



Jesuit Refugee Service Europe

MANUAL FOR DETENTION VISITORS



Manual for Detention visitors



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Acknowledgements

This manual has been developed to assist new detention visitors in the different JRS Europe offices but it is also intended for other detention visitors. JRS Europe has developed the manual with the goal of providing the new detention visitor with the guidance needed to start to visit detention centers with more skill and confidence in their role. The manual should be considered as a complement to the introduction and training provided by the national offices.

JRS Europe wishes to acknowledge and thank everyone who has contributed to this project and especially the authors of the three modules: Lucia Mihali, Alexia Rossi, Julian Caruana and Katrine Camilleri.

Special thanks and appreciation are given to Nathalie Salazar, Nicolette Busutil and Margaret Baxter, members of the Detention Visitor Support Group (DVSG) Steering Committee, who provided their vision, and support for this manual, as well as to all the detention visitors who participate every year in the training sessions that JRS Europe organizes. Not only have they accompanied and supported countless detainees, but they have also made sure that their needs are listened to and our service is consistently adapted and improved.

Foreword

Across Europe, at any given moment, thousands of people seeking protection are detained while they await removal or a decision on their asylum application. JRS staff members and volunteers in Europe visit and accompany many of these detainees, and are witnesses of the consequences as detention is evermore institutionalized.

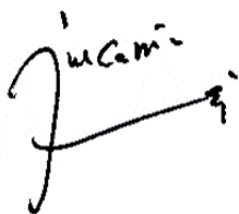
From the regular direct contact with detainees and from the detention research projects conducted by JRS, we can confirm that detention brings very negative consequences for detainees' mental health. Detainees often describe a scenario in which the environment of detention weakens their personal condition. The prison-like environment, the isolation from the 'outside world', the unreliable flow of information and the disruption of a life plan often have a huge negative effect on both mental and physical health and let people in a hopeless state.

After years of experience in detention visiting, the JRS Europe network decided that it had come time to gather the observations and expertise acquired, to share it and make it fruitful for others in one book. And the best way to pass on that knowledge to new team members starting out as detention visitors is to present it in the form of a book, a manual, including exercises and encouragement to real learning.

The manual follows on from and complements previous JRS research reports on detention such as *Becoming Vulnerable in Detention* (2010) and *Protection Interrupted* (2013), and builds on JRS expertise and monitoring detention.

Being a detention visitor means to work within a multicultural environment, with people in distress. JRS has produced this manual for new detention visitors as a tool to help them and in particular new detention visitors to work in such a difficult environment. I commend the manual to you and hope you will find it useful for your accompaniment of refugees and forced migrants.

Signature



Jean Marie Carrière SJ

JRS Europe Regional Director

Introduction

Locking up people who have fled for their lives or at risk of persecution is a common practice in European countries. Detainees spend long periods behind barbed wire or iron bars, sometimes they are even detained in security prisons. The detention of asylum-seekers and migrants represents a growing human rights challenge. JRS teams regularly visit detention centers in 12 European countries: Belgium, Croatia, Germany, Ireland, Italy, Kosovo, Macedonia, Malta, Portugal, Romania, Slovenia, Spain, Sweden, and United Kingdom.

In all these countries JRS Europe pursues its mission on behalf of asylum seekers and forced migrants held in detention centres by organizing groups of visitors to offer them legal, social and pastoral assistance. Detention visitors also facilitate detainees' access to legal services and health professionals, and often mediate between detainees and authorities.

People in detention suffer severe psychological problems and in many cases detention recreates the environment of oppression, fear and uncertainty from which people have fled. Very often JRS staff has reported that working in detention is very stressful and that they need support to work in such a hostile environment. Some years ago JRS-E decided to organise a yearly meeting with JRS detention visitors across Europe. These annual meetings provided them an occasion to share their experiences and get advice and training from professional experts. Last year JRS decided to collect and organise the training material of the different seminars to write a manual for future detention visitors. The manual is intended for JRS country offices as well as other organizations visiting detention centres. It can be a useful tool for detention visitor mentors who would like to organise some training sessions for a group of new detention visitors as well training material for individual visitors.

The manual is split into three parts and nine modules which cover the main areas of interest identified by detention visitors in the JRS Europe network.

The first chapter deals with intercultural differences and intercultural communication; the second chapter provides psycho-social support to detainees; and the third chapter presents the international detention legal framework and advocacy issues. Each chapter of the manual contains different modules tackling different aspects of the topics presented. In addition, the manual also contains case studies, some of them taken from JRS detention visitors as well as some practical tips for the new detainees.

Finally, the manual proposes individual exercises and group exercises that will help the readers to consolidate knowledge and skills acquired.

PART I

Intercultural Communications competencies

Introduction

The “individual is a prisoner of his [/her] culture, but need not be its victim”¹ Part I of this manual explains why, in a way, we are all 'trapped' in the culture in which we have been socialized, giving some suggestions about how to become aware of, and overcome the limitations resulting from this fact. Our way of thinking, seeing, hearing and interpreting the world is culturally determined. Cultural factors and patterns influence our communication and behaviour, often unconsciously.

The first module of Part I looks into different elements of culture, cultural differences and their possible influence on the communication process. The second module deals with the question of how communication can be efficient and successful in spite of cultural differences.

Inter-cultural communication takes place whenever people from different cultural backgrounds with their culturally determined views of the world meet and interact. Intercultural communication competence includes attitudes and skills necessary for effective and appropriate communication and behaviour in an intercultural situation.

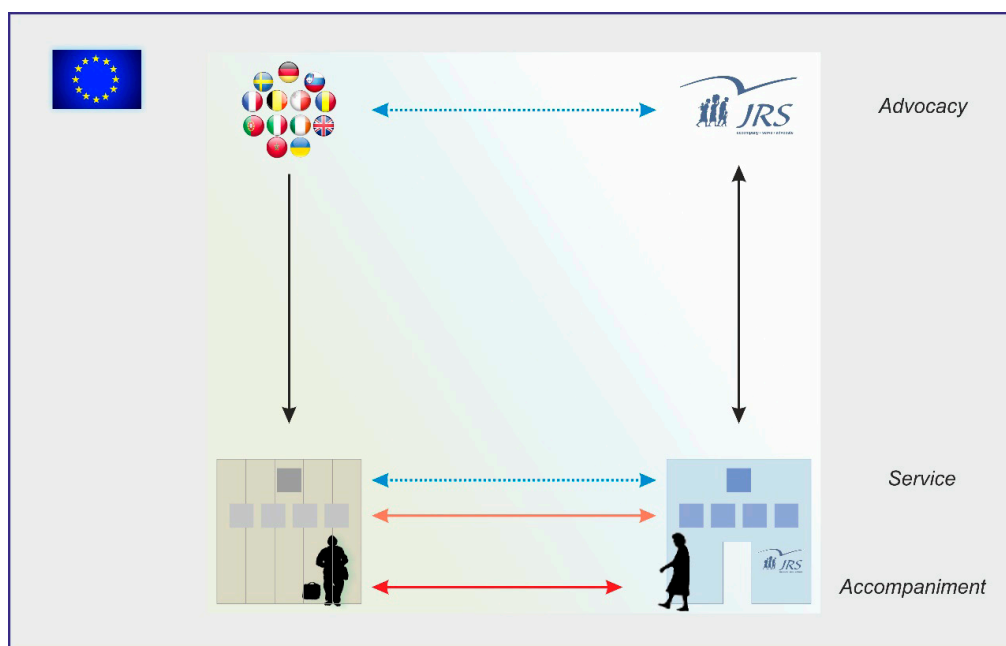
Why is intercultural competence important for detention visitors? Detention is generally an alienating situation: the refugees, asylum seekers and migrants held in detention are deprived of liberty and confined within a detention centre. Living conditions are often poor, and they are isolated from the outside world, with little or no information about their future prospects. Many detainees have already experienced traumatic situations in their home countries or on the way to the host country, where they have to deal not only with the detention situation but also with a new cultural environment i.e. with unfamiliar norms of behaviour and communication and with people from many different cultures. In the context of detention intercultural encounters can be more challenging than usual.

In order to facilitate detention visitors' work, who accompany and offer assistance to detainees from a wide range of different cultures, a basic understanding of cultural characteristics and differences is needed. On this basis they can develop appropriate responses and skills to communicate more effectively in detention visiting situations, where they constantly have to deal with intercultural encounters alongside with already complex and emotional circumstances.

Furthermore, in order to understand the complexity of the interaction situation between detention visitor and detainee, the context in which the interaction takes place should be taken into account. The following graphic illustrates this context and the different frames detention visitor and detainee - with their particular personality and cultural identity - are related to:

- The detention visitor is related to JRS and committed to its structure and processes, its mission and working guidelines, and
- The detainee is bound to the rules of a detention centre and the asylum/immigration policies and standards implemented by the immigration authorities of the host country.

¹ Ferguson, 1987



Graphic 2: Background of detention visitors' and detainees' interaction

As shown above, the whole setting in which the interaction takes place affects the relationship between detention visitor and detainee and can lead to tensions and misunderstandings in communication. This complex background with its different structures and connections, combined with the intercultural situation, operates like a more or less transparent screen which filters, stops or distorts the exchange of information. In order to enable an effective assistance relationship, it is therefore very important to understand as many of the factors involved as possible.

Part I of this manual focuses on cultural factors relevant in the context of detention. Its overarching aim is to enable detention visitors to develop a higher degree of cultural awareness and intercultural sensitivity that will help them reflect on their intercultural experiences during their daily work and learn from these on a continuing basis.

Learning objectives

- Increase detention visitors' general cultural awareness in order to enhance their understanding of how culture influences attitudes and behaviour; encourage them to reflect upon their own cultural identity and their interpretations of other individuals' or groups' behaviour.
- Enhance the ability to identify cultural differences that are most likely to influence communication and relationships in detention visiting situations and develop approaches for dealing with similar situations.
- Provide background information and practical guidelines as a basis for further learning by motivating detention visitors to practise and improve skills for effective and appropriate behaviour in complex intercultural situations.

Glossary of terms

- ✓ **Culture:** "The way of life of a group of people, the sum of their learned behaviour patterns, attitudes and material things." (Hall, 1985) A system of meanings and the basis for a shared cultural identity.
- ✓ **Cultural awareness:** An understanding of the influence the cultural background can have on people's values and beliefs, hence on their attitudes and behaviour.
- ✓ **Cultural norms:** The collective understanding of and expectations regarding what constitutes proper or improper behaviour in a given situation. They are based on cultural traditions, beliefs, and values.

- ✓ **Culture shock:** The state of psychological and sometimes also physical distress often experienced by people when moving into a new, unfamiliar culture. Without the familiar, unwritten rules regarding appropriate behaviour, people may experience disorientation and fear.
- ✓ **Detainee:** Asylum seeker, refugee or irregular migrant deprived of liberty and confined to live in detention centres or, in some cases in common prisons during the asylum or removal procedures or until their legal status is clarified.
- ✓ **Discrimination:** The positive or negative action towards people based on their belonging to a certain group/culture/race. Stereotypes and prejudice are the roots of discrimination.
- ✓ **Ethnic group:** “A social group or category of population that, in a larger society, is set apart and bound together by common ties of race, language, nationality, or culture.” (*Encyclopaedia Britannica*)
- ✓ **Ethnocentrism:** A view of the world which considers the values and beliefs of one’s own ethnic group or culture as the norm and makes value judgements towards other groups accordingly.
- ✓ **Gender:** The roles a culture attributes to the male or female sex, and the characteristics a culture defines as feminine or masculine.
- ✓ **Intercultural communication:** The interpersonal interaction between people from different cultures in the act of communication and the study of this interpersonal communication.
- ✓ **Migrant:** “A person who is staying in a State of which he or she is not a national (sociological notion).” (JRS, DEVAS Project, 2010)
- ✓ **Prejudice:** An opinion, attitude or judgement formed on the basis of incomplete information i.e. pre-judging. They can be **positive** or **negative**.
- ✓ **Racism:** Negative prejudice and discrimination against those of another race or ethnic group, which are considered inferior to own race or ethnic group.
- ✓ **Refugee:** A person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country..." (JRS acc. to 1951 *Geneva Convention*)
- ✓ **Stereotype:** A form of simplified perception of information that classifies people into categories according to certain ‘typical’ characteristics attributed to them.
- ✓ **Values:** “Implicitly or explicitly shared abstract ideas about what is good, right, and desirable in a society.” (Williams 1970, in Schwartz 1999). **Cultural values** like freedom, prosperity, and security are the basis for social norms and individual beliefs and goals.

Module 1: Culture and Cultural Awareness

This module provides basic theoretical insights about the notion of culture, cultural characteristics and differences, by taking a closer look at values, stereotypes and prejudices, at different orientations to time, space and self, and at some culturally sensitive areas considered most relevant for the context of detention.

Values, social norms and beliefs are just some elements of culture people often take for granted, without being aware of their influence on individuals' identities, attitudes and behaviour. Furthermore, the same word or notion can have different interpretations for various cultural groups. E.g. there are different notions of politeness: while in some cultures it is normal to ask personal questions referring to family, marital status etc., others may consider them impolite, an intrusion into their privacy.

This module's objective is to assist detention visitors to a better understanding of culture and its influence on individuals, i.e. to increase their awareness and sensitivity to similarities and differences between cultures in order to develop appropriate responses in interaction with detainees from a wide range of cultural backgrounds. Activities are designed to facilitate (self-) reflection and consolidate knowledge. The quotes/examples of detention visitors are equivalent reproductions of their statements about their views and experiences in the context of detention.

1.1 What Is Culture?



Culture can be very widely defined as “The way of life of a group of people, the sum of their learned behaviour patterns, attitudes and material things.”²

Culture is dynamic, it develops in time and is learned through education and collective experiences within a certain cultural group. Thinking in categories like ‘us’ and ‘the others’, identifying with one’s own group and its rules of the game’ is a normal process of identity building. However, individuals belong to many different groups at the same time e.g. nation, ethnic group, religion, and combine

² Hall, E.T., 1985

many different beliefs and practices accordingly. The culture of a national group is therefore just a rough reference frame which includes many different groups and sub-cultures. This complexity of the notion of culture and cultural identity will be illustrated in the following subchapters.

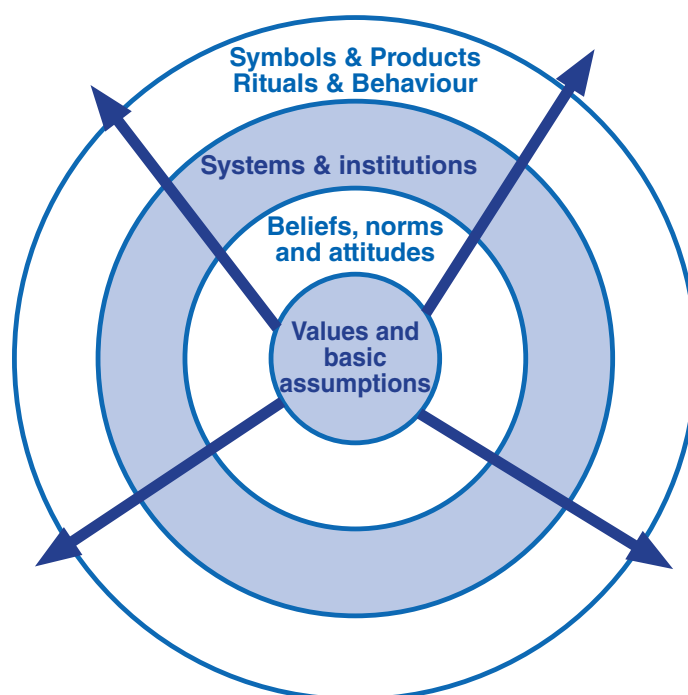
1.2 Awareness about One's Own culture

According to Edward T. Hall, an US-American anthropologist and pioneer in cross-cultural research, the real challenge is to understand one's own culture³. This is a first step for understanding others and their cultures.

There are numerous descriptions and definitions of culture, but metaphors offer a more vivid representation of its nature and its components. One of these metaphors is described in this subchapter. Relevant cultural elements and characteristics like values, stereotypes and prejudices will help to develop a better understanding of the notion. Activities aim to increase self-awareness about the influence culture has on one's identity.

1.2.1. Culture as an onion

The metaphor of culture as an onion is useful because it helps us imagine the numerous layers of culture and their characteristics: while the visible layer is rather thin, those underneath are getting thicker and tastier. The onion-diagram below illustrates not only the accessibility but also the different degrees of stability of the different cultural layers.



Graphic 3: The onion diagram⁴

An onion can always be recognised, no matter what sort, colour and taste. Similarly, cultures contain comparable elements, though in a unique form and combination.

Other characteristics of the onion can be related to culture: e.g. its flavour intensifies the taste of the ingredients with which it is mixed. This metaphor is suitable and nice, since every culture has its own 'flavour', which in interaction with other cultures can enhance their 'taste'.

Furthermore, some effort is needed to get to the inner layers and peeling or cutting an onion can sometimes bring us to tears. Likewise, in intercultural communication there are sometimes situations of tension in which misunderstandings and irritations can bring one close to tears.

³ Hall, E.T., 1985

⁴ Acc. to Spencer-Oatey, p. 232, in Treichel & Mayer, 2012

EXERCISE:

Consider your own cultural background and list its elements/characteristics in the onion layers:

- *Symbols, products, rituals and behaviours you consider relevant for your cultural group (e.g. are there specific dress codes, food and eating habits, birth and death rituals?)*
- *Systems and institutions (How are the political and educational systems organised? And the family - e.g. big families with strong bonds between relatives? What are the important social institutions?)*
- *Beliefs, norms and attitudes (e.g. role of religion, attitude to the natural environment: take advantage of or live in harmony with nature; attitude to elder/younger generation, importance of tradition, progress)*
- *Values and basic assumptions (e.g. meaning of honesty, honour, freedom, fairness, power, cooperation)*

Didactic Note: After reflecting on your cultural group draw your own diagram or mind map asking yourself to what extent this background has an impact on your own cultural identity: Where did you learn about habits, systems, norms, values etc.? Do you agree with the established habits, systems, norms, values? To what extent are the values of the cultural groups similar to your own values?

1.2.2. Values and value priorities

At the core of the 'onion' are the cultural values, i.e. they are the central and most durable component of cultural identity. Values are thus central to our personality and they are often unconscious. Being aware of own cultural values is essential for intercultural understanding and communication. Especially in the difficult context of detention it is important to identify a possible conflict of values and deal with it accordingly: to question and try to understand the values behind unfamiliar attitudes or behaviours without classifying them as wrong or peculiar.

Box 1

It is difficult for example when there is a man with three women in his country and you have to tell him that here in Europe only one woman is allowed, so he has to choose one of them.

A detainee wanted to talk about religion. He was Muslim, but wanted to become a Christian because he hoped for better chances in the new country. I think some values may become less important when it comes to survival.

Some assessments on cultural values⁵:

- Values such as honesty, courage, peace and wisdom, are known in all human cultures, they are universal. However, their importance and priority ranking may not be the same in all cultures.
- Value priorities are shared in a society or a dominant group and they are learned through socialisation, through everyday exposure to customs, laws, norms, and organisational practices.
- Individual value priorities are a result of both shared culture and of individual life experience.

⁵ Schwartz, 1999; see also Schwartz, 2006 and Mayer, 2008, p. 167 ff.

- Values as guiding principles that motivate one's actions can be grouped in value types according to their shared leading goal (see table below). The values are neither positive nor negative as such. Their evaluation as good or bad and, as a result, the feelings associated to them are a result of a cultural based hierarchy of values (e.g. high value of personal success and competition may conflict with cooperation)

EXERCISE A:

Use the table below to reflect on your values and their priorities

Look at the value types and examples listed below and reflect on how important they are for you as an individual and as a member of a cultural group.

Rank the values below from 1 (not important) to 6 (very important).

Value types and their leading goals/ definition

- ❖ **Power:** social status and reputation, control or dominance over people and resources
- ❖ **Achievement:** personal success based on competence according to social standards
- ❖ **Hedonism:** pleasure and pursuit of satisfaction/enjoyment for oneself
- ❖ **Stimulation:** excitement, novelty and challenge in life
- ❖ **Self-direction:** independent thought and choice of action, pioneering, exploring
- ❖ **Universalism:** understanding, appreciation, tolerance, and protection for the welfare of all people and for nature
- ❖ **Benevolence:** protection and improvement of the welfare of people with whom one is in frequent personal contact
- ❖ **Tradition:** respect, commitment and acceptance of the customs and ideas that traditional culture or religion provide
- ❖ **Conformity:** self-control of actions, tendencies, and impulses likely to upset others and violate social norms
- ❖ **Security:** safety, harmony and stability of society, of relationships, etc...

Exemplary values*

- ❖ Social power, authority and wealth
- ❖ Success, capability, ambition, competition
- ❖ Pleasure, enjoying life
- ❖ Exciting life, change and variety
- ❖ Creativity, freedom, choosing own goals
- ❖ Open mindedness, social justice, equality, unity with nature
- ❖ Helpfulness, honesty, forgiveness, responsibility
- ❖ Respect for tradition, modesty, spirituality
- ❖ Politeness, self-discipline, respect for authorities and norms
- ❖ National and family security, social order, etc..

My Ranking

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

***Note:** These are just examples. Other values can be attributed to each value type, according to its definition.

EXERCISE B:**Reflect upon the following questions:***Which value categories are familiar to you? Which of them are unfamiliar?**Would you say your individual value priorities are also valid for your culture? If not, what do you think is the reason?**Which values have a high priority for you? Do you think detention visitors as a professional group have similar value priorities?**Some values rather go together, some have opposing goals and could conflict with each other: e.g. strong value of tradition may conflict with tolerance for different beliefs or with openness to change. Have you experienced situations in which you were irritated by the value priorities of detainees?***Didactic Note:** Being aware of own cultural values and value-related attitudes or behaviours is essential for intercultural communication. Irritations and conflicts often occur because of different values or value priorities. Value priorities can change in the course of time, depending on phase of life, change of environment, etc...

1.3 Prejudices and stereotypes

Box 2

Detention visitors` quotes/examples

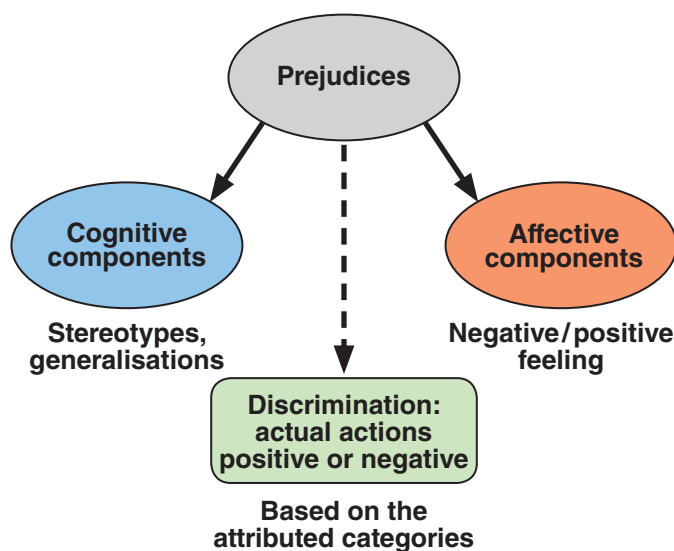
Meeting some detainees, I expected them to ask for material things, e.g. to buy them a drink. I was surprised when they needed other things like friendship.

The detainees also judge the visitors: when some of them are released, the other detainees say ‚Ah, they spoke with N.!', and so they trust you; if one of them has to go back to their country the others say ‚Ah, they talked to N. and they are sent back...'. They think it has something to do with you.

The short quotes above are examples of expectations, assumptions, judgments, which occurred or were made without knowing much about the people they were directed to. They illustrate a normal thinking process, which takes place in order to categorise and simplify the world.

Prejudice, from Latin *praejudicium* meaning an opinion, attitude or judgement formed on the basis of incomplete information i.e. pre-judging. They usually result from hasty conclusions or as generalisations of particular experiences and can be **positive** or **negative**.

