

PRISONERS IN A SITUATION OF VULNERABILITY



Prisoners in a situation of vulnerability are those who, due to their characteristics, real or attributed, social attitudes and the conditions of their detention, are at a higher risk than ordinary prisoners of having their basic human rights violated.

PRISONERS IN A SITUATION OF VULNERABILITY



Prisoners in a situation of vulnerability are those who, due to their characteristics, real or attributed, social attitudes and the conditions of their detention, are at a higher risk than ordinary prisoners of having their basic human rights violated.

Examples:

Women – vulnerable due to prevailing gender stereotypes and isolation and gender-based violence

Children – vulnerable because of their lack of understanding of the law, prison order and venues to complain, deprivation of family support and physical weakness

Prisoners with disabilities – vulnerable because of the lack of accommodation of the physical environment, stigma, lack of appropriate medical treatment and rehabilitation

Foreign prisoners – vulnerable due to their social isolation, differences in language, culture, customs and religion, lack of family ties and contacts with the outside world

Ethnic minority and indigenous prisoners – vulnerable because of their social status, prejudices and stereotypes they face in society

What do international standards say?

What are the international standards relating to prisoners in a situation of vulnerability?

Standards derive from the major international human rights treaties, customary international law (e.g. on protection against torture). At the EU level, Directive (EU) 2016/800 provides for legally binding standards for treatment of children in detention. In addition, different UN, Council of Europe and EU bodies have adopted soft law documents, which are either exclusively dedicated to or contain specific provisions for the protection of prisoners in a situation of vulnerability. There are three types of soft law standards:

1.

Thematic soft law documents dedicated exclusively to specific groups

Examples:

Women: [UN Bangkok Rules](#)

Children: [UN “Havana Rules”](#),
[UN “Beijing Rules”](#),
[CoE Rec CM/Rec\(2008\)11](#)

Foreign prisoners: [CoE Rec CM/Rec\(2012\)12](#)

LGBTI: [SPT, 9th annual report](#)

2.

Provisions in general soft law documents concerning groups in a situation of vulnerability, e.g. foreign prisoners, prisoners with disabilities, ethnic minority and indigenous prisoners

Examples:

[UN Nelson Mandela Rules, A/RES/70/175](#)
[CoE, European Prison Rules, Rec\(2006\)2-rev](#)

[European Parliament, Prison systems and conditions, Res of 5 October 2017](#)

3.

National standards on groups of prisoners that are recognized as vulnerable based on contextual criteria in the specific state

Examples:

[“Permanently unemployed prisoners” as defined by the Czech law, recognized as vulnerable by the Czech Public Defender of Rights](#)

What are the State obligations concerning prisoners in a situation of vulnerability?

States and therefore its agents have a general duty to protect all detainees, including those in situations of vulnerability. This general duty includes three types of obligations:

DUTY TO RESPECT

Prison staff must not violate the rights of prisoners in a situation of vulnerability. In particular they should be careful not to discriminate on the specific ground, which generates the vulnerability, such as a prisoner’s disability or gender.

DUTY TO ACCOMMODATE

The State must adjust the conditions of detention to address and reduce the specific vulnerability of the particular prisoner or group, e.g. by providing an appropriate physical environment, sanitary and other materials, education for those of compulsory school age, interpreters etc.

DUTY TO PREVENT

The authorities have to identify vulnerability, anticipate possible risks, take precautions against them and organize the detention facilities with the aim to protect individuals and groups in a situation of vulnerability from any assault on their human rights, regardless of the perpetrator.



National Preventive Mechanisms, established under the UN Optional Protocol to the Convention against Torture (OPCAT), are mandated to visit places of detention to prevent torture and ill-treatment and examine factors that contribute to its occurrence. As vulnerability is associated with a higher risk of any type of human rights violation, NPMs should give priority to identifying groups and individuals in a situation of vulnerability in detention and to monitoring and reporting on their human rights situation.

What should prison staff and administrations consider?

1. Which are (groups of) prisoners in a situation of vulnerability in your jurisdiction and what makes them vulnerable?
2. How do we identify prisoners and groups in a situation of vulnerability?
3. What measures do we need to adopt to respect and prevent human rights violations of prisoners in a situation of vulnerability?
4. What measures do we need to adopt to accommodate the specific needs of prisoners and groups in a situation of vulnerability?
5. What would you improve for prisoners in a situation of vulnerability if you were in charge?

Additional resources

– [UNODC, Handbook on Women and Imprisonment, 2nd ed., New York, 2014](#)

– [CHRHR, Protecting Children Against Torture in Detention: Global Solutions for a Global Problem, May 2017](#)

– [UNDOC, Handbook on prisoners with special needs, UN Office on Drugs and Crime, Vienna, 2009](#).

– [APT, Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring](#)

To find out more about complaints consult our Handbook:
“Prisoners in a Situation of Vulnerability”

For further information on other thematic issues, please refer to our publications on:
Solitary confinement, Prison violence, Complaint procedures