

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Independent Expert on the enjoyment of all human rights by older persons**

Ref.: AL GBR 15/2023  
(Please use this reference in your reply)

17 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers and Independent Expert on the enjoyment of all human rights by older persons, pursuant to Human Rights Council resolutions 52/7, 51/8, 44/5, 44/8 and 51/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the serious impacts that the imprisonment for public protection (IPP) sentencing system in England and Wales continues to have on the human rights of affected prisoners, including their right to be free from punishments that are cruel, inhuman or degrading, or which result in undignified treatment that is cruel, inhuman or degrading.

It is our assessment that the continual application of this system of preventive sentencing, now abandoned because of its widely accepted deep flaws, requires your Excellency's Government to embark on a re-sentencing programme of all remaining IPP prisoners as a matter of utmost priority.

According to the information received:

Sentences of imprisonment for public protection (IPP) were indeterminate sentences, available for courts to impose from 2005 to 2012, issued to offenders identified as posing a significant risk of causing serious harm to the public, until they would no longer pose such a risk<sup>1</sup>.

People convicted under the IPP sentencing system were given a minimum term that they had to serve in prison (the so-called 'tariff'), after which release could be ordered when the Parole Board was satisfied that the prisoner was safe to release. It was incumbent on prisoners seeking to be released to prove that they were no longer a risk, rather than for the Parole Board to prove that prisoners represented a risk<sup>2</sup>. There is no published data showing the original tariff length of all IPP sentences, however the available evidence suggests that the average tariff may have been around 4 to 5 years<sup>3</sup>.

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<sup>1</sup> For a detailed explanation of the functioning of the IPP sentences, see Jacqueline Beard, Sentences of Imprisonment for Public Protection, Research Briefing, House of Commons Library, 24 April 2023: <https://commonslibrary.parliament.uk/research-briefings/sn06086/>

<sup>2</sup> See Statement on IPP prisoners from Parole Board Chairman (2016): <https://www.gov.uk/government/news/statement-on-ipp-prisoners-from-parole-board-chairman>

<sup>3</sup> See Research Briefing, quoted above, footnote 1

When released, IPP prisoners would be ‘on licence’, or ‘on probation’ or ‘under supervision’, for an indefinite period of time, with conditions to follow. Failure to comply with such conditions, would result in them being recalled to prison.

IPP prisoners could apply to have their licence terminated following ten years after their first release from custody<sup>4</sup>.

Between 2005 and 2012, a total of 8,711 individuals received an IPP sentence<sup>5</sup>. As of 31 December 2022, there were 1,394 unreleased IPP prisoners in custody in England and Wales<sup>6</sup>. In addition to these unreleased IPP prisoners, there were 1,498 recalled IPP prisoners in custody, for a total of 2,892 IPP prisoners<sup>7</sup>, of which 99% were male, which is slightly higher than the general prison population of 96%. As of 30 June 2022, IPP prisoners had an older age profile to the rest of the custodial population<sup>8</sup>.

Of the numbers of persons who continue to be imprisoned under this scheme, as of 31 December 2022, 32 unreleased prisoners had not yet passed their tariff date, while two additional cases where the tariff date was not recorded in the dataset. Of the remaining unreleased IPP prisoners, almost all (97%) were more than two years past their tariff date and nearly half (46%) were ten years or more past their tariff date.

The functioning of the IPP system was premised on the understanding that rehabilitative treatment would be made available to IPP prisoners. Through appropriate courses and other programmes, they would be assisted, while in prison, towards achieving reformation and social reintegration.

When initially introduced, IPP sentences were mandatory in all cases of convictions for a “serious offence”, which resulted in the sentencing of a considerably large number of individuals under the IPP scheme.

As a result, it soon became challenging for the national authorities to put in place sufficient and adequate resources to manage IPP prisoners effectively. Many of them, therefore, were left with no or limited opportunities to demonstrate a reduction in their risk, mainly due to the absence of or the limited accessibility to rehabilitation courses and programmes<sup>9</sup>.

Accordingly, the IPP sentencing system was much criticised, at domestic and international levels, for failing to work properly from the outset.

