

A Snapshot of International Norms and Standards on Prisoners' Health Rights

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Features of the International Framework

1. Extensive historical efforts (but institutional tensions with criminal justice context?)
2. Specificities predominantly **soft law***; but increasing recognition of binding nature.

**Soft law = “normative provisions contained in non-binding texts” (Shelton 2000, p. 292)*

3. Normative wealth in broad **hard law*** standards, reflected in decisions of special procedures and treaty bodies.

**Hard law = international law directly binding on states.*

4. A problem of enforcement.

1. Extensive historical efforts at setting international norms & standards

YEAR	INSTRUMENT
1872	International Prison Commission
1934	International Penal and Penitentiary Commission
1948	Universal Declaration of Human Rights (UDHR)
1957	Standard Minimum Rules for the Treatment of Prisoners
1966	International Covenant on Civil and Political Rights (ICCPR)
1966	International Covenant on Economic, Social and Cultural Rights (ICESCR)
1977	ECOSOC resolution 2076 (LXII) of 13 May 1977
1975	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1979	Convention of the Elimination of All forms of Discrimination against Women (CEDAW)
1984	Convention against Torture and Other Cruel, Inhuman or other Degrading Treatment of Punishment
1985	United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
1988	Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment
1989	Convention on the Rights of the Child (CRC)
1990	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
1990	Basic Principles for the Treatment of Prisoners
1990	United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
2006	Convention on the Rights of Persons with Disabilities (CRPD)
2015	Standard Minimum Rules for the Treatment of Prisoners revised (Nelson Mandela Rules)

2. Specificities
predominantly soft law;
but increasing recognition
of binding nature.

ICCPR: Article 10

- (1) All persons deprived of their liberty shall be **treated with humanity and with respect for the inherent dignity of the human person.**
 - (2)
 - (a) **Accused persons** shall, save in exceptional circumstances, segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
 - (b) **Accused juvenile persons** shall be separated from adults and brought as speedily as possible for adjudication.
 - (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their **reformation and social rehabilitation**. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.
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- **Positive obligations:** Human Rights Committee general comment No. 21, para. 3.
 - **Not dependent on available resources:** HRC GC 21 para 4; [Interim Report](#) of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013.

Binding health rights

- The right to **health** (A 12 ICESCR): an inclusive right: **timely and appropriate health care**; AND **underlying determinants of health** (e.g. access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health). [Committee on Economic Social and Cultural Rights 'General Comment No. 14: The right to the highest attainable standard of health' (11 August 2000) UN Doc E/C.12/2000/4].
- ICESCR: A11 - Right to **adequate standard of living**, including food, clothing and housing.
- Questions of health in detention could be raised under the **right to life** (Article 6) or the **right to humane treatment** (Article 10) of ICCPR. [*Cabal and Pasini v. Australia* (7 August 2003) UN Doc CCPR/C/78/D/1020/2002] para. 7.7.]
- **Torture, cruel, inhuman and degrading treatment.**(CAT; ICCPR A7) [[Interim Report](#)] of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013) ; HRC, General Comment 21, Article 10, U.N. Doc.HRI/GEN/1/Rev.1 at 33 (1994), of 10 April 1992, para 3.]
- **Fair trial rights.** [Commission on Human Rights 'Civil and Political Rights, including the Question of Torture and Detention: Report of the Working Group on Arbitrary Detention' (1 December 2004) UN Doc E/CN.4/2005/6 para 68.]
- **Non-discrimination.** (ICCPR A2(1); ICESCR)

Positive state obligations

“This particular **obligation to fulfil and protect** the various human rights of detainees, above all their rights to food, water, health, privacy, equal access to justice and an effective remedy against torture and other human rights violations, derives from the simple fact that detainees are powerless and can no longer protect these rights through their own initiative.”

UN General Assembly “*[Interim Report](#)* of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/64/215) 3 August 2009 at para 47.)

Standard Minimum Rules (SMR) 2015

8 Areas of substantive revision:

1. Respect for prisoners' inherent dignity
2. Medical and health services
3. Disciplinary measures and sanctions
4. Investigations of deaths and torture in custody
5. Protection of vulnerable groups
6. Access to legal representation
7. Complaints and independent inspection
8. Training of staff

Evolution of SMR's normative value?