As the graphic below shows, prejudices are **often based on stereotypes**, suggesting that all members of a group behave in certain ways and have 'typical' characteristics (see also first example).



Graphic 4: Relating prejudice, stereotype and discrimination



Stereotypes involve generalisations about characteristics of people, based on their belonging to a certain group or culture. They attempt to simplify and classify information. They also influence our perceptions, as we tend to see members of a certain group and interpret their behaviour according to our stereotypes.

As prejudices and stereotypes are natural and unavoidable, it is important to become aware of, and constantly review them, otherwise they can result in **discrimination**, i. e. the actual positive or negative action towards the objects of prejudice.

Box 3

Detention visitors` quotes/examples

It is not always negative to have stereotypes. We know that Chinese people keep the distance at first, so we can start with the stereotype and see if the person is like we thought.

A further strategy for dealing with prejudices is to try to understand body language, to observe gestures. Anyway, as a visitor you need time to communicate with detainees. You also need patience, compassion and tolerance.

My strategy is to go in the detention centre and listen, e.g. the first conversation took 2.5 hours. The first contact with the detainees is very important.

EXERCISE:

Reflect on prejudices and stereotypes

- ❖ Write down typical characteristics you attribute to people of your nationality:
- ❖ Write down typical characteristics you attribute to people of your profession:
- ❖ Write down characteristics you think are typical for you as an individual:

Look at the characteristics you have attributed to the three categories and reflect upon the following questions:

- Do your individual characteristics correspond to those 'typical' to your nationality?
- Are the typical characteristics you attribute people of your nationality rather positive or negative? How about the characteristics attributed to your professional group? And your individual characteristics?

Now reflect upon the reasons why you evaluate the attributed characteristics as positive or negative.

Didactic Note: Self-reflection upon national identity and culture is the primary goal of this activity. Reflection upon national self-attributions, upon characteristics attributed to your professional sub-group and yourself as an individual should point out that individuals have 'multiple identities' and cannot be characterized using only one perspective.

EXERCISE:

Read the example below. What do you think lays behind the different behaviours of the detainee and detention visitor?

"I once met a woman from Thailand in a Belgian detention centre. She was young, pretty and a delicate person as well. I noticed all of this at a first glance, when she entered the room where I was meeting detainees individually. When I held out my hand in order to shake hands, I saw she hesitated, but finally she gave me her hand too and I gave her a strong handshake while I felt that her hand was weak and not used to shake hands.

The delicacy of this young woman became still more obvious during the conversation. While other detainees would start talking on their own initiative and talk a lot, almost without giving me the opportunity to add something, she didn't say much, unless she was asked questions, which she would reply in a kind and friendly way. I felt myself being a little bit intrusive with all my questions, but on the other hand, if I didn't ask questions, there wouldn't be a dialogue at all.

When I asked her if she had appreciated the visit of one of our male volunteers, she smiled, without saying yes or no. When I asked her if she wanted him to continue visiting her, she smiled again. I insisted that she could say no if she didn't feel comfortable with him, but she didn't say no. However, I felt from her behaviour that she preferred him not to come again. This is what I explained to our volunteer afterwards, telling him that another visit wouldn't be appropriate for the time being.

At the end of the visit I was about to shake hands again, but in a twinkling of an eye, she had already put her hand palms together, bowing slightly her head. I imitated her. A smile appeared on both of our faces."

Can you think of similar situations/examples?

Didactic Note: Different attitudes concerning concepts like space, self, and different communication styles can cause misunderstandings and conflicts if we are not aware of them.

1.4.1 Orientation to space

Edward T. Hall, initiator of intercultural communication sciences, differentiates space or distance in four zones: **intimate space** (the very closed space around a person, where only close family members and intimate friends are allowed), **personal space** (the distance experienced as secure and agreeable for conversations with friends, associates, and in group discussions), **social** (experienced as appropriate for social interactions with strangers and new acquaintances) and **public space** (for formal, anonymous encounters).⁹

People from different cultures perceive these zones or distances differently, i. e. space is culturally defined. Those who do not respect the culturally shared behaviour concerning e.g. the intimate or personal space are seen as a threat, causing feelings of discomfort, anger, or anxiety. In the story above, shaking hands when meeting a new acquaintance was not a familiar behaviour for the Thai woman and possibly meant an intrusion into her personal space. The detention visitor received her non-verbal signals and both adapted their behaviour accordingly.

A similar example would be of the Muslim men who are not allowed to touch any other women but those belonging to their family, since for them hand shakes, hugs or any other touch belong to the intimate gestures between men and women. Generally greeting rituals may be a source of

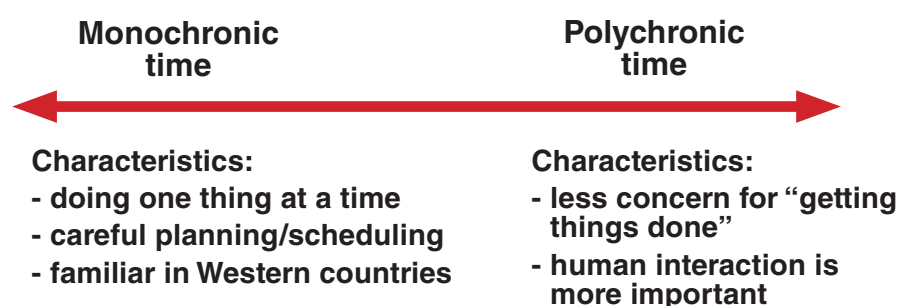
⁹ Hall, E.T. & Reed Hall, M., 1990

information about cultural rules concerning the cultural definition of space. When not sure about the space zones and greeting rituals of the culture a detainee comes from, detention visitors could at first explain their own cultural rules and then ask about the detainee's customs.

1.4.2 Orientation to time

While in some cultures time is seen as a precious resource requiring careful planning and scheduling (familiar in Western cultures), other cultural groups value human interaction more than time and finishing tasks, and they focus more on the preservation and care of relationships. In the latter, dialogues can go on for as long as somebody has something to say. Interrupting and limiting a discussion could be seen as rude.

Can you think of situations in which different attitudes to time were the cause of irritation between individuals?



Graphic 5: Description of orientation to time

People coming from a **collectivist culture**, put the interests and needs of the group above the individual ones. Strong bonds between individuals belonging to the same group and strong identification with the needs and customs of the (extended) family or the community are characteristic to these cultures.

For **individualistic cultures** the individual has a high sense of independence, the “I” with its needs is most important. Bonds between people are more fragile with flexible and open grouping patterns.

For people coming from countries where family and kinship are “the ultimate source of security and identity”, the situation of isolation in detention, with no means to communicate with their families might have a stronger effect on their mental and physical health. Besides, for those belonging to collectivistic cultures, where group affiliation is very strong, this can be a source of big solidarity with others from the same ethnic or national group in the context of detention. This might be a source of conflict if rival groups form on the basis of solidarity to their greater identities e.g. as Afghanis or Somalis, and these take hold in front of strangers.

1.4.3 High- and low-context communication

There is a different mix of both high- and low-context communication styles within every cultural group, but one of them tends to prevail. In high-context cultures contextual aspects are important to understand the rules. This applies to the communication style too. In the quote above, the detainee from Thailand would not express her wishes openly but send non-verbal signals to communicate what she thinks and wants. This is common to high-context communication, where the context i.e. the life-story, the situation, age, gender, body language etc. have a great importance for understanding a message.

Box 4

Detention visitors` quotes/examples

I think that some detainees say what they think the visitor wants to hear.

When I asked her [a Thai detainee] if she had appreciated the visit of one of our male volunteers, she smiled, without saying yes or no. When I asked her if she wanted him to continue visiting her, she smiled again. I insisted that she could say no if she didn't feel comfortable with him, but she didn't say no. However, I felt from her behaviour that she preferred him not to come again. This is what I explained to our volunteer afterwards, telling him that another visit wouldn't be appropriate for the time being.

High-context communication

- Rather indirect and formal
- Great attention is paid to the setting, situation, i.e. context of an event
- Focus on nonverbal and body language
- Good listening and observational skills are required
- Direct messages can be interpreted as insulting, aggressive
- Harmony and 'saving face' are the main concerns in communication

Low-context communication

- Rather direct and informal
- Reliant on the literal and precise meaning of the words
- Focus on verbal and written language
- "Say what needs to be said," we can discuss everything
- Indirect messages can be interpreted as evasive, dishonest
- Open, effective communication is the priority

Table 1: Characteristics of high- and low-context communication styles¹⁰

People from Asian, African and Middle East countries rather have a high-context communication style¹¹ and would not express their values, wishes and needs verbally and directly. For detention visitors it may be difficult to communicate with these people and give them the necessary assistance, since they need patience and a high degree of sensitivity to understand their problems and needs.

In high-context cultures the concept of 'face' is very important. This is a complex concept that includes reputation and honour, and is related to the social norms and expectations of a group. To 'save face' therefore means to save their own and others' reputation, maintain dignity and avoid humiliation in social interactions.¹² Open criticism can be very insulting in these cultures. This concept is often related to status, age, gender etc., e.g. elderly people might feel offended by advice from younger ones, or women could feel uncomfortable being assisted by men.

¹⁰ Acc. to Hall, 1977, 1985

¹¹ See Hall, 1977

¹² See <http://oxforddictionaries.com>



EXERCISE:

Reflect on the communication style of your cultural group

- ❖ How important are social status and relationship to the dialogue partner?
- ❖ How important are gestures, tone, setting for the meaning of a conversation?
- ❖ Would you express openly what you think, (do not) want, (dis-)like etc.?
- ❖ How is it when you talk to people with a totally different communication style?

Module 2: Intercultural Communication (IC)



Introduction

The first module provides insights into different elements of culture, cultural differences and their possible influence on people's behaviour and the communication process. The second module deals with the question of how communication can be efficient and successful in spite of cultural differences.

Its purpose is to help detention visitors improve their communication skills, presenting some strategies and tools to overcome cultural differences and communication barriers. The module begins with a description of intercultural communication with its characteristics, followed by a subchapter on communication challenges in the detention context. A further subchapter presents some methods useful for improving intercultural communication competence, like non-violent communication and critical incidents.

2.1 What Is Intercultural Communication?

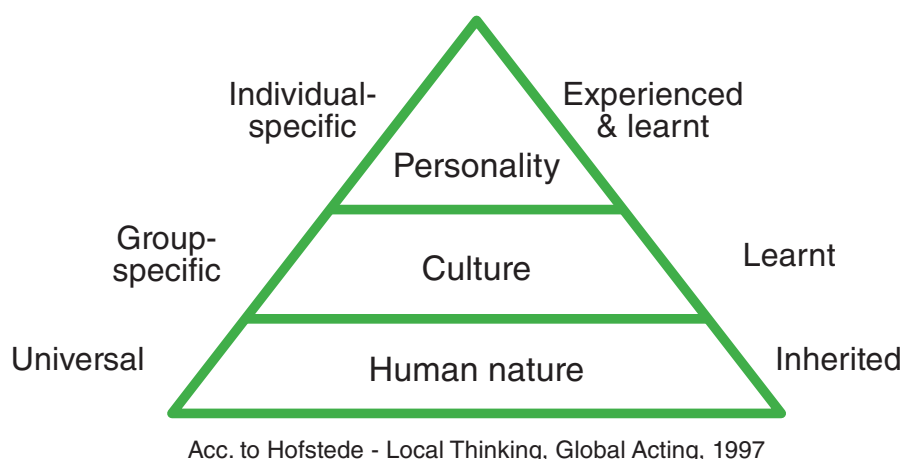
Intercultural communication can be defined as any interpersonal interaction between people from different cultures in the act of communication. More specifically, this means that in an intercultural communication situation at least two individuals from different cultural backgrounds (religious, social, ethnic, etc..) interact in a negotiation process of a common area of understanding.¹³

According to Geert Hofstede, a renowned Dutch researcher of cross-cultural groups, there are three layers to be considered in intercultural communication¹⁴:

1. **The personality layer** includes character, individual values and beliefs, individual life experience etc.
2. **The cultural layer** – see Module 1 and following subchapter.
3. **Human nature** is the basic layer and is considered universal for all human beings, including basic human needs and emotions.

¹³ See Losche & Püttker, 2009, p. 30

¹⁴ Hofstede, in Mayer, 2008, p. 226



Graphic 6: The three levels of intercultural communication

In the context of detention visiting, where many various cultures and personalities come together, it is important and helpful for visitors to gather information about detainees' countries of origin as well as to know about and reflect on sensitive areas that could challenge communication.

2.2 Challenges in Intercultural Communication

Cultures are complex entities and communication between people from different cultural backgrounds is known to be full of pitfalls. Exploring and understanding challenges and pitfalls is a way to expand cultural knowledge and develop new attitudes and skills for effective intercultural communication. This sub-chapter will give a brief description of some of the areas of sensitivity considered most relevant for detention visitors. Examples and practical tips offer suggestions for dealing with these challenges.

2.3 Language barriers

The quotes below show how some of the challenges related to language may affect communication between people from different cultures. Language is not only a means to communicate facts; it also involves cultural rules and expectations, gender roles etc.

Box 5

Examples of language barriers:

"The risk of confusion is always there, when meaning and significance have to be transferred from a language to another."

"Patterns in language offer a window on a culture's dispositions and priorities. (...) It turns out that if you change how people talk, that changes how they think. If people learn another language they inadvertently also learn a new way of looking at the world. When bilingual people switch from one language to another, they start thinking differently too. And if you take people's ability to use language (...) their performance changes dramatically..."

"Afghans see family matters as strictly private. People are generally reluctant to share personal and family issues with nonfamily members, including health care professionals, though women may discuss their problems with friends, including non-Afghans."

Therefore, even when speaking a common language, there are several aspects and pitfalls to be aware of for communication to be successful and effective¹⁵:

- **Connotation:** Words and concepts can have another meaning in different cultures, e.g. “yes” and “no” can have different meanings. In some cultures it is impolite to clearly say “no”. You use an indirect way.
- **Taboo topics:** Some topics or even words are considered taboo, and using them or talking about them can be insulting (see last quote above).
- **Rituals:** There are certain cultural rules concerning greetings, small talk, behaviour expressing approval or rejection and speaking routines, i.e. expressions related to specific known situations (e.g. “How are you?”).
- **Non-verbal communication:** includes **body language** (facial expression, gestures, body posture, eye contact – in some cultures it is rude to look somebody in the eyes), and **paralanguage** (loudness, tone of voice etc.). Non-verbal communication has the following cross-cultural functions:
 - Expresses emotions;
 - Gives information about personality;
 - Expresses attitudes;
 - Non-verbal signals control the whole interaction process.

PRACTICAL TIPS

- Be aware of the pitfalls and pay more attention to non-verbal signals (of our own and our interlocutor).
- Try to adapt your language and behaviour to those you are interacting with.
- Use meta-communication, i.e. ask about the culturally appropriate communication (E.g. “In our culture/country we say...; how is this in your culture?”).
- If possible, get information in advance about culture and communication style.
- Use interpreters also as cultural mediators.
- Use detainees from the same culture as interpreters (this is not recommended when sensitive matters are suspected, since it can prevent the detainee from speaking openly).

Gender roles and expectations

Gender role refers to the characteristics a culture defines as feminine or masculine, i.e. the cultural roles. Every cultural group has their own norms and attitudes about gender roles and the rights and obligations associated with them. E.g. Western countries promote equality between sexes, in the private as well as in the public area. Some other cultures do not consider this a desirable aim; women and men have their specific areas of responsibility. E.g. most Afghan women “consider themselves as part of their husbands' or fathers' households.”¹⁶; it is a matter of honour for men to have the power of decision. Trying to change their customs and claim more rights for themselves might rather confuse or frighten Afghan women (ibid.).

It is important to be aware of the existence of culturally defined gender roles as well as of our own cultural norms and attitudes concerning them, as they have an impact on the following aspects:

¹⁵ For more on this topic see House & Co., 2003

¹⁶ Robson & Co., 2002, p.40

- The relationship between male and female detainees;
- The relationship / communication between male/female detainees and male /female detention visitors;
- Vulnerability in detention;
- Clothing, communication rituals and strategies, language, behaviour, personal space, physical contact (e.g. handshaking) etc.

EXERCISE:

“Even the men were crying!”

List at least 3 characteristics which would be regarded as either masculine or feminine in your culture.

Complete the following sentences:

A woman is supposed to...

A man is supposed to...

A woman is not supposed to...

A man is not supposed to...

Can you think of other cultures where attributed characteristics and expectations are different from your culture?

Didactic Note: Awareness and knowledge about gender roles of one's own and of other cultures i.e. about what women/men are expected to do or not, are very important for efficient interaction between detention visitors and detainees. E.g. If a man is supposed to show strength, it might be difficult to find out what problems he has.

PRACTICAL TIPS

- Be aware of gender roles in your culture
- Reflect on your knowledge, attitudes and feelings towards different gender roles you know.
- Try to get prior information about gender roles in the detainee's country or cultural group.
- Reflect on the values which could be behind the cultural interpretation of gender roles on both sides which could cause communication difficulties.
- In some cases it might be better to have women visitors talking to women detainees and the same for men, e.g. if sensitive matters are suspected and the customs related to gender roles are not known.

Religious beliefs and practices

Box 6

Examples related to the role of religion

Under the meaningful title “Like a fairytale” the German magazine “Der Spiegel” reported some years ago the case of an African asylum seeker and head of an Ashanti tribe, who felt in danger of being tracked by her own people. As a spiritual head she was also supposed to celebrate religious ceremonies for the gods. As she was brought up as a Christian, she refused to comply and fled from her country. Great harms were expected for the tribe if the religious and spiritual rituals were neglected. As a new spiritual head could only be assigned after the death of the present one, the woman feared for her life.

The asylum claim was rejected on the reason of lack of credibility.



As the story above shows, for many individuals and cultures religion plays a central role for their cultural identity and day-to-day life. Hence, besides prayer rituals and other religious practices, it can have a big impact on many areas of life, on customs and further beliefs: e.g. food and eating habits, rules/bans and rituals, hygiene, dress code etc. Besides, religion and spirituality can often offer moral and spiritual resources and support.

People can react very sensitively, if their religious beliefs are hurt. Knowledge about different religions, their characteristics and practices is therefore very important in intercultural communication.

EXERCISE:

The table below displays several sensitive areas in detention situations and different strategies

Considering the areas of sensitivity presented below, reflect on further strategies that were and could be helpful for you.

Think of critical situations you have experienced as a detainee visitor and the cultural sensitive areas involved. How did you deal with them? How would you deal with them now?

AREAS OF SENSITIVITY

- ❖ The situation of detention
- ❖ Gender – role definition
- ❖ Age – norms / expectations
- ❖ Role of visitors
- ❖ Language
- ❖ Prejudices / labels
- ❖ Suicide attempts / self-harm
- ❖ Misinterpretation of fear (e.g. as violence)
- ❖ Discrimination
- ❖ Homosexuality / Sexuality

STRATEGIES FOR DEALING WITH THEM*

- ❖ Build up trust
- ❖ Get information in advance
- ❖ Ask for assistance
- ❖ Transparency
- ❖ Cultural interpreters
- ❖ Analyse and form your own view
- ❖ Be aware, sensitive
- ❖ Connect to country of origin to understand the reaction
- ❖ Cultural information
- ❖ Cultural mediators e.g. to health professionals

*The listed strategies are valid for many different situations.

2.4 Tools for Dealing with Intercultural Communication Challenges

There are numerous methods and tools developed by experts for dealing with intercultural encounters and for developing intercultural communication skills. Those presented here are considered to be more relevant for the detention visiting context.

2.4.1 Non-violent communication (NVC)¹⁷

Box 7

Detention visitors` quotes / examples:

Expressing needs can be difficult in detention situations. As a visitor you need empathetic listening and to be aware of the possibility that it can be embarrassing for detainees to talk about their needs.

Practising NVC helped me to become aware of the process of communication and distinguish e.g. between observation and interpretation. Visitors can also use NVC for reconstruction afterwards, for reflection.

¹⁷ Rosenberg, 2003

The following communication model uses human nature with its universal needs and emotions as a common basis of communication (see the three levels of intercultural communication on p. 25). If sometimes it is not possible to understand the differences, it can be helpful to focus on common elements in order to establish a connection.

Non-violent communication was developed by Marshall Rosenberg, US-American psychologist and mediator, as an empathetic way of communication by focusing on needs and feelings. This focus and its simple structure make it appropriate for any communication situation, being also recommended as a method to bridge the cultural gap¹⁸.

Rosenberg defines NVC as a state of mind and a process, which can and should be adapted to different situations, to personal and cultural communication styles. NVC can be expressed through “a quality of presence”, through facial expressions and body language, it does not need words.

Principles of NVC:

- By sensing the feelings and needs behind a statement or behaviour, a better understanding and a better connection with oneself and the others is possible, since feelings and needs are shared by all humans.
- People are more able to cope with difficult, trying situations when their feelings and needs are heard and understood.

EXERCISE:

Read the detainees' quotes below and try to identify and write down the feelings and needs behind the statements

"I'd rather be an animal, because for animals you care, for human beings you don't..."

"Just because you don't have documents it doesn't mean that you are a criminal!"

"It was a big mistake to come to the EU. They destroyed the lives of so many who had a dream. The EU of the past is over now".

"I don't understand why the social assistants are like that! Do they receive a bonus or something whenever they succeed to remove a detainee?!"

"Why do you speak to me? What are you doing here? What is your job? I don't need your card, I won't call you anyway!!"

"If you try to remove me one more time, then either you or myself will end up in hospital!"

The NVC process consists of four steps:

1. **Observation:** Perceive and describe a situation without interpreting and judging it.
2. **Feelings:** The second step is about identifying and defining the feelings perceived.
3. **Needs:** Empathise with the feelings and sense the needs behind them.
4. **Requests:** Express the feelings and needs in a culturally appropriate way / help the other to express their needs and requests.

¹⁸ See also Mayer, 2002, p. 228 ff.

Step 1: Observing without judging

At first we observe what really happens in a situation without allowing our opinion to mix with what we see or perceive:

- What do we hear others say?
- What do we see others do?
- We try to describe concretely what we see/hear without interpreting.



Box 8

Detention visitors` quotes / examples:

Mohamed a detainee in Malta, is a good man` – This statement is an evaluation

For the last ten months Mohamed has helped other detainees as a cultural mediator with the staff` – This is an example of a factual observation-

It is a normal thinking process to interpret and make judgements about what we perceive, according to our knowledge or experience (see also chapter on prejudices and stereotypes). As we cannot avoid interpretation and evaluation, it is important to be aware of this fact.

Observation, interpretation and judgement are three distinct steps of thinking one can learn to be aware of and distinguish between them:

- I can see/hear what you do/say. (Description):
- When I see/hear this I understand it as ... (Interpretation):
- My opinion in this case is that ... (Evaluation/Judgment):

EXERCISE:

(Access to Mayer, 2008)

Have you seen the picture above? Try to distinguish between observation, interpretation and evaluation using this picture:

Please describe what you see:

Description 1:

Description 2:

Please interpret what you see. Try to find different interpretations.

Interpretation 1:

Interpretation 2:

Please evaluate what you see. How do you evaluate the different interpretations?

Evaluation 1:

Evaluation 2:

Didactic note: Intercultural communication is about negotiating different interpretations and evaluations which vary according to different perspectives and cultural orientations. Learning to describe a situation in non-judgemental terms is a basic intercultural skill, and can be improved by practising it.

Step 2: Recognising and expressing feelings

The next step after observing is expressing the feelings perceived: what might those observed feel? How about one's own feelings about that?

From the perspective of the listener, e.g. of the detention visitor, this step focuses on understanding the feelings of the dialogue partner/detainee according to what has been observed. In intercultural encounters some information about cultural values and norms might be needed in order to interpret feelings correctly.

Box 9

Detention visitors` quotes / examples:

Visitor1: How can we deal with a person to whom it is forbidden to show emotions? E.g. I ask "how are you?" and Chinese detainee says 'I am fine.' But he is in a very difficult detention situation. Suggestion Visitor2: For a start, find a small entry door to them, e.g. topics they are interested in, like football, etc...