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<sup>4</sup> Ibid.; See also Independent Commission into the Experience of Victims and Long-Term Prisoners, Making sense of sentencing - Doing justice to both victim and prisoner, June 2022: <https://icevlp.org.uk/wp-content/uploads/ICEVLP-Making-sense-of-sentencing-web-copy.pdf>

<sup>5</sup> See House of Commons, Justice Committee, IPP Sentences: Government and Parole Board Responses to the Committee’s Third Report, Ninth Special Report of Session 2022-23: <https://committees.parliament.uk/publications/33927/documents/185861/default/>

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> See Research Briefing, quoted above, footnote 1

<sup>9</sup> See Thematic report by HM Inspectorate of Prisons, Unintended Consequences: finding a way forward for prisoners serving sentences of imprisonment for public protection, A thematic review by HM Inspectorate of Prisons, November 2016: <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/11/Unintended-consequences-Web-2016.pdf>

Following its visit to the United Kingdom in 2008, for instance, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considered that more concerted action was required to properly manage IPP prisoners<sup>10</sup>. The CPT stressed that IPP prisoners should receive proper induction, a sentence plan and a schedule for the programmes to complete, in a timely manner. They should also have access to required courses in prison, and prisons should have the necessary resources to carry out the required courses to meet demand<sup>11</sup>.

In September 2012, the European Court of Human Rights ruled that detention under the IPP system could become arbitrary and therefore in violation of article 5 of the European Convention of Human Rights where there were delays and insufficient opportunities provided for an IPP prisoner to access rehabilitative courses while in prison<sup>12</sup>.

In December 2012, the Government acknowledged that the IPP sentencing system was “not defensible”<sup>13</sup> and decided to abolish it for offenders convicted on or after 3 December 2012. The abolition was not applied retroactively. Hence, it did not apply to prisoners who were already serving those sentences at the time<sup>14</sup>.

Most recently, in June 2022, the national Independent Commission into the Experience of Victims and Long-Term Prisoners<sup>15</sup> pointed at the unfairness of the situation lived by the IPP prisoners left from the abolition of the IPP system and recommended that the injustice experienced by them be addressed<sup>16</sup>.

In September 2022, the Justice Committee of the House of Commons published a report highlighting, inter alia, the psychological harm suffered by IPP prisoners, including reports of self-harm, paranoia, and helplessness, due to the uncertainty inherent in an IPP sentence<sup>17</sup>. A submission by a group of 50 psychologists stated that the IPP sentence is psychologically harmful as evidenced by the emotional and mental deterioration of IPP prisoners when they enter the post-tariff stage of their sentence and the disproportionately high self-harm rate.<sup>18</sup> The Justice Committee also noted the harm to family members of those serving IPP sentences.

The Justice Committee report further noted that, as a result of the mental health decline suffered while serving their IPP sentence, some IPP prisoners had become unable to meet the Parole Board’s test for release and that, among

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<sup>10</sup> See Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008 (CPT/Inf (2009) 30): <https://rm.coe.int/1680698700>

<sup>11</sup> Ibid.

<sup>12</sup> See *James, Wells and Lee v. the United Kingdom* (Applications 25119/09; 57715/09; 57877/09), Judgment (Merits and Just Satisfaction), 18/09/2012: <http://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-113127%22%7D>

<sup>13</sup> See Research Briefing, quoted above, footnote 1

<sup>14</sup> See CPT Report, quoted above, footnote 6

<sup>15</sup> <https://icevp.org.uk/>

<sup>16</sup> See Making sense of sentencing, quoted above, footnote 2

<sup>17</sup> See House of Commons Justice Committee, IPP Sentences, Third report of session 2022-23: <https://committees.parliament.uk/publications/28825/documents/173974/default/>

<sup>18</sup> Ibid.

those serving IPP sentences, there were high levels of self-harm, suicidal thinking, suicide attempts, and actual suicides<sup>19</sup>. Other research presented in the Justice Committee’s report found that recalled IPP prisoners were 2.5 times more likely to self-harm than the general prison population.<sup>20</sup>

In 2019, the Independent Advisory Panel on Deaths in Custody highlighted particular concern about rates of self-harm amongst women serving an IPP sentence; its analysis found that their self-harm rate was at least double that of other women in prison and over ten times the national average within the general female population.<sup>21</sup> In 2020, for instance, a total of 2,066 self-harm incidents had been recorded, with the national Independent Advisory Panel on Deaths in Custody noting that “IPP prisoners have repeatedly been identified as at a higher risk of suicide or self-harm than those in the general prison population”<sup>22</sup>.

The Justice Committee concluded that IPP sentences were “irredeemably flawed” and recommended primarily that the Government conduct a resentencing exercise for all IPP-sentenced individuals (except for those who had their licence terminated)<sup>23</sup>.

In their response to the Justice Committee’s report, the Government rejected the Committee’s recommendation on resentencing, based on the need to avoid “an unacceptable risk to public protection”<sup>24</sup>. Instead, they considered that the IPP Action Plan, a document outlining the authorities’ strategy to address IPP issues since 2016, reviewed continually, would remain the main Government’s approach to these matters<sup>25</sup>.

