

Prisoner Lives Cut Short: The Need to Address Structural, Societal and Environmental Factors to Reduce Preventable Prisoner Deaths

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ABSTRACT

The State duty to prevent preventable prisoner deaths is easy to state and substantiate. Yet prisoner death rates are increasing around the world and are often much higher than those in the community. To understand why this is happening, the findings and recommendations of the country reports of international oversight bodies and thematic reports from international rapporteurs are synthesised with contemporary rights-informed penal standards, multi-disciplinary scholarship, non-governmental organization reports and media extracts. On the basis of this knowledge, this reform-oriented article explores the impact of structural, societal and environmental factors on natural and violent prisoner deaths and how these factors operate cumulatively to create dangerous and life-threatening custodial environments. The paper makes recommendations to reaffirm and enumerate the positive obligation to protect prisoners' lives, develop specialist standards, adopt a broader approach to prison oversight and create a specific United Nations mandate on prisoner rights.

KEYWORDS: prisoner deaths, duty to protect life, violence in prisons, natural causes, structural, societal and environmental factors contributing to deaths in custody

1. INTRODUCTION

In 2019, the United Nations (UN) High Commissioner for Human Rights stressed that the issue of prisoner deaths was one of the most 'important challenges pertaining to the protection of persons deprived of their liberty'.¹ This report focused on the vertical, horizontal and environmental causes of deaths in situations of deprivation of liberty.² This report built upon the UN Secretary General's 2013 report which highlighted the wide range of factors that contribute to prisoner deaths: a lack of staff control, violence against prisoners, riots, prison unrest and staff

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¹ Report of the UN High Commissioner for Human Rights to the UN General Assembly, 'Human Rights in the Administration of Justice' A/HRC/42/20, 21 August 2019, para 2.

² *Ibid.*, paras 4, 62.

strikes as well as a lack of food, basic healthcare and unsanitary conditions.³ Attention was also drawn to the detrimental impact of insufficient funding, overcrowding and corruption on prison security.⁴ This report concluded with a call for the 'further in-depth analysis of the underlying problems and structural shortcomings' related to deaths in detention.⁵

This article provides a rights-informed examination of the structural (prison system), societal (national) and environmental (transnational) factors contributing to preventable prisoner deaths. In order to understand the realities surrounding prisoner deaths globally, it was necessary to explore a range of reliable, yet critical sources. Firstly, all country reports of two international prison oversight bodies, the UN Subcommittee for the Prevention of Torture (SPT)⁶ and the Council of Europe's Committee for the Prevention of Torture (CPT),⁷ were examined for references to prisoner deaths. Due to the facility focus of these country reports, it was necessary to include more contextualised information. This analysis also relies on thematic reports from relevant UN Special Procedures⁸ and reports from two regional Rapporteurs: the Organisation of American States' Rapporteurship on the Rights of Persons Deprived of Liberty and to Prevent and Combat Torture⁹ and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa.¹⁰ Legal analysis of the framework in which State authorities operate was based on international treaty law, penal standards and their interpretation by human rights courts and committees. To enhance comprehensiveness, these sources were supplemented and synthesised with academic scholarship, non-governmental organization reports and media extracts. This synergistic approach to knowledge production created rich socio-legal insights into the systemic, societal and transnational factors that create custodial contexts in which prisoners are dying unnecessarily.

The article begins by exploring the structural factors contributing to two leading types of prisoner deaths: natural deaths and violent deaths. The persistence of 'harrowing tales of lives cut short'¹¹ makes it vitally important to understand the underlying reasons for high levels of premature prisoner deaths from natural causes. It is also crucial that the systemic factors that result in high levels of violence in prisons are critically examined. In 2019, the Human Rights Council called upon the Special Procedures 'to pay special attention to questions relating to the effective protection of human rights in the administration of justice, including issues relating to violence, death and serious injury in situations of deprivation of liberty'.¹²

The sections analysing natural and violent deaths begin with an overview of the rights framework governing State obligations to prevent such deaths, followed by a critical examination

³ Report of the Secretary-General, to the UN General Assembly, 'Human Rights in the Administration of Justice: Analysis of the International Legal and Institutional Framework for the Protection of Persons Deprived of Their Liberty' A/68/261, 5 August 2013, para 653.

⁴ *Ibid.*, para 55.

⁵ *Ibid.*, para 65.

⁶ 22 SPT country reports conducted over 14 years (2007–2021) in 19 countries: Argentina, Benin, Bolivia, Brazil, Chile, Honduras, Kyrgyzstan, Mexico, North Macedonia, Mali, Niger, Peru, Portugal, Paraguay, Sweden, Togo, Ukraine, the United Kingdom and Uruguay.

⁷ 80 CPT country reports over 20 years (1990–2021) in 29 countries: Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Kosovo, Latvia, Lithuania, Malta, North Macedonia/Former Yugoslav Republic of Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, The Netherlands, Turkey, Ukraine and the United Kingdom.

⁸ All reports of UN Special Rapporteurs on extrajudicial, arbitrary and summary executions; torture and health were analysed for references to deaths in prison.

⁹ 14 Inter-American Commission on Human Rights (IACmHR) country reports over 19 years (1993–2021) on 10 countries: Brazil, Colombia, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Peru and Venezuela.

¹⁰ All Resolutions, Inter-Session Activity Reports and Mission Reports issued by the Special Rapporteur were analysed for references to deaths in prison.

¹¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council 38th Session, A/HRC/38/36, 10 April 2018, para 19(d).

¹² UN Human Rights Council Resolution, 'Human Rights in the Administration of Justice, Including Juvenile Justice' A/HRC/42/11, 26 September 2019, para 22.

of the structural factors contributing to such deaths. Moving on from a thematic approach, the article proceeds to discuss the inter-play between structural and societal factors in prisoner deaths, illustrated by country-specific examples. It is evident from these case studies that environmental and transnational factors increasingly pose serious threats to prisoners' mortality. It is clear from a rights perspective that, irrespective of the origin of these threats, States have 'a particular responsibility to protect and fulfil the right to life of detainees through positive measures'.¹³ On the basis of findings and rights principles, the article recommends measures to enhance the effectiveness of prisoner death reduction strategies. These measures include the need to reaffirm the (heightened) positive obligation to prevent premature prisoner deaths, enumerate specialised standards, adopt a broader approach to oversight and create a prisoner-rights-focused UN Special Procedure (Rapporteurship or Working Group).

2. NATURAL PRISONER DEATHS

A. The Right to Healthcare in Prisons

A right for all persons to enjoy the 'highest' or 'best' attainable standard of physical and mental health is recognised in some international and regional treaty law.¹⁴ States should take the necessary measures to protect health and ensure persons requiring medical treatment receive it.¹⁵ According to penal standards, it is a State responsibility to provide persons deprived of their liberty with healthcare, free of charge.¹⁶ States should ensure that each prison has a healthcare service to evaluate, promote, protect and improve the physical and mental health of prisoners,¹⁷ and detect and treat physical or mental illnesses which prisoners may suffer from.¹⁸ All prisoners should be able to access medical care promptly, and those requiring treatment or surgery not available in prison should be transferred to specialist institutions or hospitals.¹⁹ States are obliged to respect the right to health by refraining from denying or limiting equal access for detained persons to preventive, curative and palliative health services.²⁰ The fundamental principle of equivalence of care should underpin all healthcare policies and practices in prisons:²¹ prisoners must be given access to services equivalent to those available in the community at large.²² This includes all medical, surgical and psychiatric services.²³ This duty obligates states to ensure sufficient financial and human resources are provided to deal with the health issues affecting prisoners.²⁴

¹³ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/64/215, 3 August 2009, para 59.

¹⁴ Article 12(1) International Convention on Economic, Social and Cultural Rights 1966 993 UNTS 3; Article 16(1) African Charter on Human and Peoples' Rights 1981 (ACHPR); Article 39(1) Arab Charter on Human Rights 2004; Article 10(1) Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

¹⁵ Article 16(2) ACHPR; Article 39(1) Arab Charter on Human Rights.

¹⁶ Principle 9 UN Basic Principles for the Treatment of Prisoners 1990 (GA Resolution 45/111) (hereafter UNBP); Rule 24(1) UN Standard Minimum Rules for the Treatment of Prisoners/Nelson Mandela Rules 2015 (GA Resolution 70/175) (hereafter NMR); Principle 24 UN Body of Principles of Persons under any form of Detention or Imprisonment 1988 (GA Resolution 43/173); Principle XI(1) OAS Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008 (hereafter OAS PBP); Rule 39 European Prison Rules 2020 (Recommendation Rec(2006)2-rev, 1 July 2020) (hereafter EPR).

¹⁷ Rule 25(1) NMR; Principle XI(1) OAS PBP.

¹⁸ Rule 40(4) EPR.

¹⁹ Rule 27(1) NMR; Rules 41(2), 46(1) EPR; Rule 3 Recommendation No R(98)7 on the ethical and organizational aspects of healthcare in prison.

²⁰ CESCR General Comment No 14 (2000) on Article 12 ICESCR: The Right to the Highest Attainable Standard of Health, para 34.

²¹ Rule 4 Recommendation No R(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison.

²² Rule 24(1) NMR; Principle 9 UNBP; Rule 40(3) EPR; Rule 19 Recommendation No R(98)7, *supra* n 19.

²³ Rule 40(5) EPR.

²⁴ Rule 15 Recommendation No R(93)6, *supra* n 21.

Prison healthcare teams have an important role to play in the protection of prisoners. Specifically, they are bound to protect health on clinical grounds only, and uphold the absolute prohibition of engaging actively or passively in any act that may constitute torture or other cruel, inhuman or degrading treatment or punishment.²⁵ The prison healthcare team must document and report any signs of ill-treatment to a competent medical or judicial authority, ensuring procedural safeguards are used to prevent the exposure of the prisoner or associated persons to (further) harm.²⁶ They must also regularly inspect and advise the prison director on conditions of detention such as the quantity and quality of food and water, hygiene, sanitation, temperature, ventilation of the prison, the suitability and cleanliness of clothing and bedding.²⁷ The prison director must take 'immediate steps to give effect to this advice and recommendations'.²⁸

Every prisoner should be examined by a medical practitioner (or nurse) as soon as possible after admission, and thereafter whenever necessary and at release (if requested).²⁹ Such examinations serve a protective role for reporting and recording any signs of ill-treatment,³⁰ withdrawal symptoms from drugs, medication or alcohol,³¹ the identification of psychological stresses brought upon by detention and solitary confinement³² and to determine fitness to work.³³ Prisoners should have access to a doctor at any time of day or night, and a person trained in first aid.³⁴

B. Healthcare as a Means to Protect Rights

It is clear that the right to life will be violated by a failure to provide the medical care necessary to safeguard life³⁵ and a denial of medication leading to death.³⁶ It is important to stress that the State duty to protect life is not dependent on a prisoner's request for protection. In *Lantsova*, the Human Rights Committee found that even if the detained person did not request medical help, the 'essential fact remains that . . . by arresting and detaining individuals [States] take the responsibility to care for their life'.³⁷ Subsequently, it is the State's responsibility to organise detention facilities so as to know the state of health of detained persons (as far as may be reasonably expected). A properly functioning medical service within the detention centre could and should have known about dangerous changes in the prisoner's health: the State therefore failed to take appropriate measures to protect his life during his time in detention in violation of his right to life.

Human rights courts have also held that the right to freedom from inhumane treatment can be violated by failures to provide timely and adequate medical treatment.³⁸ Factors that feature in such considerations include the prisoner's health or illness, the duration of time that has elapsed

²⁵ Rule 32(1)(a), (d) NMR.

