Detention Monitoring Tool Factsheet

Body searches

Addressing risk factors to prevent torture and ill-treatment

'We are strip searched after every visit. We are naked, told to bend over, touch our toes, spread our cheeks. If we've got our period we have to take the tampon out in front of them. It's degrading and humiliating. When we do urines it's even worse, we piss in a bottle in front of them. If we can't or won't we lose visits for three weeks.' Prisoner from Fairlea Prison, Australia[1]

1. Definition and context

In prisons, body searches may constitute necessary security measures to prevent the entry and contraband of dangerous (such as weapons) or prohibited items (such as drugs and objects that could be used for escape attempts, or cell phones in some contexts). However, owing to their intrusive nature, body searches are an infringement of a person's privacy and should therefore only be resorted to when strictly necessary and in a manner that respects the detainee's dignity.

The term 'body searches' covers three different types of searches:

- **Pat-down or frisk searches** are searches performed over the clothed body. These searches therefore include physical contact between the prisoner and staff member but no nudity.
- **Strip searches** refer to the removal of some or all of a person's clothing in order to permit a visual inspection of all parts of the body, without physical contact. Procedures may vary but prisoners are usually required to take off their clothes and to provide an unobstructed view of possible hiding places. They may be asked to open their mouth, and to bend and cough. Men may be asked to lift their penis and testicles, while women may have to spread their legs for inspection of the genital area.
- **Body-cavity searches** (or invasive or intimate searches) are a physical examination of body orifices (such as vagina or anus). This type of search includes rectal and pelvic examination, and is physically and psychologically the most intrusive method.

All types of body search can be intimidating and degrading, and the more intrusive the method, the stronger the feeling of invasion will be. The psychological effect and the violation of the right to dignity can be exacerbated for detainees from particular religious or cultural backgrounds as well as for detainees in situations of vulnerability. Body searches represent a high-risk situation for abuse, ill-treatment or even torture, and may also be misused to intimidate, harass, retaliate or discriminate.

Therefore body searches should be resorted to only when strictly necessary to ensure the security of staff and detainees, and they should be conducted in a manner that respects the dignity of the person. Body searches need to be regulated by law and clear policies and guidelines need to be put in place to explicitly define the conditions and modalities of their use. Alternatives, such as electronic scanning devices, should be developed and used wherever possible and when body searches are unavoidable, the least invasive method should be applied.

Body searches may also be performed on visitors, including professional visitors such as social workers, and on staff themselves.

2. What are the main standards?

When conducting body searches, staff in detention facilities have to respect the prohibition of torture, inhuman and degrading treatment,[2] as well as the right of all persons deprived of their liberty to be 'treated with humanity and with respect for the inherent dignity of the human person' (Article 10, International Covenant on Civil and Political Rights).

1 Amanda George, 'Strip searches: sexual assault by the state', in *Without consent: confronting adult sexual violence*, Australian Institute of Criminology, 1993, p211.

2 These include Article 5 of the Universal Declaration on Human Rights, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the UN Convention against Torture.

Specific provisions dealing with body searches can be found in recent regional and international standards, such as the European Prison Rules (2006), the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008), and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010). These provisions underline the exceptional nature of body searches, and the need for searches to respect the detainee's dignity and to be carried out by trained staff of the same gender. They also recommend the development and use of alternative searching methods.

Case law has further defined conditions and modalities regarding the legitimacy of body searches. The European Court of Human Rights, for example, has found strip searches to constitute degrading treatment when not justified by compelling security reasons and/or due to the way they were conducted.[3] The Inter-American Court on Human Rights considered a finger vaginal inspection carried out by several hooded staff members at the same time, in a very abrupt manner, 'constituted sexual rape that due to its effects constituted torture'.[4]

Recommendations provided by monitoring bodies such as the European Committee for the Prevention of Torture[5] and the Subcommittee on the Prevention of Torture also provide useful guidance.

In 1993, the World Medical Association adopted a Statement on Body Searches of Prisoners which reiterates the overarching principles of the individual's privacy and dignity and requires that body cavity searches be carried out by personnel with appropriate medical training.