According to that plan and the Police, Crime, Sentencing and Courts Act 2022, the Secretary of State is now required to automatically refer IPP offenders where 10 years has elapsed since their first release to the Parole Board and to keep doing so every subsequent year where the Parole Board opted to keep the licence in place. According to the Government, “this will give eligible offenders every opportunity to have their licence terminated and enable the IPP sentence as a whole to be brought to an end in more cases.”

On 26 April 2023, the Government shared its updated IPP action plan with the Justice Committee, saying the plan “delivers real change by reducing the IPP population both in custody and in the community whilst prioritising public protection”<sup>26</sup>. The action plan provides, inter alia, for the issuance of an annual report on progress towards addressing IPP remaining prisoners’ issues, with the first one set to be published in March 2024. In terms of resources, the action plan did not specify whether there was a budget allocated to the plan as a whole or specific workstreams within it. It set a deadline of September 2023

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> See House of Commons, Justice Committee, IPP Sentences: Government and Parole Board Responses to the Committee’s Third Report, Ninth Special Report of Session 2022-23:

<https://committees.parliament.uk/publications/33927/documents/185861/default/>

<sup>25</sup> Ibid.

<sup>26</sup> See Updated IPP Action Plan (April 2023): <https://lordslibrary.parliament.uk/sentences-of-imprisonment-for-public-protection-updated-action-plan/#heading-11>

for developing implementation plans, and a deadline of June 2023 for identifying funding for psychology services provision in the community.

Without prejudging the accuracy of the information above, we share the widely accepted view that the scheme of IPP sentences was deeply flawed, and its abolition was the responsible response. The scheme was not only problematic operationally, but it also conflicted with basic principles of fair justice and the rule of law. Being applied far more widely than envisaged, it led to a system that had serious consequences for those affected, not least a lack of viable rehabilitation opportunities to allow individuals to be released from the scheme and therefore from custody. That legacy remains for those who continue to be deprived of their liberty on the basis of the scheme, or who have been released in the community but remain regulated by the scheme and subject to recall at any time.

Your Excellency's Government has human rights obligations and duty of care owed to all persons deprived of their liberty or who remain released but technically within the custody of the State.

As general rules, indeterminate sentencing should be applied sparingly to only the most serious of offences and offenders, assessed on an individual basis weighing all relevant factors, and be subject to an automatic periodic review by an independent body distinct from government. In contrast, reviews by the parole board that are at a prisoner's request are an inadequate safeguard against potential cases of arbitrary deprivation of liberty and risks of cruel, inhuman or degrading punishment. Likewise, relying on ministerial referrals of cases to the parole board, as put forward by the Government in its recent action plan, is highly problematic, risking cases to fall through the cracks and be open to accusations of arbitrary or political decision-making, rather than fair decisions being taken on the basis of individual circumstances weighed against the crime committed, public safety and all other relevant factors. Legal certainty as to length of sentence, review procedures and other factors, are basic principles of any criminal justice system built on the rule of law. Depriving persons of their liberty because of resource shortages to be able to fulfil legal requirements of the scheme fall foul of the prohibition against arbitrary deprivation and the right liberty. Building certainty into the management of those remaining cases should be a key part of the future management of this scheme.

The scheme's abolition in 2012 was the correct decision, however, there appear to be considerable ongoing failures to tackle fully the situation of the remaining prisoners who have been sentenced under this flawed system, which has multiplied the range and seriousness of human rights violations.

It is our considered opinion that the level of uncertainty brought about by these sentences, such as not knowing whether or when a person will be released, or if released, for how long they would remain subject to the State's recall, or how such release can be secured, create levels of pain or suffering beyond those inherent in or incidental to lawful sanctions, as specified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 1), to which the United Kingdom is a State party since 1988.

The documented severe distress, fear, depression and anxiety caused by the scheme, and the corresponding physical and psychological damage to IPP prisoners, including the very worrying incidents of self-harm, suicide attempts and suicides,

potentially contravene the prohibition on cruel, inhuman or degrading treatment or punishment (articles 1, 2 and 16 of the Convention against Torture and article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom in 1976), the right to health (article 12 of the International Covenant on Economic, Social and Cultural Rights, also ratified by the United Kingdom in 1976), and the right to life (article 6 of ICCPR).

We wish to recall further that, pursuant to article 10 paragraph 3 of the ICCPR the essential aim of the treatment of prisoners shall be their reformation and social rehabilitation.

In effect, the purposes of a sentence of imprisonment or similar measures depriving a person of their liberty include protecting society against crime and reducing recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life (Nelson Mandela Rules – rule 4.1)<sup>27</sup>.

