

DIGNITY MANUAL

MONITORING HEALTH IN PLACES OF DETENTION

AN OVERVIEW FOR HEALTH PROFESSIONALS



MONITORING HEALTH IN PLACES OF DETENTION

An Overview for Health Professionals

By Brenda van den Bergh, Lisa Michaelsen, Marie Brasholt
and Jens Modvig

DIGNITY Manual, version 1.1.

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Bryggervangen 55

2100 Copenhagen O

<https://www.dignity.dk>

ISBN: 978-87-93675-54-4 (print)

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October 2021

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FOREWORD

Globally, over 11 million people are imprisoned, which is the highest number ever reported. In many countries all over the world, places of detention are of suboptimal standard and unfortunately treatments and conditions too often violate international human rights standards.

Being detained is a serious punishment in itself and conditions and treatments in places of detention should not aggravate this punishment. Prisoners retain their fundamental human rights, including the right to be free from torture and other cruel, inhuman or degrading treatment or punishment and the right to health and health care, equivalent to people living in the general community. Unfortunately, we often see that these rights are being violated with prisoners residing in conditions that are detrimental to their health, being treated in ways that make their health deteriorate, and having no or poor access to health care services. This may amount to ill-treatment and, in extreme cases, to torture, as defined in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Prison authorities have a responsibility in ensuring the right to health for all by having a well-functioning prison health service as well as decent conditions and treatments in place.

Monitoring places of detention by an independent body is key to evaluate conditions and treatments in places of detention and to assess whether these are in line with international standards. It is known to be one of the most effective ways to prevent torture and ill-treatment. Monitoring health is an essential component of monitoring places of detention. This includes assessing the prisoners' health, the health care services available to them and the conditions and treatments that have a direct or indirect impact on their health. It involves looking into a broad range of issues, including the accessibility of the health care services, the initial medical assessment of prisoners upon entry, the equivalence and continuity of care, the treatment and care of prisoners with a substance use disorder or with a mental health problem, the handling of hunger strikes, the nutrition, sanitation and hygiene in the place of detention, and many others.

This manual aims to provide a comprehensive overview of all prison health aspects that are relevant when monitoring health in places of detention and is primarily aimed at health professionals conducting monitoring visits as part of an independent monitoring body. The manual discusses the preventive monitoring approach, the monitoring cycle and includes 33 chapters in which individual prison health aspects are being presented and discussed in detail, taking a base in prevailing international human rights standards and the relevance to preventive monitoring. It needs to be noted that the current version is a first version of the manual. The intention is to publish a second version, including practical monitoring tools, at later stage.

We hope that this manual will be a useful guide for everyone interested in monitoring health in places of detention and that more comprehensive monitoring practices will contribute to improving life for those residing in those places.

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ACKNOWLEDGEMENTS

This manual has been produced by staff members in the Health department of DIGNITY, primarily Brenda van den Bergh, Lisa Michaelsen, Marie Brasholt and Jens Modvig. During the first phase of drafting this manual, also Dr Hans Draminsky Petersen was closely involved in the writing and review process. We would, first of all, like to express our great gratitude to him for his tremendous support and valuable input to many of the chapters.

Moreover, we would like to express our sincere thanks to all organizations around the world that have done important work in the areas of health in places of detention and preventive monitoring. These organizations can all be found in the references throughout the manual. The key references used are listed in annex 1. We would like to give a special thanks to the following organizations and associations for their fantastic work in the areas of health in places of detention and preventive monitoring: the Association for the Prevention of Torture, the International Committee of the Red Cross, the Physicians for Human Rights, Defence for Children International, and the World Medical Association. Furthermore, we would like to express gratitude to the European Court on Human Rights for their extensive case descriptions, which have been used as examples in many chapters. Moreover, we are thankful to the Danish Ombudsman and the Danish Institute for Human Rights for our yearlong collaboration in the Danish National Preventive Mechanism, which has given us extensive experience in health monitoring as well as examples, some of which are presented in this manual.

