some cases, when they wish.

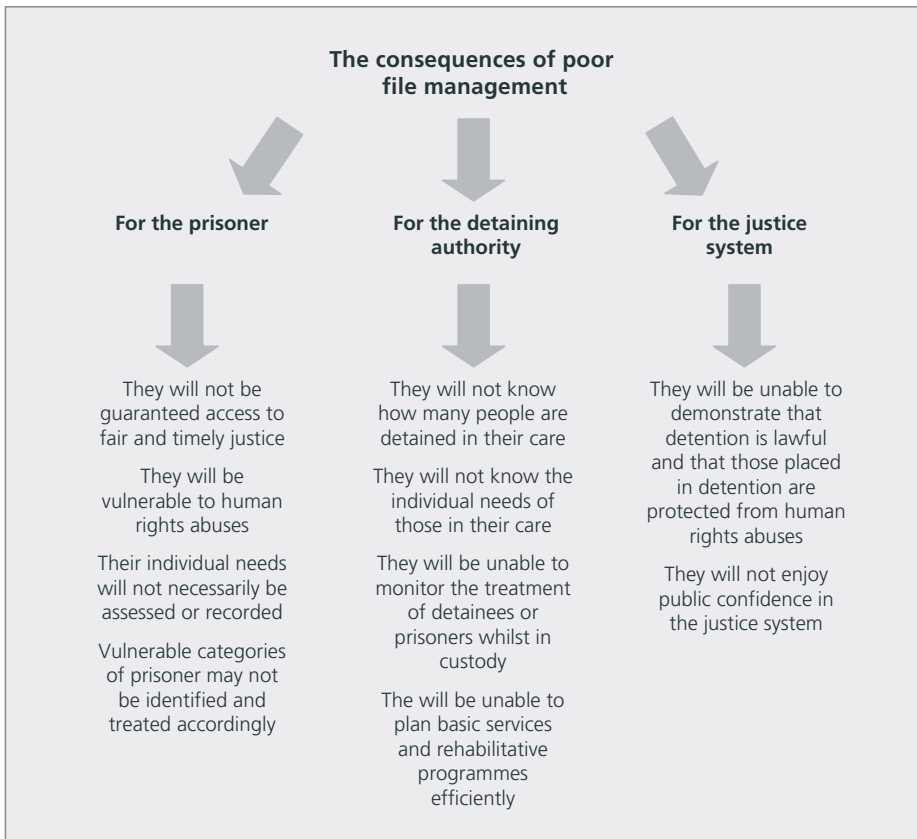
All these oversight mechanisms will need to inspect the files of prisoners. The completeness and accuracy of the files will tell the inspection body a great deal about the professionalism of the detaining authority and the commitment of that State to international human rights.

If States do not treat prisoners humanely and fairly, and in a lawful manner, this may have detrimental consequences for international cooperation. Law enforcement officials, for example, may find that other states are not willing to assist in investigations that go beyond their borders. States may equally be unwilling to enter into extradition agreements.

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<sup>15</sup>See [www.cpt.coe.int/en/](http://www.cpt.coe.int/en/)

**Figure 4. The consequences of poor prisoner file management**



# 4. Requirements to comply with international law and standards

The following requirements are consistent with the international standards referenced throughout this Handbook. The requirements illustrated below only stipulate the creation of a file, and the minimum content requirement for that file in accordance with these standards.

Some requirements need the force of national law, while others can be as effectively introduced as regulation, policy or local procedure. Law is necessary when the intent is to hold the detaining authority to account, policy is generally a means used to define what is expected, and procedure is normally a means to define how something will be done.

## On initial detention

The following file requirements need the force of national law, and must be applicable to any agency that has the legal authority to detain any person:

- The detention of any person must be immediately followed by the entry of the person's name into an official registry, and the creation of an official file.
- The file must identify the person using a means that is defined acceptable in the state. A photograph must be taken as soon as possible. Fingerprint identification is an often expected international standard. The date of birth, age, marital status including identity of

spouse, next of kin, number and identity of children must also be recorded in the file.

