



# Instruments of restraint

## Addressing risk factors to prevent torture and ill-treatment

***‘Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.’***

(European Committee for the Prevention of Torture)<sup>1</sup>

### 1. Definition and context

Measures such as the use of instruments of restraint may be necessary to provide security and order in a custodial setting: to protect persons deprived of their liberty from inter-prisoner violence; for self-defence, to prevent self-harm and suicide; and to prevent escape.

However, instruments of restraint pose a high risk for torture or other ill-treatment due to their highly intrusive nature and the risk of causing injury, pain and/or humiliation, and are often deliberately used as a torture tool. Some devices have been prohibited or condemned in general as degrading or painful. Others may be permitted in principle, but should be the exception when other methods have failed, rather than the rule.

Instruments of restraint are defined as external mechanical devices designed to restrict or immobilise the movement of a person’s body, in whole or in part.

A large variety of devices, with differing features, are in use, and new technology continues to emerge. In broad terms, instruments of restraint can be grouped into:

- ‘low-technology’ mechanical restraints – such as ankle cuffs, anklets, hand- or leg-cuffs, fetters, waist bands, wristlets, plastic cuffs, wraps, belts, shackles, chains, (weighted) leg irons or leg cuffs, gang chains,<sup>2</sup> finger- and thumb cuffs,<sup>3</sup> soft/fabric restraints, straightjackets;<sup>4</sup>
- so-called four/five/six-point restraints – such as restraint chairs, shackle boards and restraint beds,<sup>5</sup> isolation beds;<sup>6</sup> and
- body-worn electric-shock restraint devices<sup>7</sup> – such as stun belts, sleeves or cuffs.

There are various other ways to manage the movement of detainees for permissible purposes in a custodial setting. The configuration and infrastructure of the facility, adequate numbers of staff, who are well trained and have the relevant skills and competencies, an effective system for classification of detainees, and the separation of different categories of detainee, are all key factors in ensuring safety and order in custody.<sup>8</sup> By comparison, ‘poor prison management resulting in dysfunctional forms of control emerges as a major cause of interpersonal violence, and by implication modification of these practices (especially the removal of arbitrary coercive controls) is effective in reducing violence’.<sup>9</sup>

1. European Committee for the Prevention of Torture (CPT), *2nd General Report on the CPT’s activities 1 January – 31 December 1991*, [CPT/Inf (92) 3], 13 April 1992, para. 53.

2. Restraint device with several cuffs chaining a group of prisoners together.

3. Such devices are designed to be fastened around the wrist, ankle, waist, fingers, thumbs or toes to restrain free movement of the hands or legs, and can be made of metal, cloth or leather. Some instruments of restraint are designed so they restrict the movement of more than one part of the body. These are generally known as ‘combination’ cuffs and are most widely available as handcuffs and leg cuffs linked together with a long chain.

4. A jacket with overlong sleeves which are crossed and tied across the chest or back once the arms are inserted, leaving little or no movement for the arms.

5. Movable or stationary chairs, beds or boards, tying various points of the body (torso, chest, hands, legs, ankles) with belts and/or cuffs.

6. Beds molded in one piece and enclosed on all four sides.

7. These encircle various parts of the subject’s body (usually the waist, but variants have been developed to fit on legs or arms) and deliver an electric shock when a remote control device is activated.

8. United Nations, *Prison Incident Management Handbook*, 2013, p26.

9. Homel R and Thompson C, *Causes and prevention of violence in prisons*, Griffith University: Sydney, 2005. Available at: [http://www.griffith.edu.au/\\_ata/assets/pdf\\_file/0003/188706/causes2.pdf](http://www.griffith.edu.au/_ata/assets/pdf_file/0003/188706/causes2.pdf) <accessed 22 October 2013>

The Standard Minimum Rules revised in 2015 (the Nelson Mandela Rules)<sup>10</sup> explicitly acknowledge the concept of dynamic security and encourage prison administrations ‘to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts’.<sup>11</sup>

“ [G]enerally the literature supports the notion that the more coercive the prison environment the greater the potential for violence. This is especially so where prison management and treatment of prisoners are perceived by prisoners as unfair or illegitimate, as this strengthens prisoner solidarity in opposition to the authorities. This in turn threatens the legitimacy of the regime and reduces prisoner compliance. Conversely, prisons that provide more opportunities for prisoner participation in education and vocational programs and promote self-efficacy, generally report reduced levels of rule violations and violence. ”<sup>12</sup>

This Factsheet focuses specifically on the use of mechanical restraints. It outlines risk factors deriving from the use of such devices in the penitentiary context – in police custody, prisons and during transfers. It does not cover its use in psychiatric institutions,<sup>13</sup> other places of deprivation of liberty, or during deportation.<sup>14</sup>

## 2. What are the main standards?

Prohibitions and limitations of use, as well as the manner in which instruments of restraint may be applied, derive from the prohibition of torture and cruel, inhuman or degrading treatment or punishment, and from the obligation to respect and protect the human dignity of persons deprived of their liberty.