EXERCISE:**Learning to identify and express feelings:**

The first step in identifying feelings is remembering to articulate and describe a broad range of emotions. Answer the following questions and write down as many words as you can.

How are we likely to feel when our needs are being met?

How are we likely to feel when our needs are not being met?

Didactic note: *Feelings are important signals that can help us understand our needs, and, as a result, understand others and ourselves.*

Step 3: Identify the needs behind feelings

Relating feelings with the needs behind them can help us understand each other and connect: “I/you feel... because I/you need...” In an intercultural context one has to be aware of areas of sensitivity and taboo topics.

Box 10

Detainees of a certain religion complain heatedly and blame those of a different religion for being very noisy while they were trying to pray. Since they try to keep quiet when the others complete their praying rituals, they expect the same treatment. A loud argument breaks out.

An NVC response to this situation could be:

"We are angry, because when you are praying we are quiet and show respect for your religion; when we are praying we need you to be quiet and show us the same respect".

Rosenberg refers to four main groups of needs:

- **Physical needs:** air, food, light, movement/exercise, protection from harm, shelter, sleep, touch, water, etc.
- **Emotional needs:** autonomy, authenticity, creativity, enthusiasm, honesty, integrity (congruence between action and our values), self-assertion, self-confidence, self-esteem, etc.
- **Social needs:** acceptance, appreciation, belonging, care, consideration, cooperation, closeness, empathy, love, recognition, safety, solidarity, support, trust, understanding etc.
- **Spiritual needs:** order, peace, ritual, transcendence, beauty, celebration, harmony, inspiration, meaning etc.

Step 4: Expressing a request

Expressing a request means expressing the specific action that would fulfil one's own/others' needs. Requests should be concrete and realistic, using positive language and clear, specific action language:

“I want you to be respectful.” is not concrete enough.

Alternative: “I want you to keep quiet during the time I do my prayer.”

Detention visitors can use NVC to ask for concrete actions that would fulfil detainees' needs, or to make it clear what actions are possible.

PRACTICAL TIPS:

- In some situations it may be appropriate not to put into words the feelings and needs perceived out of respect for certain cultural norms. E.g. statement of a Chinese: “In our culture, to direct-talk to a person about their feelings is something they’re not used to.”²⁴ However, learning to hear these feelings is helpful for understanding others and building up a relationship.
- On the other hand, research has found out that in interaction with people from African countries, human nature is often mentioned to create a common layer of understanding: “We are all human beings with human dignity and we have to respect each other.” Expressing needs in an open, positive way is a common element of communication in these cultures. Feelings too can be often expressed in these contexts – taking situation, status, and dialogue partner into consideration. Therefore, NVC may be useful in intercultural situations.

Didactic note: Feelings are important signals that can help us understand our needs, and, as a result, understand others and ourselves.

Expressing and Reacting to Anger with NVC

According to Rosenberg anger “has a life-serving core.” It makes us aware of a need not being met. It is normal to feel frustration or anger when one thinks their values and norms are not respected. A lot of energy is set free when people are angry, energy that can be used in a positive manner, i.e. looking for ways to meet their needs.

Strong emotions and feelings are normal and they have their justification which should get acceptance and recognition. The first step in expressing anger with NVC is taking responsibility for one’s own feelings and not blaming others for them. “We are never angry because of what others say or do”¹⁹, we are angry because our needs have not been met, and we can express that:

- “I am angry because I need...” instead of “I am angry because you/they...”
- “Are you angry because you need...e.g. respect for...?” instead of “Are you angry because I / they ...?”

Box 11**Quotes / examples:****Four alternatives for hearing a negative message**

Detainee (*angry, frustrated*):

“Why are you coming if you cannot help me get free?”

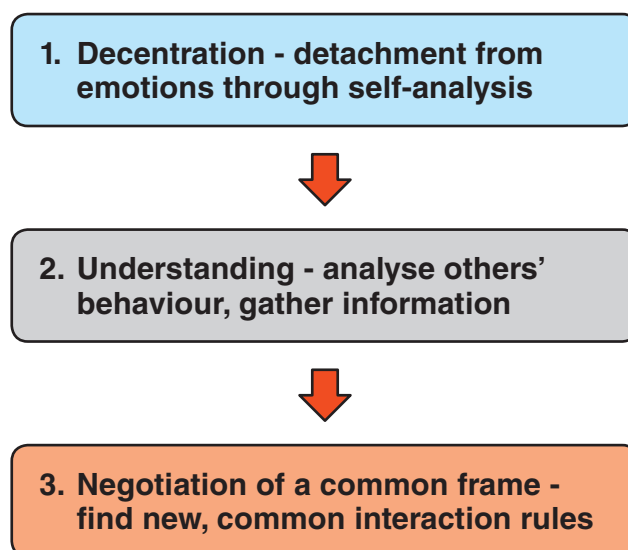
Detention visitor’s possible reactions:

1. **Blame yourselves:** *‘Maybe I haven’t tried enough to be helpful/I haven’t explained my role properly.’ -> Feelings of guilt, shame and frustration*
2. **Blame the others:** *‘He/she is so ungrateful!’ -> Feeling of anger because of the lack of appreciation for your efforts*
3. **Sense your own feelings and needs:** *‘I feel sad and hurt, because I need some trust and recognition for my efforts’.*
4. **Perceive others’ feelings and needs:** *‘Are you feeling angry and desperate because you need more certainty about your situation here?’*

¹⁹ Rosenberg, 2003, p. 142

In order to deal with the emotional distress caused by cultural shock, three steps may be helpful, as follows:

1. **Decentration** – This involves becoming aware of the emotional distress and detaching oneself from it by means of self-analysis of one's own reactions and emotional state of mind:
 - What do I feel? (fear, rejection, disgust etc.)
 - What exactly irritates, disturbs, upsets me?
 - Which of my values and norms have been shaken?
2. **Understanding** – One can achieve an understanding of the situation by analysing the 'otherness', the different frame of the interaction partner:
 - What is different in their behaviour?
 - What is their social and cultural background? / What do I know about it?
 - What are my assumptions about how the other experiences the situation?
 - What do I need to know, to understand them better?
3. **Negotiation** – After achieving an understanding of one's own and the other's context, the final step is possible, in which a common frame can be negotiated with the common goal of effective communication:
 - What do I want to reach and/or know?
 - What questions do I want to ask?
 - Are there similarities that could offer a common basis of discussion?
 - What rules might facilitate communication without hurting our values?



Graphic 7: Three-step method for dealing with emotional distress²⁰

Critical incidents

The critical incident is a method of improving intercultural communication skills by using brief descriptions of critical situations: situations in which misunderstandings, problems or conflicts develop because of cultural differences. The situations described end with an action taken by one of the involved parties, or with a dilemma the reader has to solve (see examples below).

The users/participants in a training program are asked to analyse the situation described, reflect on what happened, on possible reasons for the problem and on what they think would be “appropriate attitudes and behaviour in such a situation.”²¹

²⁰ Acc. to Cohen-Emerique, 1999, p. 301 ff.

²¹ White, A. in Fowler & Mumford, 1995, p. 130

EXERCISE A:

Read through each situation and answer the questions following the incident. There are no right or wrong answers, so please respond according to your personal opinion.

Situation 1: Visitor telling the story of a refugee from Sierra Leone (at that time in a fierce civil war):

I have been seriously warned by the immigration officer at the airport that I should be careful and press the button to call for assistance if needed, as J. was really violent: as the immigration officer took his hands trying to take his fingerprints and J. resisted, the immigration officer insisted by force and in a louder tone of voice. J. became very violent.

I got scared and cautious but tried to calm down and thought, I want to form my own opinion and I entered the room where J. was.²⁷

1. To what extent do you agree with the Visitor?
Totally disagree 1 2 3 4 5 totally agree
2. Why?
3. What would you have done in Visitor's situation?
4. How would you feel if you were the visitor in that situation?
5. What are the main issues in this incident?
6. Why do you think J. reacted as described in the incident

EXERCISE B:

Situation 2: Visitor reporting a sensitive situation

Some detainees waiting to be released were interested in homosexuality. They heard that here males can marry other males and wanted to know more about it. So we organised a gathering. As I started to talk about the topic, many of the detainees stood up and left the room. We still found it important to inform detainees about it, as it is an accepted reality in the host country.

1. To what extent do you agree with the Visitor?
Totally disagree 1 2 3 4 5 totally agree
2. Why?
3. What would you have done in Visitor's situation?
4. How would you feel if you were the visitor in that situation?
5. What are the main issues in this incident?
6. Why do you think J. reacted as described in the incident?

Answer the questions above. If possible, discuss them with colleagues.

Didactic Note: The purpose of critical incidents is to confront you with difficult situations which might arise when working with refugees and migrants. They will help you reflect on your own interpretation or explanation of others' behaviour, on your attitudes to sensitive situations, and on the various cultural differences that might create misunderstandings or conflicts in intercultural encounters.

2.4.2 Critical incidents as a reflection tool

Critical incidents are usually used as a “ready-made training tool”²², with the participants having to react to described situations. It can be very useful though as a regular tool for reflecting upon and learning from one’s daily work experience. ‘Critical’ does not necessarily mean dramatic; learning can happen “in some small or banal situation.”²³

EXERCISE:

"It happened to me" – Complete the following five steps and write your own critical incidents reflecting on your intercultural experience

1. *Identify the main actors in the incident*
2. *Describe the background of the incident, the relevant details and circumstances: What? When? How? Where?*
3. *List the people involved and their relationship to one another and to you.*
4. *Describe briefly what happened.*
5. *Describe how the participants (you and/or the other actors) reacted, your and their feelings, thoughts and actions.*

Reflect and describe the intercultural issues, your role and the skills involved. How did you understand the situation? How did you use the skills involved? What would you do differently next time?

Didactic Note: Writing a brief analysis of the incident – what happened, what did you learn from the experience and how - it will help you reflect and achieve the necessary awareness to behave more appropriately in similar situations.

Use the incidents as a basis for peer consulting with your colleagues at your regular team meetings. Ask them for their view and analysis of the situation.



²² Dant, W. in Fowler & Mumford, p. 141

²³ Ibid.

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PART II

Mental health in Detention

Module 3: Concept of Mental Health

Introduction - Visiting the Concept of Mental Health

In order to better understand the psychological difficulties you will encounter in detention centres, it will be useful to first visit the concept of mental health and what it means. This task is an important prerequisite as unfortunately wrong preconceptions of this concept abound. Mental health can be defined as a condition of internal well-being that involves how we feel, think and act. As such mental health can be viewed as existing on a continuum and as being subject to positive and negative shifts depending on multiple biological, psychological, social and environmental factors. While these factors interact in a complex way that is many times difficult to understand and predict, we know that certain life situation and challenges pose a great strain on the individual's mental health.

It is probably fair to say that such stressful events and situations (e.g. the death of a family member or experiencing unemployment) are part and parcel of human life. These events and situations can make us feel sad, tense, worried and vulnerable and if we do not take care of ourselves and/or obtain appropriate support we might experience problems with our mental health. Being confined to a detention centre can certainly be considered an example of a stressful situation; the lack of freedom, shortage of space and uncertainty about the future mean it is a difficult place to live in for a long time. Additionally, many detainees have also gone through difficult experiences before arriving in detention. This means that it is relatively common for the people you are going to encounter in a detention centre to experience mental health difficulties.

It is important to keep in mind that the way you view mental health will influence the way you work with individuals that might be experiencing psychological difficulties. An informed understanding of mental health issues will help you adopt a sensitive, open-minded and empowering approach to such work. It is therefore beneficial to remember that everyone might become vulnerable to psychological difficulties and that environmental factors play a critical role in mental health. It is also important to understand that mental health (MH) difficulties and disorders (this booklet will differentiate between the two in a later section) are treatable and therefore should not be necessarily considered terminal conditions.

3.1 Psychological issues prevalent for Detained Migrants

In a detention centre context psychological issues may be understood as stemming both from the various challenges that form part of the migration experience as well as from the experience of detention itself. The majority of migrants fleeing their country of origin in order to seek safety abroad, experience numerous losses and hardships before and during their flight. They would primarily have lost their homeland, culture, tradition and familiar way of life; some may also have lost family due to the war, oppression or hardships that would have instigated their own flight. They may also have been exposed to several traumatic experiences such as being recruited as a soldier to fight or having to live in hiding without the chance to exercise their rights. Furthermore, the individual may have endured traumatic experiences as they fled their country such as imprisonment, torture, rape, lengthy and arduous journeys and witnessing the death of friends or family en route.

Moreover, migrants in detention centres are exposed to a harsh environment characterised by loss of liberty, prolonged inactivity, disconnection to family and the outside world and lack of adequate information about ongoing legal proceedings. Due to its ability to strip a person of their freedom,

choices, status, roles and support structures in life, detention can be described as a “total institution”. Time spent in detention is sometimes referred to using the phrase “to do time” which denotes a process where everything is taken away from the individual and all that is left for him/her is to run down the time left in that place. A detainee is hence placed in a situation of limbo where they are stripped of almost everything and in essence are unable to decide the path for themselves. This lack of ownership of one’s life that the detainee is forced into, can have a profound psychological effect on his/her sense of self.

As a consequence migrants in detention might be dealing with a variety of psychological issues. Issues of loss and insecurity are particularly common; many times migrants are trying to come to terms with the multiple losses experienced and may struggle to deal with the uncertainty of their present life where they might be unsure about their chances of protection and the fate of their loved ones. You will also probably come across issues stemming from the death of loved ones and the experience of trauma. The former will trigger a complex reaction, commonly referred to as bereavement, which often includes a period of grief and is influenced among other factors by the type of relationship ended, ethnic or religious traditions and personal beliefs. The latter is defined by literature as the individual experience of objectively distressing events or prolonged conditions that may overwhelm one’s capacity for emotional integration. Such events or conditions would encompass a subjective threat to life, sanity or integrity, e.g. war, displacement and religious or racial persecution.

Moreover, as mentioned previously, the detention environment may have an adverse effect on the individual’s sense of self and associated psychological issues will hence ensue. It is probable that in this environment the detainee will lose touch with the factors his/her identity is based on. In a sense, s/he is stripped of the supports (e.g. employment and family structure) that allow the maintenance of healthy sense of self. The person may probably experience progressive negative shifts in their beliefs about self and significant others.

Box 1 provides a case example illustrating the psychological issues faced by an individual in detention.

Box 1

Case Example 1 - Elisabeth

Elisabeth has been in detention for 3 months and is extremely preoccupied about the whereabouts of her family, having last heard from them before fleeing her country. While in detention she has been unable to make contact with them. She generally feels very frustrated and angry about the situation she is in, feeling that being locked up in this centre is an injustice as she is not a criminal. Moreover, she feels very undignified, being referred to solely by a police number. The fact that she is unable to contact her family, makes her feel very alone as she has no one to share her feelings with, when she previously always had her family offering support.

It is important to remember however that while the vast majority of detained migrants will have to grapple with some if not all of the aforementioned psychological issues at some point, individual experiences vary and some individuals may not. Moreover, while some migrants will struggle with these issues and cope with them, others may be unable to resolve them and these may emerge as mental health problems.

3.2 Manifestations of Psychological Issues

Mental health problems are often manifest through a number of symptoms. These symptoms include consistent low mood, lethargy, insomnia, poor appetite, difficulty concentrating, anhedonia²⁴, high anxiety levels, anger management difficulties, aggression, isolation, nightmares, flashbacks, hyperarousal²⁵ and hallucinations. It is of vital importance that care is taken in interpreting these symptoms. Primarily the detention visitor must be aware that certain symptoms are not necessarily manifestations of a psychological issue. For example, a poor appetite in a detainee may indicate a

²⁴ Loss of pleasure in activities that previously evoked pleasure

²⁵ “a state of increased psychological and physiological tension marked by such effects as reduced pain tolerance, anxiety, exaggeration of startle responses, insomnia, fatigue and accentuation of personality traits.” “Hyperarousal,” (Dorland’s Medical Dictionary, 2007)

physical illness rather than a MH problem. Therefore, the possibility of physical illness also needs to be considered as it may require referral to a doctor for urgent attention.

If, on the other hand, a cluster of these manifestations is being exhibited by a detainee for a certain period of time, this is usually a strong indication of the possible presence of mental health problems. Different MH problems are usually characterised by a specific clusters of symptoms, for example, low mood, lethargy, insomnia, poor appetite, difficulty concentrating and anhedonia are a group of symptoms that if present for a specific period of time indicate Major Depression. The following sections will review a number of MH problems and the associated symptoms in greater depth.

Since the symptoms just described are the manifestations of the psychological issues a person is grappling with, they are often more visible and hence more easily recognisable by the detention visitor than the psychological issues which underlie them. However, it is important to remember that it is the psychological issues that are the root cause of the distress the individual experiences. Hence, while psychotherapeutic work takes place to support a person to cope with the symptoms they are experiencing, a greater proportion of the work attempts to deal with psychological issue so that the client may experience a more lasting change rather than a temporary relief in symptoms.

The following diagram is provided to depict how the symptoms and psychological issues underlying MH problems are related. As can be seen, the symptoms that may be visible to the detention visitor are generally the outward sign of the deeper psychological issues a person is experiencing.

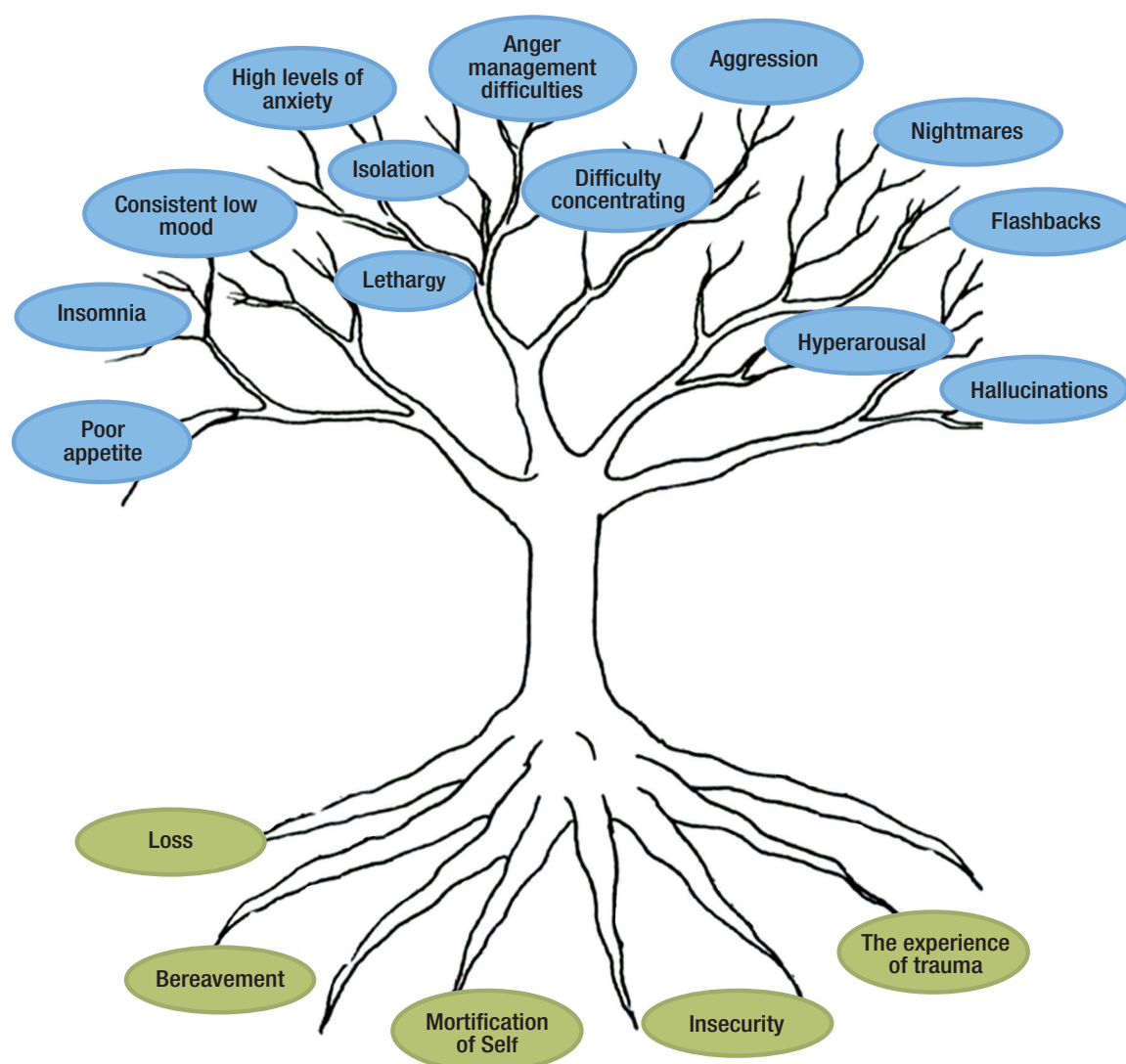


Diagram 1: Symptoms of mental health problems and underlying psychological issues.

3.3 Mental Health Disorders

3.3.1 Overview of Common Mental Health Disorders

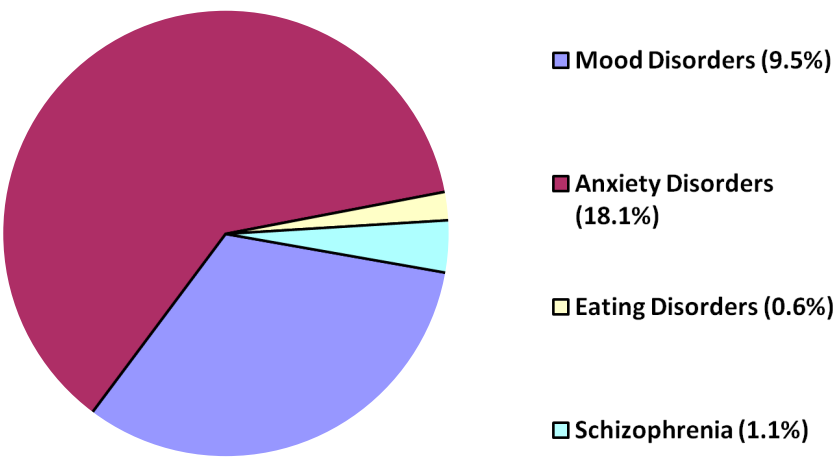


Diagram 2. Bar chart showing prevalence rates of mental health problem in a general adult US population.

As depicted in the bar chart above, the most commonly diagnosed MH problems are mood and anxiety disorders. Major depressive disorder is the most commonly diagnosed mood disorder. This pattern is also reflected in immigration detention or removal centres in the UK, USA and Australia where the most common mental health problems are depression and anxiety disorders, specifically PTSD (Robjant, Hassan, & Katona, 2009).

As explained previously, the DSM-V or ICD-10 are the manuals that classify and categorise MH disorders. Therefore when discussing mood and anxiety disorders, one must consider that these are categories encompassing different MH disorders as depicted in Box 2. For example, major depressive disorder, is encompassed under mood disorders while panic disorder would be categorised under anxiety disorders.

Box 2.1

MOOD DISORDERS

1. Major Depressive Disorder/ Episode
2. Dysthymic Disorder
3. Bipolar Disorder/Episode
4. Substance-induced Mood Disorder
5. Adjustment Disorder with Depressive Mood
6. Mood disorder due to a General Medical Condition
7. Other Psychiatric conditions in which Depression can be a major symptom

Box 2.2

ANXIETY DISORDERS

1. Acute Stress Disorder
2. Agoraphobia
3. Anxiety disorder due to a General Medical Condition
4. Generalised Anxiety Disorder
5. Obsessive-Compulsive Disorder
6. Panic Disorder with/without Agoraphobia
7. Posttraumatic Stress Disorder
8. Specific Phobia
9. Social Phobia
10. Substance-induced Anxiety Disorder

This chapter will now present symptoms checklists for a selection of MH disorders prevalent in detention centres with the aim that detention visitors like yourselves may be more attuned to the possible presence of these disorders in the individuals you visit. As explained previously, in order for an individual to be diagnosed with a specific MH disorder, a number of criteria would need to be satisfied as outlined in the DSM or ICD. The DSM-IV-TR criteria for the diagnosis of each disorder presented in this chapter will be provided as an appendix. Following each symptom checklist, a case example will be provided to help contextualise how the symptoms discussed are played out in reality. Each case example depicts an actual case encountered in Maltese detention centres. However, names and identifying information have been changed to ensure confidentiality.