Main references

- International Covenant on Civil and Political Rights, Article 7 and 10
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rules 19 to 21
- European Prison Rules, Rules 54.1 to 54.10
- Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXI
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- World Medical Association Statement on Body Searches of Prisoners

3. Types and situations of risk

3.1. Grounds and conditions for searches

While the provision of security in places of detention and the protection of detainees and staff may justify body searches, a domestic legal basis is imperative to avoid abuse. The use of body searches should be prescribed by law, which should define the conditions under which searches may take place based on the criteria of necessity and proportionality, and should include the admissible sanctions against detainees who refuse to undergo a search. Additional operational regulations could provide more detailed procedures regulating the circumstances and modalities of the use of body searches.

Usually, a systematic search takes place upon admission to a place of detention to ensure that the detainee does not carry dangerous objects (such as weapons) or prohibited items (such as drugs, objects that could be used for escape attempts, or cell phones in some contexts). Searches are subsequently applied when detainees may have had access to such items, for example before and following personal contact with visitors (relatives, friends, lawyers),[6] exercise or activity in workshops, after transfers, including for example for specialised treatment to a hospital, or following home visits or temporary release. They may be argued on medical grounds, for example if the detainee is suspected to have swallowed or hidden drugs or other items that might constitute a health hazard.

Body searches are only permissible when strictly necessary, based on a case-by-case assessment

3 *Iwanczuk v Poland*, 15 November 2001; *Shennawy vs France*, 20 January 2011; *Valasina v Lithuania*, 24 July 2001; *Frerot v. France*,12 June 2007.

4 Inter-American Court of Human Rights, *Miguel Castro-Castro Prison vs Peru,* 25 November 2006, para. 312. See also para. 309 to 312. In paragraph 310, the Court considers that 'sexual rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. Sexual rape must also be understood as act of vaginal or anal penetration, without the victim's consent, through the use of other parts of the aggressor's body or objects'.

5 See more at http://www.cpt.coe.int/en/hudoc-cpt.htm, key words 'body search'.

6 In Guantanamo Bay Detention Camp, according to a new policy, detainees are subject to a genital pat-down search whenever they leave the detention camp, including for a meeting with a lawyer. This policy has been challenged as 'having no legitimate purpose, but being pretextual, imposed in order to chill the right of access to counsel'. Available at: http://jurist.org/paperchase/2013/07/guantanamo-guards-allowed-to-continue-detainee-genital-searches.php, <accessed 30 October 2013>.

and if there is a specific suspicion. Where they are conducted on a routine basis, too frequently, in a systematic or collective way to all detainees, body searches become arbitrary measures and may in themselves constitute humiliating or degrading treatment. The reasons for detention and the overall classification (for prisons – low, medium or high-risk), as well as the previous behavioural history of the detainee will play a role in the case-by-case decision on whether or not a search is necessary.

The European Court of Human Rights considered inhuman and degrading treatment a general regime of routine weekly strip searches, including an anal inspection, even where there had been no contact with the outside world;[7] or full body searches to which a complainant had been subjected between four and eight times a day, in addition to having to undress and bend over, and force used if he resisted.[8]

Body searches also need to respect the criterion of proportionality, which relates to their frequency as well as to the requirement to select the least intrusive method to attain the security objective. Therefore, strip searches must only be performed when pat-down searches are insufficient to check whether any substance or objects have been hidden.[9] The degrading and threatening nature of dog searches should be kept in mind.[10]

Body-cavity searches are conducted to locate and remove objects (eg illegal drugs) that may be concealed in the rectum/vagina, colon or elsewhere inside the body. As they constitute the most intrusive search method, and carry a risk of physical and psychological injury, invasive body searches should only be the last resort when all other alternatives have been exploited. These alternatives may include modern scanning technology. In many cases it will be sufficient to keep the prisoner under close supervision until such time as any illicit item is naturally expelled from the body, as suggested by World Health Organization (WHO).[11] The Inter-American Commission on Human Rights[12] and some national jurisdictions[13] have prohibited invasive body searches altogether.

A strip or cavity search should not be conducted if it is likely to cause injury to the prisoner. They should always be authorised by the chief executive officer, in writing. The reason for the search, the authorising official, and findings of the search should be put on record.[14]

Alternative screening methods, such as scans or metal detectors, should be developed 'to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches'.[15]

Monitoring bodies should also enquire into the consequences for a detainee who refuses to undergo a search or to obey a related order, eg to bend over or to cough. Such a refusal will likely constitute a disciplinary offence, with sanctions ranging from withdrawal of benefits (eg employment in a workshop) or suspension of visits to isolation or even solitary confinement. Excessive sanctions against detainees who refuse to endure body searches, in particular where these are unnecessary, disproportionate or humiliating, are another risk factor for abuse that requires the attention of monitoring bodies.