As a consequence, the use of restraints that are ‘inherently degrading or painful’ is not permissible under any circumstances. This should be read in the light of the commentary to Article 5 of the UN Code of Conduct for Law Enforcement Officials, which states that the term *cruel, inhuman or degrading treatment or punishment* ‘should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental’.

The use of restraints should be prescribed by law, and be restricted by the principles of necessity and proportionality.<sup>15</sup> International standards require that restraints are used restrictively, only in exceptional cases, where other methods have been exhausted and failed. Standards developed for the use of force and firearms indicate as permissible purposes: self-defence or defence of others against the imminent threat of death or serious injury; to prevent the perpetration of a particularly serious crime involving grave threat to life; to prevent escape; however, only when less extreme means are insufficient to achieve these objectives.<sup>16</sup>

Instruments of restraint should only be used for the shortest possible period of time, and should never be applied as a punishment.<sup>17</sup> The role of doctors is guided – and limited – by standards developed on medical ethics.<sup>18</sup>

### Main references

- UN Convention against Torture, Articles 1, 2, 4, 10, 11, 12, 13, 15 and 16
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Code of Conduct for Law Enforcement Officials<sup>19</sup>
- UN revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rules 47-49, 76 and 82
- UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 64
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 24
- European Prison Rules, Rule 68
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians

10. Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN Commission on Crime Prevention and Criminal Justice on 22 May 2015, endorsed by the Economic and Social Council on 9 September 2015, UN-Doc. E/RES/2015/20 and adopted by UN General Assembly Third Committee on 5 November 2015, UN-Doc. A/C.3/70/L.3 (at the time of printing this Resolution was pending adoption by the plenary of the UN General Assembly).

11. Revised Standard Minimum Rules, Rules 38 (1) and 76 (1c).

12. *Ibid.*

13. See European Committee for the Prevention of Torture (CPT) Standards, para. 36 et seq and 47-50; and CPT 16th General Report on the CPT's activities 1 August – 31 July 2006, 16 October 2006, [CPT/Inf (2006) 35].

14. See CPT 7th General Report, [CPT/Inf (97) 10], 22 August 1997, paras. 24 to 36]; 13th General Report [CPT/Inf (2003) 35].

15. Article 3, Code of Conduct for Law Enforcement Officials; Rule 48 of the revised Standard Minimum Rules; for the application of these guiding principles on restraints see Report of the Special Rapporteur on Torture, 23 December 2003, E/CN.4/2004/56, para. 18.

16. See revised Standard Minimum Rules, Rule 47 (2) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9; see also UN Code of Conduct for Law Enforcement Officials, Articles 2, 3, 6 and 15; for application of these guiding principles on restraints see Special Rapporteur on Torture, 2003, UN-Doc. E/CN.4/2004/56, para. 18.

17. Revised Standard Minimum Rules, Rules 48 (1c) and 43 (2).

18. Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians; see also Rule 46 (1) of the revised Standard Minimum Rules.

19. Article 1(a): The term ‘law enforcement officials’ includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

### 3. Types and situations of risk

#### 3.1. Regulation

The need for regulation of instruments of restraint stems from the requirement that their use must be lawful. Clear regulations and policies should be put in place by central authorities on prohibited devices, the circumstances under which restraints may be applied, and clarifying the risks linked to their use.

This is supported by the revised Standard Minimum Rules which stipulate that instruments of restraint should only be used when authorised by law.<sup>20</sup> The UN Committee against Torture has also emphasised the need to 'strictly regulate the use of physical restraints in prisons, (...) juvenile prisons and detention centres for foreigners with a view to further minimizing its use in all establishments',<sup>21</sup> and to 'keep under constant review the use of instruments of restraint that may cause unnecessary pain and humiliation'.<sup>22</sup>

Given the lack of standardised definitions, the number of different devices and constant technological developments, any list of equipment should be illustrative rather than exclusive, and should be revised on a regular basis. Guidance should not be limited to the means of restraint but incorporate admissible and inadmissible purposes, as well as the aim of preventing inhuman or degrading treatment or punishment.

Regulations should include a 'formal accountability structure (...) in each institution and throughout the prison service' since '[a]ll staff must be accountable for their conduct and decisions and in particular for the use of force and restraints (...)'.<sup>23</sup>

#### What could monitoring bodies check?

- Is there a regulation, compliant with international standards, at the level of the central prison administration which determines which devices of restraint are admissible?
- Is the regulation comprehensive and precise enough to effectively govern the use of restraints on persons deprived of their liberty?
- Does the regulation stipulate that other means must be exploited first?
- Does its scope explicitly include the use of restraints during transfers of detainees?
- Are the prison administration and staff aware of the regulation?