Finally, we thank our donors for their financial support which allowed us to develop and publish this manual.

SECTION 1: INTRODUCTION TO MONITORING HEALTH IN PLACES OF DETENTION

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”¹

1.1. Aim and target audience of this manual

Monitoring places of detention by an independent body is one of the most effective ways to prevent torture and ill-treatment of people kept in those places.² Health is an integrated part of life and health services offered to persons deprived of their liberty should be equivalent to those available to persons living in the general society. Being deprived of such services while detained or residing in conditions detrimental to a person’s health and well-being, may amount to ill-treatment and, in extreme cases, to torture.

This manual focuses on monitoring health aspects in places of detention. It is assumed that the reader has already a basic understanding of preventive monitoring of places of detention on torture and ill-treatment. The manual will therefore not address in great detail general issues related to preventive monitoring and merely gives a brief summary of key concepts in the next chapter. For detailed guidance on how to conduct preventive monitoring of places of detention, this manual refers to already available guidance, including the ‘Training manual on human rights monitoring’ published by the United Nations Office of the High Commissioner for Human Rights in 2001,³ ‘Monitoring places of detention. A practical guide’ published by the Association for the Prevention of Torture in 2004,⁴ and the ‘Practical guide on monitoring places where children are deprived of liberty’ published by Defence for Children International in 2016.⁵

The main target audience of this manual consists of health professionals, including but not limited to medical doctors, nurses and public health specialists with an interest in, or official capacity related to, monitoring health aspects in places of detention. Both new health monitors as well as health monitors who already conduct monitoring visits will benefit from reading this manual. The aim of the manual is to provide the reader with an overview of health aspects to take into account before, during and after a monitoring visit, functioning as a key reference book. The individual chapters in Sections 3, 4 and 5 could function as read-alone chapters on a specific topic.

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- 1 WHO (1948). *Constitution of the World Health Organization*. Geneva, 1948. Available at: <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>
 - 2 APT (2016). *Yes, torture prevention works. Insights from a global research study on 30 years of torture prevention*. Association for the Prevention of Torture, Geneva, September 2016. Available at: https://www.apr.ch/content/files_res/apr-briefing-paper_yes-torture-prevention-works.pdf. Carver and Handley (2016). *Does torture prevention work?* Liverpool University Press, 2017.
 - 3 UNOHCHR (2001). *Training manual on human rights monitoring*. United Nations Office of the High Commissioner on Human Rights, New York and Geneva, 2001. Outline available at: <https://www.ohchr.org/documents/publications/training7intro-en.pdf>
 - 4 APT (2004). *Monitoring places of detention. A practical guide*. Association for the Prevention of Torture, Geneva, April 2004. Available at: https://www.apr.ch/content/files_res/monitoring-guide-en.pdf
 - 5 DCI (2016). *Monitoring places where children are deprived of liberty. Practical guide*. Defence for Children International, Belgium, 2016. Available at: <https://defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>

The manual is aimed to lead to more professional and comprehensive health monitoring practices, with the ultimate impact of prevention of torture and ill-treatment and improving conditions and services for people kept in places of detention.

1.2. Monitoring places of detention

This chapter includes a brief overview of key concepts and information on monitoring places of detention with a view to prevent torture and ill-treatment. It is written as a summary and recapitulation of basic knowledge on preventive monitoring, which the reader is assumed to be mostly familiar with by experience and/or existing guidance.

Monitoring places of detention could best be described as *'a systematic process of observing, tracking, and recording activities or data for the purpose of measuring the performance and ill-performance of a prison (system).'* It refers to monitoring with a focus on the conditions of detention (for instance the facilities, but also the protection against diseases and violence) and the treatment of people in detention (for instance the staff-prisoners relationship and available activities) as well as on the compliance of these conditions and treatment with national and international standards for the protection of human rights and, in particular, the protection against torture and ill-treatment.