²⁶ Rule 35 NMR; Rules 30-1 Recommendation No R(98)7, supra n 19.

²⁷ Rule 35(1)(a)–(d) NMR; Rule 42(a)–(c) EPR.

²⁸ Rule 35(2) NMR.

²⁹ Rule 42(1)–(2) EPR.

³⁰ Rule 42(3)(c) EPR.

³¹ Rule 42(3)(d) EPR.

³² Rules 42(3)(e), 43(2)–(3) EPR; Rule 46(1)–(3) NMR.

³³ Rule 42(3)(i) EPR.

³⁴ Rule 4 Recommendation No R(98)7, supra n 19.

³⁵ *Mustafayev v Azerbaijan*, Application No 477095/09, Merits and Just Satisfaction, 4 May 2017, para 54.

³⁶ *International Pen and Others v Nigeria* (1998) African Commission on Human Rights, Communication Nos 137/94, 154/96 and 161/97, Decision, 31 October 1998, para 104.

³⁷ *Lantsova v The Russian Federation* (2002) Communication No 763/1997, CCPR/C/74/D/763/1997, Views, 26 March 2002, para 9.2.

³⁸ *Pitale v Russia*, Application No 34393/03, Judgment, 30 October 2009, para 53; *Garcia-Asto and Ramirez-Rojas v Peru*, Judgment (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No 137, 25 November 2005) paras 226–227; *Huri-Laws v Nigeria*, ACmHR, Communication No 225/98, Decision, 6 November 2000, para 41; *Vera Vera v Ecuador*, Judgment (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No 226, 19 May 2011, paras 42–44, 78.

during which the prisoner has gone without treatment, the cumulative physical and mental effects of the delay and the prisoner's sex and age.³⁹ Authorities are obliged to ensure prompt and accurate diagnosis and care in prison hospitals, and the employment of a comprehensive therapeutic strategy to cure or prevent the aggravation of disease.⁴⁰ Holding ill prisoners in cramped and poor conditions in prison hospitals, for example, can result in a violation of Article 3 of the European Convention on Human Rights (ECHR).⁴¹

In some countries, structural and systemic issues in relation to healthcare may result in a violation of a specific right to health. The African Commission on Human and Peoples' Rights has stressed that a State's responsibility is heightened when people are in its custody, and their well-being is completely dependent on its actions.⁴² It found that the right to the best attainable standard of healthcare (Article 16 African Charter on Human and Peoples' Rights (ACHPR)) was violated when persons in custody were denied access to a doctor when their health was deteriorating⁴³ (combined with poor conditions⁴⁴), and due to a failure to provide detained persons with safe drinking water and adequate medication.⁴⁵

C. Structural Factors Contributing to Preventable Natural Deaths

In 2019, the High Commissioner for Human Rights highlighted that while States have a duty to 'respect the right to health and ensure equal access for all persons, including those deprived of their liberty, to preventive, curative and palliative health services . . . access to health care is often inexistent or inadequate and infringements of the right to health contribute to deaths in situations of deprivation of liberty'.⁴⁶ Worryingly, 'mortality rates are high and have been shown to be as much as 50% higher for prisoners than for people in the wider community'.⁴⁷ The UN Special Rapporteur on health stressed in 2018 that while it was accepted that 'safeguarding the right to health once a person is incarcerated is a challenging task . . . [m]ortality rates are high; in many cases . . . premature deaths in custody, [are] almost all preventable'.⁴⁸ This report noted that structural barriers impede the 'full and effective realisation of the right to health' in places of detention 'characterised by inhumane physical and psychosocial environments' that create 'an ecology of deprivation that significantly compromises the ethical and effective organisation and delivery of health care'.⁴⁹ Preventable deaths occur because 'the accessibility of available health-care services is often dependent on negotiations with staff tasked with control and containment'.⁵⁰

Within particular prisons, it is clear prisoners die from natural causes unnecessarily due to a failure to ensure treatment in a timely manner. Practical and policy-related obstacles to accessing prisoners in cells, particularly at night, may contribute to prisoners dying unnecessarily from heart attacks and asthma attacks.⁵¹ The lack of means of transport can result in delayed transfers

³⁹ *Vera Vera v Ecuador*, supra n 38, para 44.

⁴⁰ *Pitalev v Russia*, supra n 38, para 54.

⁴¹ *Ibid.*, para 48.

⁴² *Malawi African Association and Others v Mauritania* (2000), African Commission on Human and Peoples' Rights Communication Nos 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, paras 121–122; *Media Rights Agenda and Constitutional Rights Project v Nigeria*, ACmHR Communication Nos 105/93, 128/94, 130/94, 152/96, 31 October 1998, Decision, paras 90–91.

⁴³ *Media Rights Agenda and Constitutional Rights Project v Nigeria*, supra n 42, paras 90–91.

⁴⁴ *Malawi African Association and Others v Mauritania* (2000), supra n 42, paras 121–122.

⁴⁵ *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union InterAfricaine des Droits de l'Homme, Les Témoins de Jehovah v Zaire* (1995) ACmHR, Communication Nos 25/89, 47/90, 56/91, 100/93, Decision, October 1995, para 47.

⁴⁶ UNHCHR, supra n 1, para 29.

⁴⁷ *Ibid.*, para 30.

⁴⁸ Special Rapporteur on right to health, supra n 11, para 19(d).

⁴⁹ *Ibid.*, para 35.

⁵⁰ *Ibid.*, para 37.

⁵¹ CPT Report on the visit to Azerbaijan, CPT/Inf (2017) 11, 27 July 2005, para 46; CPT Report on the visit to Azerbaijan, CPT/Inf(2017) 12, 12 July 2007, paras 64, 93.

to hospital settings. Masaka prison in Uganda, for example, relied on a bicycle to transfer prisoners needing external treatment, and when the bicycle broke, delays in transfers ensued.⁵² Deaths may result from poor healthcare practices. In England, an Independent Monitoring Board found that ‘the safety and humane treatment of prisoners has been severely and negatively impacted by medicines management’ at Stafford prison.⁵³

However, many challenges that arise in relation to the prevention of premature natural deaths are due to the inadequacy of the healthcare provision throughout the prison system. Numerous oversight reports draw attention to the embedded and systemic nature of the problem. A wide range of concerns have been expressed by monitoring bodies including issues related to adequacy of healthcare, a lack of drugs, provisions for emergency or urgent treatment and the quality of treatment provided.⁵⁴ The quality of healthcare is often reduced due to a lack of resources, especially in low-income countries.⁵⁵ The issue of ability to pay for medical treatment becomes crucial in such circumstances. The SPT noted that the lack of government funding for medical care for prisoners in Togo was ‘directly reflected in the high number of deaths . . . many of which could have been avoided with appropriate treatment’.⁵⁶ Obstacles to prisoners participating in health insurance schemes directly impact on prisoner death rates.⁵⁷ The SPT has recommended that national authorities review (and modify) criteria for medical insurance to ensure all persons deprived of their liberty can access healthcare.⁵⁸ Further, agreements should be entered into with public hospitals to ensure prisoner access to specialists.⁵⁹ The issue of private healthcare also features in country reports. In Colombia, civil society organisations informed the Inter-American Commission on Human Rights (IACmHR) that the healthcare system for prisoners had collapsed, and prisoners had died as a result of a lack of medical care.⁶⁰ The Office of the General Prosecutor reported that the private contractor was not providing the care or medicine required to respect fundamental rights to dignified life, healthcare and humane treatment.⁶¹ The situation was so grave that one prison director initiated legal proceedings against the private contractor.⁶² Access issues can also result from lengthy procedures for clearance for transfer to external facilities. These factors are often combined. In Peru, for example, the combination of complex procedures for accessing specialist care, and the logistical and financial challenges for transfers to hospital without health insurance meant that prisoners were dying due to a lack of timely care.⁶³

The UN High Commissioner has stressed that ‘infectious and communicable diseases are often not adequately treated with potential lethal consequence’.⁶⁴ Despite the existence of international standards dealing with the prevention of transmissible disease in prisons, a lack of routine or adequate testing frequently contributes to prisoner deaths. It is estimated that

⁵² Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detention in Africa to Uganda (15–29 May 2003), para 20.

⁵³ Annual Report of the Independent Monitoring Board at HMP Stafford (1 May 2021–30 April 2022) at 4.

⁵⁴ CPT Report on the visit to Greece, CPT/Inf (2010) 33, 31 March 2010, para 129; CPT Report on the visit to Armenia, CPT/Inf (2011) 24, 1 December 2011, para 100; CPT Report on the visit to Azerbaijan, CPT/Inf (2017) 12, 12 July 2007, para 65; SPT Report on the Visit to Benin, UN Doc CAT/OP/BEN/1, 15 March 2011, paras 215, 222; Report on Uganda, supra n 52, paras 20, 22, 25.

⁵⁵ Special Rapporteur on the right to health, supra n 11, para 39.

⁵⁶ SPT Report on the Visit to Togo, CAT/OP/TGO/1, 28 April 2016, para 48.

⁵⁷ See Reply of the Chilean Government, CAT/OP/PER/1/ADD.1, 8 August 2017, paras 57–59.

⁵⁸ SPT Report on the Visit to Peru, CAT/OP/PER/1, 9 August 2017, para 51.

⁵⁹ Ibid., para 52.

⁶⁰ Truth, Justice and Reparation, Fourth Report on the Human Rights Situation in Colombia, IACmHR, 31 December 2013, OEA/Ser.L/V/II. Doc. 49/13, para 1081.

⁶¹ Ibid, para 1082.

⁶² Ibid, para 1088.

⁶³ SPT Report on the Visit to Peru, CAT/OP/PER/1, 9 August 2017, para 49.

⁶⁴ UNHCHR, supra n 1, para 30.

prisoners are five times more likely to be living with HIV.⁶⁵ Some deaths in Guatemalan prisons had been unofficially attributed to AIDS: the official stance was that no prisoners had HIV or AIDs despite the lack of any testing regime.⁶⁶ In Uganda, the fee for HIV screening was prohibitively expensive for a large proportion of the prisoner population.⁶⁷

TB is a leading cause of prisoner deaths in many countries: rates for tuberculosis can be 10 to 100 times greater among the prison population.⁶⁸ The African Special Rapporteur on prisons and conditions of detention found that TB was rife and endemic in many Ugandan prisons in 2003.⁶⁹ TB had been the leading cause of death in Ugandan prisons between 1985 and 1995, with a 15 times higher risk of contracting the disease in prison. This significantly elevated risk and the persistence of the disease was attributed to high levels of overcrowding throughout the Ugandan prison estate, a lack of quarantine rooms and delays in diagnosis.⁷⁰

Reports demonstrate the impact overcrowding and poor conditions have on the spread of infectious disease, given the correlative decline in hygiene and sanitation standards and the increased risk of infestations.⁷¹ In Cameroon, for example, at least six inmates died at Doula prison following a national cholera outbreak. Human Rights Watch noted that despite attempts to prevent the spread of cholera (vaccines and access to water), ‘even the most basic hygienic measures are hard to practice’ in overcrowded prisons and that the outbreak had demonstrated ‘how quickly abysmal prison conditions become life-threatening’.⁷² The same applies to inadequate infrastructure. In Myanmar, the sewage system was responsible for the spread of disease which resulted in the death of 12 prisoners.⁷³

It is clear that the ‘rights to life and personal integrity are directly and closely linked with humane healthcare’.⁷⁴ Yet States are failing to protect fundamental prisoner rights and reduce preventable deaths due to systemic problems of inadequate healthcare, poor conditions of detention and ageing infrastructure, exacerbated by overcrowding and under-resourcing.