- Children, juvenile persons and women must be identified as such in the registry, and in the file that is created.
- The file must identify the specific reason that the person has been detained, the date and time of detention and the specific location of their detention.
- The file must document contact by the detained person with family or counsel.
- Contact with family or counsel must occur at least within a specified period after initial detention. This must be recorded.
- The file must document any physical or mental health concerns reported or observed, and if there are none, this also must be documented.
- The identified family, next of kin, or legal counsel must be advised of any movement of the person from one point of detention to another point of detention, together with the reason for the movement.
- The file must document any personal items that are taken away from the person when they are detained.
- The file must document any transfer of authority to another agency.
- All files may be accessed by an identified external oversight authority.
- File audits must be conducted at identified periods by an identified oversight authority.
- Files must be retained indefinitely.

## On admission to a correctional facility

The following file requirements need the force of national law, and must be applicable to any correctional institution that accepts untried or convicted prisoners, or both:

1. The name of the person must be entered into an official registry for the correctional facility, and an official file must be opened recording the date and time of admission.
2. The file must identify the person using a means that is defined acceptable in the state. A photograph must be taken as soon as possible.
3. The file must contain a lawful warrant authorizing admission. The transfer to correctional institution authority must be a formalized and documented procedure. Admitting staff must be as certain as possible of the identity of the person being admitted.

4. Admitting documentation must include contact information for next of kin, and the prisoner's initial contact of next of kin or legal counsel must be recorded. Where no such contact occurs, the offer of opportunity for contact must be recorded.
5. Admitting documentation must include a medical examination, and must note the condition of the person, with particular attention to any mental or physical health concerns, having due regard to the possibility of medication requirements and of abuse at the hands of the original detaining authority.
6. The file must contain detailed identification of personal effects either allowed into the institution, or taken from the person to be held by the institution.
7. The file of a sentenced prisoner must include a sentence calculation that is completed within a specified period, and a copy must be provided to the prisoner.
8. The file of a sentenced prisoner must identify the cell number or bed number to which they are assigned.
9. The file of a sentenced prisoner must contain their classification which has been completed using methods defined in policy and procedure.
10. All of the foregoing requirements also apply to the detained person, with the exception of No. 9, and No. 10.
11. The file must document all disciplinary charges against the person, and it must document the results of any disciplinary processes undertaken.
12. The file must document all transfers and the lawful reasons for those transfers.
13. The file must document all releases and the lawful reasons for those releases.
14. All files may be accessed by an identified external oversight authority that is defined. The external authority can be administrative or judicial, but in all cases must report to a higher authority than the head of the correctional system.
15. File audits are required at identified periods by an external oversight authority.
16. Files must be retained indefinitely.

## Ongoing detention/imprisonment

Where a person is held in custody pursuant to a judicial decision, there are additional file requirements. All of the foregoing requirements “on admission” continue to apply, of course, in addition to the following:

- The file must contain a description of the “plan” that is to be followed by the person during the period of detention/imprisonment. The “plan” must describe the programme the person is required to follow to achieve a reduced classification, and to prepare for return to the community.
- The file must include periodic evaluations of the person's progress against the plan, including the modification of the plan where that is required.
- The file must include periodic re-evaluations of the person's security requirements to ensure that he is being held in a prison consistent with his classification.
- The file must include records of any ongoing physical or mental health concerns. Medical records detailing visits to physicians, dentists, or mental health professionals shall be included.