At Thiva Women's Prison in Greece, the CPT found that 'if a prisoner refuses a vaginal search, she will be transferred to the segregation unit for several days where she will be placed under CCTV surveillance or accompanied by a prison officer whenever she goes to the toilet'.[16]

7 European Court of Human Rights, *Van der Ven vs Netherlands*, 4 February 2003; *Lorsé vs Netherland*, 4 February 2003.

8 European Court of Human Rights, *El Shennawy v. France*, 20 January 2011.

9 See Article 57 of the French Prison Law 'Full body searches are possible only when pat-down searches or the use of technological means are insufficient'.

10 European Committee for the Prevention of Torture (CPT), 'Body Searches: The Problems and Guidelines to Solutions', 28 September 2001, CPT (2001) 66.

11 Møller L, Stöver H, Jürgens R, Gatherer A and Nikogasian H, (eds.), *Health in prisons, A WHO guide to the essentials in prison health*, WHO Europe, 2007, p36; see also PRI/Thailand Institute of Justice, *Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (The Bangkok Rules), 2013, p63.

12 'Intrusive vaginal or anal searches shall be prohibited by law', Principle XXI, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

13 See Article 57 of the 2009 French Prison Law. In Brazil, five states have also prohibited invasive searches: Paraíba, Goiás, Rio Grande do Sul, Rio de Janeiro and Minas Gerais.

14 Bangkok Rules, Commentary to Rule 19.

15 See Rule 20 of the UN Bangkok Rules: 'Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches'.

What could monitoring bodies check?

- What is the legal framework regulating the use of body searches?
- Is it complemented by internal rules? Do they vary from facility to facility?
- Are the permissible situations when searches may be applied explicitly prescribed? Do they specify which type of search should be performed in which situation?
- Are staff aware of the regulations?
- Who decides on whether and which type of search is conducted? Do the rules allow for a large margin of discretion?
- What is the procedure for authorising strip and invasive body searches? Are the reasons, authorising officer and findings of the search properly documented?
- Are body searches applied systematically to all detainees? Are they applied routinely/ frequently or on a case-by-case basis?
- What sanctions are applied if a detainee refuses to undergo a body search?
- Are there any alternatives to body searches, in particular of an invasive nature, such as scanning machines or metal detectors?

3.2. Modalities of body searches

Even where legitimate in principle, searches can constitute inhuman or degrading treatment if they are conducted in a way that is excessive, humiliating, or that creates a feeling of harassment or inferiority. For female detainees, the experience may be re-traumatising due to sexual abuse in the past.

In its 2007 report on Ukraine, the CPT noted complaints of prisoners at Colony No.100 who reported that they were obliged to queue up naked in unheated premises for up to half an hour.[17] In 2012, the Committee documented that 'in a few cases, reference was also made to the excessive use of force employed by "in-house special-purpose forces" after inmates refused to undergo strip searches in corridors' at Correctional Colony No. 81.[18]

The European Court of Human Rights held that obliging a male prisoner to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands, showed a clear lack of respect for the applicant, and diminished in effect his human dignity. The Court concluded that it must have left him with feelings of anguish and inferiority capable of humiliating and debasing him.[19]

Searches, in particular strip and body-cavity searches, should be performed in privacy, in a dedicated place that is not in the field of vision of other staff or detainees. The procedure should be carried out in adequate sanitary and hygienic conditions.

A woman described the practice of strip searches at a women's correctional facility in Michigan: 'These incidents have caused me to get several vaginal bacterial infections (…). I was not getting these bacterial infections…until I came [to the prison]'.[20]

The humiliation of nudity in the context of detention should be mitigated by carrying out strip searches in two distinct steps. In order to avoid the person standing completely naked in front of the staff, the detainee should be asked to remove his/her upper clothes and the lower clothes in two separate steps.

The video-recording of strip searches as a safeguard and to allow for accountability has been subject to debate, as while it has the potential to prevent abuse, at the same time it infringes a person's right to privacy and dignity.[21]

What could monitoring bodies check?

- What are the procedures for body searches, upon admission and subsequently?
- What types of searches are applied in which situations?
- When are strip searches conducted?
- What is the procedure for each type of body search?