3. VIOLENT PRISONER DEATHS

A. The Legal Framework Governing the Prevention of Violence in Prisons

International rights, jurisprudence and penal standards provide guidance to help States reduce violent prisoner deaths that result from inter-prisoner violence (IPV), the use of force by prison authorities and the use of lethal force by state authorities.

(i) *Inter-prisoner violence*

IPV is a significant cause of prisoner deaths. States must put procedures and measures in place to ensure the safety of prisoners and to reduce, to a minimum, the risk of violence.⁷⁵ Such measures can include having sufficient personnel to conduct internal security and surveillance, prevent access to weapons, drugs, alcohol and other substances through searches and technology, establish early warning mechanisms to prevent crisis situations and use mediation to

⁶⁵ Ibid.

⁶⁶ Fifth Report on the situation on human rights in Guatemala, IACmHR, 26 October 2005, OEA/Ser.L/V/II.1111 Doc. 21 Rev. 6, para VIII(42).

⁶⁷ Report on Uganda, *supra* n 52, paras 20, 24.

⁶⁸ UNHCHR, *supra* n 1, para 30.

⁶⁹ Report on Uganda, *supra* n 52, para 24.

⁷⁰ Ibid., para 20.

⁷¹ UNHCHR, *supra* n 1, para 23.

⁷² Allegrozzi, ‘Cameroon Needs to Protect Prisons from Cholera Outbreak: Overcrowding, Lack of Hygiene and Portable Water Increases Risk’ 8 April 2022 Human Rights Watch.

⁷³ Lines, ‘The Right to Health of Prisoners in International Human Rights Law’ (2008) 4(1) *International Journal of Prisoner Health* 3–53 at 34.

⁷⁴ See *Vera Vera v Ecuador*, *supra* n 38, para 43.

⁷⁵ Rule 52.2 EPR.

peacefully resolve conflict.⁷⁶ The assessment of the safety risk posed by a prisoner to other prisoners as soon as possible after admission provides another important preventative tool.⁷⁷ Prisoners fearful of being assaulted or injured by other prisoners must be fully protected by custodial staff.⁷⁸ Penal standards advocate for single cell accommodation: cell sharing should only be relied upon if accommodation is suitable for this purpose and prisoners are suitable for such association.⁷⁹ States may violate a prisoner's right to life for failures to properly assess the risk posed by a prisoner to other prisoners, and failures to take risk assessments into account in cell allocation decisions.⁸⁰ The UN High Commissioner has stressed that the consent or acquiescence of prison authorities to IPV may result in a violation of the prohibition on torture.⁸¹

(ii) *Use of force by prison authorities*

Prison staff are only permitted to use force as a last resort against prisoners in self-defence, to prevent escape or in cases of active or passive physical resistance to a lawful order.⁸² The force used must be no more than strictly necessary.⁸³ Force should only be used exceptionally and proportionally, in serious, urgent and necessary cases as a last resort to ensure security, order and the protection of the rights of persons present in prisons.⁸⁴ The force used shall be imposed for the shortest necessary time.⁸⁵ Procedures should specifically outline what types of force can be used, what circumstances they can be used in and which staff can use which types of force.⁸⁶ Staff must be trained in techniques that require the minimal use of force to restrain aggressive prisoners⁸⁷ and have access to non-lethal weapons to reduce use of means capable of causing death.⁸⁸ The open carrying of non-lethal weapons within the prison perimeter by persons in contact with prisoners is, however, only permitted if required for safety and security to deal with a particular incident.⁸⁹ Staff should not be provided with weapons unless they have been trained in their use.⁹⁰ The prevention of violence between persons deprived of their liberty and staff can be reduced through regular staff training and the eradication of impunity for acts of violence.⁹¹

(iii) *The use of lethal force by prison authorities*

Additional rules apply to the use of lethal force within prisons. The basic premise is that prison staff should not carry lethal weapons within the prison perimeter.⁹² This is only permitted in operational emergencies. Even then, States are required to strictly control (and have clear command over) personnel authorised to carry firearms and ensure only staff trained in their use are permitted to utilise arms.⁹³ Even if resort to firearms becomes 'unavoidable', important safeguards govern their utilisation. The principle of proportionality demands that restraint must be exercised in light of the seriousness of the offence and legitimate objective being pursued.⁹⁴

⁷⁶ Principle XXIII(1)(a), (c)–(e) OAS PBP.

⁷⁷ Rules 15(c), 52.1 EPR.

⁷⁸ Rule 64 Recommendation No R(98)7, *supra* n 19.

⁷⁹ Rules 18.5, 18.6, 18.10 EPR.

⁸⁰ *Paul and Audrey Edwards v UK* Application No 46477/99, Judgment, 14 March 2002, para 64.

⁸¹ UNHCHR, *supra* n 1, para 19.

⁸² Rule 82(1) NMR; Rule 64(1) EPR.

⁸³ Rule 82(1) NMR; Rule 51(1) EPR.

⁸⁴ Principle XXIII(2) OAS PBP.

⁸⁵ Rule 64(2) EPR.

⁸⁶ Rule 65(a)–(c) EPR.

⁸⁷ Rule 82(2) NMR; Rule 66 EPR.

⁸⁸ Principle 2 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990 (hereafter BPUFF).

⁸⁹ Rule 69(2) EPR.

⁹⁰ Rule 69(3) EPR.

⁹¹ Principle XXIII(1)(b), (g)–(h) OAS PBP.

⁹² Rule 69(1) EPR; Rule 82(3) NMR.

⁹³ Rule 82(3) NMR; Principle 2, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions 1989, ECOSOC Resolution 1989/65.

⁹⁴ Principle 5(a) BPUFF.

All measures must be taken to minimize injury and to respect and preserve life.⁹⁵ Firearms can only be used in self-defence, the defence of others in cases of imminent threat of death or serious injury, and only if less extreme measures cannot achieve these objectives.⁹⁶ The intentional use of firearms is only permitted 'when strictly unavoidable in order to protect life'.⁹⁷ If firearms are discharged, the authorities must ensure medical assistance is rendered to injured persons as soon as possible.⁹⁸

(iv) *The use of force by external state authorities*

At times, prison authorities need to rely on external state authorities to deal with emergency (security) situations. However, international standards stress that other law enforcement agencies should only become involved in dealing with prisoners inside a prison in exceptional circumstances and pursuant to a formal agreement or domestic legislation setting out the circumstances in which they can enter a prison.⁹⁹ It should be clear, in advance, what types of force these agencies can use and the circumstances in which they can be utilised.¹⁰⁰ Fundamentally, external state bodies can only use force against persons in custody when strictly necessary to maintain security and order in the prison or if personal safety is threatened.¹⁰¹

B. Violent Prisoner Deaths

Despite the existence of detailed and comprehensive legal frameworks governing violence in prisons, 'acts of violence and the use of force by corrections officers . . . and other officials that come into contact with persons deprived of their liberty' remain one of the leading causes of prisoner deaths.¹⁰² The persistence and prevalence of violent prisoner deaths can be attributed to factors that stem from beyond the facilities in which they occur.

(i) *Inter-prisoner violence*

Instances of IPV within a particular facility can reflect a broader culture of violence in a prison system. The CPT noted that the amount and severity of IPV in some UK prisons was staggering and exacerbated by overcrowding and poor regimes.¹⁰³ The CPT was also highly critical of persistently high IPV levels in Greece, noting that the situation remained 'volatile and alarming'.¹⁰⁴ These findings point to systemic failures to address underlying causes.

Within some prison systems, IPV associated deaths are linked to the availability of weapons. In a search of one Paraguayan prison in 2008, for example, 2000 knives were confiscated.¹⁰⁵ The extreme levels of violence and multiple deaths linked to gang clashes are increasingly associated, however, with systemic failures to prevent prisoners accessing sophisticated weaponry and explosives. Prisoner deaths have been caused by firearms, explosives, grenades and military weapons in Honduras.¹⁰⁶ A search following one riot by (military) police resulted in the confiscation of high calibre weapons including AK-47 assault rifles.¹⁰⁷ In Venezuela, a failure to prevent the entry of firearms (and other weapons) into prison was directly related to the high

⁹⁵ Principle 5(b) BPUFF.

⁹⁶ Principle XXIII(2) OAS PBP; Principle 16 BPUFF.

⁹⁷ Principle 9 BPUFF.

⁹⁸ Principle 5(c) BPUFF.

⁹⁹ Rules 67.1, 67.2, 67(3)(a) EPR.

¹⁰⁰ Rule 67(3)(c)–(d) EPR.

¹⁰¹ Principle 15 BPUFF.

¹⁰² UNHCHR, *supra* n 1, para 5.

¹⁰³ CPT Report on the visit to the UK, CPT/Inf (2017) 9, 29 July 2016, para 43.

¹⁰⁴ CPT Report on the visit to Greece, CPT/Inf (2020) 15, 19 July 2019, para 19.

¹⁰⁵ SPT Report on the Visit to Paraguay, CAT/OP/PRY/1, 7 June 2010, para 168.

¹⁰⁶ Report on the situation of human rights in Honduras, IACmHR, 31 December 2015, OEA/Ser.L/V/II. Doc. 42/15, para 534.

¹⁰⁷ *Ibid.*

levels of gang-related deaths: 1622 prisoners were killed over four years.¹⁰⁸ In one incident, 10 prisoners died following the detonation of a fragmentation grenade and a gunbattle between groups of prisoners.¹⁰⁹

Access to this type of weaponry cannot occur with the complicity of staff and corruption on a widescale. The IACmHR, when discussing the circulation of firearms and grenades among prisoners in Venezuela, stated that it was unavoidable to escape the presumption that they were entering prisons through the 'internal and external complicity of prison officers'.¹¹⁰ This corruption has clearly extended beyond the prison authorities in some cases. In Honduras, prisoners could access high calibre weapons and explosives in prisons under full militarisation (where both the periphery and detention units were under the control of the armed forces).¹¹¹

(ii) Use of (lethal) force by prison authorities

Force employed to quell protests inside prisons can include less-lethal weapons such as batons, electroshock weapons and baton rounds. The use of chemical irritants, such as tear gas and pepper spray, to quell riots and subdue detainees deemed uncooperative, can lead to serious injury and contribute to prisoner deaths. The Committee against Torture has expressed concerns about the use of chemical irritants in closed spaces, warning it can endanger inmates' lives.¹¹²

Unsurprisingly, prisoner deaths result from the discharge of firearms by prison officials. Lethal force can be used to prevent escape.¹¹³ The SPT has highlighted that observance of the principle of proportionality, however, means that non-lethal options should be available to staff charged with preventing escape (such as rubber bullets).¹¹⁴ Escape prevention can be invoked to legitimise unlawful or disproportionate uses of lethal force.¹¹⁵

Prison authorities may also employ lethal force to deal with emergency situations. The Human Rights Committee held that Jamaica had failed to take effective measures to protect life in violation of Article 6(1) International Covenant on Civil and Political Rights (ICCPR) when four prisoners were shot and killed during a prison riot after taking guards hostage. State responsibility arose as the prisoners have been killed in their cells when they no longer posed any threat (Jamaica acknowledged the shootings occurred after the guards had been rescued). Some of the murdered prisoners had received death threats from (some) staff who had participated in the shooting prior to the incident due to complaints about ill-treatment. Further, staff usually only carried batons: it could not be determined who had authorised the use of firearms.¹¹⁶

(iii) Use of lethal force by external state authorities

Prisoner deaths may (unlawfully) result from lethal force being employed by police and the military intervening in emergency situations within prisons. For instance, in *Kukhalashvili and Others v Georgia*, the European Court of Human Rights held that a State anti-riot operation that resulted in the deaths of inmates during a riot violated Article 2 ECHR.¹¹⁷ The employment of lethal force in closed facilities in situations of insecurity creates the risks of *mass fatalities*.