## On release

Most prisoners serve determinate sentences, and return to their communities. Correctional systems have a responsibility to help to prepare such persons for that return, and to document their efforts to do so. Much of this documentation will be contained in the file already, describing the progress of the prisoner against the plan that was created for him. However, there are some important elements that must be recorded near or at the time of release, such as the following:

- The file must reflect a pre-release medical, dental and optician examination. Any ongoing concerns should be shared with the prisoner and a medical professional that they designate in the community. The prisoner must be released with a supply of any medication that is required to manage chronic conditions, and a prescription that can be filled following release to acquire more medication as may be necessary.
- The file must record the presence of identification documents that will be required by the prisoner following release. Where these documents are not present, the correctional system has a responsibility to correspond and acquire them on behalf of the prisoner.
- The file must reflect the funds that are available to the prisoner upon release.
- The file must reflect the return to the prisoner of their effects, as recorded upon admission, and during the period of imprisonment.
- The file must record the precise date and time of release, and the planned destination of the former prisoner.

- The file must record the issue of clothing that is appropriate to the climate and season.
- Where required by law, the file must record that notifications of community authorities are completed.





# 5. Checklists for prisoner files

## Identity information

The following checklist of information should be collected from the prisoner or detainee on admission and recorded in a single file:

Photo and fingerprints		
Date and time of admission		
Civil status	National	Family name First name Date and place of birth Residence
	National citizen	Family name First name Date and place of birth Residence Country of origin Type of nationality
	International citizen	Family name First name Date and place of birth Residence Country of origin Nationality
Sex	Male	
	Female	
Father's name		
Mother's name		
Level of education		
Occupation		
Language(s) spoken		

Identity card	Passport number	
	Identity card number	
	Others	
Family situation	Single	
	Married	
	Widowed	
	Divorced	
	Children	Names Dates of birth
Penitentiary information	Register number	
	Category of prisoner	Common law Remand detainee Convicted prisoner
	Location	Block number Cell number Bed number
Judicial information	Prosecutor file number	
Health information	Name of doctor	
	Date of medical examination(s)	
	Location or reference no. for medical file	
Personal items		
Contact person for emergencies		
Database no. (if stored on an electronic database)		

## Detention information

The following information should be collected and recorded for all sentenced prisoners:

Date of admission		
Sentence	Main sentence	
	Subsidiary sentence	
	Suspended sentence	
	Fine	
	Community Service	
Conditional release	Eligibility date	
	Agreement notice	
	Introduction file date	
	Decision date	
	Revocation	
Release	Release date	
	Temporary release date	
	Conditional release date	
	Fulfil warrant	
	Grace	
	Amnesty	Law number
	Return of personal items	
Transfer	Transfer date	
	Prison	
Hospitalization	Hospitalization date	
	Reason	
	Hospital	

Behaviour/discipline	Project participation	Rehabilitation Production Social education activity
	Penalty	Solitary confinement Visit deprivation Correspondance deprivation

## Judicial information

The following information should be collected and recorded for all remand detainees:

Hearing follow-up	Jurisdiction	
	Local	
	Magistrate court	
	Appeal court	
	High court	
	Military court	
Calendar	Other	
	Summons date	
	Appearance date	Postponement date
	Judgement date	
	Reopening debate date	
	Notification date	Appeal Opposition Revision
Legal representation	Lawyer name and contact details	

## Arrest/investigation information

The following information should be collected and recorded by detaining authorities on arrest:

Situation	Prosecution of ...
Prosecuting magistrate	
Offence	Wording
	Penal code article number
Judicial file number	
Warrant	Warrant date
	Number
Detention order	Introduction judge date
	Judge name
	Clerk name
	Prosecution magistrate name
Detention order extension	Introduction judge date
	Judge name
	Clerk name
	Prosecution magistrate name
Temporary release	Date
	Reason
	Prosecution of
	Prosecution magistrate name
	File number
Copy of criminal record number	



# 6. Setting up a prisoner file management system

Whilst human rights standards stipulate what prisoner information should be recorded and when, they do not prescribe what operational systems should be in place to ensure these requirements are met. This can leave detaining authorities with many unanswered questions: how exactly should prisoner information be recorded and by whom? Where and how should it be organized and stored? And who should have access to this information?