- Are the policies reviewed regularly? Who is in charge of initiating and undertaking such a review? Does it ensure that the most recent knowledge is taken into consideration, including on health risks associated with the use of certain restraints?
- How is any revised regulation brought to the attention of prison administrations and staff, and who is in charge of notifying all relevant actors of an updated regulation?
- Are staff held to account if found to be using restraints unnecessarily, disproportionately or in a painful or humiliating way?

#### 3.2. Prohibited instruments

Both the Special Rapporteur on Torture and the Committee against Torture have condemned methods of restraint that are inherently inhuman, degrading or painful, or have such effects.<sup>24</sup> Rule 47 (1) of the revised Standard Minimum Rules explicitly prohibits the use of chains, irons, or other instruments of restraint that are inherently degrading or painful. This is mirrored in Rule 68 (1) of the European Prison Rules. Fabric leg restraints, appropriately tested and selected in line with human rights standards, could provide a more humane, yet effective, alternative to the use of 'metal on skin'.

**On 10 December 2003 the Mozambique Human Rights League visited Maputo's Maximum Security Prison to find five prisoners held in leg-irons, whilst a sixth prisoner was shackled with chains. The prisoners had spent four days and nights with their ankles shackled or chained together, causing them great pain by pressing into their flesh whenever the prisoners bent their knees. They had cut into the flesh of one prisoner who tried to relieve the pain by inserting cloth between the metal and the skin.**<sup>25</sup>

It should be noted that, in the light of constantly changing technology, any list of prohibited instruments in national regulations should be illustrative rather than exclusive, and should have as its objective the prohibition of any device that is degrading, humiliating or painful.

<sup>20</sup> Revised Standard Minimum Rules, Rule 47 (2).

<sup>21</sup> Report of the UN Committee against Torture to the UN General Assembly – 47th/48th session, A/67/44, p47.

<sup>22</sup> For example, UN Committee against Torture, *Concluding Observations: New Zealand*, 2009, CAT/C/NZL/CO/5, para. 9.

<sup>23</sup> UN Office on Drugs and Crime (UNODC), *Handbook for Prison Leaders*, 2010, p40.

<sup>24</sup> Report of the Committee against Torture – 23rd/24th session, A/55/44, para. 180 (c), reiterated by the Special Rapporteur on Torture in his report to the UN General Assembly, 9 August 2013, A/68/295, para. 58.

<sup>25</sup> Community Law Centre, University of the Western Cape, *Civil Society Prison Reform Initiative, Newsletter No. 20*. Available at: <http://www.omegaresearchfoundation.org/assets/downloads/publications/comm%20law%20centre.pdf> <accessed 22 October 2013>.

Concerns have been raised, for example, about weighted leg cuffs,<sup>26</sup> leg irons, bar fetters,<sup>27</sup> finger-cuffs<sup>28</sup> and thumb cuffs<sup>29</sup> on the grounds that they purposefully cause pain, anguish or humiliation.

The use of body-worn electro-shock restraint devices has been increasingly condemned by both the UN Committee against Torture and the Special Rapporteur on Torture.<sup>30</sup> The European Committee for the Prevention of Torture (CPT) has appraised their use as ‘inherently degrading’, highlighting that ‘the scope for misuse is particularly high’ and recommending ‘alternative means of ensuring security during the movements of detained persons’.<sup>31</sup>

Concerns relate to the infliction of severe physical pain, the humiliating and degrading effect, and the fact that electric shocks can be delivered remotely, meaning that the detainee must anticipate activation at any moment.

“The electrical current not only causes severe pain, with one survivor describing it as ‘very intense shocking pain, so intense I thought that I was actually dying’, but can cause short and long term physical side effects. These include; muscular weakness, urination and defecation, and heartbeat irregularities and seizures.”<sup>32</sup>

Methods of restraint, which are likely to obstruct the airways partially or wholly, or forcing the detainee into positions where he/she risks asphyxia, must also not be used.<sup>33</sup>

In 2004, a 39-year-old woman died in Florida from strangulation from a leather belt whilst trying to wriggle free from a restraint chair. Hands cuffed behind her back, she was tied onto the chair with a leather belt around her chest and a nylon strap around her waist. Her legs were shackled and her ankles cuffed. The chair had been modified and a leather belt was used to restrain her across the chest rather than the manufacturer approved ‘crisscross’ straps. When officers found her, she had wriggled off the chair, though her ankles and legs were still secured to its base, and the leather belt was around her neck. It remained unclear why the chair had been modified. The corrections officer who strapped the woman said she hadn’t received training on its use.<sup>34</sup>

#### What could monitoring bodies check?

- Who decides which equipment is made available in the facility?
- Which instruments of restraint are in use in the place of detention? Are body-worn electro-shock devices used?
- Do existing regulations explicitly incorporate a prohibition of the use of devices that are inherently inhuman, degrading or painful, or have a humiliating or degrading effect? If so, are staff aware of what types of equipment are prohibited?
- Are prison staff aware of concerns relating to asphyxia?