There are several national and international bodies monitoring places of detention. At the national level these include internal inspections, judicial inspections and independent external inspections, foremost by national human rights institutions and sometimes non-governmental organizations (NGOs) working in the area of human rights. Only the independent external inspections can be expected to operate with a preventive monitoring approach. States that have ratified the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) are moreover required to install a National Preventive Mechanism (NPM), conducting preventive monitoring of places of detention in the country.

At the international level, a number of monitoring bodies are operational. These include the monitoring mechanisms by the International Committee of the Red Cross (ICRC) and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) (also installed under the OPCAT). At regional level, the European Committee for the Prevention of Torture (CPT) and the Inter-American Commission on Human Rights are examples of independent, preventive monitoring bodies operational in Europe and America respectively.

This manual focusses on *preventive* monitoring, which can best be described as monitoring with a dual view, i.e. to:

1. Identify existing breaches of standards, e.g. cases of torture or ill-treatment; and
2. Identify conditions and treatment, which may develop into breaches of standards.

Preventive monitoring can therefore be described as *'the well-prepared systematic and regular observation and recording of conditions and treatment of prisoners in places of deprivation of liberty. The monitoring involves the validation of the findings, the evaluation of the findings in light of national and international standards, the analysis of the causal background for the findings, making recommendations in order to promote improvement and preventing future cases of torture and ill-treatment, as well as following up the implementation of these recommendations'*.

It is important to note that sometimes national and international standards may be conflicting (e.g. on how to handle a hunger strike, see the respective chapter in Section 3). In these cases, the monitor should make a sound judgement as to which standards to refer to and should be informed about why national standards deviate from the international standards.

Preventive monitoring is assumed to contribute to the prevention of torture and ill-treatment by means of three distinctly different mechanisms:

1. Cases of torture and ill-treatment are identified, analyzed and brought forward, and the failure of existing protection mechanisms are pointed out. Recommendations for the amendment of the failures of protection are made at the appropriate level of responsibility (institution management, ministry, parliament). If the protection is improved, future cases are prevented.
2. Conditions and treatment, which – if further amplified – may give rise to torture or ill-treatment, are identified in an early stage, analyzed and brought forward with a view to stop their further development at the appropriate level (institution, central administration, parliament), thereby preventing the occurrence of torture and ill-treatment.
3. The general deterrent effect of monitoring entails that just the fact that independent outside experts come on a regular basis and review conditions and treatment, will discourage staff to overstep lines and ensure transparency and accountability with regard to ensuring compliance with standards.

The main international standard referred to throughout this manual is the United Nations (UN) Mandela Rules.⁶ The Mandela Rules are an updated version of the UN Standards Minimum Rules for the Treatment of Prisoners (1963) and were published in 2015. Although they are not legally binding, they are often regarded by States as the primary – if not only – source of standards relating to conditions and treatments in detention, and are the key framework used by national, regional and international monitoring and inspection mechanisms around the world in assessing and monitoring places of detention.

Basic Rule number 1 of the Mandela Rules clearly provides the framework for any monitoring work:

'All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times'.

Other international standards and conventions and protocols which the health monitor should be familiar with, include (but are not limited to):

- The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), United Nations, New York, 2011.
- The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations, 1985.
- The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, 1984.
- The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, 2006.

⁶ UN (2015). United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). United Nations, 2015. Available at: https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6/ECN152015_L6_e_V1503048.pdf

- The Istanbul Protocol; Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment, Office of the UN High Commissioner for Human Rights, 2004.
- The European Prison Rules, Council of Europe, Strasbourg, 2006.⁷
- The CPT Standards 2002, revision 2010, European Committee for the prevention of torture and inhuman or degrading treatment or punishment, 2010.