- Preliminary observation 1: “In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times.”
- Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge.
- HRC, *Fongum Gorji-Dinka v. Cameroon*, views of 17 March 2005, communication 1134/2002: HRC reiterated:
‘that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners (1957).’
- “With reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee finds, that the conditions as described amount to a violation of article 10, paragraph 1, in respect of the author’s son”.
HRC, *Safarmo Kurbanova on behalf of her son, Abduali Ismatovich Kurbanov, v. Tajikistan*, Communication No. 1096/2002, U.N. Doc. CCPR/C/79/D/1096/2002 (2003), views of 6 November 2003.
- Also national Courts: e.g. see *Makoni v Commissioner of Prisoners and Another* (Zimbabwe Constitutional Court) 2016.

3. Normative wealth in broad hard law standards, reflected in decisions of special procedures and treaty bodies

Access to healthcare and treatment

General Access to Services

SMR 24	<ol style="list-style-type: none">1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence
SMR 25	<ol style="list-style-type: none">1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
SMR 30	A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary.
Human Rights Committee 'Concluding Observations: Georgia' (2002) UN Doc A/57/40 vol I 53 para 78(7); 'Concluding Observations: Republic of Moldova' (2002) UN Doc A/57/40 vol I 76 para 84(9).	<p>"[T]he right to ... health of all detained persons" is engaged under Articles 6 (the right to life) and 7 (prohibition of torture) of the International Covenant on Civil and Political Rights, and the obligation to "provide appropriate medical care to detainees" is engaged under Article 10 (prohibition of inhuman or degrading treatment).</p> <p>See also: <i>Pinto v. Trinidad and Tobago</i> (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; see also <i>Kelly v. Jamaica</i> (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7.</p>

Access to healthcare and treatment

Emergency Services

SMR 27	All prisons shall ensure prompt access to medical attention in urgent cases.
<u>Interim Report</u> of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/I NF/2 7 October 2013.	“The Special Rapporteur notes that loss of life or a deterioration in an inmate’s well-being occurs because of a lack of or unreasonable delays in the provision of urgent medical care, and that these omissions on the part of the authorities can amount to ill-treatment and even torture.”

Timely Services

Leehong v. Jamaica (13 July 1999) UN Doc CCPR/C/ 66/D/613/1995.

Kalenga v. Zambia (27 July 1993) UN Doc CCPR/C/48/D/326/1988 para. 6.5

Access to healthcare and treatment

Specialised services

SMR 27	<p>1. ...Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.</p> <p>2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.</p>
<i>Levy v. Jamaica</i> (3 November 1998) UN Doc CCPR/C/64/D/719/1996 para 7.4.	applicant “should have had an operation on his jaw and throat, but that the prison authorities made it impossible for him to keep his appointment”
<i>Simpson v. Jamaica</i> (31 October 2001) UN Doc CCPR/C/73/D/695/1996 para 2.7.	“refused specialized treatment” despite “an undiagnosed and untreated medical condition giving rise to symptoms of great pain and swelling in his testicle”, among other ailments.

Preventative Healthcare

SMR 30	<p>“A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:</p> <p>(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period”</p>
SMR 32 1.	<p>“The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular: (a) The duty of protecting prisoners’ physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only”</p>
UN Committee on Economic, Social and Cultural Rights (CESCR), <u>General Comment No. 14</u> : The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4	<p>“States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons including prisoners or detainees... to preventive, curative and palliative health services; Furthermore, obligations to respect include a State’s obligation to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines, from marketing unsafe drugs and from applying coercive medical treatments ...”</p>
Human Rights Committee ‘Concluding Observations: Republic of Moldova’ (2002) UN Doc A/57/40 vol I 76, para 84(9)	<p>the “the spread of contagious diseases” could amount to a violation of Article 9 (the right to liberty and security of the person).</p>
Article 24 (the right to health) of the Convention on the Rights of the Child; Rules for the Protection of Juveniles Deprived of their Liberty (14 December 1990) GA Res 45/113	<p>Preventative healthcare for children in detention.</p>