26. See Special Rapporteur on Torture, Mission to China, 10 March 2006, E/CN.4/2006/6/Add. 6, para. 68.

27. See Study on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, 13 January 2003, E/CN.4/2003/69, para. 9, with reference to verdict of the Sindh High Court (Pakistan) dated 30 December 1993, p3 (quoted in E/CN.4/1997/7/ Add.2, para. 59 and note 1).

28. See US Bureau of Industry and Security, Code of Federal Regulations, 1 January 2013, Specially designed implements of torture, including thumbscrews, thumbcuffs, fingercuffs, spiked batons, and parts and accessories, N. E. S., C FR 742.11. Available at: <http://www.gpo.gov/fdsys/granule/CFR-2013-title15-vol2/CFR-2013-title15-vol2-sec742-11/content-detail.html> <accessed 24 October 2013>.

29. See Amnesty International and Omega Research Foundation, *No more delays: putting an end to the EU trade in ‘Tools of Torture’*, stressing that ‘the practical utility of thumb-cuffs for legitimate law enforcement purposes is unproven, while their propensity for use in “stress positions” amounting to torture and other ill-treatment is evident.’, June 2012, AI-Index: ACT 30/062/2012, p20.

30. For example, Report of the Committee against Torture, Section M United States of America, A/55/44, 15 May 2000, para. 179(e); Special Rapporteur on Torture, *Report to the UN General Assembly*, 9 August 2013, A/68/295, para. 58. The European Commission has classified them as a device ‘which has no practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment’, EC Regulation 1236/2005, Article 3 and Annex II, para.2.1.

31. CPT, *20th General Report*, p33 et sqq; see also Council of Europe (2010) Press release: ‘Council of Europe anti-torture committee calls for strict regulation of electrical discharge weapons’, 26 October 2010. Available at: <http://www.cpt.coe.int/en/annual/press/2010-10-26-eng.htm> <accessed 22 October 2013>

32. Omega Research Foundation, quoting Yoon, P K (2003) ‘The “Stunning” Truth: Stun Belts Debilitate, They Prejudice, and They May Even Kill’, *Capital Defense Journal* 15, Issue 2, pp385, 286.

33. See in the context of deportations, *Guidelines of the Committee of Ministers of the Council of Europe on Forced Return*, Guideline 19, CM(2005)40 final, 2005.

34. ‘Sheriff to pay \$500,000 to settle jail suit’, *Orlando Sentinel*, 27 April 2007. Available at: [http://articles.orlandosentinel.com/2007-04-27/news/LRESTRAINT27\\_1\\_restraint-chair-corrections-staff-jail](http://articles.orlandosentinel.com/2007-04-27/news/LRESTRAINT27_1_restraint-chair-corrections-staff-jail) <accessed 23 October 2013>.

### 3.3. Prohibited use and modalities

Instruments of restraint are often directly and purposefully used as a torture tool, or to immobilise detainees who are then beaten or otherwise abused.

The Special Rapporteur received consistent allegations about torture in Bata Central Police Station in Equatorial Guinea, applied during interrogation mostly at night in the interrogation room in the basement. Many interviewees explained how they had been hung up on handcuffs, suspended in various ways from a relatively short metal bar between two black tables for prolonged periods; in these positions the victims were swung, or had heavy devices such as car batteries placed on top of their backs.<sup>35</sup>

Beyond deliberate use for torture, the use of handcuffs and other means of restraint during interrogation is problematic if used to 'soften up' a detainee, to intimidate or 'break' them in order to obtain a confession or statement.