16 Report of the European Committee for the Prevention of Torture (CPT) 2011 visit to Greece, para. 50.

17 European Committee for the Prevention of Torture (CPT), Report on the visit to Ukraine from 9 to 21 October 2005, CPT/Inf (2007) 22, para. 149.

18 European Committee for the Prevention of Torture (CPT), Report on the visit to Ukraine from 1 to 10 December 2012, CPT/Inf (2013) 23, para. 17.

19 European Court of Human Rights, *Valašinas v. Lithuania*, 24 July 2001, para. 117.

20 American Civil Liberties Union, available at: http://www.aclu.org/invasive-search <accessed 28 October 2013>.

21 See PRI/APT Factsheet 'Video-recording in police custody', in *Detention Monitoring Tool: Addressing factors to prevent torture and ill-treatment*, 2013.

- How and where do body searches take place?
- Are strip searches conducted in two steps (first upper and then lower body)?
- Are detainees obliged to take positions that are embarrassing or degrading?

3.3. Staff carrying out body searches

Recent international standards and case law underline the need for body searches to be performed only by staff of the same gender.[22] In the specific case of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) detainees, their preference regarding the gender of the staff should be respected.

In Ukraine, where there were no female custodial staff in some places holding female detainees, the CPT stressed 'that persons deprived of their liberty should only be searched by staff of the same gender; any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender'.[23]

The number of staff present during the search is also highly relevant in the appraisal of whether or not body searches are conducted in an appropriate way, or contribute to humiliation. As a general rule, security does not require the presence of several staff and strip searches should ideally be carried out by one officer only. Where the presence of a second staff member is considered necessary – for security reasons or to provide a safeguard against abuse during searches – one officer should conduct the search while the other should only observe.

The Subcommittee on the Prevention of Torture determined as humiliating the practice of search procedures after a mass transfer from one unit to another, involving prisoners being 'strip searched in front of groups of security staff'.[24]

Staff performing body searches must be trained on how to carry out such a sensitive measure in a professional way, avoiding unnecessary intrusion and touching.[25]

It is also important for monitoring bodies to understand the broader staff working environment in order to identify potential incentives for overzealous body searches. Where management and institutional culture over-emphasise security considerations,[26] and where staff are sanctioned rigidly following even minor incidents, they will be more inclined to apply body searches rigorously and systematically.[27]

In recently developed standards for physicians, the participation of healthcare personnel has been considered unethical. 'The physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system'[28] and therefore, involvement in 'any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health' is in contravention of medical ethics for health personnel.[29]

The involvement of physicians in body-cavity searches is a more complex issue, given the risk of injury if not performed by a person with relevant medical skills. While the European Prison Rules prescribe that searches only be conducted by a medical practitioner,[30] standards of medical ethics suggest that they can be carried out by 'staff with sufficient medical knowledge and skills to safely perform the search'.[31] Where conducted by a physician, body-cavity searches should be performed

22 Rule 19 of the Bangkok Rules; European Prison Rules Rule 54.5; Principle XXI of the Inter-American Principles. In *Valasinas v. Lithuania*, the European Court of Human Rights held that obliging a male prisoner to strip naked in the presence of a woman prison officer, and touching with bare hands his sexual organs and then his food constituted a degrading treatment, op.cit.

23 Report of the European Committee for the Prevention of Torture (CPT) on its 2009 visit to Ukraine, CPT/Inf(2011)29, para. 42.

24 Report of the visit of the Subcommittee on the Prevention of Torture to the Maldives, 26 February 2009, CAT/OP/MDV/1, para. 201.

25 See Rule 19 of the UN Bangkok Rules, which explicitly requires searches to be 'carried out by women staff who have been properly trained in appropriate searching methods'.

26 See PRI/APT, *Balancing security and dignity in prison: a framework for preventive monitoring*, 2013.

27 In Argentina, Article 202 of the regulations regarding disciplinary measures for staff of federal penitentiary system provides that 'not conducting with due rigor and zeal, searches of the detainees, cells, bars, pavilions, doors, workshops and other places' constitutes a serious disciplinary offence. CELS, Derechos humanos en Argentina, Informe 2012, p231.

28 World Medical Association, Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993, and editorially revised by the 170th *WMA Council Session, Divonne-les-Bains, France, May 2005.*

29 Principle 3 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30 See European Prison Rule 54.6: 'There shall be no internal physical searches of prisoners' bodies by prison staff'. and Rule 54.7 'An intimate examination related to a search may be conducted by a medical practitioner only'.