3.3.2 Common Mental Health Disorders Explained

3.3.2.1 Major Depressive Disorder

Major depressive disorder (MDD) is a mood disorder that is characterised by feelings of sadness and hopelessness and low behavioural engagement. While the DSM criteria can be used for diagnostic purposes by a mental health professional, as a detention visitor, you may realise that a person may be suffering from a depressive disorder if they tick several of the criteria listed on the following checklist

It is important to remember that the symptoms the individual is presenting with need to be present during the same two-week period and the person's presentation must be different to their previous functioning. While not all the symptoms need to be present, for a person to be diagnosed with depression at least one of the symptoms needs to be depressed/low mood or loss of pleasure or interest in activities on all or most days.

The detention visitor will also notice that the person is suffering from a specific MH disorder, rather than simply experiencing transitory distress, as they will be experiencing significant and prolonged distress and/or impairment in occupational, social or other important areas of functioning. Additionally, the person's symptoms must not be related to substance abuse or a general medical condition and their symptoms must not be better accounted for by a psychological issue such as bereavement. Therefore a person may have a depressed

CHECKLIST 1 –

MAJOR DEPRESSIVE DISORDER

Does the individual feel like this?

- ☐ Sad, empty, guilty, upset, hopeless, worthless
- ☐ Crying a lot or not able to cry at all
- ☐ Feeling angry or getting frustrated with very small things
- ☐ Not interested or unable to enjoy things
- ☐ Feeling alone even in the presence of people

Does the individual exhibit the following?

- ☐ Lack of or excess sleep
- ☐ Tiredness, low in energy
- ☐ Restlessness
- ☐ Slowing-down of physical movements and thoughts
- ☐ Decrease in appetite and/or significant weight loss seen

Does the person have the following thoughts?

- ☐ "I am not able to cope"
- ☐ "I am not good at anything"
- ☐ "Other people do not like me"
- ☐ "Everything is hopeless"
- ☐ "I cannot concentrate or remember things anymore"
- ☐ "I need to end this"
- ☐ "I cannot take this anymore"

Does the individual exhibit the following behaviour?

- ☐ Leaves things unfinished
- ☐ Avoids people and situations that worry him/her
- ☐ Talks fast, becomes nervous and frustrated with others
- ☐ Increased smoking or drinking alcohol
- ☐ Procrastination
- ☐ Refraining from daily tasks/activities
- ☐ Suicide attempt or having a specific plan for committing suicide

mood following the death of a loved one, but this may not necessarily constitute a MH disorder if it does not persist for more than 2 months, is not accompanied with other symptoms and the person does not exhibit some specific symptoms such as psychomotor retardation²⁶.

Box 3

Case Example 2 – Ibrahim

Friends noticed a marked change in Ibrahim's previous interest in engaging in discussion and activities. When spoken to, Ibrahim explained that this change had slowly crept up on him and that he was noticing himself becoming weaker, more tired and 'slowed down' over the last few weeks. He could not really explain how he got to this stage, but described feeling as though his heart was empty and he could not feel anything. He described how he previously took great pleasure in reading and discussing topics with friends, but he no longer felt like doing these activities and now spent most of his day alone on his bed, not interested in showering or eating. His friends also indicated that he had almost lost his ability to focus and would many times stare blankly at them when they asked him questions.



²⁶ Slowing-down of thought and physical and emotional reactions

3.3.2.2 Panic Disorder

As explained previously, panic disorder is an anxiety disorder that individuals in detention may present with. Such a disorder is characterised by worry which a person may experience following a difficult event, such as receiving a letter indicating that their claim for asylum was rejected. This worry can trigger a chain of symptoms which, when fulfilling the criteria laid out in the DSM (see Appendix A for full criteria), can lead to the

- sweating
- trembling or shaking
- chills or hot flushes
- sensations of shortness of breath or smothering
- feeling of choking
- chest pain or discomfort
- nausea or abdominal distress
- feeling dizzy, unsteady, lightheaded, or faint
- fear of losing control or going crazy
- fear of dying
- numbing or tingling sensations
- perceiving the external world or the self as unreal

As indicated in the section on MDD, a detention visitor may notice that an individual may be suffering from panic disorder if s/he ticks several of the criteria listed on the following checklist.



In conjunction with the above symptoms, a person with panic disorder will also experience recurrent, unexpected panic attacks.

According to the DSM-IV-TR, a panic attack is a short period of intense discomfort or fear in which 4 of the following symptoms develop abruptly and reach a peak within 10 minutes: palpitations, pounding heart, or accelerated heart rate.

CHECKLIST 2

PANIC DISORDER

Does the person feel like this?

- ☐ Worried, nervous, frightened
- ☐ Panicking often and panicking over small things
- ☐ Feeling like something bad is going to happen
- ☐ Feeling tense and stressed

Does the individual exhibit the following?

- ☐ Heart heavy and beating fast
- ☐ Unable to sit still and always moving around
- ☐ Sweating
- ☐ Feeling of tightness of pain in chest
- ☐ Stomach upset
- ☐ Breathing very fast or having difficulty breathing

Does the person have the following thoughts?

- ☐ "Very bad things are going to happen to me"
- ☐ Mind jumping from one thing to another, poor concentration
- ☐ Always worrying, many thoughts turning round one's head
- ☐ "I cannot control how I feel", "I am going to die"
- ☐ Always thinking that the worst can happen
- ☐ "These symptoms mean I am losing control and going crazy"
- ☐ "I am having a heart attack"
- ☐ "I am going to get another attack of symptoms"

Box 4

Case Example 3 – Blessing

We were contacted by detention services about Blessing after she was taken to hospital. Emergency bells were rung by people in her zone after she was seen clutching her chest and becoming very sweaty and tense during one of their evenings watching television. They explained that she was very quiet prior to the incident and had never previously complained of chest pain. What they witnessed quickly escalated with her pacing round the room and becoming increasingly agitated, crying “my heart, my heart”. This incident lasted for about 20 minutes after which she slowly regained composure. She was taken to hospital and tests were run which indicated no medical condition. Her doctors suggested she obtain psychological help as her symptoms were probably psychosomatic in nature. Blessing experienced two other panic attacks in the weeks following her hospitalisation and began to worry constantly that she was going crazy and becoming unable to control herself. She also began engaging in numerous behaviours to prevent her having another attack such as not eating certain foods and not going out during sunshine hours. She also generally became much more reserved and would stay alone during times of socialising.

It is important to note that for a person to be suffering from panic disorder, the panic attacks they experience must not be substance induced (e.g. physiological effects of abusing a drug or a reaction to specific medication) and a general medical condition has been ruled out. Following a panic attack, the individual commonly remains concerned about the chances of a recurrence and the implications of the panic attack and may engage in certain behaviours they feel will “protect” them from another attack (e.g. not engaging in activities they associate with the last panic attack).

If a person has been diagnosed with panic disorder, it is useful for the detention visitor to remember that the physical signs the individual exhibits (e.g. palpitations and chest tightness) are not dangerous as they are only a reaction to the anxiety a person is experiencing and visits to the doctor or intense medical checks would be counterproductive in the long-term. In such cases it would be useful to remind the sufferer that their symptoms are a product of anxiety and continued worry and that safety behaviours (e.g. visiting the doctor) will only fuel the anxiety as they will not lead to long-term change.

3.3.2.3 Post-traumatic Stress Disorder

The reasons why refugees flee their country of origin, the journey on which they embark and the harsh conditions they are often exposed to might mean that they have been exposed to an intensely distressing event, otherwise known as a traumatic event. A traumatic event is defined as an objectively distressing event, encompassing a subjective threat to life, sanity, physical or psychological integrity. While a number of individuals who experience traumatic events are able to process and integrate them psychologically, allowing them to cope with the experience, others may struggle to do so. In these cases, an individual may have reacted to the event with intense fear and they might start to have repeated thoughts and images of the experience. They may be very tense and constantly on their guard, fearing anything that may remind them of the event. The fear and anxiety evoked when they encounter a reminder (e.g. when watching the news) of the traumatic event may lead them to avoid a range of activities.

The presence of such thoughts and behaviours in an individual who has been exposed to a traumatic event can indicate the presence of post-traumatic stress disorder (PTSD). A detention visitor may notice that an individual may be suffering from PTSD if s/he ticks many of the criteria listed on the following checklist.

A detainee with post-traumatic stress disorder would hence display three categories of symptoms: re-experiencing, hyperarousal and avoidance and these symptoms would cause significant distress and affect their different areas of functioning. Following the trauma, the individual would persistently re-experience it through nightmares, flashbacks and/or through intrusive recollections of the event. They would also display symptoms of increased arousal such as irritability or hypervigilance and persistent avoidance of stimuli associated with the traumatic event experienced.

CHECKLIST 3

POST-TRAUMATIC STRESS DISORDER

Does the person feel like this?

- ☐ Worried, nervous, frightened
- ☐ Depressed
- ☐ Feeling like something bad is going to happen
- ☐ Feeling tense and always looking out for danger
- ☐ Feeling strange and detached from the world around them

Does the individual exhibit the following?

- ☐ Heart heavy and beating fast
- ☐ Body feels very tired
- ☐ Getting dizzy, headaches
- ☐ Tense body, tight chest
- ☐ Feeling pain around one's body
- ☐ Crying easily

Does the person have the following thoughts?

- ☐ Thoughts and pictures of the trauma come into one's mind
- ☐ "What happened is my fault"
- ☐ "I am not safe, it will happen again"
- ☐ Always worrying, many thoughts running through one's head
- ☐ "I cannot concentrate or make decisions anymore"
- ☐ Get frightened easily even with a small noise

Does the individual exhibit the following behaviour?

- ☐ Trouble falling asleep or staying asleep, nightmares
- ☐ Forgets daily things often
- ☐ Cannot sit down or relax
- ☐ Avoid things that remind the person of the trauma
- ☐ Avoids people OR always need to be near people
- ☐ Gets angry or frustrated with people easily, poor relationships
- ☐ Smokes or drinks alcohol more

Box 5

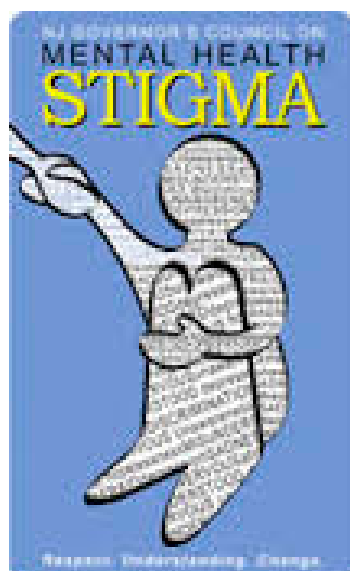
Case Example 4 – Mariam

Upon arriving in detention Mariam started exhibiting signs of intense psychological distress. She would become easily startled and was always looking around for signs of danger. Sometimes she experienced flashbacks where she could be seen shouting alone and asking someone to kill her but not her daughter. She also woke up regularly in the middle of the night screaming and often found herself drenched in sweat in the morning. When approached by detention visitors she was unable to speak at length about what is bothering her and simply repeated the same phrases over again. When probed she would say that she didn't remember much about what happened and would often speak of her traumatic past in a blunt way devoid of affect. This numbness was also apparent in her daily life and her friends claimed she would never join them to cook, have meals or socialise.

3.4 Mental Health Stigma

The word stigmatisation originates from a Greek word meaning to place a mark on someone to indicate a devalued status (Goffman, 1961). This process of devaluation involves stereotyping, prejudice and discrimination and can have a profound impact on society as a whole as well as on the persons being stigmatised. The degraded status promulgated by stigma can have far-reaching influences on the perception of 'discredited' groups by society as a whole and may result in a tendency for the 'majority' to ostracise and limit the rights of these individuals. Furthermore the negative views transmitted through stigmatisation may be internalised by the stigmatised party, thus impacting adversely the way they view themselves.

Stigmatisation is experienced by a variety of social groups including individuals in racial or ethnic minority groups, individuals with a disability or a homosexual orientation (Hinshaw & Stier, 2008). While stigmatisation exists across different spheres, particular attention has been devoted to the stigmatisation of mental illness because mental disorders are often harshly stigmatised against. A possible reason for this high degree of stigmatisation may be that mental health is a complex and abstract topic and hence is generally not very well understood. One may argue that the prevalence of stigma in the arena of mental health continues to hinder efforts to increase public awareness about this subject. In fact, while it is clear that strides forward have been made in public knowledge about mental health, statistics still indicate that a lot of progress still needs to be made. For example, US surveys on mental health stigma have shown that, at least in relation to the severe mental disorder, attitudes of castigation have increased rather than decreased (Phelan et al., 2000).



While lack of adequate knowledge about the causes and correlates of MH disorders appears across nations, certain specific beliefs about the cause of mental illness may heighten levels of stigma. In certain cultures, mental health is seen in spiritual or religious terms and in this respect mental illness may be understood as the result of possession by evil spirits or demons, or conversely as an experience of spiritual awakening or blessing from a higher power. In other cases, the individual may be believed to be effected by acts of witchcraft or cursed through contact with superstitious artefacts and would be considered to be in need of cleansing.

In countries where individuals with MH problems are severely ostracised and placed in secure establishments such as asylums or institutions providing cleaning rituals, a perception of dangerousness is promulgated. Here, individuals with mental illness are often believed to be unpredictable, violent or aggressive. See example 5 for case of an Ethiopian individual stigmatised due to erroneous beliefs about MH problems in his culture. Moreover, in many western cultures, criminality

including rape and serial killings is portrayed as having a strong association with mental illness and hence while community mental health treatment is increasing in this part of the world, this association continues to fuel a discriminatory image of these individuals as unpredictable and dangerous. Furthermore there is a widespread perception of individual suffering from MH problems as strange, abnormal or incapacitated. Many times these individuals are seen as being incapable of social relationships and would not be expected to follow a typical life course. Gureje et al.'s (2005) study in fact found that only a quarter of respondents thought that individuals with a MH disorder could hold down a job, most thought that these individuals were mentally retarded and only 4% reported considering them as suitable marriage material.

Hence, while the nature and form of the stigmatisation may differ across cultures, it is clear that stigmatisation of mental illness is a universal phenomenon often related to the poor knowledge of its cause and correlates and when these are erroneously related to possession, punishment, weakness, deviance or evil, the shame and taboo individuals with mental illness experience seems to be aggravated. The consequences of this stigmatisation are many and can sometimes be seen to have a greater negative impact than the difficulties caused by the mental illness itself. Hinshaw (2007) eloquently states that “the pain engendered by mental illness is searing enough, but the devastation of being invisible, shameful, and toxic can make the situation practically unbearable” (p. xi).

Speaking on a psychological level, stigmatisation might affect adversely an individual's sense of worth. After internalising the degraded status imparted through stigmatisation, an individual will begin to devalue himself and develop a poor self-esteem. This is further aggravated when the stigmatisation puts the individual at the mercy of ostracisation and institutionalisation. In the wider scheme of things, mental health stigma in a society may result in decreased life opportunities for the individual as he would be devalued as a potential employee, marriage partner, authoritarian figure etc. Moreover, the individual's family may also be stigmatised resulting in either animosity and ostracisation or over-protection and smothering of the individual by his/her family.

Individuals with MH problems in detention are particularly vulnerable to the negative impact of stigmatisation. Their behaviour is constantly open to scrutiny due to their prolonged proximity with other individuals and the lack of privacy. As a result an individual may be humiliated by the “majority” group, undervalued and discriminated against when it comes to taking decisions or recognising one's ability to contribute to the group. When an individual is ostracised by fellow detainees they often respond by isolating themselves in an attempt to prevent further humiliation. Therefore an individual with MH problems in detention may not only suffer worse symptoms because of the detention conditions that generally begin to destroy a person's sense of self, but also because of the stigmatisation they experience from fellow detainees. It can be argued that an individual with MH problems in detention lives in an environment that is different to that of the general group, one that generally increases the distress one experiences with adverse effects on their level of functioning. The fear of humiliation from the “majority” may also aggravate a person's mental health by acting as barrier to self-disclosure and access of mental health services.

Box 6

Case Example 5 – Berhane

Following sexual abuse in his early childhood, Berhane withdrew within himself, refusing to speak to family members or play with friends. He recalls being a 5 year old boy and being left at home while his family went to social and religious gatherings as he was told that he could not be seen by people. His father often took him to traditional healers for them to make his son normal again. At the age of 9 he was sent to a church in a remote village and described being housed with a number of other people. Every week the priest would walk him into a fenced section where he would be prayed with and immersed in springs several times in order for him to be cleansed. Back at home his family continued to ostracise him and would often make him miss school. His mother would read the Bible to him and pray for healing for her son's condition. Berhane ran away from home repeatedly as a child and would be severely beaten when he would be found. As an adolescent Berhane managed to run away from his home and country.

3.4.1 Dealing with Stigma in Detention

Following a discussion on mental health stigma, its effects on individuals in general and its potential to heighten the vulnerability of individuals in detention, this section will highlight the important role the detention visitor can play in dealing with and combating mental health stigma in a detention setting. Practical ways, on both a macro and micro level, through which the detention visitor can fulfil this role are provided.

A. Macro level

- 1) Detention visitors can provide mental health awareness sessions in detention. This could take place through the organisation of small group sessions where various mental health topics are discussed. Basic information covering the concept and examples of a mental health disorders could be imparted. The sessions would need to allow space for discussion of participants' different views of mental illness, both personal and cultural. It is useful to consider that it may be more difficult to dispel myths about symptoms such as hallucinations that appear of a severe nature and represent a greater disparity from the norm. However in this respect any information about traumatic experiences and their consequences presented and discussed can represent a helpful first step. Group sessions could be, for example, planned along the lines of Module 1 in this manual, simplifying concepts discussed and providing prompts for discussion to make allowance for the lack of familiarity of many of the detainees with the concept of mental health.
- 2) In circumstances where group sessions may not be possible, providing psycho-educational material covering the topic of MH disorders could be very informative and eye opening, possibly helping to dispel any misconceptions that fuel stigma in detention. Detention visitors would need to select psycho-educational material with care and screen it thoroughly before disseminating it, making sure it is simple and easy to understand and more importantly, that the way it is written imparts underlying messages that serve to normalise mental illness. Appendix B of this manual provides some examples of psycho-educational materials that could be utilised with the persons you work with in detention.

B. Micro level

- 1) First of all, it is imperative that the detention visitor evaluate their own views of mental health and correct any misconceptions they may hold about the causes of MH problems. Become knowledgeable about mental health and clear about your position is the first step and a pre-requisite to imparting this knowledge onto others and combating stigmatising views and behaviours that may exist in detention. Remember you cannot hope to impart an attitude if you do not adhere to it yourself!
- 2) Mental health stigma can be dealt with on an individual basis through example. The manner in which the detention visitor interacts with the detainee with MH problems can highlight the "normality" of the individual. Having genuine conversations, asking for one's opinion, obtaining their views on treatment and generally interacting in a way one would with any other person, can help to challenge perceptions other detainees may have of the individual with mental health problems as incapable, strange, dangerous or unpredictable and can very effectively model respectful behaviour which may later be mirrored.
- 3) Detention visitors can also combat mental health stigmatisation by discussing the topic of mental health openly with detainees. Questions raised should be answered confidently and openly in a way that reflects the importance, but also the normalcy of the topic. Discussions can be had wherever the detainees are and need not necessarily take place in an office or during an official group session. When the detention visitor comes across as being open about and comfortable with the topic of mental health, such an attitude towards the topic is also encouraged in the detainees they interact with.

EXERCISE:

The following are examples of comments or questions detainees may pose as they begin to question their personal views of people with mental health problems. Individually or in groups discuss the following questions and try to come up with a suitable answer. Considering such questions before they arise will put you in a stronger position to challenge mental health stigma.

- ❖ *How can this person not be crazy when he speaks to the air?*
- ❖ *How can I become friends with a person who may be dangerous?*
- ❖ *How can you expect us to socialise with that person when she is always on her bed alone?*
- ❖ *I have seen many movies of people who kill and steal, many times it starts with a lot of anger. That person gets angry very quickly, I think I should stay away.*
- ❖ *How can he be a productive member of society if his brain is damaged?*
- ❖ *That person is definitely crazy if they need to hide him in the mental hospital.*

Didactic Note: Encourage detention visitors to come with suitable answers themselves. Should guidance be required reiterate points made previously, such as the fact that people with mental health problems may sometimes present with symptoms that are strange to us because they are different, but this does not mean that they are damaged or dangerous and with support these individuals can live stable and productive lives like everyone else.

3.5 Awareness of the Role of Culture in Mental Health Disorders

As outlined in the first chapter, culture - cultural beliefs, norms, values etc - influences how we think, behave and feel, and therefore it is not surprising that the cultural model we are brought up in also affects our mental health. The role of culture in mental health cannot be underestimated; it is a factor that impacts the development, expression and perception of mental health problems. Furthermore culture also exerts a strong influence on the individual's motivation to seek help as well as on the manner in which s/he seeks help.

The biopsychosocial model of mental health originates and is mainly understood in the Western world. The mental health disorder categories described beforehand can in fact be considered as Euro-American cultural constructs. In many non-Western cultures the notion of distinct mental health problems being exhibited through a range of emotional, behavioural and physiological symptoms and having roots in biological, psychological, and social factors and their complex interactions is a foreign concept. While this model is gradually spreading across other cultures, considerable worldwide variation in cultural conceptualisations of mental health and illness still exists. Other cultures attribute different causes to mental health problems, for example several African and Asian cultures adopt supernatural or religious explanations for severe MH problems; Vietnamese see mental illness as form of punishment for those who have sinned in previous life, while in Ethiopia it is common belief that supernatural agents can possess a person and cause physical and psychological disorders.

By offering interpretations of the possible causes of mental health difficulties, cultural models impact the meaning given to the symptoms experienced. They for example influence the individual's thinking about what the consequences of these mental health difficulties for their daily life are and about what they say about them as a person based on the ideals of that culture. For instance, a 2007 study conducted by the American National Mental Health Association found that approximately 63% of African Americans viewed depression as a "personal weakness".

3.5.1 Expression of Mental Health Problems across Cultures

The individual's cultural model influences which aspects of his/her experience attention is directed towards, thus impacting how bodily sensations and emotions are perceived. For example, certain cultures have a rich and detailed understanding of physical sensation such as body temperature shifts and digestive processes, whilst other cultures place less emphasis on bodily changes and encourage a more pronounced focus on the emotional world. By filtering the attention individuals dedicate to physical and emotional stimuli cultural models impact heavily how distress is experienced. For example, while in certain cultures distress is mainly expressed in an emotional way, in other cultures it is often expressed as physical health problems and somatic complaints such as headaches and stomach aches (Lauber & Rossler, 2007). For this reason certain academic fields such as ethnopsychiatry and ethnomedicine have focused on investigating and understanding diverse "idioms of distress", i.e. culturally-specific modes of experiencing psychological and physical suffering.

This diversity in expressing distress means that the manner a mental health problem is expressed also differs across cultures. Reference to empirical literature can help illustrate this point: Research indicates that depression in Turkish clients may also be described by symptoms such as irritability, headaches, choking and drowning sensations that are not found in the DSM-V. This example highlights the fact that depressed individuals you may encounter in detention centres may outwardly present in dissimilar ways. In this respect, it is important to keep in mind that while core symptoms of a specific mental health problem are generally universal, there may be interpretations and experiences of a disorder that are culture specific.