Monitoring places of detention is by nature a sensitive and difficult task. The following basic principles are always key to adhere to:

1. Do no harm
2. Respect the mandate
3. Know the standards
4. Exercise good judgement
5. Seek consultation
6. Respect the authorities and the staff in charge
7. Respect the persons deprived of liberty
8. Be credible
9. Respect confidentiality
10. Respect security
11. Understand the country
12. Be consistent, persistent and patient
13. Be accurate and precise
14. Be impartial
15. Be objective
16. Be sensitive
17. Behave with integrity
18. Behave professional
19. Be visible^{8,9}

Monitoring should be seen not only as a control and inspective measure of what is going on in places of detention, but also as a cooperation between monitors and the various groups of actors in the institution, with the aim of ensuring the dignity and rights of prisoners.

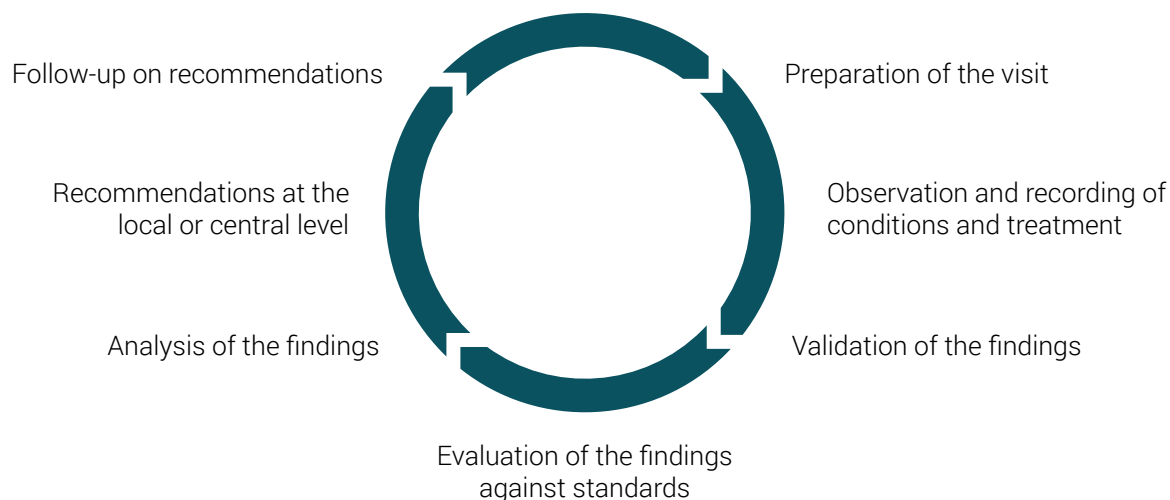
The phases of preventive monitoring can be represented as a monitoring cycle running repeatedly, as demonstrated in figure 1.

7 In the European Region, the Council of Europe published the European Prison Rules, originally published in 1987 and updated in 2006. The European Prison Rules are based on the original UN Standard Minimum Rules for the Treatment of Prisoners as published in 1957. They are not legally binding for member states of the Council of Europe, but provide recognized standards on good principles and practices in the treatment of detainees and the management of detention facilities. They are often used as a main reference for inspection and monitoring mechanisms for places of detention in the European Region.

8 UNOHCHR (2001). *Training manual on human rights monitoring*. United Nations Office of the High Commissioner on Human Rights, New York and Geneva, 2001. Outline available at: <https://www.ohchr.org/documents/publications/training7intro-en.pdf>

9 APT (2004). *Monitoring places of detention. A practical guide*. Association for the Prevention of Torture, Geneva, April 2004. Available at: https://www.apr.ch/content/files_res/monitoring-guide-en.pdf

FIGURE 1.
THE MONITORING CYCLE



A great number of actors are involved in the conditions of places of detention and treatment of prisoners, including law makers, the government, ministries, the prison administration, the management of the individual institution, prison staff members, prison health staff members and the general public. Among all those actors, monitors will mostly deal with the management of the individual institution, its staff members and health staff members. There may be conflicting interests between actors from these three groups and between the three groups and other actors, which the monitor should always keep in mind.