31 World Medical Association, Statement on Body Searches of Prisoners.

by healthcare personnel who are not part of the regular healthcare service of the place of detention,[32] as their involvement in such a procedure would compromise the exclusivity of the physicians' curative function and the principle of informed consent.

The Council of Europe has noted that '[b]ody searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement'.[33] The CPT has stated that '[a] prison doctor acts as a patient's personal doctor. He should not carry out body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in'.[34]

Some medical experts have pointed to the possibility of giving the detainee a choice between having a trained member of detention staff or a physician carry out the search, drawing on the principle of informed consent for any medical intervention by physicians.

'This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. In such a case the physician should explain this to the prisoner. The physician should furthermore explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities.' (World Medical Association, Statement on Body Searches of Prisoners)

What could monitoring bodies check?

- Are searches conducted by staff of the same gender?
- Do staff involved in body searches receive specific training?
- How many officers are present during a search, in particular strip or invasive body searches?
- If body-cavity searches are conducted, who performs them? If detention staff, are they adequately trained? If physicians, what safeguards are in place to prevent an infringement of their curative role and the principle of informed consent?
- Where healthcare personnel are involved in searches, are the same personnel involved in providing medical care to the detainee(s)? Are physicians aware of the relevant standards of medical ethics?
- What sanctions are applied to staff in the cases of incidents within their area of responsibility? Does the system incentivise unnecessary, routine or disproportionate searches?

3.4. Persons in situation of vulnerability

While body searches are humiliating and degrading for any prisoner, some groups are disproportionately affected, such as women, children, LGBTI detainees, members of certain religious groups, ethnic or cultural minorities or persons with disabilities. Detainees labelled a 'national security threat' may be subject to discriminatory treatment, and so may prisoners on death row or those convicted to life imprisonment. Moreover, vulnerability is not static and will depend on the context. Individuals may be particularly vulnerable regardless of whether or not they belong to a particular group.

The educational, cultural and religious background of the detainees, including taboos on sexual matters, are factors that can either cause a search to be humiliating or degrading, or cause it to be perceived by the detainee as such. The European Court of Human Rights has recognised that for searches to be degrading or humiliating, 'it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others'.[35]

Where body searches are carried out by the opposite sex, women prisoners are particularly vulnerable to sexual abuse. The Special Rapporteur on Violence against Women described the improper touching of women during searches carried out by male prison

32 World Medical Association, Statement on Body Searches of Prisoners: 'If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner'.

33 Council of Europe, Committee of Ministers, Recommendation Concerning the Ethical and Organisational Aspects of Health Care in Prison, No. R (98) 7, 8 April 1998, para. 72.

34 CPT Standards, 2006 Edition, Extract from the 3rd General Report [CPT/Inf (93) 12], p38, para 73.

35 *Tyrer v. UK*, Application No. 5856/72, 1978, para. 32.

staff, as 'sanctioned sexual harassment'.[36] The Inter-American Court has ruled that it can amount to sexual rape. International standards therefore require all body searches performed on women to be carried out exclusively by women staff, out of the presence and sight of male staff. However, strip searches and even more so, vaginal searches, remain particularly humiliating and can be traumatic, even when carried out by female staff.[37] They should therefore only ever be a last resort.

Two female prisoners' testimony: 'My stomach and heart drops, when it's close to my visitor's time to go, because I know that I have to get strip-searched in this horrible manner' … 'When I went for my Parole Board Hearing, I was not able to concentrate or focus properly on the parole officer's questions. My mind was racing and I was full of fear and panic at the anticipation of having to be put through the strip-vaginal search procedure. I began to relive this event and became very upset, almost to the point of crying. I was sweating and having breathing trouble. I was really trying to keep my composure, but all I could think about was what was going to happen after the hearing was over.' … 'Out of fear and retaliation I did not file a grievance. Women who did file grievances were written up, sent to seg and subject to harassment.'[38]

LGBTI detainees may not be protected by the requirement for searches to be conducted by a staff member of same gender, which in particular affects transsexual detainees. Monitoring bodies should therefore underline the need for a specific policy for searches of LGBTI detainees, which allows transsexual detainees to express their preference regarding the gender of the staff member performing the search.[39]

Finally, there is the risk that searches can be used to target specific groups, with a view to humiliating, coercing or discriminating them. Monitoring bodies should therefore analyse thoroughly who is being searched, how often, and under what circumstances, in order to identify patterns and potential discrimination.