¹⁰⁸ Report on the situation of human rights in Venezuela, IACmHR, 31 December 2017, OEA/Ser.L/V/II. Doc. 209/17, para 390.

¹⁰⁹ Democracy and Human Rights in Venezuela, IACmHR, 30 December 2009, OEA/Ser.L/V/II. Doc. 54, para 889.

¹¹⁰ *Ibid.*, para 878.

¹¹¹ Report on the situation of human rights in Honduras, supra n 106, para 537.

¹¹² UNHCHR, supra n 1, para 9.

¹¹³ SPT Report on the Visit to Honduras, CAT/OP/HND/1, 10 February 2010, para 252; Report on the situation of human rights in Honduras, supra n 106, para 534.

¹¹⁴ SPT Report on the Visit to Honduras, CAT/OP/HND/1, 10 February 2010, paras 254–255.

¹¹⁵ Democracy and Human Rights in Venezuela, supra n 109, paras 883.

¹¹⁶ *Leach v Jamaica* (CCPR/C/57/D/546/1993) Merits, 18 July 1996.

¹¹⁷ Application Nos 8938/07 and 41891/07, Judgment, 2 August 2020.

Multiple deaths often arise due to an 'irrational and indiscriminate use of force'.¹¹⁸ In 2017, in Venezuela, 40% of the Amazonas Judicial Detention Centre's population died during a State operation to retake control following clashes. Investigations showed that the joint police-military operation had employed excessive force, with the intention of creating as many victims as possible.¹¹⁹ At the Catia Detention Centre, at least 63 persons were killed (and another 28 disappeared) after nearly 500 national guards and police entered the prison following a coup and extrajudicially executed and shot at prisoners indiscriminately.¹²⁰ In Peru's Castro-Castro prison, guards and other state agents attacked male and female prisoners. Inmates died due to the deliberate use of lethal force (including on those who had surrendered peacefully) and a deliberate failure to provide medical assistance to injured prisoners.¹²¹

(iv) *Human rights jurisprudence on the use of lethal force in anti-riot operations*

The issue was explored at length in 2020 by the European Court of Human Rights in *Kukhalashvili v Georgia*. Prisoner deaths caused by the disproportionate use of lethal force during an anti-riot operation resulted in violations of the right to life. While recourse to lethal force was found to be lawful (to quell a riot),¹²² the indiscriminate and excessive use of lethal force in an uncontrolled and unsystematic manner without a clear chain of command; the failure to consider less violent means or the possibility of negotiation; the use of force after the end of the operation and the failure to provide adequate medical assistance to (foreseeable) casualties, all cumulatively constituted a violation of the prisoners' right to life. Further, the authorities' awareness of planned disobedience meant that a strict standard of absolute necessity was applied to assess the proportionality of the response (looking in particular at the form and intensity of lethal force employed). Recourse to automatic weapons within the close confines of the prison, that would foreseeably create an 'inordinately high risk of fatalities', was disproportionate.

This decision clearly states that even where the law permits the use of lethal force, it does not give security forces a 'carte blanche' and that the 'unregulated and arbitrary actions' by State agents are 'incompatible with effective respect for human rights'.¹²³ Crucially, agents must be trained to assess whether there is an absolute necessity to use firearms in both pre-arranged and spontaneous operations 'not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental right'.¹²⁴ Further, the planning context is of clear significance: operations should be planned to minimise to the greatest extent recourse to lethal force and subsequent fatalities, focusing on the means and methods permitted.¹²⁵

These requirements have also been highlighted by the Inter-American Court of Human Rights (IACtHR). The use of firearms and lethal force, generally forbidden, is only justified in extraordinary cases, in circumstances determined by law (restrictively construed) and only if absolutely necessary in relation to the force or threat to be repealed. When the force used is excessive, any resulting deprivation of life is arbitrary (and therefore unlawful).¹²⁶ While the IACtHR has acknowledged the power and even duty of States to guarantee safety and order

¹¹⁸ Report on the situation of human rights in Brazil, IACmHR, 29 September 1997, OEA/Ser.L/V/II.97 Doc. 29 Rev. 1, para IV(35).

¹¹⁹ *Ibid.*, para 392.

¹²⁰ *Montero-Aranguren et al (Detention Centre of Catia) v Venezuela*, Judgment (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No 110, 5 July 2006.

¹²¹ *The Miguel Castro-Castro Prison v Peru*, Judgment (Merits, Reparations and Costs) IACtHR Series C No 160, 25 November 2006, paras 243–246.

¹²² *Kukhalashvili and Others v Georgia* Application Nos 8938/07 and 41891/07, Judgment, 2 August 2020, para 152.

¹²³ *Ibid.*, para 144.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*, para 145.

¹²⁶ *Montero-Aranguren et al v Venezuela*, supra n 120, paras 67–68.

in prisons,¹²⁷ the presence of gangs and a sub-culture of violence, drugs and arms trafficking do not (by themselves) generate permission for States to use force with lethal consequences for inmates.¹²⁸ To do so would release 'the State from its duty to take preventative measures and also from its responsibility for the creation of such conditions': States must prioritize prevention (of violence and arms trafficking) over repression.¹²⁹

(v) *The impact of broader insecurity*

The use of lethal force within prisons often occurs within a context of broader insecurity. In South America, operations to transfer high-profile prisoners to militarized prisons have triggered violence. In Honduras, grave acts of violence have been related to systematic transfers of inmates, considered to be very dangerous, to maximum-security units installed on military bases.¹³⁰ Violent incidents in prisons in South America can escalate and result in a large loss of life due to the intervention of police and military personnel and the excessive use of lethal fire. The level of violence in Honduran prisons was noted to reflect 'the generalised violence within the country'.¹³¹

Deaths resulting from lethal force deployed by security services in prisons may be linked to broader political conflict. In Turkey, for example, security forces intervened in 20 prisons on the same day in December 2000 in response to prisoner protests about the transfer of prisoners to a special model of prison (F-type). Over three days, 32 prisoners died.¹³² The type and impact of the weaponry used by the security services in the closely and densely populated settings of prisons were subject to scrutiny by the CPT. The CPT pointed to 'particularly disquieting features' of the actions such as prisoner deaths by gunshot wounds and as a result of the use of teargas bombs.¹³³ The CPT questioned 'whether the munitions employed were the most appropriate under the circumstances and/or were they used in the most appropriate way'.¹³⁴ These security actions came against the backdrop of coordinated hunger-strikes protesting against this use of prison for persons remanded or convicted on terrorism charges, resulting in the death of at least 20 prisoners.¹³⁵

C. Structural Factors Contributing to Pervasive and Persistent Cycles of Violence

High levels of violence within prisons are often symptomatic of structural issues within a given prison system, including a loss of control due to a lack of staffing or reliance on prisoners, a prevalent gang culture and co-governance strategies and overcrowding.

(i) *Loss of control over prisons*

In 2019, the Human Rights Council called on States to 'address and prevent violence in situations of deprivation of liberty, including inter-prisoner violence, by taking effective measures, such as reasserting responsible control . . . where prisons are de facto managed by prisoners'.¹³⁶

A loss of staff control results in an increase in prisoner control which can cause extreme insecurity and associated deaths. In a prison with high IPV levels in Macedonia, the CPT noted that 'privileged prisoners' had keys enabling them to access parts of the prison, and with the complicity of staff, they were allowed to run these areas.¹³⁷ When one prisoner died in Latvia

¹²⁷ See also *The Miguel Castro-Castro Prison v Peru*, supra n 121, para 240.

¹²⁸ *Montero-Aranguren et al v Venezuela*, supra n 120, paras 70–71.

¹²⁹ *Ibid.*

¹³⁰ Report on the situation of human rights in Honduras, supra n 106, para 534.

¹³¹ *Ibid.*

¹³² CPT Report on the visit to Turkey, CPT/Inf (2001) 31, 17 July 2001, para 2.

¹³³ *Ibid.*, para 16.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, paras 1, 3.

¹³⁶ UN HRC Resolution, supra n 12, para 11.

¹³⁷ CPT Report on the visit to the Former Yugoslav Republic of Macedonia, CPT/Inf (2008) 5, 24 November 2006, para 52.

following a severe beating due to blood loss—there were **no** prison officers present on the unit.¹³⁸ Reliance on prisoners for custodial tasks increased the risk of IPV: the CPT report stressed that ‘the maintenance of order and discipline should be the exclusive task of staff’ and recommended that the system of ‘delegation of powers’ should be abolished.¹³⁹

There are numerous examples in oversight reports of how the loss of control can contribute to IPV. In Brazil, prisoners were able to designate a cell to which they could take other inmates to be tortured.¹⁴⁰ In Guatemala, the loss of control meant that authorities had not been immediately aware of the murder of four prisoners who had been tortured and hung.¹⁴¹ In Venezuela, the lack of security contributed to the death of 59 prisoners from gunshot and stabbing wounds, hangings and decapitations in one prison.¹⁴² The lack of security control caused by the very low staff-prisoner ratio (1:181) resulted in the violent deaths of 80 prisoners (from gun and blade wounds) in Uribana prison in Venezuela in one year.¹⁴³

(ii) Prisoner self-management

A low staff-prisoner ratio forces staff to focus on perimeter security, increases temptation to engage in corruption and creates situations where power can be exercised by prisoners.¹⁴⁴ Structurally lower levels of control, due to a lack of staff and technological surveillance resources, are linked to the increased involvement of prisoners in prison (co-)governance.¹⁴⁵ Systems of prisoner self-management have, however, been identified as risk factors for prisoner deaths through IPV. As stressed by the UN High Commissioner, ‘understaffing can make the management of prisons by prisoners and the exponential rise in the use of violence related to it unavoidable’.¹⁴⁶

In Gabon, the SPT urged prison authorities to regain control of prisons in which cell and yard bosses were able to impose disciplinary measures on other prisoners in order to ensure prisoner safety.¹⁴⁷ The CPT has also noted that informal power structures can contribute to IPV: it linked prisoner deaths in Georgia to the ‘resurgence of traditional informal prisoner hierarchies involving crime bosses and watchers’ that resulted from a strategic decision to depart from an excessive control and security approach.¹⁴⁸ Allowing hierarchical or caste structures to become established within prisoner populations can also exacerbate IPV. In Latvia, the CPT noted that ‘untouchables’ (the lowest caste of prisoner in the informal hierarchy) were regularly subjected to humiliation and ritualistic sexual abuse by other inmates (and staff). One untouchable prisoner died following a severe beating in his dormitory (due to blood loss and internal bleeding).¹⁴⁹

In 2008, the Special Rapporteur on extrajudicial, summary or arbitrary executions addressed this specific issue. Alston noted that the power of prisoners to control order may result from delegation, a loss of control or coercion on the part of prisoners, but warned that it could be exercised ‘arbitrarily and abusively’.¹⁵⁰ Worryingly, in ‘a remarkable number of cases . . . the guards have abandoned any attempt at regulating life within the prison’.¹⁵¹ He lamented that ‘the

¹³⁸ CPT Report on the visit to Latvia, CPT/Inf (2009) 35, 11 April 2008, para 40.

¹³⁹ Ibid.

¹⁴⁰ SPT Report on the visit to Brazil, UN Doc CAT/OP/BRA/3, 16 February 2016, para 51.

¹⁴¹ Fifth Report on the situation on human rights in Guatemala, supra n 66, para VIII(29).

¹⁴² Democracy and Human Rights in Venezuela, supra n 109, para 900.

¹⁴³ Ibid., para 901.

¹⁴⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3, 2 May 2008, para 81.