Holding authorities accountable for their human rights and public health obligations is always challenging in places of detention and therefore, the work of monitors is crucial.

Further reading

APT (2004). *Monitoring places of detention. A practical guide*. Association for the Prevention of Torture, Geneva, April 2004. Available at: https://www.apr.ch/content/files_res/monitoring-guide-en.pdf

DCI (2016). *Monitoring places where children are deprived of liberty. Practical guide*. Defence for Children International, Belgium, 2016. Available at: <https://defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>

OSCE ODIHR and PRI (2018). *Guidance document on the Nelson Mandela Rules. Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners*. OSCE Office for Democratic Institutions and Human Rights and Penal Reform International, 2018. Available at: <https://www.osce.org/odihr/389912?download=true>

UN (2015). *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*. United Nations, 2015. Available at: https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6/ECN152015_L6_e_V1503048.pdf

UNOHCHR (2001). *Training manual on human rights monitoring*. United Nations Office of the High Commissioner on Human Rights, New York and Geneva, 2001. Outline available at: <https://www.ohchr.org/documents/publications/training7introen.pdf>

UNOHCHR (2006). *Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment*. United Nations Office of the High Commissioner on Human Rights, New York and Geneva, 2006. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

1.3. Health monitoring and the health monitor

When looking specifically into the health aspects in a place of detention and the health consequences related to the conditions of the place as well as the treatment of the prisoners, this is referred to as health monitoring.

'Health monitoring of places of detention is the well-prepared and regular observation and recording of health aspects and health consequences related to conditions of detention and treatment of prisoners in places of detention'

Preventive health monitoring looks into:

1. Conditions and treatments affecting the health of prisoners in places of detention, which breach national and international human rights standards and represent a risk to the health of prisoners; and
2. Conditions and treatments affecting the health of prisoners in places of detention, which may develop into a breach of national and international human rights standards.

As part of a monitoring team with an extensive mandate to prevent torture and ill-treatment, monitors with a specific focus on health aspects are in a unique position to help promote and protect prisoners' health and human rights through consistent monitoring of all aspects relating to health.

As will be elaborated in more detail in the next Section, health monitoring looks into 3 areas, together referred to as the prison health framework:

1. The health of the prisoners kept in the place of detention
2. The health services available to the prisoners
3. The factors in the place of detention that directly or indirectly impact on the health of the prisoners

Health monitoring can best be conducted by persons with a health-specific background. Medical specialists, such as general practitioners, psychiatrists and dentists, are often first choice for conducting health monitoring due to their knowledge of health conditions, medications and the necessary elements of an effective health care service. Their extensive educational background, knowledge of the level of provision of health services in the general society, and experience with working with patients makes them the obvious choice to conduct health monitoring. Nurses, public health specialists and other health professionals also have a good understanding of the most common health conditions and the functioning of health care services and are therefore considered qualified health monitors as well. What is most important for a person monitoring health aspects in a place of detention, is a basic background knowledge on health conditions and health services - in particular in places of detention, but also in the outside community - and on the influence of prison factors on health. Moreover, the person should be familiar with the general approach to preventive monitoring of places of detention. He/she should be skilled in conducting interviews for monitoring purposes. He/she should have (at least some basic) experience with and knowledge on identifying victims of torture and ill-treatment and (basic) documentation of such cases. He/she should know the most common torture methods in the local area and be familiar with their consequences on the physical and mental health of the victim (see Section 6 on torture methods and their consequences).

Preferably, the health monitor should not conduct monitoring visits on his/her own and instead be an integral team member of a monitoring body consisting of a broad range of professionals. He/she should contribute to the overall recommendations of the monitoring body with his or her specific expertise.