As the Subcommittee on Prevention of Torture stressed, '[n]o person should be handcuffed in custody without a valid grave security reason',<sup>36</sup> and the use of physical restraints is legitimate only if **lawful, necessary and proportionate**.<sup>37</sup>

Restraints should not be applied other than in exceptional circumstances, when no other options are available, in order to prevent the detainee from inflicting injuries to others or themselves, or prevent escape during a transfer.<sup>38</sup>

The revised Standard Minimum Rules clarify that instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement, and that the method of restraint should be the least intrusive possible. For example, automatic resort to restraints is not called for when a brief period of manual control combined with de-escalation skills would suffice. Where instruments of restraint are used, they should be imposed only for the time period required and removed as soon as

possible after the risks posed by unrestricted movement are no longer present.<sup>39</sup> As the UN Office on Drugs and Crime (UNODC) *Handbook for Prison Leaders* stresses: 'restraints should only be used as short-term measures for the high-risk high security prisoners' and a 'continuous risk assessment will help determine the length of time that is necessary for such measures'.<sup>40</sup>

A prisoner in Ukraine, who had gone blind during pre-trial detention, despite his disability and no previous attempts of escape or signs of any violent behaviour, was handcuffed any time he left his cell – in addition to being escorted by three wardens with a dog, including during family visits.<sup>41</sup>

Where the use of restraints is legitimate in principle, the manner in which they are applied must not be **degrading or painful**,<sup>42</sup> eg. handcuffing a person tighter than necessary, or needlessly using handcuffs in humiliating situations (eg. in front of their family in the visiting room).

Where devices have become hazardous due to abrasion, they must be discarded immediately. For example, rusty chains that cut detainees may result in infection, including tetanus.

Furthermore, Rule 43 (2) of the revised Standard Minimum Rules explicitly prohibits the use of instruments of restraint as a sanction for disciplinary offences.<sup>43</sup>

According to a report of the Asian Human Rights Commission, Jeong Phil-ho, age 40, was restrained with leather belts and handcuffs for 466 days, from 8 March 2000 until 18 June 2001, in Gwangju and Mokpo Penitentiaries (Republic of Korea) after an escape from Gwangju District Court in February 2000. The leather belts bound the entire upper half of the inmate's body, and he could not freely wash, eat, sleep or carry out any other normal human activity.

35. Report of the Special Rapporteur on torture: Mission to Equatorial Guinea, 16 December 2009, A/HRC/13/39/Add.4, para. 41.

36. Report on the 2008 visit of the Subcommittee on Prevention of Torture (SPT) to Benin, 15 March 2011, CAT/OP/BEN/1, para 107.

37. Article 3, Code of Conduct for Law Enforcement Officials, adopted by UNGA resolution 34/169 of 17 December 1979.

38. Rule 47 (2) of the revised Standard Minimum Rules; Principle 9, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and UNODC *Handbook for Prison Leaders*, 2010, p107.

39. Revised Standard Minimum Rules, Rule 48.

40. UNODC, *Handbook for Prison Leaders*, 2010, p107.

41. European Court of Human Rights, *Averzin v Ukraine*, Judgment, Fifth Section, Appl. No. 23893/03, 15 August 2012.

42. Report by the Special Rapporteur on torture to the UN ECOSOC, 23 December 2003, E/CN.4/2004/56, para. 45.

43. See also Report by the Special Rapporteur on torture to the UN ECOSOC, 23 December 2003, E/CN.4/2004/56, para. 45, and *General Report on the CPT's activities 1991*, para. 53, *op.cit.*

Given the circumstances, human rights organisations suspected that the prison officers punished him as revenge for his previous attempt to escape.<sup>44</sup>

With regard to prevention of **self-harm and suicide** in prisons, the World Health Organization (WHO) states that 'suicidal inmates may require protective clothing or restraints', but that 'because of the controversial nature of restraints, clear policies and procedures must be in place if they are to be used. These must outline the situations in which restraints are appropriate and inappropriate, methods for ensuring that the least restrictive alternatives are used first, safety issues, time limits for use of restraints, the need for monitoring and supervision while in restraints, and access to mental health staff'. The WHO further recommends the 'provision of social support' and 'routine visual checks and constant observation for acutely suicidal inmates' as alternatives.<sup>45</sup>

In order to allow for scrutiny, proper **recording** of the use of restraints should be mandatory,<sup>46</sup> including 'the security reason and length of the use of the restraint'.<sup>47</sup>

When a prisoner indicated to the Special Rapporteur that the bar fetters had all been removed from some 200 to 300 prisoners the previous evening in anticipation of the Special Rapporteur's visit, he inspected several pages of the fetters register, which contained a list of several hundred names and the dates on which fetters had been imposed, but not a date on which the fetters had been removed. At Karachi Central Jail, visited a few days later, all the relevant information was properly recorded in what was presented as the Fetters Register Entries. Entries were neatly written in what appeared to be the same hand and the same ink.<sup>48</sup>

The European Committee for the Prevention of Torture (CPT), conscious of injuries that may be sustained, has recommended that 'when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision'.<sup>49</sup>

### What could monitoring bodies check?

- In which situations do prison staff resort to the use of instruments of restraint?
- Do the situations in which restraints are applied, the way or duration of use, indicate they are in fact used as a punishment?
- For how long are restraints applied? When are they removed?
- Is the use documented in the prisoner's file and/or the register of incidents, including the reasons for its application, in order to allow for scrutiny?
- Is the necessity of the use of restraints discussed and assessed in individual cases by the prison administration retrospectively?
- Are instruments of restraint used in order to address the risk of self-harm and suicide? Who takes the decision and based on what considerations? Are alternative ways considered and exploited before recourse is made to restraints?
- Are injuries from the use of restraints recorded and treated?