¹⁴⁵ Dal Santo, ‘Brazilian prisons in times of mass incarceration: Ambivalent Transformations’ (2021) *The Howard Journal of Crime and Justice* 1–17, doi.org/10.1111/hojo.12493 at 9–10.

¹⁴⁶ UNHCHR, supra n 1, para 21.

¹⁴⁷ SPT Report on the visit to Gabon, CAT/OP/GAB/1, 23 June 2013, paras 58, 61.

¹⁴⁸ CPT Report on the visit to Georgia, CPT/Inf (2015) 42, 31 July 2015, para 56.

¹⁴⁹ CPT Report on the visit to Latvia, CPT/Inf (2009) 35, 11 April 2008, para 40.

¹⁵⁰ Special Rapporteur on executions, supra n 144, para 71.

¹⁵¹ Ibid.

violent death of . . . inmates is an almost invariable consequence of the abdication of authority to prisoners'.¹⁵² This outcome was attributed to the ruthlessness of the 'discipline' imposed, the correlative increase in gang strength and conflict and a higher risk of large scale riots requiring police or military intervention (with foreseeable mass fatalities). Alston warned States that they have 'no right to imprison a person in order to subject him . . . to the caprices and arbitrariness of thugs, whether in the name of necessity, realism or efficiency'.¹⁵³ A controlled custodial environment, he argued, was necessary to enable States to fulfil their duty of protection.¹⁵⁴

These warnings have been vindicated by the facts established by oversight bodies: the risk of IPV is increased in prison systems with insufficient staffing levels as authorities cannot ensure proper supervision to maintain security and control,¹⁵⁵ respond in adequate time to incidents,¹⁵⁶ create a situation of dynamic security or effectively exercise their authority.¹⁵⁷ Appropriate staffing levels are crucially important to ensure necessary levels of security are in place to prevent and react to IPV,¹⁵⁸ to reduce the influence of organized crime¹⁵⁹ and prevent the circulation of prohibited substances.

(iii) *Gangs in prisons*

An established gang culture within prison systems significantly contributes to deaths resulting from IPV.¹⁶⁰ In Guatemala, for example, prisoners were being killed for a failure to pay 'protection' payments.¹⁶¹ Multiple deaths can occur following clashes between rival gangs within a prison.¹⁶² In Paraguay, a quarter of prisoner deaths were caused by wounds inflicted during fights between rival gangs.¹⁶³ Deaths can also result from the assassination by a gang of its own members: in one day, the Mara 18 gang executed seven of its members in two different prisons in Guatemala.¹⁶⁴ Further deaths become likely in these situations, with cycles of repeat multiple deaths resulting from revenge attacks. For example, in 1998 in Colombia, the assassination of a gang leader resulted in detainees massacring the alleged perpetrators (killing 15 prisoners).¹⁶⁵ In Guatemala, four prisoners were hung in their cells by other prisoners the day after arriving in a high security prison for killing two other prisoners.¹⁶⁶

Gangs may also be involved in the control of prisons. In Brazil, the PCC gang is reported to control 90% of São Paulo state prisons (representing one-third of the country's prison population).¹⁶⁷ The African Special Rapporteur has made it clear that 'by abetting gangsterism, prison authorities are directly responsible for the violence in their facilities'.¹⁶⁸ Attempts to reduce gang control, by the movement and isolation of gang leaders, however, often prove to be counter-productive as this can expand the gang's reach, and result in an overly punitive (or militarised)

¹⁵² Ibid., para 72.

¹⁵³ Ibid., para 87.

¹⁵⁴ Ibid., paras 73, 75.

¹⁵⁵ CPT Report on the visit to Latvia, CPT/Inf (2013) 20, 28 March 2012, para 52.

¹⁵⁶ CPT Report on the visit to the UK, CPT/Inf (2017) 9, 29 July 2016, para 43.

¹⁵⁷ CPT Report on the visit to Latvia, CPT/Inf (2005) 8, 10 April 2003, para 71; CPT Report on the visit to Greece, CPT/Inf (2020) 15, 19 July 2019, para 23.

¹⁵⁸ SPT Report on the Visit to Paraguay, CAT/OP/PRY/1, 7 June 2010, para 169.

¹⁵⁹ SPT Report on the visit to Brazil, CAT/OP/BRA/3, 16 February 2016, para 52.

¹⁶⁰ UNHCHR, supra n 1, para 15.

¹⁶¹ Report on the situation of human rights in Guatemala, 'Diversity, Inequality and Exclusion' (2015) IACmHR, 31 December 2015, OEA/Ser.L/V/II. Doc. 43/15, para 361.

¹⁶² Ibid., para 362.

¹⁶³ SPT Report on the Visit to Paraguay, CAT/OP/PRY/1, 7 June 2010, para 168.

¹⁶⁴ Report on the situation of human rights in Honduras, supra n 106, para 534.

¹⁶⁵ Third Report on the human rights situation in Colombia, IACmHR, 26 February 1999, OEA/Ser.L/V/II.102 Doc. 209, para 47.

¹⁶⁶ Fifth Report on the situation on human rights in Guatemala, supra n 66, para VIII(32).

¹⁶⁷ Dal Santo, supra n 145, at 11.

¹⁶⁸ Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Mission to the Republic of South Africa (14–30 June 2004), para 53.

approach causing further unrest.¹⁶⁹ The African Special Rapporteur has commented that a 'coherent strategy of dealing with gangs, other than the temporary isolation of their leaders' must be put in place to remove their power.¹⁷⁰

Prison authorities with limited and reducing resources often allow gangs to have power roles within prisons: their inside knowledge and free labour are viewed as means to help reduce inter-gang violence.¹⁷¹ Yet, allocation and segregation decisions made on the basis of actual or perceived gang affiliation exacerbate gang control and tension within prisons.¹⁷² Further, this approach makes resulting prisoner deaths difficult to prevent or punish and the 'supposed benefits of an orderly and disciplined prison population almost always degenerate into a system in which violence rules, drugs dominate, gang-based turf battles are unleashed and various forms of economic, social and sexual coercion or intimidation are facilitated'.¹⁷³ High levels of gang control are often linked with drug-dealing and trafficking, which also generate a climate of increasing IPV.¹⁷⁴

(iv) Overcrowding

The African Special Rapporteur stated it succinctly: overcrowding 'is by itself a human rights violation, and occasions further human rights violations' and put simply, 'is a recipe for violence'.¹⁷⁵ Time and time again, reports highlighting high levels of IPV and prisoner deaths draw attention to severe levels of overcrowding within both a particular facility and the prison system as a whole. In Brazil, in the context of a prison population increase of over 700% in 15 years, a Parliamentary Committee of Inquiry on Prisons in 2009 reported that overcrowding was the 'mother of every other problem in prisons' including riots, rebellions and deaths.¹⁷⁶ Overcrowding is repeatedly identified as a major trigger for IPV. In Mexico, the SPT discussed the importance inmates place on 'safeguarding their territory,' noting that overcrowding was resulting in deplorable conditions that were having fatal consequences.¹⁷⁷ In Brazil, the SPT linked high levels of extreme violence and homicide to overcrowding: overcrowded spaces and stretched resources were forcing prisoners to compete, with aggressive and violent behaviour causing multiple deaths.¹⁷⁸ The risk is further heightened in the context of a pervasive gang culture and can lead to mass riots. In Venezuela's Puente Ayala prison, a clash between rival groups trying to take control of an area, that involved most of the prison's 5500 population, resulted in the deaths of 14 inmates. The occupancy rate at the time of the riot was 733% (5500 inmates housed in a facility designed for 750 inmates).¹⁷⁹

In addition to being the cause of violence, the UN Special Rapporteur has drawn attention to the fact that 'overcrowding makes it much more difficult to prevent prisoner-on-prisoner violence'.¹⁸⁰ Solutions to reducing prisoner deaths often explicitly refer to the 'need for comprehensive reform of the criminal justice and penitentiary system, including a need to reduce the excessive use of incarceration'.¹⁸¹ Preference is placed on the use of non-custodial alternatives to

¹⁶⁹ Dal Santo, *supra* n 145, at 11–12.

¹⁷⁰ Report on South Africa, *supra* n 168, para 53.

¹⁷¹ Special Rapporteur on executions, *supra* n 144, para 69.

¹⁷² Dal Santo, *supra* n 145, at 11.

¹⁷³ Special Rapporteur on executions, *supra* n 11, para 70.

¹⁷⁴ CPT Report on the visit to the Former Yugoslav Republic of Macedonia, CPT/Inf (2008) 5, 24 November 2006, para 52; CPT Report on the visit to Portugal, CPT/Inf (2007) 11, 20 March 2003, para 18.

¹⁷⁵ Report on South Africa, *supra* n 168, para 54.

¹⁷⁶ Dal Santo, *supra* n 145, at 2–3.

¹⁷⁷ SPT Report on the Visit to Mexico, CAT/OP/MEX/1, 31 May 2010, para 177.

¹⁷⁸ SPT Report on the visit to Brazil, CAT/OP/BRA/3, 16 February 2016, para 51.

¹⁷⁹ Report on the situation of human rights in Venezuela, *supra* n 108, para 391.

¹⁸⁰ Special Rapporteur on executions, *supra* n 44, para 82; see also UNHCHR, *supra* n 1, para 21.

¹⁸¹ 'Ecuador—Prison Violence' Spokesperson for the UN High Commissioner for Human Rights, Geneva, 10 May 2022, available at: www.ohchr.org/en/press-briefing-notes/2022/05/ecuador-prison-violence [last accessed 6 July 2022].

imprisonment where appropriate rather than building further facilities.¹⁸² Authorities often fail to develop strategies to systematically address overcrowding due to financial constraints, relying instead on stopgap measures.¹⁸³

(v) *A combination of structural factors*

High IPV levels often result in staff reacting with excessive and lethal force, creating a self-sustaining cycle of increasing overall violence and deaths. In Monaga Judicial Prison in Venezuela in one year, for example, the violent deaths caused by gunshot wounds, stabbings, hangings, decapitations and dismemberments in incidents involving both prison personnel and outbreaks of violence between prisoners resulted in 10% of total prison deaths.¹⁸⁴ This aligns with a broader pattern. In 2009, the IACmHR highlighted the ‘disturbing’ death rate in prisons in Venezuela—at 44 times higher than that of the general population and with 2.2% of all prison inmates being killed by acts of violence, Venezuelan prisons were the most violent in the region.¹⁸⁵

It is clear that broader structural factors often operate together to create a custodial environment and culture characterised by high levels of violence and correlative risks of prisoner deaths. Structural deficiencies can operate in combination with devastating effect. In Greece, for instance, high IPV levels were linked directly to severe overcrowding and staff shortages. In one prison, a single prison officer was responsible for nearly 400 prisoners in a wing with over 100 cells.¹⁸⁶ As the prison was only functioning due to prisoners carrying out prisoner officer duties, it is unsurprising that the situation was one of anarchy, impotence and lawlessness.¹⁸⁷ Staff had no control over the prisoners, no idea what was happening in the wings and could not intervene in serious incidents (kidnappings within the prison for ransom, the use of cables to whip other prisoners), resulting in deaths.¹⁸⁸ In addition to staffing and overcrowding problems, the high rate of IPV was also being fuelled by ‘poor conditions, a lack of activities, a high rate of drug use, [and] the lack of proper risk and needs assessments’.¹⁸⁹

A combination of severe overcrowding, staff shortages and the availability of weapons in prisons makes violence inevitable.¹⁹⁰ In such circumstances, it is clear that the efforts of prison officials to address violent deaths within a particular facility are likely to prove fruitless ‘unless . . . underlying factors are addressed’.¹⁹¹ Despite the complex challenges, international law, policy and standards provide tools for addressing precisely these issues. What is often lacking is ‘the political will to address violence and repression against an almost universally disdained group (convicted criminals), especially in countries in which the problem has grown to the point of appearing intractable’.¹⁹²

4. THE INTER-PLAY OF STRUCTURAL AND SOCIETAL FACTORS

Structural issues that contribute to prisoner deaths can often be attributed to broader societal problems. Corruption, for example, within a given society can permeate and influence the culture of its prison system. The IAmCHR drew attention to the fact that systemic corruption

¹⁸² Special Rapporteur on executions, *supra* n 44, para 83. See also UN HRC Resolution, *supra* n 12, paras 12–13.