National legislation, policies and protocols provide an essential framework to guide detaining authorities in establishing an effective prisoner file management system. However the precise procedures for creating, maintaining and using a file management system in any given place of detention will be largely determined by internal factors, notably, the resources at their disposal, the size of the institution and indeed the number of personnel.

In spite of this, there are general principles that can be followed that provide important foundations for an efficient file management system. These are outlined below.

## Creating a general prisoner file

The general prisoner file should be created when the prisoner is first received at the institution. A designated officer—or team—should hold responsibility for creating the file and collecting the relevant information

from the prisoner directly, along with any supporting documentation from relevant agencies and professionals.

Interviews with prisoners should be undertaken in an area that respects the privacy of the prisoner and ensures confidentiality. Templates or specific forms should be used to enable all the relevant information to be collected.

The designated officer should check whether the prisoner has a previous record at the institution. If so, this information should be retrieved and attached to the new file.

File information may be classified and organized in different ways. However, a general file should contain the following supporting information and documentation:

- Committal information and court reports;
- Initial assessment reports;
- Classification reports;
- Incident reports;
- Misconduct reports;
- All correspondence relating to the prisoner;
- Inventory of prisoner's property;
- IDU information.

Different sections within each file should be labelled clearly and information within each section should be organized chronologically, with the most recent information stored at the front.

## Medical files

Medical information relating to the prisoner should be kept separately from the general file and stored in a separate location, such as the health centre. Medical personnel should hold responsibility for the organization and maintenance of medical files and an appropriate register.

Medical assessments and interviews should be undertaken by trained medical professionals in an area that ensures that prisoner confidentiality and privacy are respected. In the case of HIV testing, informed consent must be obtained from the prisoner and recorded. If consent is not given, this should also be recorded.<sup>19</sup>

<sup>19</sup>The World Health Organization Guidelines on HIV infection and AIDS in prisons (1999) for example states that, "Compulsory testing of prisoners for HIV is unethical and ineffective, and should be prohibited ...Voluntary testing should only be carried out with the informed consent of the prisoner." It additionally states: "Test results should be communicated to prisoners by health personnel who should ensure medical confidentiality."

### ***Medical confidentiality***

Medical files should not be made available to non-medical personnel. The World Health Organization Guidelines on HIV infection and AIDS in prisons (1999) for example make the following recommendations:

31. Information on the health status and medical treatment of prisoners is confidential and should be recorded in files available only to health personnel. Health personnel may provide prison managers of judicial authorities with information that will assist in the treatment and care of the patient, if the prisoner consents.
32. Information regarding the HIV status may only be disclosed to prison managers if the health personnel consider, with due regard to medical ethics, that this is warranted to ensure the safety and well-being of prisoners and staff, applying to disclosure the same principles as those generally applied in the community. Principles and procedures relating to voluntary partner notification in the community should be followed for prisoners.
33. Routine communication of the HIV status of prisoners to the prison administration should never take place. No mark, label, stamp or other visible sign should be placed on prisoners' files, cells or papers to indicate their HIV status.

## **File register**

A central file register should contain information indicating the current location of each general prisoner file. A designated member of staff—or team—should hold responsibility for maintaining the register and have clear procedures that outline how the register should be updated and used.

The central file register should record when individual prisoner files have been issued to staff members, detailing their name, the time/date of issue, and the reason for issue. It should also record when files have been returned.

Separate file registers may be additionally set up to record information about the following:

- Released prisoners;
- Deceased prisoners;
- Prisoners under disciplinary measures;
- Prisoners who have been transferred to another institution;
- Prisoners on remand.