### 3.4. Use during transfer

While the use of instruments of restraints can be justified as a precaution against escape during a transfer (eg. from the police station to a penitentiary facility, to court or hospital), they should 'not be used as a matter of course when a prisoner is being transferred from one location to another, either within a prison or outside the prison. In each case, their use should be based on an individual assessment of the risk posed by the prisoner'.<sup>50</sup>

A male prisoner in France, aged 74, was taken to hospital for an operation. Prison staff were issued with instructions that he should be monitored under normal supervision, at the discretion of the senior escorting officer. After being transported to the hospital in handcuffs he remained handcuffed for the rest of the day. During the night he was restrained by a chain attached to his ankles and to the bedpost, making any movement difficult or painful and sleep impossible.<sup>51</sup>

44. Asian Human Rights Commission, 'Chained and segregated in Korean prisons'. Available at: <http://www.humanrights.asia/resources/journals-magazines/article2/0204/chained-and-segregated-in-korean-prisons> <accessed 22 October 2013>

45. World Health Organization/International Association for Suicide Prevention, *Preventing suicide in jails and prisons*, 2007.

46. See, for example, UN Committee against Torture, *Concluding observations: New Zealand*, 2009, CAT/C/NZL/CO/5, para. 9; European Committee for the Prevention of Torture (CPT), *2nd General Report on the CPT's activities 1991*, para. 53; UNODC, *Handbook on Prisoners with Special Needs*, 2009, p74.

47. CAT/OP/BEN/1, para. 107, *op.cit.*

48. Report of the Special Rapporteur on torture, Visit to Pakistan, 15 October 1996, E/CN.4/1997/7/Add.2, paras. 54 and 56.

49. *2nd General Report on the CPT's activities 1991*, para. 53, *op.cit.*

50. Coyle A, *A Human Rights Approach to Prison Management*, 2009, p65.

51. European Court of Human Rights (ECtHR), *Hénaf v France* (No. 65436/01), 27 November 2003.

Furthermore, the revised Standard Minimum Rules (Rule 47/2a) provide that restraints must be removed when the prisoner appears before a judicial or administrative authority to avoid humiliation but also in order to prevent situations compromising the presumption of innocence.

### What could monitoring bodies check?

- Are restraints used routinely during transfers or only following an individual assessment of risk? Who takes this decision and based on what considerations and facts?
- Which instruments of restraint are used for transfers? Do they constitute the least intrusive means to address the risk of escape?
- When are restraints attached and when are they removed?
- Do detainees have to appear in restraints before a court or other authority?

### 3.5. The role of doctors

Standards developed on **medical ethics** prohibit healthcare personnel from ‘participat[ing] in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the detainee, his fellow detainees, or his guardians, and presents no hazard to his physical or mental health’.<sup>52</sup> The revised Standard Minimum Rules also reflect this principle by stressing that health-care personnel should not have any role in the imposition of disciplinary measures or other restrictive measures.<sup>53</sup>

“The health professional should not perform any medical duties on shackled patients, inside or outside the custodial setting. The only exception should be where, in the health professional’s judgment, some form of restraint is necessary for the safety of the individual, the health professional and/ or others, and treatment cannot be delayed until a time when the individual no longer poses a danger. In such circumstances, the health professional may allow the minimum restraint necessary to ensure safety.”<sup>54</sup>

### What could monitoring bodies check?

- What role do doctors play in the use of restraints?
- Do detainees have access to medical care following the use of restraints in order to check any health effects suffered?
- Are healthcare personnel aware of the standards of medical ethics (see above)?

### 3.6. Specific groups

Explicit standards have been enshrined relating to the use of restraints for children (up to the age of 18) and for women.