Access to healthcare and treatment

Women's healthcare services

SMR 28	In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate
UN Human Rights Council, <u>Report of the Special Rapporteur on torture</u> and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57	Absence of women's healthcare services linked to torture, cruel, inhuman and degrading treatment: 25. Most prison health policies and services are not designed to respond to women's specific health needs and fail to account for the prevalence of mental health and substance abuse problems among female prisoners, the high incidence of exposure to different forms of violence, and gender-specific sexual and reproductive health concerns. ¹⁰ The provision of appropriate health-care services, including comprehensive, interdisciplinary and rehabilitation-oriented mental health-care programmes, as well as the provision of training and capacity-building to prison staff and health-care personnel to identify specific physical and mental-health needs of female detainees, are key to preventing mistreatment. 26. The absence of gender specific health care in detention can amount to ill-treatment or, when imposed intentionally and for a prohibited purpose, to torture. States' failure to ensure adequate hygiene and sanitation and to provide appropriate facilities and materials can also amount to ill-treatment or even torture.

Particular health conditions

Diabetes

Human Rights Committee (HRC) Leonid Komarovski v. Turkmenistan, views of 24 July 2008, communication 1450/2006

Treated ‘inhumanely and without respect for his inherent dignity, in violation of Article 10, Paragraph 1’ of the ICCPR.

Commission on Human Rights ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Summary of communications sent to and replies received from Governments and other actors, December 2004-December 2005’ (22 December 2005) UN Doc E/CN.4/2006/48/Add.1 paras 1011.

Mental healthcare

HRC, *C. v. Australia*, views of 28 October 2002, communication 900/1999

“[C]ontinued detention of [the complainant] when the State party was aware of [his] mental condition and failed to take the steps necessary to ameliorate [his] mental deterioration”
[Violation of Article 7 of the ICCPR (prohibition on torture, cruel, inhuman and degrading treatment or punishment.]

Particular health conditions

Pain treatment

HRC, *Leon R. Rouse v. The Philippines*, Communication [No. 1089/2002, U.N. Doc. CCPR/ C/84/D/1089/2002 \(2005\)](#), views of 25 July 2005, para 7.8.

The inmate “suffered from severe pain due to aggravated kidney problems, and that he was not able to obtain proper medical treatment from the prison authorities. As the author suffered such pain for a considerable amount of time, from 2001 up to his release in September 2003, the Committee finds that he was the victim of cruel and inhuman treatment in violation of article 7.”

UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 14: The Right to the Highest Attainable Standard of Health](#) (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4

“States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons including prisoners or detainees... to preventive, curative and **palliative health services**...”

Leslie v. Jamaica (31 July 1998) UN Doc CCPR/C/63/D/564/1993 para 3.2.

Allergies and Asthma

Whyte v. Jamaica (27 July 1998) UN Doc CCPR/C/63/D/732/1997 para 9.4;

Commission on Human Rights ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Summary of communications sent to and replies received from Governments and other actors, December 2004-December 2005’ (22 December 2005) UN Doc E/CN.4/2006/48/Add.1 paras 26-27

Particular health conditions

Ophthalmology

Pinto v. Trinidad and Tobago (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40

Dentistry

Pinto v. Trinidad and Tobago (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40; Commission on Human Rights ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt: Addendum, Summary of cases transmitted to Governments and replies received (2 February 2005) UN Doc E/CN.4/2005/51/Add.1 para 41.

Dermatology

Lewis v. Jamaica (18 July 1996) UN Doc CCPR/C/57/D/527/ 1993 para 10.4

Kidney conditions

Commission on Human Rights ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Summary of communications sent to and replies received from Governments and other actors, December 2004-December 2005’ (22 December 2005) UN Doc E/CN.4/2006/48/Add.1 paras 28,43

Particular health conditions

Critical heart condition

Commission on Human Rights 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Summary of communications sent to and replies received from Governments and other actors, December 2004-December 2005' (22 December 2005) UN Doc E/CN.4/2006/48/Add.1 para 40

Tuberculosis

Commission on Human Rights 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Summary of communications sent to and replies received from Governments and other actors, December 2004-December 2005' (22 December 2005) UN Doc E/CN.4/2006/48/Add.1 para 44

Access to healthcare and treatment

Ethical healthcare services

SMR 31	The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.
SMR32	1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular: (a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only; (b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship; (c) The confidentiality of medical information, ... (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.

NB: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (5 March 2015) A/HRC/28/68

Food

SMR 22

1. Every prisoner shall be provided by the prison 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 or she needs it.

[Committee Against Torture,](#)
Consideration of Reports
Submitted by State Parties
under Article 19 of the
Convention: Conclusions and
Recommendations of the
Committee against Torture
(2004) CAT/C/CR/33/1, para.
6 (h).