¹⁸³ SPT Report on the Visit to Mexico, CAT/OP/MEX/1, 31 May 2010, para 177.

¹⁸⁴ Democracy and Human Rights in Venezuela, *supra* n 109, para 899.

¹⁸⁵ *Ibid.*, paras 881–882.

¹⁸⁶ CPT Report on the visit to Greece, CPT/Inf (2020) 15, 19 July 2019, para 19.

¹⁸⁷ *Ibid.*, paras 19–20.

¹⁸⁸ *Ibid.*, para 19.

¹⁸⁹ *Ibid.*, para 23.

¹⁹⁰ Report on South Africa, *supra* n 168, para 53.

¹⁹¹ Special Rapporteur executions, *supra* n 44, para 80.

¹⁹² *Ibid.*, para 86.

in Guatemala led to the appointment of persons with no experience of directing prisons.¹⁹³ These appointments were directly blamed for creating a prison system in crisis with high levels of overcrowding, poor conditions and high levels of violence leading to prisoner deaths.¹⁹⁴ Corruption by prison staff routinely subverts other measures for reducing prisoner-on-prisoner violence¹⁹⁵ as it facilitates access to weapons, drugs and movement within and between prisons by gang leaders.¹⁹⁶

A lack of resources can also be to blame. The SPT recently drew attention to the dire and complex prison crisis in Ecuador, and the high levels of violent prisoner deaths: detainees are living 'in a state of tension and constant fear, in prisons lacking essential services and basic resources' and are self-governed by detainees who are members of criminal organisations. These failings were directly attributed to 'decades of state abandonment'.¹⁹⁷

The endemic nature of violence in a prison system may reflect broader societal prevalence. The SPT noted that it was 'abundantly evident that . . . torture and ill-treatment continue to be widespread practices' across a spectrum of institutions in Brazil, perpetrated by different state authorities.¹⁹⁸ Prisoner deaths in Brazil were attributed to the combined effect of overcrowded prisons that 'act as a hub for infectious disease, violence, torture and deaths; they are institutions characterised by material deprivation lacking adequate food, water, cleanliness and hygiene and are often ruled by gangs'.¹⁹⁹

Prisoner deaths can also be related to public health and financial security issues facing the country at large. In 1999, for instance, the Department of Correctional Services in South Africa concluded that 90% of prisoner deaths that year were HIV-related.²⁰⁰ In respect of deaths by natural causes in Venezuela, the IACmHR found that prisoners' right to life was under threat due to the lack of and negligent medical care, exacerbated by poor hygiene, inadequate food and lack of drinking water.²⁰¹ It could not be ignored however, the report stated, that these issues were 'occurring in the context of widespread crisis and lack of supplies' in the country.²⁰² General shortages and high costs hindered families' ability to provide food for prisoners (difficulties purchasing products and officials demanding bribes to allow food in). The resulting malnutrition led to prisoner deaths.²⁰³ This devastating impact of social poverty on prisoner mortality also risks unfolding in Lebanon: a long-term economic crisis (and lack of Governmental funding), general food shortages and a contractor's increasing prices have resulted in the prison service being unable to consistently provide a sufficient quantity and quality of food to ensure adequate nutrition for inmates in overcrowded prisons.²⁰⁴ The situation has been exacerbated by a security decision that prevents families bringing food for incarcerated family members.

The inter-play of structural and societal factors in prisoner deaths is apparent in numerous national contexts. A 2009 study linked the high rate of prisoner deaths from disease (TB in particular) and starvation in Zimbabwe to the country's 'economic decline and political crisis'

¹⁹³ Fifth Report on the situation on human rights in Guatemala, supra n 66, para VIII(29).

¹⁹⁴ Ibid., para VIII(17).

¹⁹⁵ Special Rapporteur on executions, supra n 44, para 84.

¹⁹⁶ Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, Mission to the Republic of South Africa (14–30 June 2004), para 55.

¹⁹⁷ UNHCHR, Press Release 'Ecuador: UN torture prevention body remains seriously concerned by prison crisis after second visit' 6 October 2022, available at: www.ohchr.org/en/press-releases/2022/10/ecuador-un-torture-prevention-body-re-mains-seriously-concerned-prison-crisis [last accessed 10 November 2022].

¹⁹⁸ SPT Response to the Reply of the Brazilian Government, CAT/OP/BRA/2, 5 March 2014, para 34.

¹⁹⁹ Dal Santo, supra n 145 at 3.

²⁰⁰ Lines, supra n 73 at 6.

²⁰¹ Report on the situation of human rights in Venezuela, supra n 108, para 395.

²⁰² Ibid., para 393.

²⁰³ Ibid., para 432.

²⁰⁴ Bafitos, 'The Impact of Rising Food Prices on Food Security in Lebanese Prisons' available at: www.penalreform.org/blog/the-impact-of-rising-food-prices-on-food/ [last accessed 5 July 2022].

during the 90s. Escalating prison deaths were being caused by severe overcrowding, a lack of medicine, water, clothing and severe national food shortages.²⁰⁵ Forced reliance on one meal a day (porridge and cabbage) meant prisoners were literally fighting over food.²⁰⁶ Few prisoners had relatives who could afford to bring them food. In this situation, a prison sentence bought ‘the certainty of great suffering and the very real possibility of death’.²⁰⁷ As the High Commissioner for Human Rights stressed—the ‘denial or inadequate provision of food and water to detainees can . . . adversely affect their right to life’.²⁰⁸

Environmental harms such as pollution are also problematic. Structural decisions to locate or construct prisons on contaminated sites have clear implications for prisoner health.²⁰⁹ Prisoners can be exposed to serious environmental hazards (water and air pollution), due to the situation of prisons on contaminated land or toxic sites, creating ‘lower life expectancy and a litany of illnesses’.²¹⁰ Poor water supply (and contamination with manganese, metals, oils) has also been identified as a cause of prisoner deaths.²¹¹

The recent prisoner death scandal in Haiti illustrates the inter-relatedness and cumulative detrimental impact of different levels of contributory factors. In June 2022, the Guardian reported that eight inmates had starved to death in the overcrowded and oppressively hot Le Cayes prison in Haiti after it ran out of food.²¹² Shockingly, these deaths were not unforeseeable: the UN Security Council had been notified that 54 prisoners had already died from malnutrition in the previous few months in a food, water and medicine crisis.²¹³ A previous report had outlined how the fuel crisis in 2021 had meant that all Haitian prisons were struggling to provide meals to prisoners resulting in ‘several cases of severe malnutrition’.²¹⁴ Le Cayes prison lacked food and also water due to a broken pump (situational). The lack of funding to provide food and water to overcrowded prisons was systemic and ongoing (structural). Efforts to resolve the matter, and restore food supply to prisons, involved appointing the fifth director of prison administration in 11 months.²¹⁵ A report to the UN Security Council in June confirmed that prison authorities were struggling, due to a lack of funding, to provide two meals a day to prisoners housed in severely overcrowded prisons.²¹⁶ In such situations, prisoners could typically rely on their relatives to provide food. Haiti is currently, however, experiencing a ‘protracted and deteriorating political, economic, security, human rights, humanitarian and food security crises’ as well as ‘extremely high levels of gang violence and other criminal activities’.²¹⁷ The severe scale of gang warfare had blocked access to prisons as major roads had become unpassable (societal).²¹⁸ Further, infrastructural damage from the August 2021 earthquake was exacerbating prison overcrowding (environmental). Severe overcrowding (with some prisons holding up to five times as many prisoners as they were designed to hold) was ‘exacerbated by the relocation of hundreds of individuals detained in three southern region prisons which

²⁰⁵ Alexander, ‘Death and Disease in Zimbabwe’s Prisons’ (2009) 373 *The Lancet* 995–996 at 995.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, at 996.

²⁰⁸ UNHCHR, *supra* n 1, para 24.

²⁰⁹ Special Rapporteur on the right to health, *supra* n 11, para 31.

²¹⁰ Wang, ‘Prisons are a Daily Environmental Injustice’ Prison Policy Initiative Blog, 20 April 2022, available at: www.prisonpolicy.org/blog/2022/04/20/environmental_injustice/ [last accessed 10 November 2022].

²¹¹ *Ibid.*

²¹² The Guardian, ‘Haiti: Dozens of Inmates Starve to Death as Malnutrition Crisis Engulfs Prisons’ available at: www.theguardian.com/world/2022/jun/23/haïti-prisons-starvation-un-deaths-crisis [last accessed 10 November 2022].

²¹³ Report of the Secretary-General on Haiti to the UN Security Council, S/2022/481, 13 June 2022, para 42.

²¹⁴ Report of the Secretary-General on Haiti to the UN Security Council, S/2022/117, 15 February 2022, para 29.

²¹⁵ *Ibid.*, para 30.

²¹⁶ UN Secretary-General, *supra* n 213, para 31.

²¹⁷ UNSC Resolution 2645(2022), 15 July 2022.

²¹⁸ UN News, ‘Haiti: Armed Violence Reaches “Unimaginable and Intolerable Levels”’ available at: <https://news.un.org/en/story/2022/05/1118432> [last accessed 10 November 2022].

suffered extensive damage during the 14 August earthquake'.²¹⁹ The situation has deteriorated further with a national outbreak of cholera: within an overcrowded prison system that lacks water, sanitation and food, it is unsurprising that this outbreak has already caused at least 14 prisoner deaths.²²⁰

5. ENVIRONMENTAL FACTORS CONTRIBUTING TO PRISONER DEATHS

In addition to structural and societal factors that impact upon the ability of prison authorities to prevent prisoner deaths, the last decade has underscored the risks posed to prisoners by transnational and even global threats to prisoners' right to life. Extreme weather caused by climate change, global pandemics and military conflict have all impacted on prison mortality rates and will continue to do so. Given the detrimental impact environmental, health and security factors can have upon a State's ability to fulfil its obligation to protect prisoners' lives, it is clear that State and prison authorities must recognise threats that emanate from beyond national territorial boundaries and plan for their management.

The prevalence of transmissible disease in prisons (such as HIV, TB, hepatitis B and C) has resulted in standards being developed to provide guidance to authorities on ways to prevent outbreaks. These standards encourage States to put national strategies and measures in place, in collaboration with national health services, to prevent the spread of disease.²²¹ The impact of COVID-19 on prisoners and prison systems has been documented in academic studies.²²² Statements issued by health, rights and prison oversight bodies outlined the principled and practical measures required of national prison services to overcome this global threat to prisoner mortality.²²³ Unfortunately, the death rate in many prison systems increased on account of this disease, and was inflated in comparison to non-incarcerated persons. In the US, for example, the death rate in prisons was roughly three times higher than in the general population. During eight months of the third wave alone, more prisoners died due to COVID-19 in the US, than in 44 years due to the death penalty.²²⁴ It must be asked, how many of these deaths were preventable? As the African Rapporteur on prisons noted, the COVID-19 pandemic exposed systemic issues in prison systems and shone a spotlight on the need to ensure reform through the adoption of long-term solutions.²²⁵

The 2022 invasion of Ukraine by Russia exposed the risks posed to prisoners' lives due to the loss of control of prisons in occupied territories, and prison instability in active conflict zones or territories under attack (including nuclear risks). McClain describes, for example, that prisoners were left unguarded, during shelling and without access to medical treatment when staff evacuated during Russian incursions into the Donetsk region.²²⁶ Prisons in active conflict zones are under attack, and lack water, heat and electricity: yet 'people who are incarcerated

²¹⁹ UN Secretary-General, *supra* n 214, para 29.