3.5.2 Culture and Help Seeking

The individual's cultural background also influences the behavioural choices s/he will make to promote mental health or relieve psychological distress. Cultural norms provide guidelines about how the exchange of help and support should operate within a social group. For instance, group-oriented cultural models encourage the individual to seek help within rather than outside of their social group, while individually-oriented cultural models view the exchange of help in a contractual manner involving rules of reciprocity and compensation. These norms will impact if, when and how the detainees will seek help for mental health difficulties. Cultural interpretations of the causes of and treatment for mental health difficulties will also play a part. For example, Whitley, Kirmayer and Groleau's (2006) research about West Indian immigrants' use of mental health services in Montreal, Canada indicated that negative views about psychotropic medication and perceived over-willingness on the part of doctors to prescribe such medication was resulting in high levels of reluctance to use such services.



3.5.3 Working with Individuals from different Cultural Backgrounds

So how can a detention visitor working with individuals suffering from MH difficulties take cultural variables into account in an effective manner? Obviously you can't be an expert on the myriad existing cultural models, but armed by an awareness of culturally distinct patterns of distress experience and meaning interpretation you should strive to be more cautious in your interpretation of the behaviour and psychological experiences of people hailing from a cultural background that differs from your own. To help you understand their lived experiences better, if available, make use of the expertise of cultural

mediators and research about the cultural background of the persons you are working with. Finally try to take cultural norms into consideration when offering a service or encouraging help seeking. Do not make the mistake of assuming that individuals from a different cultural background will seek help using the same channels and processes endorsed by your culture. Strive to be sensitive to their preferences about help-seeking and if possible make an effort to facilitate this process for them.

What to do

- As a listener make an effort to tune out your own point of view and try to bracket your personal preconceptions.
- Avoid closed questions that may limit conversation to a sterile series of questions and answers and instead ask open questions that invite less forced and more flowing dialogue. Remember that open questions elicit more information and reduce the risk of communicating mistaken assumptions. For example, when speaking to a person who seems to be irritated, instead of asking “Are you in a bad mood today?” use the question “How are you feeling today?”
- Try to use paraphrasing, i.e. a restatement of the person’s discourse using your own words, to reflect the essence of what the speaker says back to them and clarify any incorrect interpretation.
- Actively use questions to convey interest and seek clarification of what you have understood as the listener. This allows the speaker to remain in control and the owner of their experience.
- Ensure that your non-verbal behaviour shows you are engaged in the conversation. Examples of body language that denote attention include steady and prolonged eye contact, slow nodding and an open posture (see Box 7).

Box 7**THE LANGUAGE OF OPENNESS**

As we try to come across as open to the migrants we work with, there is much that can be done not only in our verbal interaction but also through our non-verbals. Adopting an open stance will require refraining from crossing one’s arms or legs in any ways, transmitting the message that nothing is being concealed. One’s arms should ideally be open and gesturing/ movement can often be helpful when it is animated and synchronised to what is being said. Hands and palms should also be used in an expressive way if they are relaxed and depict an example the person is giving. For example, when describing the detachment a person feels from her brother, this could be indicated through a distance between the therapists’ hands. When it comes to one’s legs, these should not be crossed and may be kept in parallel or apart and the feet may point forward to the side or at something or someone of interest. When working with a couple or family, one’s body should shift towards the person speaking. One’s head should also be moving around, nodding and generally positions facing the individual you are speaking to.

What to avoid

- Do not interrupt (especially if individual is disclosing a difficult experience). If you do interrupt inadvertently, apologise and ask the speaker to continue.
- Do not talk about yourself.
- Do not change the topic.
- Do not ignore or deny the other person’s feelings.
- Try not to provide an interpretation or explanation for people’s experiences.
- Be careful about comparing people’s experiences.

4.1.2 Foster a space where the detainee can feel safe and in control

Remember that the detainee lives in a harsh and demanding environment they can exert no control over, so try to cultivate a space, in both the spatial and relational sense, that instils in them some measure of safety and control.

From the outset be clear about what your role is, who you work for and what you can and cannot help or support the detainee in. Clarifying puts the persons you are working with in control and enables them to make the choice about what they want to disclose. Furthermore be vigilant about raising detainees' expectations unwittingly in an attempt to foster hope, as this will most probably be counterproductive in the long-term and might act as an additional barrier to their help seeking in the future.

Remember also that the migrant in detention lives in a situation of minimal power, s/he might perceive a power differential between you that might cause uneasiness and apprehension. Being aware of this possibility and striving to address this perception through your mode of interaction will help remove a potential barrier to communication between yourself and the individual suffering from MH problems.

4.1.2.1 Create an adequate environment

Within the limitations of a detention centre, try to create a meeting environment that is as comfortable and private as possible. Make an effort to find a space where the chance of overhearing are minimised and where ideally you can both sit down and face each other. Simply making an effort to find a suitable space, instead of having a discussion with the person anywhere, gives the message that you value what the other person has to say and that you are sensitive to any concerns s/he might have about speaking of their difficulties.

4.1.2.2 Be dependable

Try to be a source of dependability amidst the sea of uncertainty the detainee with MH difficulties is encircled by. If you set a day and time when to meet always try to respect that agreement. If your work routine means that keeping fixed times is unrealistic, it is better to avoid setting specific appointments rather than not turning up as agreed. If something unexpected arises try to inform the person that you won't be able to meet.

4.1.3 Relate with the individual as person

As mentioned beforehand in the introduction to this chapter, striving to relate with the person with MH difficulties is of paramount importance. This will only be possible if in our interaction we adopt a person-centred approach, meaning that we give more importance to the person than to the task we are responsible for. Instances of this approach include using a person's name rather than impersonal identifiers such as a police number and taking the time to greet them and convey an interest in their general life. Ideally endeavour to approach the individual with MH difficulties with an open attitude, willing to get to know them, share experiences and learn from them.

4.2 Provide Emotional Support

In all probability the person suffering from MH difficulties will express distress and display painful emotions and may moreover also share traumatic personal experiences. In such circumstances the most basic assistance we can offer is the provision of adequate emotional support. You will be able to offer such support if you learn to engage with the detainees and respond to their self-disclosure in a manner that offers emotional comfort and sustenance. The following guidelines can help you develop this valuable skill.

What to do

- Offer empathy (refer to Box 8).
- Show the person you are willing to be present and listen to them.
- Acknowledge the value of their experience.
- Show appreciation for how difficult sharing their experience might be.
- Address one's distressing feelings in a sensitive and effective way.
- Explain that expressing negative feelings is healthy.
- Encourage them to speak about these feelings with people they trust.

Box 8**WHAT IS EMPATHY?**

Unfortunately empathy is becoming one of those over-used words that seems to have a plethora of meanings. A basic definition is, attempting to understand the detainee's experience from their own perspective. It is the ability to see the world as another person sees it and recognise, share and understand the emotions, needs, concerns and/or emotional state being experienced by the individual. Empathy as a skill is one of the most advanced interpersonal skills and requires effective communication, imagination and the ability to think outside your own frame of reference. It might come naturally to some people but can also be developed with working with people in difficult situations.

EXERCISE – Developing Empathy:

Take the example of a detainee becoming anxious every time a soldier calls her name. Try to imagine what it would be like to be that person, locked up for hours each day and with no knowledge of when the next knock at the gate would come and what news it would bring.

This short exercise will probably make you more able to understand this detainee's reaction.

What to avoid

- Avoid evaluating the person and his/her feelings.
- Avoid attempting to problem-solve.
- Do not simply ignore the person's painful feelings.
- Do not attempt to divert attention from the person's painful feelings.
- Do not attempt to point out the 'silver-lining' in the situation.
- Avoid using clichés such as "Don't worry" or "Everything will work out fine" that might be seen as trivialising the person's experience.
- Avoid adopting a judgmental attitude.
- Be cautious of any non-verbal behaviour that may indicate rejection.

The aforementioned guidelines indicate clearly that it is the nature of our response that will determine whether the speaker feels that his/her self-disclosure was acknowledged, understood and valued. In this respect, the use of person-centred messages will maximise our chances of providing effective emotional support (refer to Box 9).

Box 9

PERSON-CENTRED MESSAGES

- **Low person-centred messages** – *denies detainees feelings by criticizing or challenging him or her, telling them how to feel or act.*
- **Moderately person-centred messages** – *expression of sympathy and condolence, presenting explanations of the situation that are not emotionally focused.*
- **Highly person-centred messages** – *explicitly recognise and legitimise the other's feelings, help the other to articulate those feelings, explain why those feelings might be felt and support the detainee to see how those feelings might fit in a broader context.*

Adapted from Burleson (2008).

4.3 Empower

To empower can be defined as rendering a person stronger and more confident in controlling the course of their life. Unfortunately there is a prevalent view of individual with MH problems as being abnormal, damaged and/or weak. Most probably the detainees with MH problems you will be working with receive such message on a daily basis and might unfortunately have already internalised such views. The first step to empowering these individuals is to view them as not being defined by their MH problem, but as a person with various potentialities including the capacity to overcome this problem. Being able to transmit this viewpoint to the individual and supporting them to recognise and get in touch with their self-help capacities constitutes the subsequent crucial steps.

4.3.1 Using specific techniques to empower the individual

The provision of psycho-education is a very effective means for empowering individuals suffering from MH difficulties. Firstly it can help dispel myths about mental health, e.g. it challenges notions of people with MH problems as being possessed, unclean, useless, scarred for life etc. Secondly, it can provide clarity and understanding to the recipient rather than confusion or embarrassment about what they are experiencing. Lastly, it can help normalise their experience and provide the realisation that such an experience is not as uncommon among people in the same situation as previously thought.

Identifying and acknowledging the individual's areas of strength is another valuable technique that can serve an empowering purpose (refer to Module 3).

The use of self-help material is another technique that can empower individuals with MH difficulties (refer to Appendix B for a list of available self-help material). Before you use this material first familiarise yourself with its content and ensure that you can answer questions about it. When offering such material to a detainee with MH difficulties, first explain the aims of the publication and if possible periodically review their use of it. If utilised in the correct manner this material can equip persons with MH difficulties with the tools to help themselves and thus reduces dependence on services.

4.4 Provide Basic Guidance

There are practical ways in which a person can take care of their psychological health. Providing suggestions about these ways can be of valuable help for the detainees you will be working with. In this sub-section we will describe a few of these suggestions.

As a preamble to offering such suggestions it would be useful to explain that:

- ❖ These suggestions can be useful both for persons who are experiencing MH difficulties and for persons who are currently feeling fine, as taking care of one's own psychological health is beneficial for everyone.
- ❖ If you are experiencing psychological difficulties these steps might appear difficult at first, but they are worth trying out. The more often you attempt these strategies, the greater the possibility that you will start feeling better.

4.4.1 Keeping Active

Keeping active and busy throughout the day is of salutary value, especially in a place like detention. Activities can be helpful by providing some measure of enjoyment and achievement and some needed distraction from worrying thoughts. The majority of the people you will be working with will feel that there is nothing much they can do in detention, but if you encourage them to apply some imagination and effort, occupying their day may become easier for them.

The following is a list of activities tried by immigrants in Maltese closed detention centres.

- Reading
- Watching TV
- Listen to music
- Playng games (e.g draught)
- Playng
- Drawing
- Writing (e.g. diary, poem)

4.4.2 Physical Activity

Daily physical activity can have a significant positive effect on one's emotional state. Exercising makes us feel less tired and in a better mood. Encourage the individuals with MH difficulties you work with to, if possible, try going for a jog or to play a game of football or any other sports outside. If they can't use an outside space, doing push-ups, sit-ups, pull-ups etc. can also serve as exercise. Encourage them to try and plan at least 20 minutes of either outdoor or indoor exercise every day.

4.4.3 Getting a Good Amount of Sleep

Sleeping refreshes the mind and the body and is necessary for both our physical and psychological health. Lack of sleep can make us feel tired, tense and unable to concentrate. On the other hand excessive sleeping can also be harmful as it increases tiredness, decreases energy levels and can isolate the individual from others. Sometimes individuals are prone to sleep more when they are feeling sad or bored.

Applying a few behavioural strategies can help us develop more stable and healthy sleeping patterns. The best advice you can give to a person with sleeping difficulties is to try and keep a regular sleeping routine. Having a regular sleeping time at night helps us sleep quicker and have a more restful night. Suggest that they minimize their sleeping time during the day; encourage them to only have one short rest during the day and to make a plan of how they can spend the remainder of the day. Other useful behavioural tips are the avoidance of caffeine and heavy meals up to 3 hours before bed time and regular exercising during the day.

4.4.4 Relaxation

As explained beforehand, anxiety causes physical symptoms such as heart racing, fast breathing and sweating. We can control these physical signs of tension through the use of relaxation strategies. Some persons manage to relax through the aforementioned activities; e.g. exercise, reading, watching TV etc. Apart from these activities breathing exercises can be effective way to induce relaxation.

The rationale behind these exercises is that slowing your breathing lowers physiological correlates of stress such as increased heart rate and high blood pressure. Encourage the people you meet in detention to try practice the following breathing exercises (refer to Box 10). Once a person masters these exercises they can use them several times a day to keep themselves calm.

Box 10

BREATHING EXERCISES:

Holding your Breath

Breathe in deeply through the nose while counting up to 3. Hold your breath while counting up to 3. Then release your breath through your lips, while saying “Relax” to yourself.

Rhythmic Breathing

Breathe in through your nose while counting up to 5. Breathe out through the nose for the same count. Do not hold your breath in between. Continue breathing in this rhythm for a number of minutes.

4.4.5 Talk to Friends and Family

Put simply, communication is necessary for psychological health. Persons suffering from MH difficulties, for a variety of reasons, often prefer to stay alone, but lack of communication will probably be serving to augment their psychological distress.

It is important to explain that whilst it is sometimes useful to spend some time alone to think, reflect and relax, everyone needs social contact. Encourage detainees to try to regularly find time to speak to someone about their day, their opinions and any other mutual topic of interest.

4.4.6 Expressing your Emotions

Expressing emotions is another important aspect of being psychologically healthy. People living in a detention centre often experience a range of negative emotions such as sadness, anxiety, anger, frustration and hopelessness. Failing to accept and express these negative emotions can have harmful consequences; these distressing emotions may augment in intensity and the risk of an outburst with accompanying loss of self-control increases.

Accepting these negative emotions can have a salutary effect. Explain to the detainee that after all every person experiences negative emotions and that detention is a stressful environment for everybody! Once they are ready to accept these distressing emotions, there are various methods they can employ to express them in a safe and healthy way.

The easiest way is through talking to someone they trust about how they are feeling. Sharing painful feelings might appear daunting at first, but it can make one feel ‘lighter’ as if a heavy weight is now being shared. Activities like writing, drawing and playing music can also serve as means to express distressing emotions, as well as a way to foster positive feelings.

4.4.7 Positive Thinking

Persistent negative thinking often constitutes a causal, maintenance or contributing factor to certain mental health problems such as depression or generalised anxiety. For example: Persistent feelings of sadness are often linked to negative thoughts about the self (e.g. *“I am stupid”, “No one likes me”*) and/or negative thoughts about the world and your future (e.g. *“My future is hopeless”, “The world is a dangerous place”*). On the other hand, feeling anxious daily is probably the consequence of negative predictions conducive to worry such as *“I am not able to make friends” “I will never find a job”*.

Encouraging the persons you are working with to reflect on and write down their thoughts can be of great benefit. This strategy can help them become more aware of their thoughts, and once they are cognisant about their negative thinking patterns, they are in a better position to do something about them. We all sometimes fall prey to the mistake of emphasizing negative aspects of a situation/event/person and discounting the positive ones. Once we have identified a particular negative thought we can analyse it and then try to adopt a more balance perspective. After encouraging the detainee to write down and identify their thoughts, you can suggest the use the following questions as exercise about engaging in balance thinking:

- *Am I exaggerating what is negative in me?*
- *Am I forgetting my strengths as a person?*
- *Am I only remembering negative events?*
- *Can I also think of some positive events in my life?*
- *Am I being too pessimistic about my future?*
- *Is there something I can be hopeful about?*
- *Am I worrying too much?*
- *Is this worrying helping me?*

4.5 Identify and Refer

4.5.1 Identify

It is important to identify when a person may be potentially suffering from a MH problem and is not simply experiencing transitory sadness, anger etc. While you can't do a psychologist's or a psychiatrist's job, you can inform your team leader of the case as one that may deserve professional attention. So how can you identify which cases would be useful to draw attention to? As a rule of thumb the concomitance of a number of cognitive, behavioural and emotional symptoms for a certain duration (i.e. more than a few days, usually at least two weeks) would be a strong indicator of a mental health problem. To illustrate what we mean by this rule of thumb we provided an example in Table 1 of a collection of symptoms that if present in conjunction for two weeks would provide a strong indication of depression.

Table 1. An example of symptoms that would need be present together over a certain period of time for the identification of Depression

Cognitive Symptoms	Behavioural Symptoms	Emotional Symptoms
“I am not able to cope”	Being irritable towards others	Sad, guilty, upset, without hope
“Everything is hopeless”	Not doing daily tasks	Crying frequently
“I am not good at anything”	Finding it difficult to take decisions	Not interested or able to enjoy activities

Therefore a good strategy is to be on the lookout for the co-occurrence of several of the aforementioned manifestations over a number of visits. Furthermore the presence of certain individual symptoms are in their own right strong indicators of MH problems. Examples of such symptoms include self-harm behaviour, suicidal planning/attempts/ideation, hallucinations and flashbacks. It is of vital importance for you to understand that if a MH problem is suspected, the individual would need help from a MH professional and that trying to sort it out yourself can be dangerous.

4.5.2 Referral

The referral route you decide to employ will be dependent on the resources available to your JRS office and on the country's health system. If a MH professional (see Box 11) forms part of your team or is accessible through your JRS office the ideal choice would be to refer the detainee you have identified to them. If this is not possible a discussion within your team leader/director can serve to outline the options available. A possible option is referring the person in question to a general medical practitioner, so as to ensure that the individual's case is within the health system.

Even if you might not be responsible for making the final referral, it is useful for you to be aware that referral can be a tricky undertaking and that there are a number of guiding principles to observe when referring. As a core principle the personhood of the detainee should be central to our work at all times. Therefore the way the referral is made should be in line with the person-centred and empowering approach to working with persons with MH difficulties explicated in this section. The following guidelines are based on this core principle:

- The individual should always be asked if they want to be referred on.
- Where possible discuss the referral with the individual; provide information about route, people involved, timeframe etc.
- Referral should be made through appropriate channels in a manner that minimises the persons involved so as to maintain the highest level of privacy possible.
- Only put necessary information in the referral.
- Referral should be done as swiftly as possible.
- Referral should not change your view of the individual and or the messages you transmit to them.

Box 11

MENTAL HEALTH PROFESSIONALS

Psychiatrist – a medical doctor whose specialisation is mental health. The psychiatrist would be concerned with the medical management of the presenting mental health problem and would hence administer psychiatric assessments, diagnose and prescribe medication. Some may also deliver psychotherapy.

Psychiatric Nurse – a nurse specifically trained to work with individuals with mental health problems. In contrast to other nurses they are often receive training in psychological therapies and administration of psychotropic medication.

Psychologist – a professional who has obtained rigorous training in the scientific study of human behaviour and mental processes. They are hence research scientists and focus on validated measures and obtaining evidence to confirm the efficacy of psychological interventions. They are also practitioners and certain strands like counselling or clinical psychologists would provide mental health care through assessment, formulation and treatment through psychological therapy.

Psychotherapist – a professional who is trained in psychotherapy. Psychotherapy is aimed at healing the self when the individual is not functioning in the way they would like. It involves the exploration of thoughts, feelings and behaviour with the aim of increased problem-solving. Unlike a psychologist, this professional does not receive such extensive training in the scientific study of mental processes and is mainly concerned with therapeutic interaction.

Counsellor – a professional who like a psychotherapist is not trained in the scientific study of mental processes but is specifically trained to provide counselling. Through a non-judgemental, genuine therapeutic relationship, counselling guides the client to explore difficulties from different angles and facilitate positive behaviour change.

EXERCISE – Skills and Aptitudes for the Detention Visitor:

Pair up with a fellow detention visitor, with one person role playing a detainee and the other a detention visitor. Each detainee should read and act out the vignette provided, while the detention visitor should use the skills and aptitudes discussed in module 2 to support the detainee during their meeting. Pairs can reverse roles for each individual to practice applying the skills discussed in this manual.

Didactic Note: As a facilitator you should observe the role plays taking place to enable you to provide an evaluation of the detention visitor's use of skills and aptitudes. Once role plays are completed, a group discussion should take place where detention visitors are encouraged to provide feedback on their experience as the visitor, any difficulties they encountered and the particular skills they drew on during the exchange. Detainees should also be encouraged to provide feedback on how the detention visitor interacted with them, what they found helpful or unhelpful about the visit and how they might react in a subsequent meeting with that detention visitor.

N.B: Facilitators can chose to create role play vignettes themselves using fictional cases or those based on their experience. Should they prefer they could also make use of the vignettes provided in Appendix C.

- Always make it clear to the detainee who you might be going to discuss their case with
- Refrain from providing information that your colleagues don't need to know
- If not strictly necessary avoid providing information that exposes person as vulnerable

A particularly tricky aspect of maintaining confidentiality regards liaising with other professionals, especially in situations where a multi-disciplinary team works closely together. In these cases:

- Operate on “need to know” basis (What does this professional need to know to work with this individual?).
- Get detainee's permission beforehand for any disclosure.
- If report writing or referrals are required refrain from including confidential information unless strictly necessary and obtain consent (or inform the detainee) before doing so.

The aforementioned guidelines clearly indicate that maintaining confidentiality requires constant effort and not surprisingly it is common for people working in this field to break confidentiality unwittingly. In this respect, it is useful to keep in mind that even passing on non-specific information about a case, by for example saying “I see Joseph often because he is experiencing some difficulties”, is an instance of imparting information of a confidential nature. Therefore if we are serious about maintaining confidentiality we need to remain vigilant to this principle at all times. As a rule of thumb always reflect on this principle before saying or writing anything about someone you have visited.

4.6.2.2 The value of confidentiality

Confidentiality is a valuable standard for both the detainee and the detention visitor. It respects the detainees' autonomy and their right to privacy and self-presentation and gives them control over what they want to disclose. Additionally by maintaining confidentiality the detention visitor will come across as trustworthy and respectful of detainee's privacy and will be more able to foster a positive helping relationship. It is also worth considering the repercussions of breaking confidentiality. A main potential repercussion could be the loss of trust in the detention visitor, which in turn might inhibit further disclosure. Other possible consequences include the individual with psychological difficulties being exposed as vulnerable and rendered open to stigmatisation and the detention visitor gaining a negative reputation. In conclusion, in the context of MH problems the standard of confidentiality assumes greater relevance and consequences of breaking it may be especially severe because of the nature of one's disclosure

4.6.3 Client Safety

Ensuring the safety of the person you are working with is another primary ethical consideration that always needs to be at the fore of the detention visitor's mind. Ensuring the safety of individuals living in detention requires constant vigilance to any signs of risk of harm to self. These signs include episodes of self-harm²⁷, thinking about self-harm, suicidal thoughts and/or planning and most obviously any suicide attempt. Observing any of these signs makes you duty bound to inform the relevant authorities. If you notice any other indicative signs such as hopelessness try to gain a clearer understanding of the situation by asking the following questions about suicidality:

1. Have you had thoughts of ending your life?
2. Do you know how you would kill yourself?
3. Have you made any plans about this?

If the detainee replies positively to any of these questions let him/her know that the preferable course of action is for you to inform the authorities that can ensure his/her safety.

4.6.3.1 How to report

Once you have decided that you need to act to ensure the safety of a client, you should strive to report the matter in a sensitive and understanding manner. The following procedure can guide you

²⁷ People who self-harm repeatedly are at a high and persistent risk of suicide (Owens et al, 2002; Hawton et al, 2003)

in this regard:

- Let the individual know that for his/her own safety you will be informing relevant authorities.
- Tell the person that you care and want to help them.
- Express empathy for the person and what they are going through.
- Explain that suicidal thoughts are often associated with MH problems that are treatable.
- Explain that suicidal thoughts are common especially in your situation and do not need to be acted upon.
- Inform relevant authorities immediately.