What could monitoring bodies check?

- How are searches on women performed, and who by?
- Are there special procedures regulating searches of LGBTI detainees?
- Are there any specific regulations/policies relating to children accommodated in detention with their parent? Do authorities take into account that such children are not detainees?
- Are some detainees or groups of detainees searched more frequently than others? What reasons do staff/registers indicate as reasons for this difference?

3.6. Searches on visitors and staff

Searches of visitors have the same rationale: to prevent them from passing dangerous or prohibited objects to a detainee, including items which could be used in escape attempts.

The safeguards described above (prescription by law, necessity and proportionality, modalities and staff) and the prerogative of alternatives[40] equally apply to visitors, while '[s]uch procedures have to recognise that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy'.[41] Intrusive search procedures are likely to discourage visitors, and consequently have a negative impact on the maintenance of family and social links which are essential for reintegration following release.

There should be clear rules about the types of items that are prohibited in detention and the information on these rules should be made visible to all visitors.

36 Report of the Special Rapporteur on Violence against Women of the mission to the United States of America on the issue of violence against women in state and federal prisons, E/CN.4/1999/68/Add.2, paras 55, 58.

37 See PRI/APT, *Women in detention: a guide to gender sensitive monitoring*, 2013.

38 American Civil Liberties Union, http://www.aclu.org/invasive-search <accessed 28 October 2013>

39 See PRI/APT, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, 2013; see also the *Directive on Searching of Inmates* issued in June 2013 by the Canadian Correctional Service, including an annex on 'Transgender searching requirements'.

40 In 2011, the Government of Argentina decided to install detectors to control the entry of relatives in prison (they are not fully in place yet). See CELS Derechos Humanos en Argentina, Informe 2012, p231.

41 Coyle A, *A Human Rights Approach to Prison Management*, p65.

Procedures for searching visitors need to be sensitive to the needs of children, women, elderly visitors and other vulnerable groups. In some countries, even vaginal searches of women visitors are a common abusive practice which should be abolished.

Women visiting relatives at a men's prison on the edge of Kabul were subjected to invasive body-cavity searches at the order of the prison's commandant, arguing that the measure was needed to keep out contraband. While most male visitors got into the American-financed prison with a mere pat down search, it was reported that almost every female visitor had to undergo a vaginal search without reasonable suspicion or recourse. 'We have been strictly ordered to search genital areas of all the women who are visiting the prisoners', one guard described, saying that she was still uncomfortable with the blanket order to search all women.[42]

Considering the rights of children of incarcerated parents, including to regularly visit their parent(s), the Committee on the Rights of the Child recommended measures 'to ensure that the visit context is respectful to the child's dignity and right to privacy' and urged states to 'ensure that security matters and policies on incarcerated parents take into account the rights of affected children'.[43]

The Scottish Public Services Ombudsman found that a 15-year-old girl visiting her father at a high security prison had been 'inappropriately searched' as it had been conducted in the absence of an appropriate adult. The girl had been with her 16-year-old brother, and was searched after setting off a metal detector. Subsequently, both children were denied the right to visit their father because the girl was not accompanied by an adult.[44]

Procedures for searching professional visitors, such as legal representatives, social workers and doctors, should be agreed with the appropriate professional bodies to ensure a balance between security and the right of confidential professional access.[45]

In 2012, a mental health counsellor and six nurses working at a prison in Portsmouth issued a lawsuit after, as employees of the companies holding contracts at the prison, they had been subjected to strip and visual body-cavity searches and were told they would be barred from the prison if they did not submit. As part of an ongoing investigation of drugs being brought into the prison it had been ordered that 'all civilian contract employees be subjected to a strip search and visual body-cavity search'.[46]

While detainees and their visitors are usually the focus of searches, detention staff may also bring dangerous or illicit items into the facility. In many countries, search procedures have therefore been established for staff. While in principle, measures to prevent malpractice, corruption and staff smuggling items are legitimate, the safeguards described for detainees and visitors apply equally to staff working in places of detention.

What could monitoring bodies check?