²²⁰ Human Rights Watch 'Haiti: Urgently Address Cholera Outbreak' 18 October 2022, available at: www.hrw.org/news/2022/10/18/haiti-urgently-address-cholera-outbreak [last accessed 10 November 2022].

²²¹ Rules 1, 23 Recommendation No R(93), *supra* n 21; Rules 36, 41, 42 Recommendation No R(98)7, *supra* n 19; Principle XI(1) OAS PBP; Para 5(c) Plan of Action, Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa.

²²² See Dünkel, Harrendorf and Van Zyl Smit (eds), *The Impact of COVID-19 on Prison Conditions and Penal Policy* (Routledge, London: 2022).

²²³ See Advice of the SPT relating to COVID-19 (CAT/OP/10); ACmHPR, Resolution on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts, ACHPR/Res. 449 (LXVI) 2020.

²²⁴ Mortaji et al, 'Chronicle of Jails and Prisons: Covid-19 Deaths Foretold' (2021) 361(6) *The American Journal of the Medical Sciences* 801–802 at 801.

²²⁵ Inter-Session Activity Report, Special Rapporteur on prisons, conditions of detention and policing in Africa, 13 November–3 December 2020, paras 42–44.

²²⁶ McClain, 'Left in Harm's Way' 19 April 2022, available at: <https://pjil.lbj.utexas.edu/left-harms-way>

cannot choose to evacuate, even when conditions are life-threatening'.²²⁷ Prisoners in conflict situations are also often restricted from accessing (acceptable levels of) healthcare.²²⁸ The conflict in Ukraine also contributed to further global food insecurity and economic problems impacting on prisoners around the world.

The issue of extreme temperatures in prisons will increasingly affect prisoner death rates. Extreme heat is a real and present threat, with recorded deaths and 'horror stories of inmates screaming for help from the windows' in the US.²²⁹ Extreme heat is intolerable for all prisoners, but will have a worse effect on persons who are more heat sensitive due to pre-existing conditions such as diabetes or high blood pressure (conditions typically present in higher rates in prisons) or on certain types of medication (psychotropic drugs).²³⁰ Sharka et al note that even though overcrowding makes conditions even hotter as bodies generate heat and extreme heat exacerbates the spread of communicable disease, many authorities lack policies on temperature regulation, or have the means to enforce such policies.²³¹ Extreme weather can create wildfires, hurricanes and flooding that require residential evacuations. Yet, effective (or humane) prison evacuations are less likely to be part of emergency planning.²³² These events may also cause loss of power which can also result in extreme heat within prisons.²³³

Scholars and activists are increasingly 'bridging environmental justice and criminal justice . . . [and] breaking the boundary between green criminological research and prison scholarship' by conducting research on the health impacts on prisoners of environmental harms.²³⁴ Wu and Felder identify the reality that both the COVID-19 pandemic and the increasing effects of climate change represent 'public health crises on global scales that will cause greater harm to populations of imprisoned people due to the irreducible realities of congregate imprisonment and because imprisonment prohibits residents from taking rational risk-reducing measures to protect themselves'.²³⁵ They argue that climate change is likely to increase the risk of serious harm to prisoners as it will create or exacerbate unconstitutional conditions due to chronic understaffing (due to shrinking economies) and make facilities more dangerous due to IPV caused by the stress of living in environmentally dangerous conditions.²³⁶ Just as the COVID-19 pandemic 'brought urgency towards rethinking approaches and policies on prisons and punishment', climate change is likely to wield a similar pressure to reconceptualise penal planning 'towards transformative directions for reform'.²³⁷ At a minimum, Wu and Felder argue, national authorities should forward plan, adopt harm-reduction strategies that include plans for mass evacuation and relocation, and contingency plans for a lack of food and basic shelter.²³⁸

²²⁷ Ibid.

²²⁸ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/68/297, 9 August 2013, para 20.

²²⁹ Chammah, 'Cooking them to Death' The Lethal Toll of Hot Prisons' 10 November 2017, available at: www.themarshallproject.org/2017/10/11/cooking-them-to-death-the-lethal-toll-of-hot-prisons [last accessed 10 November 2022].

²³⁰ Wang, supra n 210; Chammah, supra n 229; Skarha, Peterson, Rich and Dosa, 'An Overlooked Crisis: Extreme Temperature in Incarceration Settings' (2020) 110(1) *American Journal of Public Health* S41–S42.

²³¹ Skarha et al, supra n 230.

²³² McClain, supra n 226.; Wang, supra n 210.

²³³ Skarha et al, supra n 230.

²³⁴ Toman, 'Something in the Air: Toxic Pollution in and Around U.S. Prisons' (2022) *Punishment and Society*, Online First, 15 July 2022, doi.org/10.1177/14624745221114826.

²³⁵ Wu and Felder, 'Hell and High Water: How Climate Change can Harm Prison Residents and Jail Residents, and Why Covid-19 Conditions Litigation Suggests most Federal Courts will Wait-and-See When Asked to Intervene' (2022) 49(2) *Fordham Urban Law Journal* 259–340 at 325.

²³⁶ Ibid., at 324.

²³⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 16 July 2020, A/75/163, para 107.

²³⁸ Wu and Felder, supra n 235 at 328.

6. PRISONER DEATH PREVENTION MEASURES: THE NEED FOR TAILORED STRATEGIES, SPECIALIZED STANDARDS, BROADER OVERSIGHT AND A NEW UN SPECIAL PROCEDURE

Preventability depends on a true acknowledgement of the full range of factors contributing to premature and unnecessary prisoner deaths. While a myriad of individual and situational factors contribute to prisoner deaths,²³⁹ this article focused on the (interplay between) structural and societal factors that create(s) custodial contexts that produce heightened risks of fatalities. It also illustrated the emergence and growing significance of factors that originate beyond territorial boundaries and are often beyond governmental control. This reality, however, neither alters nor diminishes the responsibility of States to protect prisoners' lives.

A. A Heightened Obligation to Protect Prisoners' Lives

The positive obligation on States to prevent preventable prisoner deaths derives from substantive treaty provisions, rights principles and penal standards, particularly those delineating the right to life,²⁴⁰ the right to freedom from torture, inhuman and degrading treatment and punishment,²⁴¹ the right to be treated with humanity and respect for dignity²⁴² and the right to healthcare.²⁴³ The basic premise that prisoners retain all rights and freedoms except for those temporarily restricted due to the inherent nature of detention is well established.²⁴⁴ The dependency created by imprisonment may, however, produce a *heightened duty* in respect of some rights, and the right to life in particular.²⁴⁵ The positive duty to protect life is not absolute. The ECtHR has explained that 'the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources' means that 'the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden'.²⁴⁶ In other words, not every alleged risk to life will entail a rights obligation. However, in the custodial context, the obligation is considered to produce a heightened duty of care.

The Human Rights Committee has explained that the heightened duty of care and positive duty to protect the life of persons deprived of their liberty extends to an obligation to provide inmates with necessary medical care, shield them from IPV, prevent suicides and provide reasonable accommodation for persons with disabilities.²⁴⁷ The African Commission has elaborated on this protective duty generally, explaining that it extends to chronic risks (such

²³⁹ See Tomczak and Mulgrew, 'Making Prisoner Deaths Visible: Towards a New Epistemological Approach' (2023) 4 *Incarceration* 1–21.

²⁴⁰ Article 6(1) International Covenant on Civil and Political Rights (ICCPR) 1966, 999 UNTS 171; Article 2(1) European Convention on Human Rights (ECHR) 1953, 213 UNTS 221; Article 2(1) EU Charter of Fundamental Rights 2012 C 326/02; Article 1 American Declaration on the Rights and Duties of Man 1948; Article 4(1) American Convention on Human Rights (ACHR) 1978, 1144 UNTS 123; Article 4 ACHPR; Article 5(1)–(2) Arab Charter of Human Rights.

²⁴¹ Article 7 ICCPR; Article 3 ECHR; Article 5(2) ACHR; Article 5 ACHPR; Article 8(1) Arab Charter of Human Rights; Article 4 EU Charter of Fundamental Rights; Article 5 Universal Declaration on Human Rights (UDHR) 1948 (A/840); Article 3 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment 1975, GA Resolution 3452 (XXXX); Rule 1 NMR; Principle 6 BO.

²⁴² Article 10(1) ICCPR; Article XXV American Declaration on the Rights and Duties of Man; Article 5(2) ACHR; Article 5 ACHPR; Article 20(1) Arab Charter on Human Rights; Rule 1 NMR; Principle 1 UNBP; Rule 72(1) EPR; *The Miguel Castro-Castro Prison v Peru*, supra n 121, para 315.

²⁴³ Article 12(1) ICESCR; Article 16(1) ACHPR; Article 39(1) Arab Charter on Human Rights; Article 10(1) Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights (1988 Protocol of San Salvador).

²⁴⁴ General Assembly resolution 67/166; Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 August 2013, para 87; Principle 5 UNBP; Rule 2 EPR; Principle VIII, OAS PBP. See also para 2 Kampala Declaration on Prison Conditions in Africa 1996.

²⁴⁵ Human Rights Committee, General Comment No 36 (2018) on Article 6: The Right to Life, para 25; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, A/HRC/35/23, 6 June 2017, para 37; *Pacheco Teruel et al v Honduras*, Judgment (Merits, Reparations and Costs) IACtHR Series C No 241, 27 April 2012, paras 63–64.

²⁴⁶ *Coselav v Turkey*, Application no 1413/07, Judgment, 9 October 2012, para 54.

²⁴⁷ Human Rights Committee, General Comment No 36 (2018) on Article 6: The Right to Life, para 25.

as poor healthcare systems) and environmental or humanitarian emergencies such as natural disasters, famines and outbreaks of infectious disease.²⁴⁸ In relation to the heightened level of responsibility in custodial contexts, the ACmHPR explained that States are under a positive obligation to protect all detained persons from violence, and emergencies that threaten their lives and to provide the necessary conditions for dignified life (food, water, ventilation, disease-free environment) and adequate healthcare.²⁴⁹ Many of the rights underpinning this heightened responsibility are non-derogable and apply in times of emergencies and conflict.²⁵⁰

B. (Re-)Affirming and Enumerating this Positive Duty and Its Preventative Objective

Many premature, preventable deaths would not occur 'but for' the custodial status of affected prisoners. Numerous treaties, policies and standards describe the ways in which States are obliged or are encouraged to act to reduce prisoner deaths. The protective objective of the rights-based obligation to prevent prisoners' deaths is clear. The obligation is easy to state and legally substantiate. The undeniable fact that preventable prisoner deaths continue to occur, however, makes the argument for a more urgent call to action compelling.

The obligation on States to protect prisoners' lives and prevent preventable deaths in prison should be (re)-articulated and enumerated. Greater awareness of all the elements of an effective prisoner death prevention strategy is needed. National strategies for reducing preventable deaths are necessary to comply with the requirement to develop legal and practical frameworks to ensure respect for, protect and fulfil the right to life.²⁵¹ Prisoner death prevention strategies require greater breadth (to be comprehensive), detail (to be effective) and future-proofing (to enable authorities to deal with real and worsening (trans)national risks).