Who to report to depends on the context and the structure of your organisation and the detention centre you work with. Speak to your team leader about the potential risk of harm to self-identified, they will be able to guide you regarding which relevant authorities should be informed.

If as a detention visitor you are going to be meeting a detainee regularly it would be ideal to explain the ethical standard of client safety and what your ethical obligations are from the outset. In cases where a one-off meeting offers an indication of risk of harm to self you will need to provide this explanation there and then. In such cases it would be useful to express yourself in the following manner: “This is something I have to report because I have the duty to safeguard your safety and that of others”

4.6.4 Boundaries

4.6.4.1 The concept of boundaries

A boundary can be defined as a divide between two persons’ sense of self. This limit defines us as separate from others and demarcates what we claim as our own; feelings, goals, desires, physical space etc. Boundaries set limits to the way we interact with other, thus helping us engage interpersonally in a safe manner. While boundaries exist in every relationship; their nature differs according to the type of relationship in question. For example, there is a significant variation between intimate and professional relationships in level of physical contact, extent of self-disclosure and manner of self-presentation.

Within professional relationships (e.g. lawyer-client and doctor-patient relationships) boundaries are often discussed and spoken about and are hence clear to both parties. Even if the detention visitor does not enter in a professional capacity but to befriend and support, that relationship still needs to be considered a professional NOT a personal one.

4.6.4.2 Why do we need boundaries?

Setting clear and functional boundaries between yourself and the detainee is of indispensable importance for your work. First and foremost they instil some much needed security and safety in an individual used to unpredictable situations. Such boundaries also support the personal well-being of both the detainee and the detention visitor as they reduce the risk of fostering dependency in the detainee and they protect the visitor thus enabling him to better serve others. Furthermore healthy boundaries allow a relationship of trust to be fostered and reduce the risk of misunderstandings about roles and expectations thus aiding the development of a positive helping relationship.

4.6.4.3 How to set boundaries

If you intend to develop a helping relationship with an individual with MH difficulties a comprehensive discussion on boundaries at the outset will be required. Firstly explain your role within JRS, the aims of your visit, and what kind support you are able to offer. Secondly discuss the specifics of your visits/appointments such as duration and frequency as well as what might impede you from visiting detention. Finally discuss what would constitute appropriate and inappropriate communication between you (seek the guidance of your office in this matter). If on the other hand, you plan to meet a detainee with MH difficulties for either a one-off visit or few visits, a discussion on boundaries limited to delineating your precise role and the purpose of your meetings would suffice.

4.6.4.4 How to maintain boundaries

Since the detention visitor is taking on the role of the helper and since, given the context, s/he enjoys a higher degree of power than the detainee, the onus on maintaining boundaries rests on his/her shoulders. As a detention visitor you therefore need to remain vigilant of your actions and reflect regularly on your interactions with migrants in detention. The following tips can aid you in maintaining clear and functional boundaries in your work.

- Remain aware of the principle of boundaries.
- Ensure that your personal needs are met in your own life outside of detention.
- Discuss unclear situations with colleagues or in professional supervision (according to the provisions of your office).
- Be honest with yourself and acknowledge situations where boundaries may be becoming blurred.
- Keep self-disclosure to a minimum (as a general guideline refrain from offering details about your personal life).

EXERCISE - Examining Potential Boundary Issues:

Set some time aside to examine any boundary issues you may be facing. The following are some questions that can guide you. Be honest with yourself and if you are concerned by some of your answers seek it might be useful to discuss with a supervisor or colleague you are comfortable with. Do not shy away from such introspective evaluations as they can greatly serve to enhance the quality of our work.

- *Is this in my client's best interest?*
- *Whose needs are being served?*
- *How would I feel telling a colleague about this?*
- *How would this be viewed by the client's family or significant other?*
- *Does the client mean something 'special' to me?*
- *Am I taking advantage of the client?*
- *Does this action benefit me rather than the client?*

(Vick, Vanderlick, & Merricks, 2004)

Didactic Note: This exercise should be done individually, in the detention visitors own time and space. No one should be made to conduct this exercise. It may be useful if as a facilitator/instructor you could offer the visitor the chance to discuss any of their concerns should they wish. Take care not to be judgemental or critical with visitors who recognise boundary issues.

EXERCISE:

Read the following case study and think about how you as a detention visitor would go about this scenario:

You have been seeing someone who is depressed for sometime and have formed a helping relationship. He has said that the evenings are a very difficult time for him as he finds himself with little to do and ruminates about his past. He mentions that he has no friends to converse with and asks if on certain evenings when he is feeling really down, it would be possible for him to call and speak over the phone.

Didactic Note: This exercise can be done individually, in pairs or groups and a discussion should be facilitated utilising their responses, making sure to bring in points about setting and maintaining boundaries as explained in the manual.

For reference, the appropriate course of action in this scenario would be as possible: The detainee's request would not be possible but the visitor should be careful about how to put it across. S/he can explain by first acknowledging and showing an understanding of his need for company and how difficult the evenings must be for him. Following this, such an interjection would be most appropriate: "I come to detention and dedicate a very specific time to you and your needs, I would not be able to dedicate my time to you in this way outside this time. The work we do together would be more effective and useful if we don't engage in a relationship as friends in a conventional sense as such a relationship would introduce certain expectations that could impinge on the work we're doing."

Module 5: Resilience

Introduction

Throughout the first 2 modules we have spoken at length about migrants who, following their multiple difficult experiences, develop MH problems. This module will now present the other side of the coin, individuals who are exposed to the same adverse conditions, but do not develop MH problems. This phenomenon is known as resilience and through the following sections, the detention visitor will be able to familiarise himself with the concept and begin to understand how these individuals are able to withstand the adversity they face and not develop MH problems. The basic premise for the inclusion of this section in the manual is that a closer look these resilient individuals can teach us something about how to meet the mental health needs of detainees.



5.1 Defining Resilience

Resilience, by definition, is *an interactive and dynamic process that leads an individual to display positive adaptation in context of significant adversity*. A process that cannot take place without the existence of adversity and results in individuals not developing MH problems or experiencing intense disruption to their pre-adversity level of functioning. The resilient individual would exhibit a level of functioning that is stable, not experiencing distress and/or impairment in social, occupational or other important areas of functioning. Moreover, the resilient individual would commonly resume pre-adversity life pursuits such as employment and education that might have been stopped as a result of the adversity.

Resilience cannot be mistaken for a characteristic that simply allows a person to adapt, the absence of which inhibits this adaptation. As outlined in the definition, resilience is a process that is complex and involves several factors and sub-processes. These factors and sub-processes interact cumulatively over a period of time, resulting in a positive outcome for the individual.

Therefore, since resilience is a construct which helps explain how people exposed to high levels of adversity do not develop MH problems, it is of relevance to the detention visitor who routinely comes into contact with individuals who have been exposed to high levels of adversity at some point in their lives.

5.2 History of the Resilience Construct

Research on MH problems following different types of adversity such as war, child abuse and disadvantaged childhood backgrounds has long been established. For example, many researchers have attempted to understand MH problems like PTSD by studying Vietnam or Gulf war veterans. Numerous studies were also conducted on children from disadvantaged backgrounds such as children of alcoholic or economically deprived parents.

As this research strand progressed, equipping the field with a greater understanding on the roots and development of certain MH problems, researchers were surprised by the fact that some of the children who were expected to be vulnerable later on in adulthood because of their adverse childhood background were not following this trend. These children did not develop MH problems and furthermore grew up to live stable and productive lives. Researchers became intrigued by this and began to ask “How do these individuals do this?”

These questions hence led to the development of a whole new field of research, that of the identification of strengths leading to psychological health. Early research studied children from abusive home environments, schizophrenic parents and economically disadvantaged backgrounds (e.g. Garmezy, 1991; Rutter, 1990; Werner & Smith, 1992). These studies indicated that quite a few children were not negatively affected in the long-term by these “risk factors” in childhood, i.e. many children did not develop mental illness, were not social deviants, went on to succeed in education, employment and/or family life and some presented as highly successful adults. As this evidence continued to emerge, researchers adopted the term “resilience” to describe this specific psychological phenomenon.

Over the last 20 years there has been growing interest in this phenomenon and studies on resilience have flourished. We now see resilience being studied as a response to 3 different categories of stressor:

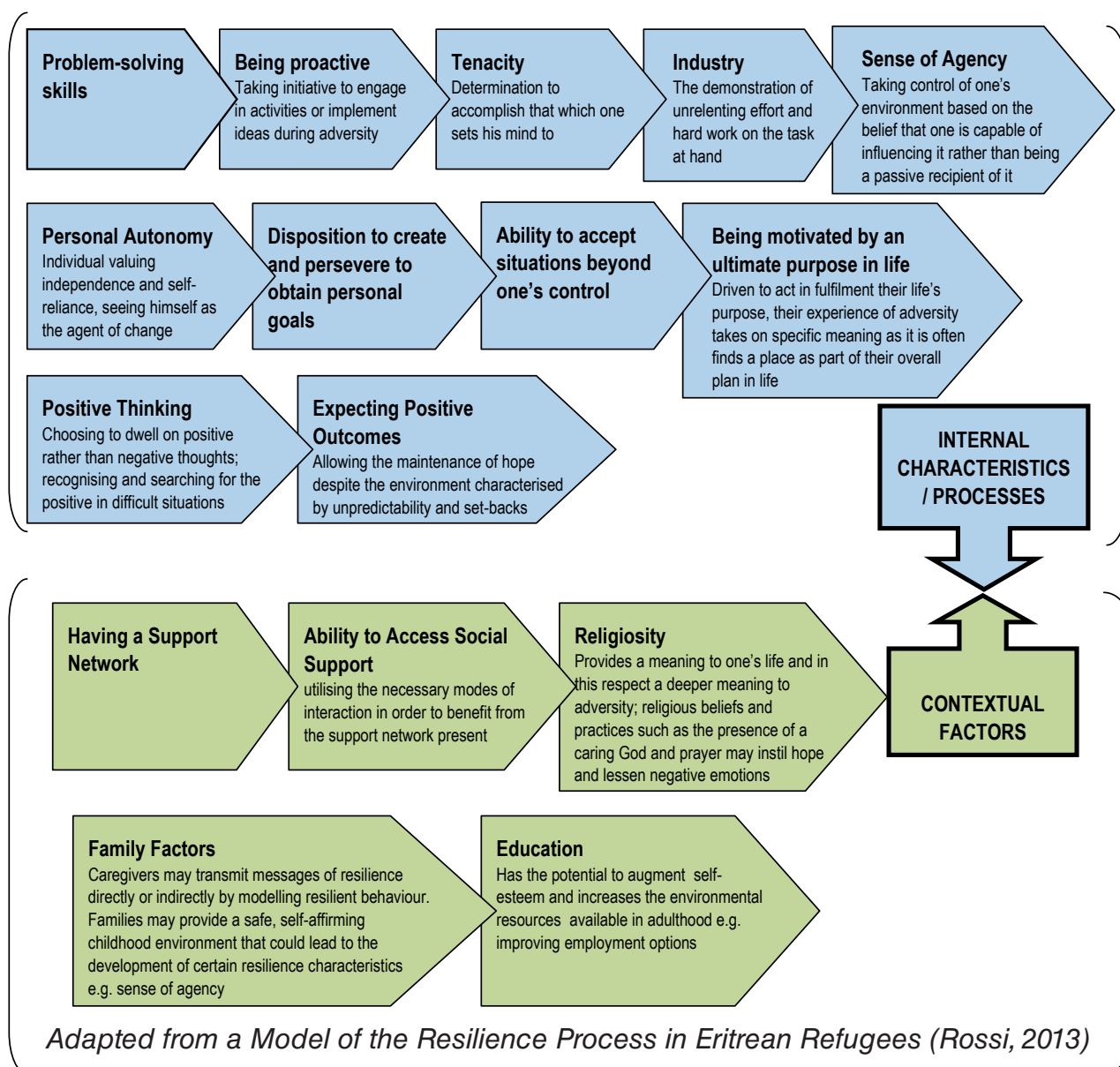
1. High-risk backgrounds e.g. low socio-economic status, low levels of education, familial mental health problems.
2. A challenging event or experience of misfortune during a specific development period e.g. parental divorce.
3. Trauma, i.e. extreme or life-threatening experiences.

5.3 What we know so far about the Resilience Construct

The latest research in this field has indicated that the resilience process involves internal characteristics and psychological processes e.g. sense of agency, as well as contextual factors e.g. a supportive family environment. These processes work together cumulatively and they generally cannot be unravelled. That is, no one process seems to be more important than the other. While the resilience process is often evident in adulthood, research has shown that it may begin in childhood and becomes activated upon exposure to adversity later on in life.

5.4 A Profile of a Resilient Refugee

The following chart portrays how a refugee might display resilience through the interaction of a number of internal characteristics/processes (highlighted in lilac) and contextual factors (highlighted in green). The resilient refugee may possess some and not necessarily all of the characteristics listed and these would work together in a dynamic process. A complex interaction exists and the arrow boxes used in this chart are meant to highlight interaction between the internal characteristics/processes and contextual factors themselves and not only an interaction between internal and contextual factors.



5.5 Usefulness of the “Resilience” concept for a Detention Visitor

The detention environment itself is one of the major influences on how a detainee begins to perceive him/herself, as one's prolonged stay in a closed centre, where one experiences the loss of individuality, subservience, loss of control over their daily routine and a break with past roles, can greatly influence a person's sense of self. A person may perceive himself as being reduced to a sub-human where his desires, motivations and strengths are no longer useful to meet his needs.

While you may not have considered this at first, as a detention visitor you may also play an important role in how detainees begin to perceive themselves. You can either counteract or reinforce the perception developed as a result of the detention environment. For example, a detention visitor who explains a detainee's case to another professional in their presence without allowing him/him to explain their own experience, undoubtedly reinforces the individual's perception of himself as having no control over his own life/experience.

Of course, the detention visitor's actions and attitude towards the detainee are themselves influenced by their own perception of the detainee. As mentioned in module 1, if the detention visitor perceives the detainee with MH problems as unpredictable and incapable, they will transmit this view to the individual through their interaction with him/her. It is hence, the ability of the resilience concept to challenge certain perceptions and modes of interaction, that we believe makes it particularly useful for the detention visitor.

The distressing environment in detention can often lead us to adhere more to the assumption of vulnerability rather than resilience, but keeping all possible outcomes in mind can help you avoid adopting a judgemental attitude when approaching detainees. Moreover, these considerations can support you to refrain from interacting with refugees with an attitude of pity or ‘rescuing the weak’, which may be a common response for a helper entering an oppressive environment.

Importantly, awareness of the possibility for resilience does not change the fact that any migrant in a detention centre is at risk for MH problems and hence this knowledge of resilience can not only be used to challenge perceptions, but also to identify personal characteristics and external factors that may be fundamental in preventing the development of long-term MH problems.

5.6 Utilising the Resilience Concept in Practice

Following this discussion on the utility of the resilience concept, this section will suggest some practical ways how you can make use of the resilience concept to enhance your work with migrants in detention. This section is based on the premise that by utilising a focus on resilience one’s work as a detention visitor can serve to prevent the development of long-term MH problems.

At the outset it is important to remember that every detainee, whether they are psychologically healthy or not, will have a number of strengths. While some are clearly manifest, others may be latent and not initially visible. The detention visitor can be very effective in the care they give detained migrants in the following ways. Box 12 then summarises a general formula for applying a strengths-focused approach.

- 1) Supporting the person to focus on their strengths rather than their deficiencies. In this respect you can help the individual identify and utilise resilience characteristics they may possess.
 - a) If certain resilience characteristics are manifest and already being utilised by the individual, the detention visitor could effectively highlight these and situations where these are being utilised, support the person to recognise the benefits of their use both for the current situation and in the future, and encourage continued use of the characteristics both in the situation to which they are currently applied, as well as to novel scenarios (see Box 13 for a case example). You must consider that the detainee would probably have used these resilience characteristics naturally and without much thought and therefore might be unaware of their benefit. They therefore might require support to think of ways in which these could be applied to alternative situations. For example, if while in detention, a detention visitor observes a behaviour that highlights an area of strength (e.g. engagement in communal discussions and activities highlighting the presence of an active support network), one could draw attention to it and its protective value.
 - b) In the case where the detention visitor notices that the detainee possesses certain resilience characteristics but these seem unused, their role would be to guide the individual to tap into and utilise them (see box 14 for a case example). For example, an individual may be industrious, but due to the detention environment would have no chores or jobs where he could put this characteristic to use. Here you would need to engage well with the individual and through their conversations, interaction and actions astutely identify possible resilience characteristics that seem to be present. When a characteristic has been identified, you could discuss it with detainee, tentatively, always aware that the individual is the expert of his life and experience. Avenues for use of this characteristic even within the detention environment could then be explored and the individual supported to attempt these. In this respect, you could give examples of possible tasks the individual can engage in and discuss ways s/he could go about it. It is important to remember that the greater the use of a characteristic, the easier its generalisation to novel scenarios becomes. Hence, where possible the detainee should be encouraged to begin using the resilience characteristic in detention, rather than waiting till they are outside.
 - c) In other cases, certain characteristics would need to be fostered and developed in the person. For example, knowing the importance of the characteristic of social support and recognising its absence and the difficulties the detainee is facing as a result, the detention visitor could discuss the importance of social support with him/her. Once this is recognised, the detainee

could be supported to develop their own support network in detention. The individual's progress with this is monitored and the detention visitor should continue to engage with the person to review any benefits they are obtaining and brainstorm ways in which other such characteristics could be developed. Resilience characteristics could be fostered both through one-to-one interactions with the detention visitor as well as through group sessions that may be conducted. In the case of the latter, general examples would be used and the group would be encouraged to support each other in attempting to utilise the resilience characteristic discussed.

These 3 possibilities for detention visitor to apply a focus on strengths may not necessarily be mutually exclusive, as an individual may possess certain resilience characteristics and not others and may utilise some while leaving others latent.

- 1) Adopting a focus on strengths when developing a positive helping relationship. As you work to develop a positive helping relationship as explained in Module 2 it is important that you emphasize the strengths the individual possesses that could allow them to cope with their difficulties. A case example can serve to illustrate this point. A detainee while speaking about various sources of frustration mentions that he manages to relax by watching some TV. He also recounts how the TV was reinstated after he spoke to the detention service staff and suggested the use of a roster to avoid previous disagreement about its use. While of course supporting him with the frustration he feels following the conflict, the detention visitor can be very effective by highlighting the problem-solving skills the detainee appears to possess. This can create the focus on strengths that generally will be more adaptive than a sole focus on difficulties, as it will help to instil the individual with a sense of control over his surroundings.

Box 12

GENERAL FORMULA FOR APPLYING A STRENGTHS-FOCUSED APPROACH

- ❖ Be alert to identify resilience characteristics the individual may possess through discussions and observation.
- ❖ Acknowledge one's difficulties but focus on the strengths (resilience characteristic) s/he may allude to while speaking about his/her difficulties.
- ❖ Discuss how this characteristic has been helpful in their life previously. If the individual is unable to see the benefits, guide the discussion in order to support them to identify benefits.
- ❖ Discuss how s/he can make use of this resilience characteristic again, both now in situations in detention and in future difficulties.
- ❖ Develop ways in which to foster absent resilience characteristics in detainees.

Box 13

Case Example 6 – William

A detention visitor had been seeing William for 2 months and it was very clear to her that William was a person with a high level of initiative and determination to accomplish that which he set his mind to. She noticed that he offered to re-establish the library and offer computer courses to his fellow detainees if access was granted. She was seeing William more regularly as he had trouble sleeping and was beginning to lose interest in things around him. During one of her visits, she shared her observations of William's possession and utilisation of the resilience characteristics of proactivity and tenacity. William seemed to be unaware that his actions were anything different to the norm. The detention visitor hence continued to work with William, guiding him to recognise how these characteristics effect a situation and how he could utilise these in different situations in order to increase his sense of control over this adverse environment, which in and of itself afforded him little control.

Case Example 7 – Sonia

As the discussion in this module comes to a close, we are reminded of the valuable role the concept of resilience can play for the detention visitor. This module has presented basic principles which can be applied by detention visitors in diverse professional capacities. In essence, awareness of the underlying principles of resilience can prompt the utilisation of a strength-focus in our work with detainees. This approach is empowering for the refugee as it focuses on strengths rather than weaknesses. Very often, it also utilises tools which the refugee already possesses and hence requires less groundwork to teach strategies before one can reap the benefits of them. Moreover, it provides an effective avenue for the prevention of long-term psychological distress, leaving the individual stronger and more able to cope with the environment in detention and the obstacles that one will continue to face outside. Finally, for the detention visitor, once mindful of the general principles underlying resilience, s/he can creatively choose how to support the client to utilise their strengths. This allows the detention visitor the opportunity to engage and interact with individuals in ways that are unique, but ways that highlight the individual's potentialities and enhance their internal strength.



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PART III

Legal framework in Detention

Introduction

This section of the manual gives detention visitors a basic understanding of the laws regulating the detention of migrants and asylum seekers in Europe. As it will be used by JRS offices across Europe, it focuses mainly on the applicable regional legal frameworks.

It is essential that country offices supplement the material in this manual with information on national law and policy regulating detention.

It would also be useful for country offices to develop a clear procedure on how detention visitors should deal with legal questions or requests from detainees, including criteria to help visitors determine what kinds of requests can be referred for follow up and to whom.

Ideally a resource person with in-depth knowledge of the applicable laws and policies, with whom visitors can discuss legal questions and seek information and guidance on how to deal with specific requests, will be identified to ensure that detention visitors can benefit from ongoing support. This support could take different forms, such as: regular, e.g. monthly, meetings or the possibility of sending queries by email.

This section is divided into four modules:

- **Module 6** is an introduction, providing basic information on the context and the applicable legal frameworks;
- **Module 7** outlines the rules regulating the lawfulness of detention – i.e. the circumstances in which detention is permissible and the safeguards that need to be in place to protect individuals from arbitrary detention;
- **Module 8** focuses on conditions in detention, examining the basic standards that need to be met to ensure that the detainees' dignity is respected;
- **Module 9** looks at the different monitoring bodies set up to supervise the implementation of the applicable legal frameworks and some tips on how these may be used in practice to advocate for improved treatment of detained migrants.

The publication may be used by country offices to organise training for detention visitors and by individual detention visitors who want to further their knowledge on the subject. It is not intended to be exhaustive. There are several more detailed publications available, some of which are referred to here, for those who are interested in learning more about the topic.

Module 6: Applicable legal frameworks in Detention

6.1 Why bother with the law?



If you have already started visiting detention centres you will surely have realised that, for most detainees, some of the most pressing questions are those concerning their legal situation. For many migrants deprived of their liberty across Europe, obtaining timely access to accurate information about their rights and the remedies available to them is particularly difficult. Contact with their lawyer, when they have one, is often very limited and it is not always easy to obtain reliable information from other sources. Because of this, detainees turn to whoever they meet with their questions, in the hope that someone will be able to answer them or tell them what they want to hear. So detention visitors can find themselves bombarded with questions they cannot answer or are unsure how to deal with.

In this section of the training manual we will help you, as a detention visitor, to get a stronger grasp of the general legal framework regulating States' power to detain migrants and asylum seekers. While it will not help you answer all of the detainees' questions, it can help with the search for the required information. It will hopefully also help you to distinguish between what is unlawful and what is unfair, i.e. between those things about which something can be done and those which, although they appear completely unjust, are within the limits allowed by law.

All too often the law is perceived as an instrument of oppression, as it is the law that authorises detention. However, the law also sets limits on the State's power to detain. What's more, as it is binding, it is a standard to which States can be held accountable.

This video produced by the Innocence Project, tells the story of Betty Ann Waters, and highlights how the law can be used as an instrument of justice, as does the story of Asiya Aden Ahmed reproduced below with her consent.

<http://www.innocenceproject.org/know/conviction/>

Betty Ann was a formidable advocate for her brother, not so much because she was a brilliant lawyer but, because she was passionate about what she was fighting for. For her, the law was a tool that she could use to help her brother. Even if we don't get a law degree, we too can use the law to advocate more effectively for the people we serve.