- What is the legal framework for searches of visitors?
- Are there clear rules regarding prohibited items? Are these rules visibly displayed?
- What is the procedure for searching visitors?
- Where strip searches are conducted, are they based on individual assessment? Do they take place out of sight of other staff and visitors?
- Is the specific vulnerability of children, women, elderly visitors, etc. taken into consideration?
- What are the consequences for visitors who refuse to undergo a body search? Are their visiting rights suspended? Does the detainee they came to visit face any consequences as well?
- What policies are in place for searches of social workers, lawyers and doctors?
- Are searches applied to staff? Are these clearly prescribed in law, and compliant with the standards described above?

42 'Afghan Prison's Invasive Searches of Female Visitors Stir Fear of Slipping Rights', *New York Times*, 16 March 2012; 'Afghanistan: End Invasive Searches of Women Visiting Prison', *Human Rights Watch*, 20 March 2012.

43 UN Committee on the Rights of the Child, *Report and Recommendations of the Day of General Discussion on 'Children of Incarcerated Parents'*, 30 September 2011, paras. 38 and 39; see also Rule 28 of the UN Bangkok Rules, requiring that visits involving children 'shall take place in an environment that is conducive to a positive visiting experience'.

44 'Girl "inappropriately searched" at jail', *Herald Scotland,* 25 September 2013.

45 Coyle A, *A Human Rights Approach to Prison Management*, p65.

46 American Civil Liberties Union of Virginia, 'Lawsuits Filed Against Portsmouth Sheriff and Other Jail Officials for Cavity Searches of Contract Workers', 30 April 2012; 'Female workers sue over Portsmouth strip searches', *Pilotonline.com*, 1 May 2012.

4. What can monitoring bodies do?

Body searches are an example of a measure that, while legitimate under certain circumstances, can constitute ill-treatment or even torture in others. By examining and analysing policies and practices on searches, monitors can address a systemic issue prone to abuse.[47]

Monitoring bodies, including National Preventive Mechanisms (NPMs), can play an essential role in enquiring into the reasons, conditions and modalities of the use of body searches in detention, and in analysing their necessity and proportionality, as well as the way in which they are conducted.

Through their observation of admission procedures, examination of registers (in particular registers of incidents and of disciplinary sanctions), interviews in private with detainees, staff and medical personnel, as well as with visitors (in particular relatives), monitoring bodies can assess whether body searches are legitimate and adequate security measures or give reason for concern at a systemic level.

Monitoring bodies also need to look at the broader context and the domestic legal framework. It is important to analyse whether the use of body searches is regulated at the legislative level, only at the level of decrees or circulars, or not at all. Where the legal framework is inadequate, monitoring bodies should recommend the introduction or revision of respective laws or regulations.

Even where a regulatory framework of general application is in place, practices may vary significantly from one institution to another, either legitimised by the nature of the place of detention and differing security considerations, or arbitrarily. Monitoring bodies therefore need to understand the context of the institution, and take into consideration the message sent by senior management regarding security procedures. By comparing procedures and practices in different places of detention, monitoring bodies may identify abusive search regimes as well as good practices, which can feed into their recommendations relating to the national regulatory framework. Monitoring bodies may also consider producing a thematic report on the use of body searches.[48]

The role of staff is essential in ensuring that body searches are conducted in a way that respects the dignity of detainees, visitors and staff. International standards underline the importance of 'competence, professionalism and sensitivity',[49] and monitoring bodies should address this in their recommendations, for example highlighting the need for staff to be trained to approach searches with sensitivity, in particular when dealing with detainees in situations of vulnerability.

47 See PRI/APT, *Balancing security and dignity in prison: a framework for preventive monitoring*, 2013.

48 See, for example, the 2011 annual report of the French NPM, p238 to 256 (in French). Contrôleur général des lieux de privation de liberté, *Rapport annuel d'activité* 2011. Available at: http://www.cglpl.fr/wp-content/uploads/2012/02/CGLPL_rapport-2011_texte.pdf <accessed 23 October 2013>.

49 Rule 21 of the UN Bangkok Rules.

Notes

Notes

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About this Factsheet

This Factsheet is part of PRI/APT's Detention Monitoring Tool, which aims to provide analysis and practical guidance to help monitoring bodies, including National Preventive Mechanisms, to fulfil their preventive mandate as effectively as possible when visiting police facilities or prisons.

All resources in the tool are also available online at www.penalreform.org and www.apt.ch.