To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate, available and accessible to prisoners, including older detainees. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners (rule 4.2).

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State<sup>28</sup>. Specific measures should therefore be adopted with a view to resolving structural shortcomings of places of deprivation of liberty and earmark the resources necessary to cover basic needs and work and educational programmes<sup>29</sup>.

We therefore emphasize that IPP prisoners must be provided with opportunities to engage in rehabilitative programs and be effectively supported towards reformation and social reintegration and release.

Indeed, a prison sentence that is premised on a possibility of release in principle without being assisted by adequate and accessible avenues to make that happen in practice, could amount to arbitrary detention whereby any meaningful review of prisoners' rehabilitative progress would be precluded. This could, in turn, result in the impossibility to ensure that deprivation of liberty remains necessary, proportional, lawful, and non-arbitrary, potentially contravening article 9 of the

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<sup>27</sup> See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>

<sup>28</sup> See Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment (A/68/295): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/422/85/PDF/N1342285.pdf?OpenElement>  
Ibid.

ICCPR<sup>30</sup>.

Within this context, we also stress that, pursuant to article 3 of the UDHR and article 6 of the ICCPR, States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty, since by arresting, detaining, imprisoning or otherwise depriving them of their liberty, they assume the responsibility to care for their lives and bodily integrity<sup>31</sup>. Such duty to protect the life of all detained individuals includes providing them with the necessary medical care and the appropriate regular monitoring of their health, as well as the adoption of adequate measures to prevent suicides<sup>32</sup>.

In light of the above, we wish to endorse the recommendation of the Justice Committee of the House of Commons and respectfully call on Your Excellency's Government to conduct a re-sentencing exercise for all remaining IPP-sentenced individuals - and provide them with access to adequate reparation, as appropriate - without delay. We also call on the Government, in the meantime, to step up efforts to secure rehabilitation opportunities for all those affected.

We stand ready to support all relevant authorities in any effort necessary to be undertaken towards satisfactorily settling this matter.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide your assessment as to whether the IPP sentencing system, as currently left in force, is compatible with the United Kingdom's international human rights obligations, particularly as they arise from articles 6, 7 and 9 of the International Covenant on Civil and Political Rights; articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and article 12 of the International Covenant on Economic, Social and

<sup>30</sup> See, for example, Opinions of the Working Group on Arbitrary detention nos. 32/2016, 54/2015, 52/2014, 10/2013. On the requirements of reasonableness, necessity and proportionality, see also Working Group Deliberation No. 9, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012, para. 61:

[https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf); and Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paragraph 12: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>

<sup>31</sup> See Human Rights Committee, General comment n. 36 (Article 6: the right to life) (CCPR/C/GC/36): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGGB%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNjrlLdefuuQjN19BgOr%2fS93rKPWbCbgoJ4dRgDoh%2fXgwn>; See also Report of the United Nations High Commissioner for Human Rights, Human Rights in the administration of justice (A/HRC/42/20): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/247/98/PDF/G1924798.pdf?OpenElement>

<sup>32</sup> Ibid.

Cultural Rights.

3. Please explain whether the Government's IPP Action Plan, updated in 2023, addresses the human rights questions raised in this letter.
4. Please provide information regarding the rehabilitation opportunities presently available for those remaining IPP prisoners, including older prisoners, and whether they are considered adequate to allow individuals to "graduate" from the sentence. Please provide information as to the steps taken to address the reported shortages of such opportunities.
5. Please provide information regarding how the cases will be automatically reviewed at periodic intervals and guard against arbitrary deprivations of liberty and potential violations of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment.
6. Please explain the steps taken by the Government to reduce the reported high levels of self-harm and suicide attempts. Please provide information as to investigations undertaken in respect of death by suicide of deceased IPP prisoners.
7. Please explain whether the Government of the United Kingdom would consider embarking on a resentencing exercise of all (or some) IPP-sentenced individuals, as also recommended by the Justice Committee of the House of Commons in September 2022. If not, please explain why this is not considered a viable and fair part of the process.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future about this matter, which concern nearly 3000 individuals still held on the ground of public protection, in spite that the program was terminated in 2021. We also believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Matthew Gillett

Vice-Chair on communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions



Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

Claudia Mahler  
Independent Expert on the enjoyment of all human rights by older persons

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 5 of the Universal Declaration of Human Rights (UDHR); article 7 of the International Covenant on Civil and Political Rights (ICCPR); and articles 1, 2 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) which establish the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment<sup>33</sup>. Attached to such prohibition are obligations to take all necessary measures to prevent torture or other ill-treatment (art. 2) and investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims (arts. 10 and 11 et seque)<sup>34</sup>.

We refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), particularly rule 4, as well as rules 86-107, which state that "The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners."<sup>35</sup>

We also wish to recall that, pursuant to article 6 of the ICCPR, "States parties (...) have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The same heightened duty of care attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities. A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities, military camps, refugee camps and camps for internally displaced persons, juvenile institutions and orphanage."<sup>36</sup> Furthermore, "States should take adequate

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<sup>33</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/77/502): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/610/77/PDF/N2261077.pdf?OpenElement>

<sup>34</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/52/30): <https://www.ohchr.org/en/documents/thematic-reports/ahrc5230-good-practices-national-criminalization-investigation>

<sup>35</sup> See Rules, quoted above, footnote 19  
See General comment n. 36, quoted above, footnote 26

measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations, including individuals deprived of their liberty.”<sup>37</sup>

We also wish to refer to article 9 of the ICCPR which states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” As explained by the Human Rights Committee, “The Covenant is consistent with a variety of schemes for sentencing in criminal cases. Convicted prisoners are entitled to have the duration of their sentences administered in accordance with domestic law. Consideration for parole or other forms of early release must be in accordance with the law and such release must not be denied on grounds that are arbitrary within the meaning of article 9. If such release is granted upon conditions and later the release is revoked because of an alleged breach of the conditions, then the revocation must also be carried out in accordance with law and must not be arbitrary and, in particular, not disproportionate to the seriousness of the breach. A prediction of the prisoner’s future behaviour may be a relevant factor in deciding whether to grant early release.”<sup>38</sup>

“When a criminal sentence includes a punitive period followed by a non-punitive period intended to protect the safety of other individuals, then once the punitive term of imprisonment has been served, to avoid arbitrariness, the additional detention must be justified by compelling reasons arising from the gravity of the crimes committed and the likelihood of the detainee’s committing similar crimes in the future. States should only use such detention as a last resort and regular periodic reviews by an independent body must be assured to decide whether continued detention is justified.”<sup>39</sup>

“State parties must exercise caution and provide appropriate guarantees in evaluating future dangers. The conditions in such detention must be distinct from the conditions for convicted prisoners serving a punitive sentence and must be aimed at the detainee’s rehabilitation and reintegration into society. If a prisoner has fully served the sentence imposed at the time of conviction, articles 9 and 15 prohibit a retroactive increase in sentence and a State party may not circumvent that prohibition by imposing a detention that is equivalent to penal imprisonment under the label of civil detention.”<sup>40</sup>

We further recall that the right of everyone to life constitutes a *jus cogens* and customary international law norm (general comment No. 36, paragraph 2). States hold heightened due diligence obligations in relation to protect the right to life of individuals who are detained under their auspices “since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity” (general comment No. 36, paragraph 25). Inadequate conditions of detention can be a contributing factor to deaths and serious injuries in detention, and when seriously inadequate, can pose an immediate or long-term threat to the lives of detainees.

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<sup>37</sup> Ibid.

<sup>38</sup> See Human Rights Committee, General Comment n. 35 (Article 9: liberty and security of person) (CCPR/C/CG/35): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>

<sup>39</sup> Ibid.  
Ibid.

Lastly, we recall article 12 of the International Covenant on Economic, Social and Cultural Rights which states that States Parties to the Covenant “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This includes “an obligation to take positive measures that enable and assist individuals and communities to enjoy the right to health.”<sup>41</sup> Violations of such obligation may occur “through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the (...) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized (...)”<sup>42</sup>.

We would like to recall the observations of the Independent Expert on the enjoyment of all human rights by older persons that “[d]etention facilities are often not designed to accommodate older persons or to respond to their needs as they are generally planned for younger detainees” and therefore she recommended that “[a]ge-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured” (A/HRC/51/27, paras. 44, 48 b) and c)). We also flag that the notion of the relativity of older age is crucial when addressing the situation of older persons deprived of liberty, especially in the context of the criminal justice system. Therefore, due to this phenomenon of “accelerated ageing”, we recognize that the non-discrimination principle under international law necessitates specific attention to the needs of certain groups of prisoners, including older detainees, to ensure they are not discriminated against in their enjoyment of human rights and fundamental freedoms (see UNODC, Handbook on Prisoners with Special Needs, p. 5).

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<sup>41</sup> See Committee on Economic, Social and Cultural Rights, General Comment n. 14 (2000) (E/C.12/2000/4): <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2B9t%2BsAtGDNzdEqA6SuP2r0w%2F6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL>

<sup>42</sup> Ibid.