Of course, what is unjust is not always illegal, and we can only use the law to do something about those situations which are unlawful. Justice can take a long time coming – too long for people who need to move on with their lives, and who want a solution now rather than later. But it is still a powerful tool and, all too often, the only one we have to assist the people whom we serve to obtain justice or, at least, some form of redress for the harm they have suffered.

What can actually be done in an individual case will depend on a number of factors, not least the applicable laws and the specific legal situation of the individual concerned. Both of these issues will be explored briefly in the next two sections.

In July 2013, in the case of Asiya Aden Ahmed v Malta, the European Court of Human Rights held, unanimously, that there had been a violation of Article 3 of the European Convention on Human Rights and a violation of Article 5 §§ 1 and 4 of the same Convention. These articles refer to the prohibition of inhuman or degrading treatment and to the right to liberty and security. Here is Asiya's story:

"I arrived in 2009 and I was sent to detention in Ta' Kandja. I spent five months there and after having my request for asylum rejected by the authorities, I escaped. I went to Holland with the intention of joining my father in Sweden. But whilst in Holland, I was caught by the police and sent back to Malta. After coming back, I spent six months in prison, and another fourteen months in detention, this time in Lyster Barracks, Hal Far.

However, my experience in Holland made me more aware of my rights and gave me the courage to start fighting for my rights. As a result, when I was sent back to Malta I wanted to defend my rights and fight for my protection. I was no longer afraid.

When I was nearing the end of my period in detention, my lawyer told me I could open a case in court against the conditions of my detention. It was up to me. I decided that I wanted to do something about what I had lived through and to open a case.

When my lawyer finally told me that the European Court of Human Rights had decided that I was right, and that we had won the case, I was happy. However, I still didn't have any documents as the government hadn't recognized me as a refugee. Then, a few months later, I was so happy when I obtained subsidiary protection. Before that, when I didn't have any protection, I even tried to get married but they said it was not possible. Now, everything has become easier.

I would like my story to help other people in my situation. I would like other people to defend themselves, the way I defended my rights. Every person has the right to fight for his or her rights. I would also like to tell other people: 'Do not feel afraid'. When someone is afraid, you cannot do anything.'

6.2 Which rules apply?

The rules regulating the detention of migrants and asylum seekers in a particular country are usually found in national law. However, these are not the only legal provisions that apply – regional, legal systems also impact on a State's power to detain. Both the Council of Europe and the European Union have a significant impact on the rules regulating treatment of migrants in Europe. The Council of Europe framework for the promotion and protection of human rights has much broader applicability than the EU framework. However, because as institutions they are very different both in nature and in the way they work, the impact they have in practice is also very different. That said, both lay down standards which can be used as a yardstick to measure national law and policy.

EXERCISE:

Learn more about the Council of Europe and the EU and their respective legal frameworks. Complete the questionnaire below, then look up the answers to the questions using the links provided:

The Council of Europe is:

- ☐ An intergovernmental military alliance set up to engage in peacekeeping missions in areas of conflict around Europe
- ☐ An international organisation set up to promote democracy & protect human rights & the rule of law in Europe
- ☐ An international organisation in Strasbourg set up to enact laws which are then enforced in the different member states

See: <http://www.coe.int/en/web/about-us/do-not-get-confused>

The European Convention on Human Rights and Fundamental Freedoms is a convention on human rights applicable only in EU member states.

- ☐ TRUE
- ☐ FALSE

The implementation of the European Convention on Human Rights is overseen by:

- ☐ The European Court of Justice
- ☐ The European Court of Human Rights
- ☐ The Commissioner for Human Rights
- ☐ Individuals can apply directly to the European Court of Human Rights.
- ☐ TRUE
- ☐ FALSE

The EU is a party to the European Convention on Human Rights and Fundamental Freedoms [ECHR]

- ☐ TRUE
- ☐ FALSE

See: <http://www.coe.int/en/web/about-us/who-we-are>

The Common European Asylum System refers to a set of legislative instruments relating to the field of asylum which are binding on all 28 EU member states.

- ☐ TRUE
- ☐ FALSE

See: <http://www.ecre.org/topics/areas-of-work/introduction/194.html>

The Charter of Fundamental Rights incorporates all of the rights & obligations set out by the European Convention on Human Rights.

- ☐ TRUE
- ☐ FALSE

The Charter of Fundamental Rights applies:

- ☐ Only to EU institutions
- ☐ Only to EU citizens
- ☐ To EU institutions & national authorities when implementing EU law
- ☐ To all individuals on the territory of any one of the Member States

See: http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

Regulations and Directives are two of the legislative acts which may be adopted by the EU.

- ☐ TRUE
- ☐ FALSE

EU Regulations are of general application, binding in their entirety. They are initially published in the Official Journal of the EU but are only applicable once they are transposed into national law

- ☐ TRUE
- ☐ FALSE

Directives are binding upon the MS to which they are addressed, and set out the result which is to be achieved. It is up to the MS to decide the methods as to how this is to be accomplished.

- ☐ TRUE
- ☐ FALSE

See: http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm

The rights set out in a Directive can be relied upon directly by the individual if this is not transposed by the MS:

- ☐ TRUE
- ☐ FALSE
- ☐ If the right set out is sufficiently clear & precise

See: http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14547_en.htm

As the European Convention for the Protection of Human Rights and Freedoms²⁸ (hereafter 'ECHR') applies in all the countries where JRS works in Europe, this training module is based largely on this legal instrument. However, references are also made to EU laws.

"The founding members of the Convention, and each subsequent Contracting Party, strove to achieve one aim, at once infinitesimal and infinite: the supremacy of the rule of human rights law. In Article 1 they undertook to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention. This was and remains the cornerstone of the Convention."

Al Skeini and others v UK – ECtHR – 07/11/2011

EXERCISE:

Which laws regulate detention in my country?

Is there just one applicable set of rules – e.g. those found in national immigration laws – or are there others? If so, which?

Of all of these different legal systems, is any one supreme?

6.3 All in the same boat?

Although to some extent detainees are all in the same boat, as all have been deprived of their liberty because of their immigration status, their individual situations are often very diverse. All had their own personal reasons for choosing to leave their country and the reasons, and possibly the legal basis, for their detention may well be very different.

So, for example, some were forced to leave their country by war or political persecution, whereas others came to join relatives, to further their studies, or to find work. Some came legally while others were smuggled or trafficked. Some are nationals of one country, others of two or more, a few are stateless. Some are awaiting forced removal, others are awaiting the outcome of their asylum application. Of those awaiting removal, some are facing the prospect of forced return to their country after their asylum application was rejected, while others will be 'transferred' to another EU Member State in terms of the Dublin III Regulation. Some lived and worked in your country for years before finding themselves in detention, while others were detained as soon as they set foot in the country.

These differences may seem somewhat superficial and, in truth, none of them alter the fundamental reality that all detainees are human beings with inalienable rights. Yet, in practice, they are extremely significant, because rights are attached to legal status and it is the applicable law that will ultimately determine the extent of an individual's rights and entitlements, the legal options available and the long term outcome in his/her case. In order to be able to effectively assist an individual, whether by providing information, or a service, or by referring him/her to an organization that can provide the assistance required, it is essential to identify his/her needs and to obtain as clear a picture as possible of his/her legal status.

The following are some of the different legal categories of migrants you might meet in a detention centre:

²⁸ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at <<http://www.refworld.org/docid/3ae6b3b04.html>>.

6.3.1 Asylum seekers



The 1951 UN Convention Relating to the Status of Refugees does not define the term **asylum seeker**.

More often than not, we use the term **asylum seeker** to refer to an individual who is seeking protection, whether or not s/he has actually lodged an application for asylum.

However, according to EU law, an **asylum seeker** is a third country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken by the competent national authorities.

UNHCR, on the other hand, states that an **asylum seeker** is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.

Asylum seekers have a number of basic rights, the most fundamental of which is protection from **refoulement**.

The principle of **non-refoulement** is found in article 33 of the 1951C. It prohibits States from returning people, in any manner whatsoever, to a country where they will face persecution on one of the so-called 'Convention grounds' – i.e. race, religion, nationality, membership of a particular social group or political opinion.

This principle does not apply only to those who have formally applied for asylum or who have been recognised as refugees but to anyone who will face torture or cruel, inhuman and degrading treatment if returned. As the European Court of Human Rights judgment in the *Hirsi*²⁹ case makes clear, it applies also to those who have not formally entered the territory or to those who enter or are seeking to enter illegally.

Asylum seekers could be detained while their asylum application is being determined. They could also be detained pending the outcome of a Dublin request or removal to another state.

The treatment of asylum seekers within the EU is regulated by the **Reception Directive**. This Directive lays down the minimum standards for the reception of asylum seekers.

The granting of international protection across the EU is regulated by the **Qualification Directive**.

This Directive establishes a set of uniform standards regulating who qualifies for these statuses and lays down the minimum rights of holders, which are applicable in all Member States of the Union.

The **Procedures Directive** establishes common procedures that EU Member States must follow when examining asylum applications.

The **Dublin Regulation** is the EU law which determines which EU member state is responsible for examining an application for asylum.

This Regulation lays down a number of criteria on which the decision regarding the Member State responsible must be based. Where another state is found to be responsible the applicant is transferred to that state for the application to be processed there.

29 *Hirsi Jamaa and Others v. Italy* App no 27765/09 (23 February 2012).

6.3.2 Beneficiaries of international protection

EU law defines **international protection** as **refugee status** or **subsidiary protection**.

According to the 1951 Convention a **refugee** is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of origin and is unable or, owing to such fear is unwilling, to return to it.

This definition is the most widely recognised definition of the term and it is found in several regional and national laws, including the EU Qualification Directive.³⁰

There is no definition of the term **persecution**, however it is generally understood to include all forms of very serious harm or gross violations of human rights which make it impossible for an individual to live with dignity.

Refugee status is the status given by a country to a person who has been recognised as a refugee.

A person does not become a **refugee** from the moment that s/he is granted protection, but from the moment that s/he fits the definition. The ultimate aim of the asylum or Refugee Status Determination (RSD) Procedure is the recognition of existing protection needs.

That said, in order to avail oneself of the rights that the law accords to refugees, it is necessary to have been granted **refugee status**.

Subsidiary protection is a form of international protection given to those who do not qualify for refugee protection, yet will face a real risk of serious harm if returned to their country of origin. Serious harm is defined as: death penalty or execution; torture or inhuman and degrading treatment or punishment; threats to life by indiscriminate violence in international or internal armed conflicts.

Refugees and beneficiaries of subsidiary protection may find themselves in detention while awaiting removal to another EU Member State or safe third country. It should be noted that international protection granted by one EU Member State does not entitle the holder to reside anywhere within the EU. Beneficiaries of international protection found staying illegally in another EU Member State can be removed to the State who granted them protection. They should not be removed to their country of origin if their protection needs subsist – i.e. if there is still a risk of harm upon return.

Within EU Member States, the treatment of migrants awaiting return is regulated by the **EU Return Directive**.

This Directive lays down common standards for the removal of illegally staying third country nationals, regulating the procedure that Member States should follow as well as the possibility to detain migrants awaiting return.

6.3.3 Rejected asylum seekers

This term is not legally defined, however, for the purposes of this manual it refers to a third country national or stateless person whose application for international protection has been examined and rejected by a final decision of the competent authorities.

Once a final decision has been taken on an asylum application and the individual concerned has been found not to be a refugee or to be otherwise in need of protection s/he may be sent back to his/her country.

³⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>>.

6.3.4 Migrants awaiting return



This term too is not legally defined, however, for our purposes the term ‘migrants awaiting return’ refers to all migrants within the return procedure.

These could be migrants apprehended within national territory by the immigration authorities and **issued with an expulsion/removal order on account of their illegal entry or stay**.

They could also be migrants who were **refused admission** at the border who are in detention awaiting removal.

6.3.5 Stateless persons

Statelessness refers to the condition of an individual who is not considered as a national by any state. Nationality is the legal bond between an individual and state, which allows people to exercise a wide range of rights and to avail themselves of the protection of the government of their country of nationality, not only within the country but also when they are abroad. The lack of a nationality leaves people devoid of this protection and, in many cases, unable to return to ‘their’ country.

Although stateless people may sometimes also be refugees, the two categories are distinct.

Statelessness occurs for a variety of reasons including discrimination against minority groups in nationality legislation, failure to include all residents in the body of citizens when a state becomes independent and conflicts of laws between states.³¹

6.3.6 Victims of trafficking in human beings

The Council of Europe Convention on Action against Trafficking in Human Beings³², the EU Trafficking Directive³³, and the United Nations Convention against Transnational Organized Crime and its

³¹ For more information on statelessness see: UNHCR, Protecting the Rights of Stateless Persons, Geneva 2010, available at <<http://www.unhcr.org/4ca5941c9.html>> accessed on 27 January 2015; UNHCR, Handbook on Protection of Stateless Persons, Geneva 2014, available at <<http://www.refworld.org/pdfid/53b676aa4.pdf>> accessed on 27 January 2015; UNHCR, Statelessness Determination Procedures: identifying and protecting stateless persons, Geneva 2014, available at <<http://www.refworld.org/docid/5412a7be4.html>>.

³² Council of Europe, 16 May 2005, CETS 197, available at <<http://www.refworld.org/docid/43fde544.html>>.

³³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>>.

Protocols³⁴ contain virtually identical definitions of the term ‘trafficking in human beings’.

It is defined as *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”*. Where one of the means listed is used, the consent of the victim to the intended exploitation is considered irrelevant.

The law states that *“exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”*.

The terms **smuggling** and **trafficking** are often used interchangeably, yet there is a difference between the two. Whereas smuggling is about the movement of people or things across an international border for a profit, trafficking involves the movement of people through the use of deception or coercion, for the purposes of exploitation.

The profit in trafficking people comes not from their movement but from the sale of their sexual services or labour in the country of destination. The trafficked person may be physically prevented from leaving or be bound by debt or threat of violence to themselves or their family in their country of origin.³⁵

Victims of trafficking often need extensive support; they could also be entitled to protection in terms of national and EU law. It is therefore important that they are identified and assisted to access the protection and services that they need.

EXERCISE:

Think of the people you meet in the detention centre/s you visit. Can you identify their legal status?

What information would you need to get from them to be able to understand better their legal situation and assess their needs?

Write down the questions you would ask/information you would collect to make this determination.

Although legal definitions are clear, reality can be quite complex and in practice the lines between the different categories of migrants are often blurred. For example, Asiya Aden Ahmed [testimony above] was found to be in need of international protection when her case was reopened after she had gone through the asylum procedure and had her claim initially rejected.

At times a person could fall into more than one category. An asylum seeker might also be a victim of trafficking or a stateless person. Sometimes migrants within the return procedure apply for asylum and at that point they become asylum seekers.

At the end of the day, the primary scope of any exercise to determine an individual’s legal status is to determine his/her needs for protection, assistance and/or support. As will be seen, legal status is also an important consideration when determining the lawfulness or otherwise of an individual’s detention, as different rules apply to different categories of migrants. These rules will be discussed in Part 2.

³⁴ UN General Assembly, 8 January 2001, A/RES/55/25, available at <<http://www.refworld.org/docid/3b00f55b0.html>>.

³⁵ For more information on trafficking in persons, see: UNODC, Global Report on Trafficking in Persons, New York 2014, available at <http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf> and US Department of State, Trafficking in Persons Report 2014, available at <http://www.state.gov/j/tip/rls/tiprpt/2014/?utm_source=NEW+RESOURCE:+Trafficking+in+Persons+R>. See also UNODC, ‘Human Trafficking’ (2015) <<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>> accessed on 27 January 2015, and Forced Migration Online, ‘About’ (27 January 2012) <<http://www.forcedmigration.org/about/whatisfm#sthash.XxTC00XV.dpu>>.

Module 7: Lawfulness of detention

The aim of this section is:

- *To give visitors a better understanding of the scope of the protection offered by human rights law – primarily the ECHR – against arbitrary detention*
- *To provide a basic outline of the EU Directives regulating detention of asylum seekers and migrants awaiting return*

Ideally trainees will also be provided with information on the grounds for detention in national law and the remedies available for detainees to challenge their detention.

This section consists of a brief outline of the legal principles and standards relating to detention³⁶. It is drawn mainly from the case law of the European Court of Human Rights (ECtHR), however it also makes reference to the International Covenant on Civil and Political Rights³⁷ (hereafter 'ICCPR'), as both are binding human rights instruments of broad applicability. Reference is also made to the Charter of Fundamental Rights, the Return Directive³⁸ - although the procedural safeguards the Return Directive contains may not apply to all immigration detainees - and to the recast Reception Directive, which has to be transposed into national law by July 20, 2015.³⁹

RIGHT TO LIBERTY AND SECURITY

Article 5 of the European Convention on Human Rights [ECHR]

(1) *Everyone has the right to liberty and security of person.*

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

7.1 The right to liberty

Liberty is a fundamental right; deprivation of liberty is an extreme measure and should therefore be the exception, not the rule⁴⁰.

Because it is an exception to the norm, detention must comply with important legal safeguards and be in line with the limits set by law. The scope of these safeguards and limitations on the State's power to detain is to protect the individual from arbitrary detention.

³⁶ For more information see Handbook on European Law relating to asylum, borders and immigration, June 2013, available at <<http://www.refworld.org/docid/51b6eb394.html>> .

³⁷ International Covenant on Civil and Political Rights, 16 December 1966, UN Treaty Series vol 999 p 171.

³⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>>.

³⁹ The Recast Reception Directive was adopted on June 26, 2013 and the deadline for transposition into national law is July 20, 2015. It does not apply to the United Kingdom, Ireland and Denmark.

⁴⁰ ECHR (n 1) Article 5; ICCPR (n 10) Article 9 and European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02 Article 6.

7.1.1 Applicability of Article 5

Deprivation as opposed to restriction of liberty

It is important to remember that these standards relate to detention, i.e. to situations where migrants are deprived of their liberty, as opposed to situations where migrants are subjected to restrictions on their liberty.

In proclaiming the right to liberty, paragraph 1 of Article 5 (art. 5-1) contemplates the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. ... it is not in principle concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4.... The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance.

ECtHR in *Amuur v France*, para 42

In every case, before moving to determine whether an individual's right to liberty and security of person in terms of article 5, cited above, have been breached, the Court must assess whether a particular measure amounts to a deprivation or a restriction on liberty.

There is no legal definition of detention – according to UNHCR the term “*refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prison or purpose-built detention, closed reception or holding centres or facilities.*”⁴¹

In the absence of a definition, the assessment is made on a case-by-case basis and the outcome will depend on the particular circumstances of the case. In each case the Court starts by looking at the concrete situation of the individual, and takes several factors into account, “*such as the type, duration, effects and manner of implementation of the measure in question.*”⁴²

The cases outlined in the text boxes below give an indication of the different factors that the Court would need to take into account when making this assessment:

Guzzardi v Italy:

This case concerned the compulsory residence of a person undergoing criminal proceedings on a small part of a little island, where most of the other residents were police or people subject to the same measure, for almost 16 months. He had almost no opportunities for social contact, and was subject to a strict curfew and constant supervision:

“Thus, Mr. Guzzardi was not able to leave his dwelling between 10 p.m. and 7 a.m. without giving prior notification to the authorities in due time. He had to report to the authorities twice a day and inform them of the name and number of his correspondent whenever he wished to use the telephone. He needed the consent of the authorities for each of his trips to Sardinia or the mainland, trips which were rare and, understandably, made under the strict supervision of the carabinieri. He was liable to punishment by “arrest” if he failed to comply with any of his obligations... It is admittedly not possible to speak of “deprivation of liberty” on the strength of any one of these factors taken individually, but cumulatively and in combination they certainly raise an issue of categorisation from the viewpoint of Article 5 (art. 5).” [para 95]

⁴¹ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at <<http://www.refworld.org/docid/503489533b8.htm>>.

⁴² *Amuur v France* App no 19776/92 (25 June 1996) para 42 and *Guzzardi v Italy* App no 7367/76 (6 November 1980) para 92.

7.2 Legal safeguards and limits to the State's right to detain migrants and asylum seekers

7.2.1 Detention must be for one of the grounds listed in the Convention

Article 5(1) of the ECHR, contains an exhaustive list of the situations in which detention is justified.

With reference to immigration-related detention, the Convention states that detention is justified only “to prevent ... unauthorised entry into the country”, or where “action is being taken with a view to deportation or extradition” of a particular individual.⁴³ These two grounds are referred to as the two ‘limbs’ of article 5(1)(f).

The ECtHR has repeatedly stressed that: “the list of exceptions to the right to liberty is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision [i.e. Article 5]”.⁴⁴

Below is a brief outline of how these two grounds justifying detention have been interpreted by the Court.

Detention to prevent unauthorised admission

National law usually grants immigration authorities or border guards the authority to prevent unlawful border crossing and to refuse admission to those who do not fulfil the conditions for entry into the country, which are normally established by law. Most national legal systems also provide for the use of detention within the context of refusal of entry. National law could also contain specific provisions on the detention of asylum seekers.

Until recently EU law was completely silent on the subject of detention of asylum seekers. The Recast Reception Directive introduces a list of grounds justifying the detention of asylum seekers [see *blue text box*].

The Schengen Borders Code regulates movement of persons across EU borders; among other things it lays down the conditions for entry into the EU and the checks to be carried out at EU borders. Article 13 of the Schengen Borders Code stipulates that third-country nationals who do not fulfil the entry conditions established by the Code are refused entry into the EU. It also directs border guards to prevent unauthorised border crossings and take measures against persons who have crossed the border illegally [article 12].

Asylum seekers are often detained under provisions preventing unlawful entry in spite of the fact that Article 31 of the 1951 Convention on the Status of Refugees states that: “the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

The ECtHR has repeatedly found that detention of asylum seekers fell within the first limb of article 5(1)(f). i.e. detention to prevent unauthorised entry, even if in practice they did not apply for asylum after being refused admission at the border.⁴⁵

Although it is true that States enjoy relatively wide discretionary powers when it comes to detention under the first limb of article 5(1)(f), i.e. detention to prevent unauthorised admission, it is clear from the Court's jurisprudence that States cannot detain asylum seekers indefinitely simply because their asylum application has not been determined; it is also clear that detention cannot be arbitrary.

⁴³ ECHR (n 1) Art 5(1)(f).

⁴⁴ *Giulia Manzoni v Italy* App no 19218/91 (1 July 1997) para 25.

⁴⁵ *Lokpo and Toure v Hungary* App no 10816/10 (20 September 2011) and *Suso Musa v Malta* App no 42337/12 (23 July 2013).

“The detention of potential immigrants, including asylum seekers, is capable of being compatible with Article 5 § 1(f)... until a State has ‘authorised’ entry to the country, any entry is ‘unauthorised’ and the detention of a person who wishes to effect entry and who needs but does not yet have authorisation to do so, can be, without any distortion of language, to ‘prevent his effecting an unauthorised entry’... While holding, however, that the first limb of Article 5 § 1(f) permits the detention of an asylum seeker or other immigrant prior to the State’s grant of authorisation to enter, the Court emphasises that such detention must be compatible with the overall purpose of Article 5, which is to safeguard the right to liberty and ensure that no one should be dispossessed of their liberty in an arbitrary fashion.”

ECtHR in *Amuur v France*, para 42

Detention of asylum seekers under EU law

In terms of Article 8(3) of the Recast Reception Directive an asylum seeker may be detained only:

- (a) in order to determine or verify his or her identity or nationality;*
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;*
- (c) in order to decide, in the context of a procedure, on the applicant’s right to enter the territory;*
- (d) when he or she is detained subject to a return procedure under the Return Directive in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;*
- (e) when protection of national security or public order so requires;*
- (f) in accordance with Article 28 of the Dublin Regulation.*

[Article 28 of the Dublin Regulation talks about detention for the purposes of a Dublin transfer]

Detention for the purposes of removal

Detention under the second limb of article 5(1)(f) is justified only where there is a realistic prospect of removal and where proceedings are in progress and are being conducted with due diligence.⁴⁶ These requirements are echoed by the Return Directive, which allows detention *“in particular when: there is a risk of absconding or the third country national concerned avoids or hampers the preparation of return or the removal process... for as short a period as possible and... as long as removal arrangements are in progress and executed with due diligence.”*⁴⁷

...all that is required under this provision is that ‘action is being taken with a view to deportation’... Any deprivation of liberty under article 5(1)(f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5(1)(f).