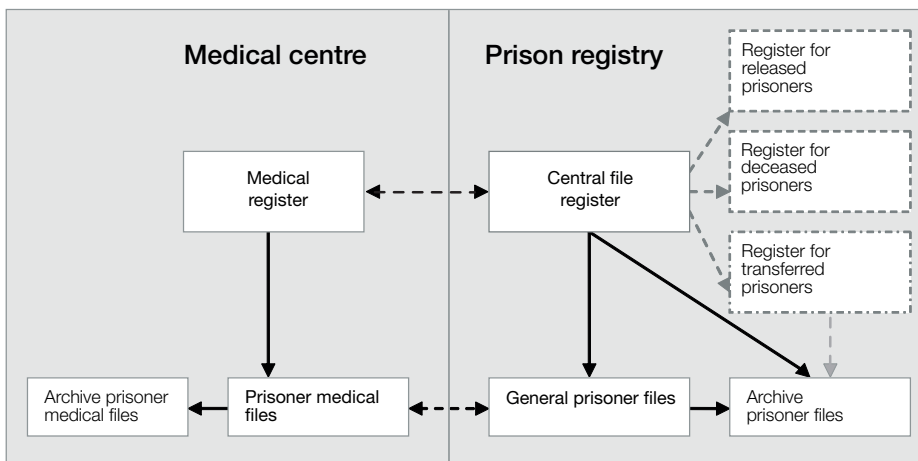
The creation of separate registers such as those listed above can enable prison managers to quickly access specific information, which can provide a helpful snapshot at any given time. A separate file register for remand prisoners, for example, will enable detaining authorities to hold a central record of when prisoners are due to appear before court. This can enable them to plan transfers accordingly and prevent court appearances being missed.

In all cases, a file register system should record when a file has been transferred to another institution, or location, and when it is returned.

## Prison registry

The central file register and general prisoner files need to be stored in a prison registry (or registry office). This should be a secure area with controlled access. The prisoner files themselves should be stored in lockable, fireproof, waterproof and vermin-proof cabinets. The general prisoner files should be systematically organized i.e. alphabetically, and clearly labelled for ease of access. Files should be left out where unauthorized persons could potentially access them. Additionally, no information contained within the files should be duplicated i.e. photocopied.

Figure 5. Setting up a prisoner file management system



## Access to files and information sharing

Access to prisoner files by personnel should be on a “need to know” basis; the central file register should record all access given to prisoner files (see above).



Access to information contained in the general prisoner files by external parties should follow national legislation and protocols relating to data protection and should at all times respect the prisoner's right to privacy and confidentiality.

Under national legislation, prisoners themselves may have a right to access information contained within their prisoner file and amend any information that is factually incorrect. As such, detaining authorities should ensure that procedures for sharing information with prisoners are compliant with legislation.

## Transferring files

The officer responsible for the prisoner's transfer should hold responsibility for the transfer of the prisoner file. The general prisoner file should be in a sealed package and all loose documentation tied securely. Medical files should be sealed in a separate package and attached to the general file. Access to files during transfer should be limited to a "needs to know" basis and all records made of such access.

## Archiving and storage

The archiving and storage of "inactive files" (e.g. relating to prisoners who have been released or who have died in custody) should follow national legislation and protocols on archiving prisoner files. This may set time limits on how long files are kept and where they are kept before being destroyed. In the absence of national requirements, prison authorities should devise their own protocols and procedures for storing such files.

"Inactive" files should be stored separately from active files of those currently in detention.

**Developing a prisoner file management protocol:  
checklist of questions for prison authorities**

Q. Are there dedicated personnel responsible for creating and maintaining prisoner files and registers?

Q. Are the files organized in a systematic way? Are they stored in a secure area, accessible only to authorized personnel?

Q. Are there clear guidelines to personnel on what information needs to be collected, how the information is collected and how it is organized within each individual file?

Q. Is there a central file register to record where individual files are located and who has accessed them?

Q. Are medical files kept separately from general prisoner files? Are there dedicated personnel responsible for these files?

Q. What procedures are in place to monitor how files are released to personnel and how information within the files is shared with external parties?

Q. What procedures are in place to support the transfer of files between institutions?

Q. Are the prisoner file management procedures written down and made available to relevant personnel? Is induction or training provided to personnel to ensure they work in compliance with the procedures?

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