Restraints applied on children must be ‘used only as a last resort and exclusively to prevent harm to the child or others’ and all methods of physical restraint for disciplinary purposes should be abolished’.<sup>55</sup>

The use of instruments of restraint on women during labour, during birth and immediately after birth has been prohibited explicitly, in 2010, by the UN Bangkok Rules and is reiterated by the revised Standard Minimum Rules.<sup>56</sup>

**An obstetrician and gynecologist explains: ‘Women in labour need to be mobile so that they can assume various positions as needed and so they can quickly be moved to an operating room. Having the women in shackles compromises the ability to manipulate her legs into the proper position for necessary treatment. The mother and baby’s health could be compromised if there were complications during delivery, such as hemorrhage or decrease in fetal heart tones. If there were a need for a C-section (caesarean delivery), the mother needs to be moved to an operating room immediately, and a delay of even five minutes could result in permanent brain damage for the baby.’<sup>57</sup>**

Furthermore, restraints must never be used on a discriminatory basis, and vulnerabilities need to be taken into account regardless of the existence of

<sup>52</sup>. Principle 5 of the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians.

<sup>53</sup>. Revised Standard Minimum Rules, Rule 46 (1).

<sup>54</sup>. Dual Loyalty & Human Rights in Health Professional Practice; Proposed Guidelines & Institutional Mechanisms, para. 13.

<sup>55</sup>. Committee on the Rights of the Child, *Concluding observations on United Kingdom and Northern Ireland*, 20 October 2008, UN-Doc. CRC/C/GBR/CO/4, para. 39; see also Rule 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and Committee against Torture, *Concluding observations on the United Kingdom* (6-31 May 2013), advance unedited version, para. 28. Available at: <http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf> <accessed 22 October 2013>.

<sup>56</sup>. Rule 24, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); Rule 48 (2) of the revised Standard Minimum Rules.

<sup>57</sup>. Amnesty International, ‘Not part of my sentence: Violations of the Human Rights of Women in Custody’, *AI Index*: AMR 51/01/99, March 1999.

explicit standards, for example regarding sick or injured detainees, persons with disabilities, minority groups or indigenous peoples.<sup>58</sup>

### What could monitoring bodies check?

- Are instruments of restraint used on children? Which devices are these, and who authorises their application? Do the reported cases indicate that application would be avoidable by use of other means?
- Are women in advanced pregnancy shackled or otherwise restrained? How do authorities handle transfers to hospital for delivery?
- Is an unequivocal prohibition in place regarding the use of shackles on women during labour, during birth and immediately after birth? Are personnel aware of the respective prohibition in the UN Bangkok Rules?
- Are restraints applied in a discriminatory manner against certain detainees or groups?

### 3.7. Training

The revised Standard Minimum Rules require training before entering duty as well as in-service training courses and specify the minimum elements of such training. These explicitly include security and safety, the concept of dynamic security, use of force, and instruments of restraint.<sup>59</sup> The Basic Principles for Law Enforcement Officials also require training to include issues of police ethics and human rights, including the peaceful settlement of conflicts, methods of persuasion, negotiation and mediation.<sup>60</sup>

In fact, a 'dynamic security' approach, combining positive staff-prisoner relationships with fair treatment and purposeful activities, and techniques of mediation and de-escalation, has been shown to be a more effective means to ensure order in custody as it allows for the anticipation of problems and security risks.<sup>61</sup>

**“ The first message which staff must learn is that prevention is always better than cure. It is extremely rare that a major incident will occur without any advance warning. In almost all cases there will be some prior**

**indication of a build-up of tension at an individual or a group level. This is where the benefits of dynamic security will become apparent. ”**<sup>62</sup>

The revised Standard Minimum Rules provide that the prison administration 'should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness'. Furthermore they call for special physical training to enable staff to restrain aggressive prisoners.<sup>63</sup>

The importance of training on the use of physical restraints has been stressed by the UN Committee against Torture,<sup>64</sup> and in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.<sup>65</sup>

### What could monitoring bodies check?

- Does training include skills for the peaceful settlement of conflicts, methods of persuasion, negotiation and mediation?
- Do training curricula include the use of restraints?
- Is the curriculum based on the international standards outlined in this Factsheet?
- Do staff receive practical training in using minimal force? How many of the staff in the place of detention have undergone such training? When was the last refresher session?

## 4. What can monitoring bodies do?

Given the effect on detainees on a regular basis and the high risk of misuse of instruments of restraint, monitoring bodies may want to consider a comprehensive assessment of regulations, policies, devices in use, and application in practice.

Members of monitoring bodies will need to make themselves familiar with different types of restraints, their intended purpose and their (health) risks, in general and relating to specific situations or individuals. For example, restraint chairs have been documented to have lethal consequences when combined with the use of drugs/medication, mental illness or violent altercations.<sup>66</sup>

<sup>58</sup>. See also UNODC *Handbook on Prisoners with Special Needs*, 2009, p74.

<sup>59</sup>. Revised Standard Minimum Rules, Rules 75, 76.

<sup>60</sup>. Article 20, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>61</sup>. See PRI/APT, *Balancing security and dignity in prisons: a framework for preventive monitoring*, 2013.