1.4. Role of the health monitor in the monitoring team

The health professional has a specific mandate in the monitoring team to focus on the health aspects in the place of detention. During the monitoring visit, he/she will be the team member that should ensure that monitoring health aspects is conducted in its entirety and that the prison health services are properly assessed. This will necessitate the cooperation and coordination with other team members who could – during interviews with prisoners - gather information on for instance access to the prison health clinic, diagnostic means and medicine, and for instance inquire on corruption related to health services which is an important issue in some countries. Other team members could also refer prisoners to the health monitor for an assessment of whether the offered medical services have been (in)sufficient or for an assessment of and follow-up on an allegation of torture or ill-treatment.

It is important to stress that the health professional participates in a monitoring team within the overall mandate of the team, i.e. preventive monitoring. The task of the health professional in the monitoring team does therefore not include examination and treatment of individual prisoners (examination only in very exceptional cases, see also Section 2.2.1). Nor is it the role of the health professional to review the medical treatment provided in individual cases. However, an overall and general evaluation of the quality of the health care provided is included in the tasks of the health monitor in order to assess compliance with the principle of equivalence of care.

A health professional is in the best position to fully assess all aspects of a place of detention that impact upon health, discuss specific health issues with prisoners and with the authorities (with power and influence), assess the health services in the place of detention and the treatment and care being provided, and provide essential medical expertise in the prevention and identification of torture and ill-treatment.

Further reading

APT (2008). *Visiting places of detention. What role for physicians and other health professionals?* Association for the Prevention of Torture, Geneva, 2008. Available at: https://www.apr.ch/content/files_res/RoleForPhysicians.pdf

1.5. Key concepts and definitions

Health

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.¹⁰

Ill-treatment

Ill-treatment equals cruel, inhuman, or degrading treatment or punishment. Ill-treatment is a broader term than torture, referring to a broad range of acts that amount to cruel, inhuman or degrading treatment or punishment. This could for instance include prolonged solitary confinement, poor nutrition, poor sanitation and ventilation and severe overcrowding. It is not always easy to make a clear distinction between torture and ill-treatment and ill-treatment may be categorized as torture when considered very severe and inflicting a high level of pain or suffering. It is important for a monitor to realize that this distinction is in the end not so important. Anything that he/she encounters while monitoring a place of detention which may amount to torture or ill-treatment, should be included in his/her focus. There are in principle two forms of ill-treatment:

1. An aggravated form of pain or suffering arising only from, inherent in or incidental to lawful sanctions, i.e. non-intentional and without any obvious purpose;¹¹
2. Intentional infliction of suffering for a purpose (e.g. during interrogation), but not meeting the severity level qualifying it as torture.

Place of detention

A place of detention is a place where people reside who are deprived of their liberty. It is a place of compulsory detention in which people are confined while on remand awaiting trial, on trial or for punishment following conviction for a criminal offence because they have been convicted of a crime (not including police cells). Without aiming to be an exhaustive list, this includes prisons, pre-trial detention facilities, arrest houses, police detention, psychiatric hospitals, social care homes, military detention camps, and detention centers for migrants.¹²

In this manual, the terms 'prison' and 'institution' are often used as a synonym for place of detention.

Prisoner

Any person deprived of personal liberty as a result of arrest, administrative detention, pretrial detention or conviction and held in a place of detention.

In this manual the term 'prisoner' is used as a synonym for 'detainee' or 'inmate'.

Torture

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a con-

10 WHO (1948). Constitution of the World Health Organization. Geneva, 1948. Available at: <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>

11 UN (1984). United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations General Assembly, 1984. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

12 This manual mainly focusses on prisons and pre-trial detention facilities, while it will also be useful for monitoring some of the other places of detention. Monitoring psychiatric hospitals requires a particular approach and is therefore out of the scope of this manual, even though many chapters will still provide useful information for this setting.

fession, punishing him for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹³

13 UN (1984). United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. United Nations General Assembly, 1984. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>