The duty on states to prevent preventable prisoner deaths is an obligation of means rather than result. What those means are, however, requires careful thought. Further, there is currently a civil and political rights focus that often situates the duty to protect prisoners' lives within the right to life and/or freedom from torture. It is clear from the examination of the broader societal and environmental factors affecting custodial fatality rates above, that economic, social and environmental rights can offer protective value. The creation and delineation of more holistic standards focused specifically on the prevention of prisoner deaths at an international or regional level would provide a sound strategy base for national governments.

The creation of specialised standards aimed at achieving the overarching goal of preventing preventable deaths will undoubtedly have benefits for the attainment of prisoner rights generally. It is foreseeable that recommendations tailored towards the reduction of premature prisoner deaths will, as a consequence, improve prison healthcare systems, reduce violence, ensure prisons are built in safe locations and force governments to engage in emergency planning that will benefit all prisoners. It may be that (additional) regional standards are required given variations in dominant causes of deaths or contributing factors. For example, suicide is often the leading form of prisoner death in Europe, whereas violent deaths caused by IPV and lethal interventions are more common in South America. In addition to creating a prevention-focused legal framework to guide and shape national strategies, specialised standards could also act as a catalyst for oversight bodies to move beyond an individual and situational focus when documenting prisoner deaths.

²⁴⁸ ACmHPR, General Comment No 3 (2015) on the African Charter of Human and People's Rights: The Right to Life (Article 4), paras 41–42.

²⁴⁹ *Ibid.*, para 36.

²⁵⁰ Special Rapporteur on health, *supra* n 228, para 70(a)–(b).

²⁵¹ ACmHPR, *supra* n 248, para 7; *Montero-Aranguren et al v Venezuela*, *supra* n 120, paras 65–66.

C. Oversight of Prisoner Death Reduction Strategies and Practices

Loughnan draws attention to the ‘inverse relationship between the surveillance characterising . . . sites [of confinement], and the invisibility of those confined’.²⁵² All prisons should be subject to regular external monitoring and inspections by independent national, regional and international monitoring bodies to protect prisoners’ rights.²⁵³ States have (increasingly) granted national preventative mechanisms, regional and international oversight bodies and Rapporteurs access to all places where persons are deprived of their liberty to conduct both regular and ad hoc visits to prevent ill-treatment and strengthen the protection of prisoners.²⁵⁴ While there has been a movement from what Rodley termed a presumption and paradigm of ‘opacity’ to one of ‘transparency’ in terms of access to oversight bodies,²⁵⁵ it is apparent that not all factors contributing to prisoner deaths are examined in such reports.

Rates and patterns in prisoner death statistics provide important indicators of the general health, safety and rights-compliant nature of a prison system. Independent oversight reports do document prisoner deaths. The current individual and situational factors focus that is often adopted, however, ignores what may in fact be more significant causes, and causes that perpetuate and aggravate situations in which fatalities will continue to occur. Many oversight reports are facility focused due to the nature of the oversight process: CPT and SPT reports outline findings in relation to deaths in the particular facilities visited within a country.

While thematic reports are conducted, such reports are often conducted several years or even decades apart. The regular independent assessment of (the impact of) a country’s strategy to reduce preventable prison deaths is vital. In the context of torture prevention, for example, States are encouraged to undertake regular and systemic reviews of prevention strategies, that should encompass an assessment of the methods, practices and arrangements for the treatment of persons deprived of their liberty, and form part of the inspection process.²⁵⁶

It is imperative that both explicit and implicit forms of (institutional) violence are addressed. Loughnan demonstrates the need to look beyond explicit forms of coercive control to identify and name the implicit ‘violence that emanates from neglect,’ especially given that the ‘power of neglect lies in its capacity for responsibility to disappear from view’.²⁵⁷ In other words, violence can occur behind a ‘veil of inaction’ and result from the withdrawal of services and healthcare, in a way that produces diminished accountability for the harms caused.²⁵⁸ The UN Special Rapporteur on health has also drawn attention to the duality of physical violence and the ‘silent forms of adverse conditions of detention’.²⁵⁹ The Rapporteur’s 2018 report attributed the fact that widespread and systematic rights violations were continuing to the fact that the several monitoring bodies active in prisons ‘rarely consider structural barriers’²⁶⁰ and argued that a broader focus on structural challenges would be a ‘useful tool in their monitoring and promotion

²⁵² Loughnan, ‘The Scene and the Unseen: Neglect and Death in Immigration Detention and Aged Care’ (2022) 3(2) *Incarceration* 1–18 at 2.

²⁵³ Rules 83(1)(b), 83(2) NMR; Rules 9, 93(1) EPR; Principle XXIV OAS PBP; Principle 7, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Article 17(2)(e) International Convention for the Protection of All Persons from Enforced Disappearance 2010, 2716 UNTS 3.

²⁵⁴ Articles 2–3, 4(1) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OPCAT), 2375 UNTS 237; Articles 1–2 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987, ETS No 126.

²⁵⁵ Interim report on the question of torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur of the Commission on Human Rights, A/56/156, 3 June 2001, para 35.

²⁵⁶ Article 11 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85; HRC General Comment No 20 (1992) on Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, para 11; Article 6 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Rule 83(1)(a) NMR.

²⁵⁷ Loughnan, *supra* n 252 at 3.

²⁵⁸ *Ibid.*, at 5, 13.

²⁵⁹ Special Rapporteur on the right to health, *supra* n 11, para 32.

²⁶⁰ *Ibid.*, para 44.

functions'.²⁶¹ States should be assisted, through the reports of independent monitors, to identify and 'address socio-economic and other systemic factors leading to the . . . deprivation of life'.²⁶² A focused thematic review is also better placed to provide a foundation for tailored action plans that can address the underlying systemic, societal and transnational causes of violence and neglect.

D. The Creation of a Prisoner (Death-) Focused Special Procedure

There is therefore a solid argument to be made for the creation of a specific international mandate on the issue of prisoner deaths. There are numerous current thematic UN Special Procedures that address the structural, societal and environmental contributory factors identified above. Rapporteurs have been appointed, for example, to address arbitrary detention, climate change, enforced and involuntary disappearances, the right to a clean and healthy environment, extrajudicial, summary and arbitrary executions, the right to food, the right to health, extreme poverty, torture and inhuman and degrading treatment and punishment, the right to safe water and sanitation and the implications of toxic waste.²⁶³ However, the majority of these roles are not prison focused, and though they might occasionally address how these matters affect prisoners and contribute to prisoner deaths, this is not their focus or priority.

There has previously been a call for the creation of a UN Special Rapporteur on the rights of detained persons.²⁶⁴ This specialist role already exists in regional rights systems (Africa and Americas). This more general role might suffice, or it may be necessary to create a specific mandate for prisoner deaths. An alternative option would be to create a Working Group on Preventing Prisoner Deaths that can bring together the experience of a number of experts and/or (previous) Special Rapporteurs. The five-member Working Group on Arbitrary Detention, for example, created in 1991, had its mandate renewed in 2019.²⁶⁵ A working group might also be well placed to examine and make recommendations for issues affecting various regions.

E. Illegitimacy of Financial Justifications for Inaction

Scholarship increasingly recognizes the role of necro-power in deaths in confinement (deciding whose life matters and whose does not), and the role that the (violence of the) site in which a person resides plays in producing death.²⁶⁶ Prison conditions that violate prisoners' rights and result in patterns of prisoner deaths must be identified and remedied. Overcrowding, for example, should be prohibited by law, and if it occurs, it should be investigated, and remedies adopted to immediately address the situation and prevent its repetition.²⁶⁷ Saying the problem is simply too big, or prohibitively expensive to remedy, is not a legitimate response.

The Human Rights Committee, for example, has underlined the fundamental and universally applicable nature of the rule that prisoners be treated with respect for their humanity and dignity, stating that it is not dependent on the material resources available in a State.²⁶⁸ It further stressed that national governments cannot rely on a lack of financial resources or other logistical problems to reduce their responsibility to protect lives.²⁶⁹ The Special Rapporteur on torture also unambiguously declared that 'treating all persons deprived of their liberty with humanity

²⁶¹ Ibid., para 45.

²⁶² Special Rapporteur on executions, *supra* n 245, para 120(b).

²⁶³ Find the list of thematic mandates, available at: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type> [last accessed 10 November 2022].

²⁶⁴ Special Rapporteur on executions, *supra* n 144, para 90.

²⁶⁵ See Human Rights Council Resolution, A/HRC/RES/42/22.

²⁶⁶ Loughnan, *supra* n 252 at 2, 4.

²⁶⁷ Principle XVII OAS PBP.

²⁶⁸ HRC General Comment No 21 (1992) on Article 10: Humane Treatment of persons deprived of their liberty, para 4.

²⁶⁹ Human Rights Committee, General Comment No 36 (2018) on Article 6: The Right to Life, para 25.

and with respect for their dignity is a fundamental and universally applicable rule, the application of which . . . cannot be dependent on the material resources available in the State'.²⁷⁰ Consequently, States should 'allocate adequate resources to ensure the full implementation' of international penal standards.²⁷¹ Put simply, 'financial justifications are not acceptable for the infringement of rights'.²⁷² Moreover, extreme and extraordinary circumstances, such as war, political instability and national emergencies, cannot be relied upon to justify the dereliction of the duty to ensure the humane treatment of detained persons.²⁷³

The necessity of taking concrete actions to address structural problems such as overcrowding, guarantee access to healthcare and (re)assert control over prisons in order to reduce prisoner deaths has been stressed by the UN High Commissioner.²⁷⁴ Rather than adopt a position that widespread or systemic issues are intractable, it is imperative that governments work with international bodies to develop effective prevention strategies. In challenging financial situations, States are urged to take advantage of technical assistance provided by the UN or other international bodies to strengthen national capacity and infrastructure to ensure minimum standards of imprisonment are attained.²⁷⁵

7. CONCLUSION

The easily stated and substantiated obligation to protect prisoners from avoidable deaths is not being (sufficiently) respected in practice. In 2009, the UN Special Rapporteur on torture highlighted that routine breaches of obligations to ensure humane conditions of detention and respect for the dignity of detainees were 'caused less by resource constraints than by the punitive approach of most criminal justice systems'.²⁷⁶ The persistence of prisoner deaths on the agenda of various UN rights and criminal justice bodies, including the recent mandate of the UN Rapporteur on extra-judicial, summary and arbitrary executions, perhaps speaks to a more fundamental lack of respect for prisoners. But this makes ensuring continued focus and pressure to remedy the situation even more crucial. The Sustainable Development Goals, adopted by all UN members States, urge national authorities to ensure the health and well-being of all persons and 'significantly reduce all forms of violence and related deaths'.²⁷⁷ This article has demonstrated the individual and cumulative impact of structural, societal and environmental factors on natural and violent prisoner deaths and how these factors operate in tandem to create dangerous and life-threatening custodial environments. It concludes with recommendations to reaffirm and enumerate the positive obligation to protect prisoners' lives in specialised standards and tailored prevention strategies and create a specific UN mandate in this regard.

²⁷⁰ Special Rapporteur on torture, supra n 244, para 88(f).

²⁷¹ Ibid., para 88(h).

²⁷² Rule 4 EPR. See also *Vera Vera v Ecuador*, supra n 38, para 42.

²⁷³ Principle I OAS PBP.

²⁷⁴ UNHCHR, supra n 1, para 65(a)–(c).

²⁷⁵ Special Rapporteur on torture, supra n 244, para 88(i).

²⁷⁶ Special Rapporteur on torture, supra n 13, para 80.

²⁷⁷ Targets 3 and 16.1 SDGs. [last accessed 10 November 2022].