“The overcrowding and poor physical conditions prevailing in the prisons, and particularly the lack of hygiene, adequate food and appropriate medical care, which may be tantamount to inhuman and degrading treatment”

Overcrowding

SMR13	“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”	
Cameroon, CAT/C/CR/31/6, of 5 February 2004, para 4(b)	Extreme overcrowding where conditions endanger lives.	Inhuman and degrading treatment
<i>Lantsova v. Russian Federation</i> n (26 March 2002) UN Doc CCPR/C/74/763/1997 para 10	prisoner “lost his life as a direct result of the existing prison conditions”/ overcrowding.	Articles 6 and 10 (1) ICCPR
Commission on Human Rights ‘Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37 Addendum: Visit by the Special Rapporteur to the Russian Federation’ (16 November 1994) UN Doc E/CN.4/1995/34/Add.1	The Special Rapporteur on Torture has noted the impact of overcrowding on health, stating that, “overcrowding exacerbates the inability of the staff to provide adequate ... health care to the detainees. It also makes it difficult to prevent the spread of infectious diseases”.	

Overcrowding

Commission on Human Rights ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt’ (11 February 2005) UN Doc E/CN.4/2005/51.	The Special Rapporteur on Health has expressed concern that “Prison conditions such as Overcrowding, [and] lack of privacy ... tend to exacerbate mental disabilities”.	Right to health.
UN General Assembly “ Interim Report ” of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/64/215) 3 August 2009:	“Some cells were so overcrowded that there was no space for everyone to sleep at the same time. Sleeping in shifts owing to a lack of space is common in many of the police stations and pretrial detention facilities the Special Rapporteur visited, including in Georgia, Nepal, Sri Lanka, Togo and the Transnistrian region of the Republic of Moldova.”	Under torture mandate – linked to human dignity and “adequate standard of living.”

SEE ALSO:

UN Committee against Torture: Conclusions and Recommendations, Greece, 10 December 2004, CAT/C/CR/33/2, para 5(i);
Nepal, CAT/C/NPL/CO/2, of 13 April 2007, para 31; *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40;

Cell conditions and sanitation

SMR 15; 16; 17; 18	“Adequate to comply with the needs of nature” “in a clean and decent manner; bathing or showering “at least once a week in a temperate climate”; prison to be kept “scrupulously clean at all times”; necessary toilet articles.	
Human Rights Committee (HRC) <i>Leonid Komarovski v. Turkmenistan</i> , views of 24 July 2008, communication 1450/2006	Cell ‘very small, lacked natural light and water in the toilet and was infested by roaches’	Treated ‘inhumanely and without respect for his inherent dignity, in violation of Article 10, Paragraph 1’ of the ICCPR.
HRC, <i>Fongum Gorji-Dinka v. Cameroon</i> , views of 17 March 2005, communication 1134/2002	Inmate kept in ‘wet and dirty cell without a bed, table or any sanitary facilities’	Article 10(1) ICCPR.
HRC, Safarmo Kurbanova on behalf of her son, Abduali Ismatovich Kurbanov, v. Tajikistan, Communication No. 1096/2002, U.N. Doc. CCPR/C/79/D/1096/2002 (2003), views of 6 November 2003	Inmate’s “cell has no water, is very cold in the winter and hot in the summer, has inadequate ventilation and is infested with insects, and that the author’s son is allowed to leave his cell only for half an hour a day”.	Violation of A10(1) of the ICCPR.
UN General Assembly “ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/64/215) 3 August 2009.	“In Equatorial Guinea, detainees spend several weeks or even months in overcrowded, often dark and filthy police cells with virtually nothing but a concrete floor where they are kept for 24 hours a day. It is the task of their families to bring them water in plastic bottles and food in plastic bags. Since there are no toilets, they must use the same bottles to urinate and the plastic bags to defecate.”	Under torture mandate – linked to human dignity and “adequate standard of living”

Sexual Violence

- “special consideration should be given to the aggravated risk of violence that women and those from vulnerable groups, including persons with disabilities, people living with HIV/AIDS, drug-dependant individuals, lesbian, gay, bisexual, transgender and intersex persons and sex workers might suffer”.
- “[I]nter-prisoner violence may amount to torture or other ill-treatment if the State fails to act with due diligence to prevent it (A/HRC/13/39/Add.3, para. 28). ... The Special Rapporteur on torture notes that acquiescence in inter-prisoner violence is not simply a breach of professional responsibilities but that it amounts to consent or acquiescence to torture or other ill-treatment.

Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013

- “States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances (A/HRC/7/3).”

UN Human Rights Council, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), 5 January 2016, A/HRC/31/57.

Vulnerable Groups

- See SMR 2 (Broad measures for individualized treatment); Part II (Rules applicable to special categories) Esp Rule 109 Prisoners with mental disabilities and/or health conditions.

“Ensuring non-discrimination and special protection for vulnerable groups and individuals is a critical component of the **obligation to prevent torture and other ill-treatment**. The Special Rapporteur recognizes that while all people deprived of their liberty are vulnerable to neglect, abuse and mistreatment, for certain marginalized groups that vulnerability is heightened. These groups include, in addition to those identified in Rule 6 (see para. 28 above), particular categories of detainees or prisoners (e.g. **sex workers, drug users, lesbian, gay, bisexual, transgender and intersex persons, prisoners who have tuberculosis or terminal illnesses and people living with HIV/AIDS**) (see A/HRC/13/39/Add.5, paras. 231 and 257).”

[Interim Report](#) of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013.

Vulnerable Groups

“Both the Special Rapporteur and other human rights mechanisms have expressed concern about reports of **sexual abuse and physical violence against homosexual and transgender prisoners** (see A/HRC/19/41, paras. 34 and 36, and CAT/C/CRI/CO/2, para. 18). The Special Rapporteur has also examined the special needs of **drug users in detention and penitentiary centres** and the practice of denying opiate substitution treatment as a way of eliciting confessions by inducing painful withdrawal symptoms. This is a particular form of ill-treatment and possibly torture (A/HRC/22/53, para. 73). 69. In a 2008 report that focused on the situation of **persons with disabilities in detention**, the Special Rapporteur noted that the lack of reasonable accommodation may increase the risk of exposure to neglect, violence, abuse and ill-treatment and that if such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment (see A/63/175, paras. 38 and 53). Reasonable accommodation in the context of prisons and detention centres should be considered a prerequisite for humane treatment.”

[Interim Report](#) of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (a/68/295) UNODC/CCPCJ/EG.6/2013/INF/2 7 October 2013. See also: UN Human Rights Council, [Report](#) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57 [report describes in detail protections required for **LGBT persons in detention**]; and UN Human Rights Council, [Report](#) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 March 2015, A/HRC/28/68 [on **children** in detention].

Side Note: Standards of Detention under International Humanitarian Law

- **1949 Geneva Conventions**: Protections for the health of all persons living in an occupied or partially occupied zone during a time of war or armed conflict; in particular Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- **Third Geneva Convention of 1949** relative to the Treatment of Prisoners of War: Rights of fighters captured in international armed conflicts, including the right to humane treatment and medical care:
 - Article 13 specifies that Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention.
 - Access to free medical services in “an adequate infirmary”, regular medical inspections and the right to be transferred to a civilian hospital for surgery or special treatment.

4. A question of enforcement?

“[A] comparison of the sad reality in many countries with the important international safeguards of the rights to personal integrity and dignity points to an **enormous implementation gap**. ...this arbitrary deprivation and non-fulfilment of most human rights amounts to a **systematic denial of human dignity** and must, therefore, also be qualified as inhuman and degrading treatment, in violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, and article 16 of the Convention against Torture, respectively.”

UN General Assembly “Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/64/215) 3 August 2009:

<http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A-64-215.pdf>.

4. A question of enforcement?

“[The SR] is most concerned **structural deprivation of most human rights**, notably the rights to food, water, clothing, health care and a minimum of space, hygiene, privacy and security necessary for a humane and dignified existence. It is the combined deprivation and non-fulfilment of these existential rights which amounts to a **systematic practice of inhuman or degrading treatment or punishment** and, around the world, there is an urgent need to ensure more respect for detainees and improve conditions of detention: the respect shown for the detainees is a mirror of a country’s general human rights culture.”

UN Human Rights Council, [Report](#) of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 February 2010, A/HRC/13/39.