<sup>62</sup>. Coyle A, *A Human Rights Approach to Prison Management*, 2009.

<sup>63</sup>. Revised Standard Minimum Rules, Rules 49 and 82 (2).

<sup>64</sup>. UN Committee against Torture, *Concluding observations on Germany*, 12 December 2011, CAT/C/DEU/CO/5, para. 16.

<sup>65</sup>. Principle XX.

<sup>66</sup>. 'Death in the Restraint Chair', Association of Alternative News Media, 17 September 2004. Available at: <http://www.altweeklies.com/aan/death-in-the-restraint-chair/Story?oid=139208> <accessed 22 October 2013>



As new technology is constantly emerging, monitors have the difficult task of keeping up to date with the new instruments in use, and with evidence related to the safety and safe use of devices (and techniques) of restraint. To this end, monitoring bodies may need to enquire why and how certain instruments are purchased (either by the central administration or the individual facility) and examine information provided by manufacturers about the intended purpose and 'safe use'.

Monitors may want to ask prison staff how they apply such devices. Open questions on what instruments are in use, in which situations, for how long and whether prison staff perceive them as 'effective' may generate more uninfluenced information than asking how requirements of necessity and proportionality are met. It may be appropriate for monitors to inspect the facilities to locate such instruments on their own. Monitors can also enquire whether detainees' files include any mention of the application of restraints and the reasons for it.

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**In Lahore, the Inspector General and the Superintendent initially denied that they even had fetters available to show the Special Rapporteur. During the visit to the punishment cell block a member of the delegation saw approximately a dozen leg irons neatly stacked against the wall of an empty cell.<sup>67</sup>**

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Monitoring bodies may find that prison staff are ignorant of the regulations as well as the risks, or that they perceive the use of restraints to be the easiest or indeed only way to deal with tensions, inter-prisoner violence or the risk of self-harm or suicide.

The reports and recommendations of monitoring bodies should therefore include guidance on alternative, human rights compliant methods to cope with the difficult situations that may occur in custodial settings.

Recommendations may need to be directed to the central administration, if regulation is lacking or inconsistent with international standards, or to the particular detention administration where their use in practice does not adhere to the directives in place. The devices in use and their application may differ considerably depending on the type of detention (eg. whether police custody, prison, detention centre pending deportation or juvenile detention facility), and may even vary from one place of detention to another.

Lastly, authorities may tell monitors that they can conduct an interview with a certain detainee, but only if he/she remains handcuffed. Monitors will have to take a decision on whether the conditions of such an interview provide the atmosphere needed for a confidential, uninfluenced conversation. Where security concerns do in fact exist, alternative means should be sought, such as the presence of a guard in sight but out of hearing. If the interviewee was not expecting such a situation, the monitors should reassure themselves that he/she still consents to participate in the interview.

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<sup>67</sup>. See E/CN.4/1997/7/Add.2, paras. 54 and 56, *op.cit.*





Penal Reform International and the Association for the Prevention of Torture (APT) would like to thank Andrea Huber for drafting this paper and the Omega Research Foundation for their contribution.

This paper has been produced under Penal Reform International's project *Strengthening Institutions and Building Civil Society Capacity to Combat Torture in 9 CIS Countries*, in partnership with the Association for the Prevention of Torture and with the financial assistance of the European Instrument for Democracy and Human Rights (EIDHR).

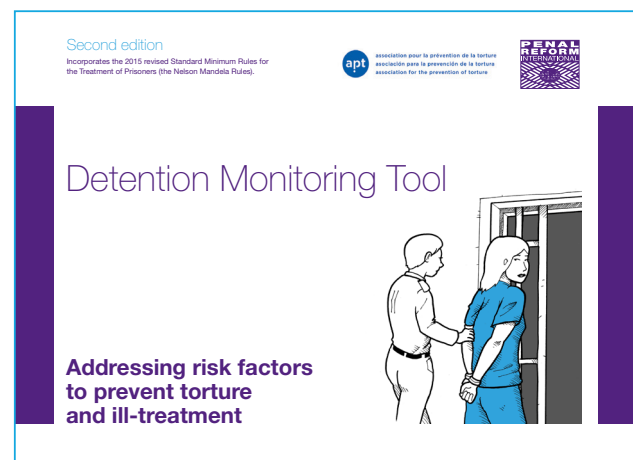
Second edition © Penal Reform International 2015. First published in 2013.

The reprint and update of this paper to incorporate the 2015 revised Standard Minimum Rules for the treatment of prisoners (the Nelson Mandela Rules) was made possible by the financial assistance of the UK Government.

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We promote alternatives to prison which support the rehabilitation of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Sub-Saharan Africa, Eastern Europe, Central Asia and the South Caucasus, and work with partners in South Asia.

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