ECtHR in *Chahal v UK*, para 112 & 113

⁴⁶ See also *Mikolenko v Estonia* App no 10664/05 (8 October 2009), *Louled Massoud v Malta* App no 24340/08 (27 July 2010) and *Popov v France* App nos 39472/07 and 39474/07 (19 January 2012).

⁴⁷ Directive 2008/115/EC (n 11) Article 15(1).

Thus in the case of *Louled Massoud v Malta*⁴⁸, outlined in the text box below, the Court found that the applicant's detention ceased to be permissible once it became clear that removal was no longer possible.

Louled Massoud v Malta

In this case, which dealt with the 18-month detention of a rejected asylum seeker for the purposes of removal, the Court held:

“Detention cannot be said to have been effected with a view to his deportation if this was no longer feasible (see Mikolenko v. Estonia, no. 10664/05, §§ 64-65, 8 October 2009)... In the light of the above, the Court has grave doubts as to whether the grounds for the applicant's detention – action taken with a view to his deportation – remained valid for the whole period of his detention, namely, more than eighteen months following the rejection of his asylum claim, owing to the probable lack of a realistic prospect of his expulsion and the possible failure of the domestic authorities to conduct the proceedings with due diligence.”[para 67 & 69]

On the other hand, in *Chahal v UK*⁴⁹ (referred to above), the Court found that the four-year detention of Mr Chahal, an Indian national, did not violate article 5(1)(f). The Court held that *“Mr Chahal has undoubtedly been detained for a length of time which is bound to give rise to serious concern. However, in view of the exceptional circumstances of the case and the facts that the national authorities have acted with due diligence throughout the deportation proceedings against him and that there were sufficient guarantees against the arbitrary deprivation of his liberty, this detention complied with the requirements of Article 5 para. 1 (f).”*⁵⁰

Detention of migrants subject to return procedures under EU law

In terms of Article 15(1) of the Return Directive:

Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

... ..

Further, Article 15(5) states that:

Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal.

⁴⁸ *Louled Massoud* (n 19).

⁴⁹ *Chahal v the United Kingdom* App No 22414/93 (15 November 1996).

⁵⁰ *Chahal* (n 22) para 123.

EXERCISE:

Read the case studies below and answer the following questions in each case:

- **What are the possible grounds for detention?**
- **Which factors would justify a decision to detain?**
- **Which factors would militate against the imposition of detention and in favour of adopting other sufficient less coercive measures?**

Case study 1

Lilya is a woman of 57 from Russia. She was born in Kazakhstan after her family had been banished to Siberia. When the family settled back in Russia, it was in Chechnya. Her husband was killed in 2004. She moved to Ingushetia after the death of her husband.

Lilya left Ingushetia for a country in the EU in 2009 because as resident of Chechnya she could not be registered there and they had problems with the police; her son, in particular, was humiliated by them several times.

Two of her stepchildren already had refugee status there and two of her own children have a legal residence permit because they are married to citizens of that country. She has seven grandchildren there, all in legal stay.

She applied for asylum but her application was rejected, as was her request for a residence permit on grounds of family reunification. At that point her stay in the country became irregular and removal procedures were initiated.

Case study 2

James is a 25 year-old Nigerian man. He fled his country with a friend after he lost all his family during a clash between Christians and Muslims. They first took refuge in Niger, where they were hosted for a few days in a mosque. Once they recovered they crossed the desert and went to Libya, where they wanted to start a new life. During the journey his friend died of starvation, but James arrived in Libya in October 2011.

James survived the war in Libya living in terrible conditions, always fearing for his life, and in 2013 he set up a small business with the help of a Libyan man who became his friend. One day, walking back home from work, he was assaulted by a group of Arabs, savagely beaten, robbed of all his possessions and kidnapped. He was locked in a room where he was tortured and sexually abused for four days. Luckily he managed to escape and make it to the coast where he met other Africans ready to set sail towards Europe. He joined them and eventually managed to get a place on a boat leaving Libya.

Shortly after they left the Libyan coast the boat started sinking. The survivors were rescued by the coastguard of an EU country, taken ashore and handed over to the immigration authorities who placed him in detention, where he applied for asylum as soon as he had the opportunity to do so. He is now requesting the court to release him from detention.

7.2.2 Detention must be lawful

Where detention is resorted to, it must be *on grounds prescribed by law and in accordance with a procedure prescribed by law*.⁵¹ According to the ECtHR, this requirement implies not only that the detention *must have a legal basis in domestic law*, but also refers to the quality of the law authorising deprivation of liberty, which *must be sufficiently accessible and precise in order to avoid all risk of arbitrariness*.⁵²



7.2.3 Detention must not be arbitrary

It is a fundamental principle of human rights law that detention should not be arbitrary.

According to established jurisprudence, *“the notion of ‘arbitrariness’ in Article 5 § 1 extends beyond a lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention”*.⁵³

In order to avoid all risk of arbitrariness, the Court has held that detention must be:

- carried out in good faith
- closely connected to the ground of detention relied on by the government
- in an appropriate place and conditions
- not for longer than the time reasonably required for the purpose pursued

In cases of detention for the purpose of removal:

- proceedings have to be carried out with due diligence; and
- there must be a realistic prospect of removal.⁵⁴

In the cases outlined below the Court explored issues of good faith, appropriate conditions and the length of detention. *Louled Massoud v Malta*⁵⁵, outlined above, highlighted the requirement that the purpose of detention be closely connected to ground of detention relied on by the government.

⁵¹ ECHR (n 1) Art 5(1) and Art 9(1).

⁵² *Amuur* (n 15) para 50.

⁵³ *A and others v. the United Kingdom* App No 3455/05 (19 February 2009).

⁵⁴ See among others *Suso Musa* (n 18), *Louled Massoud* (n 19), *A. and Others* (n 26), *Longa Yonkeu v Latvia* App no 57229/09 (15 November 2011), *Rusu v Austria* App no 34082/02 (2 October 2008), *Saadi v UK* App no 13229/03 (29 January 2008), *Dougoz v Greece* App no 40907/98 (6 March 2001), *Singh v Czech Republic* App no 60538/00 (25 January 2005).

⁵⁵ *Louled Massoud* (n 19).

Suso Musa v Malta

In this case, which dealt with the detention of an asylum seeker who arrived in Malta by boat, the Court examined the government's failure to conduct an individual assessment of the necessity to detain. Referring to the Recommendations of the Committee of Ministers of the Council of Europe on detention of asylum seekers, the Court held that:

"In the light of these practices the Court has reservations as to the Government's good faith in applying an across-the-board detention policy (save for specific vulnerable categories) with a maximum duration of eighteen months..."[para 100]

With reference to the conditions in which the applicant was held, the Court held that:

"even accepting that the applicant's detention had been closely connected to the purpose of preventing his unauthorised entry to the country, the Court is concerned about the appropriateness of the place and the conditions of detention endured. Various international reports have expressed concerns on the matter (see paragraph 33 et seq. above). Both the CPT and the ICJ considered that the conditions in question could amount to inhuman and degrading treatment under Article 3 of the Convention...In that light, the Court finds it difficult to consider such conditions as appropriate for persons who have not committed criminal offences but who, often fearing for their lives, have fled from their own country."[para 101]

With reference to the duration of the applicant's detention pending the outcome of his asylum application – in total the Refugee Status Determination procedure took twelve months, but five of these were spent in prison:

"The Court must only examine for the purposes of this complaint the period, amounting to more than six months in total, during which he was detained for the purposes of the first limb of Article 5 § 1 (f). the Court has already considered periods of three months' detention pending a determination of an asylum claim to be unreasonably lengthy, when coupled with inappropriate conditions (see Kanagaratnam, cited above, §§ 94-95). Hence, it cannot consider a period of six months to be reasonable, particularly in the light of the conditions of detention described by various independent entities."[para 102]

Longa Yonkeu v Latvia

This case concerned the removal of a Cameroonian asylum seeker.

The government argued that it had only learnt about an order suspending the applicant's removal two days after his deportation on January 9, 2010:

"The Court cannot accept this argument for two reasons. Firstly, the State Border Guard Service had been aware as far back as 5 January 2010 that the applicant had applied for asylum on humanitarian grounds, since they received a copy of his application. Secondly, under domestic law, he enjoyed the status of asylum seeker from the date of his application and as such could not be deported. It follows that the State Border Guard Service did not act in good faith in deporting the applicant on 9 January 2010, before his application for asylum on humanitarian grounds was ever examined by the competent domestic authority. Therefore, his detention for that purpose was arbitrary."

7.2.4 Detention must be necessary, proportionate and alternatives to detention must be considered

The ECHR does not require that detention is necessary to achieve the stated aim⁵⁶, nor does it make any specific reference to the need to use alternative measures. However, as may be seen from the case of *Louled Massoud* (cited below), the Court does sometimes consider whether less draconian measures could have been applied, when examining all the facts to determine the lawfulness or otherwise of an applicant's detention.⁵⁷

The Return Directive, on the other hand, provides that detention must be used only where *other sufficient but less coercive measures can be applied in a specific case*⁵⁸ and where it is necessary to ensure successful removal⁵⁹. Article 8(2) of the Recast Reception Directive explicitly requires that which is implied in the Return Directive – i.e. an individual assessment of the necessity to detain in each case. This Directive allows States to resort to detention of an asylum seeker only “*when it is proved necessary and on the basis of an individual assessment of each case... if other less coercive measures cannot be applied effectively.*”

The Human Rights Committee [see *Part 4 for more information*] too, in *A v Australia*, stated that detention *could be considered arbitrary if it is not necessary in all the circumstances of the case... the element of proportionality becomes relevant in this context.*⁶⁰

Compare the decision in *Chahal v UK*, where the Court held that Article 5(1)(f)

“... does not demand that the deportation of a person against whom action is being taken with a view to deportation be considered reasonably necessary, for example to prevent his committing an offence or fleeing... Indeed, all that is required under this provision is that ‘action is being taken with a view to deportation’... Any deprivation of liberty under article 5(1)(f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5(1)(f).” [para 112 & 113]

to that in *Louled Massoud v Malta*, where the Court implies that, in the circumstances, detention was unnecessary and less coercive measures should have been implemented:

“the Court finds it hard to conceive that in a small island like Malta, where escape by sea without endangering one's life is unlikely and fleeing by air is subject to strict control, the authorities could not have had at their disposal measures other than the applicant's protracted detention to secure an eventual removal in the absence of any immediate prospect of his expulsion.”

⁵⁶ *Chahal* (n 22) paras 112 and 113.

⁵⁷ See *Mikolenko* (n 19) para 67 and *Louled Massoud* (n 19) para 68.

⁵⁸ Directive 2008/115/EC (n 11) Art 15(1).

⁵⁹ *Ibid* Art 15(5).

⁶⁰ *A v Australia*, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (1997) para 9.2 available at <<http://www1.umn.edu/humanrts/undocs/html/560-1993.html>>.

7.2.5 Procedural safeguards

In order to provide protection against arbitrariness, the law regulating detention should contain a number of procedural safeguards. These include the right to be given reasons for the decision to detain⁶¹ and the possibility to obtain a review of one's detention⁶².

Right to be given reasons for decision to detain

Article 5(2) of the European Convention on Human Rights [ECHR]

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

This implies that “arrested persons must be told in simple, nontechnical language that they can understand, the essential legal and factual grounds for the arrest, so as to be able, if they see fit, to apply to a court to challenge its lawfulness in accordance with article 5(4)... a bare indication of the legal basis for the arrest, taken on its own is insufficient for the purposes of article 5(2)...”⁶³

Right to a speedy judicial remedy to challenge lawfulness of detention

Article 5(4) of the European Convention on Human Rights [ECHR]

(1) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

In terms of the case law of the ECtHR, in order to qualify as adequate in terms of this article, a remedy must fulfil the following criteria: it must be sufficiently certain, accessible and effective; the reviewing court or judicial authority must have the power to decide whether detention is lawful in terms of article 5 and to order release if it is not; the review must be conducted speedily. It is worth noting that while there is no fixed time limit within which the case must be concluded, the Court has judged remedies taking twenty-three and seventeen days respectively to be excessive.

EXERCISE:

Read the case study below and examine the lawfulness of Fadumo's detention, applying the principles outlined above:

Fadumo is a Somali woman – she arrived in Malta in 2009, when she was 22 years old. She entered Malta irregularly, by boat, on 5 February 2009.

Upon her arrival in Malta she was registered by the immigration authorities and served with a Removal Order (at the time national law did not oblige the authorities to issue a return decision) as she was deemed to be a “prohibited immigrant” in terms of the Immigration Act. She was then immediately placed in detention at Ta' Kandja Detention, as the Immigration Act stipulates that a person on whom a removal order is served “shall be detained in custody until he is removed from Malta”. The said Removal Order did not contain specific reasons for her detention, but rather for the issuing of the Removal Order.

On 18 February 2009 Fadumo filled an asylum application form, however, she was not sure

61 Directive 2008/115/EC (n 11) Art 15(2); ECHR (n 1) Art 5(2) and ICCPR (n 10) Art 9(2).

62 ECHR (n 1) Arts 5(4), 9(4) and 15(2).

63 Fox, Campbell & Hartley v the UK App nos 12244/86, 12245/86 and 12383/86 (30 August 1990).

about the content and purpose of the form since it was in English. At the time forms were simply distributed to asylum seekers by the Detention Service staff without any accompanying information or the assistance of a translator. As Fadumo could not read or speak any English, she relied heavily on fellow detainees to complete the form, both for practical assistance and for information as to what she should say. On the advice of fellow detainees, who were her only source of information about the asylum procedures in the circumstances, Fadumo did not divulge the full details of her asylum claim.

On 9 May 2009 the Office of the Refugee Commissioner rejected her application for refugee status on the grounds that it failed to meet the relevant criteria.

Fadumo did not appeal against that decision. Instead, a few days later, on **17 May 2009** she escaped from detention. Sometime after her escape, she travelled to the Netherlands in an irregular manner. Upon her arrival in the Netherlands she immediately approached the authorities to ask for asylum. From there she was hoping to be able to go to Sweden in order to be reunited with her family (her father, siblings and minor son) who had been granted refugee status in Eritrea and were awaiting resettlement in Sweden. The family were eventually resettled there on 17 March 2011.

On 11 February 2011 Fadumo was returned to Malta under the Dublin II Regulation and detained at Safi Barracks, despite repeated attempts by her lawyer in the Netherlands to prevent her return to Malta. At the time of her return to Malta, Fadumo was two months pregnant.

On 17 February 2011 she was arraigned before the Court of Magistrates and charged with escaping from a place of public custody (detention centre) and knowingly making use of forged documents to travel out of Malta.

Fadumo pleaded guilty to all of the charges. On the same day she was therefore found guilty as charged and sentenced to a period of six months' imprisonment.

On 17 June 2011 Fadumo was released from prison, having served her sentence. She was placed in detention at Hermes Block in Lyster Barracks Detention Centre with a view to her removal from Malta. During her time in detention she was never approached by the immigration authorities regarding her removal and had no way of knowing whether any proceedings were under way with a view to her removal. In practice, it is common knowledge that no deportations to Somalia or Somaliland have ever been effected. This is no doubt due in part to the UNHCR recommendation on return to Somalia (which relates primarily to South-Central Somalia) as well as to the very real logistical difficulties inherent in such returns.

On 10 October 2011 social workers with JRS Malta, who were monitoring Fadumo in detention and offering psycho-social support, referred Fadumo's case to the Agency for the Welfare of Asylum Seekers ("AWAS") with a view to obtaining her release from detention in accordance with government policy on grounds of her vulnerability due to her mental health, given her deteriorating psychological condition as supported by medical evidence.

On 14 February 2012, while still awaiting the outcome of AWAS's assessment (see below), Fadumo lodged an application with the Immigration Appeals Board ("IAB") for release from detention under Article 25A(9) of the Immigration Act (this provision allows a detainee to challenge the reasonableness, as opposed to the lawfulness of his/her detention). In her application she claimed that her continued detention was no longer reasonable and requested the Board to order her release from custody in view of the fact that there was no reasonable prospect that the immigration authorities would be able to enforce her removal to Somalia within a reasonable time. In her application she also noted that, in practice, no one was ever deported from Malta to Somalia. She also submitted a social worker's report attesting to the fact that her psychological health was suffering as a result of her prolonged detention and noting that she had also miscarried while in prison.

On 29 February 2012 the Principal Immigration Officer (who in effect was the Commissioner of Police) filed a response. He agreed with the facts as presented by the applicant.

He further stated that, as the applicant had escaped from detention she now had to remain in detention, although it was not necessarily obligatory that she be held for eighteen months. Indeed she could potentially be released from detention earlier. Regarding the applicant's psychological problems caused by her separation from her child, he noted that the applicant could avail herself of the provisions of the Dublin Regulation to request to be reunited with her son in Holland [sic]. Regarding the applicant's request for release from custody, he noted that, in the first place, the applicant should never have escaped from detention in order to solve her personal problems. The time she had spent as a fugitive was time she had spent residing illegally in Malta and Holland, thus, her detention was a situation that she had brought upon herself and in consequence she should now be held in detention by law. Moreover, he considered that by escaping from detention without being medically cleared, as required by law, she had created a public health risk. Lastly, since she was receiving continued psychological care in detention he considered that her release from detention was not currently advisable.

The application was never set down for hearing by the IAB and no decision on Fadumo's request was ever delivered.

In the meantime, following a referral by the JRS, in December 2011 Fadumo was interviewed by the Vulnerable Adults Assessment Team of AWAS with a view to determining whether she should be released from detention on grounds of vulnerability according to government policy. She was never formally informed of the outcome of this interview or of the decision taken regarding her request. However, some months later, she happened to see the woman who had conducted the interview at the Detention Centre, and, on enquiring, was verbally informed that her request had not been acceded to.

She was finally released on from detention on 30 August 2012 in line with government policy, as she had spent a total of eighteen months in "immigration detention" since her arrival in Malta.

After you have finished your assessment, read the judgement in the case of Asiya Aden Ahmed v Malta to see what the Court decided.

Queries regarding the lawfulness of detention should always be referred to a lawyer for possible action. It could also be useful to document cases which raise concerns regarding the lawfulness of detention in order to bring them to the attention of monitoring bodies. Even if they cannot do anything about individual cases, this information could help them to understand better the way in which the laws and policies on detention are implemented and to assess the adequacy of the safeguards in place to protect individuals from arbitrary detention.

Module 8: Conditions of Detention

Introduction

The aim of this section is:

- *To outline the international and regional legal frameworks regulating the conditions of detention, with a particular focus on persons in a vulnerable situation*
- *To provide a basic understanding of the applicable legal principles and how these are applied in relation to the conditions of detention*

This will help visitors identify issues that should be recorded / reported to be used in our advocacy for improved treatment of detainees.

Both international and regional human rights law contain an express prohibition from torture and other forms of cruel, inhuman and degrading treatment or punishment. This section contains a brief outline of the applicable legal principles as well as how they have been applied by Courts and monitoring bodies in cases relating to detention. Becoming familiar with these legal standards will allow you to identify situations where detainees' human rights are violated by the conditions in which they are detained, with a view to taking effective action.⁶⁴

PROTECTION FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 5 of the Universal Declaration of Human Rights
Article 7 of the International Covenant on Civil and Political Rights
Article 3 of the European Convention on Human Rights
Article 4 of the Charter of Fundamental Rights of the EU

8.1 Protection from torture and cruel, inhuman and degrading treatment or punishment

The prohibition of torture and other forms of cruel, inhuman and degrading treatment or punishment is absolute, which is another way of saying that no exceptions may be made to this rule. Although there is no specific definition or list of the kinds of treatment that is prohibited, it is clear that it relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. Both the ECtHR and other monitoring bodies, such as the Human Rights Committee, make clear that this provision is not simply about prohibiting particular forms of ill-treatment or harm. In each case, the adjudicating authority is called upon to determine whether particular treatment falls within the scope of this prohibition. In reaching a conclusion, the “*nature, purpose and severity of the treatment applied*” will be the determining factor.⁶⁵

8.2 Specific rules on the treatment of detainees and the conditions of detention

In addition to the general prohibition on torture and other forms of cruel, inhuman and degrading treatment or punishment there are also specific, more or less binding, standards on the treatment of detainees. Some of these standards, such as those drawn up by UN bodies, are not legally binding,

⁶⁴ For more information as well as practical guidelines on monitoring immigration detention see <http://www.apr.ch/content/files_res/monitoring-immigration-detention_practical-manual.pdf>.

⁶⁵ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

while others, such as those contained in EU Directives have the force of law in those States where they apply.

There are two EU Directives which deal with conditions of detention: the Recast Reception Directive and the Return Directive.

INTERNATIONAL STANDARDS ON TREATMENT OF DETAINEES

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources.

Human Rights Committee, **General Comment 9**, Article 10(1) (Sixteenth session, 1982)

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Body of principles for the protection of all persons under any form of detention or imprisonment, UN General Assembly (1988)

The Recast Reception Directive applies only to asylum seekers, i.e. to persons awaiting the outcome of their asylum application, whereas the Return Directive applies to migrants in return proceedings. Both establish basic standards in relation to detention conditions.

Recast Reception Directive

Recital 18 of the Directive states that applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation.

- As a rule asylum seekers are to be held in **specialised detention facilities**. Where they are held in a prison they must be kept separated from ordinary prisoners and as far as possible they should also be kept separate from third country nationals who have not lodged an application for protection. [Art 10]
- They are to have:
 - Access to **open air** spaces
 - Possibility to **communicate with UNHCR** in conditions that respect privacy
 - Possibility to **communicate with family members, legal advisers/counsellors/NGOs**, in conditions that respect privacy
- Special provisions for **vulnerable asylum seekers and those with special reception needs** [Art 11 & 21]:
 - **Health**, including mental health, to be of primary concern to national authorities
 - **Regular monitoring and adequate support** to be provided in case of detained vulnerable persons
 - **Families** to be provided with separate accommodation guaranteeing adequate privacy
 - **Female applicants** to be accommodated separately from male applicants
 - Even if detained, **minors** must never be held in prisons, but accommodated in institutions that take their needs into account and provide the possibility to engage in leisure activities

People considered vulnerable include: minors (accompanied and unaccompanied); disabled people; elderly people; pregnant women; single parents with minor children; victims of human trafficking; persons with serious illnesses; persons with mental disorders; persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence such as victims of FGM

Return Directive

- As a rule migrants awaiting return are to be held in **specialised detention facilities**. Where they are held in a prison they must be kept separated from ordinary prisoners. [Art 16(1)]

“...detention does not constitute a penalty imposed following the commission of a criminal offence and its objective is not to correct the behaviour of the person concerned so that he can, in due course, be reintegrated into society. Any idea of penalising behaviour is, moreover, missing from the rationale forming the legal basis of the detention measure. There is, consequently, no legitimate reason for that detention to take place in prison conditions and under a prison regime.”

Advocate General's Opinion in Joined Cases C-473/13 and C-514/13 and in Case C-474/13 Bero v Regierungspräsidium Kassel, Bouzalmate v Kreisverwaltung Kleve and Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik

- **Families** detained pending removal shall be provided with **separate accommodation guaranteeing adequate privacy**. [Art 17(2)]
- **Minors** in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. [Art 17(3)]
- Migrants awaiting return are to be allowed to establish in due time **contact with legal representatives, family members and competent consular authorities**. [Art 16(2)]
- **Relevant and competent national, international and nongovernmental organisations and bodies** shall have the possibility to visit detention facilities, subject to authorisation. [Art 16(3)]

8.3 The ECtHR and conditions of detention



Over the years the ECtHR has been repeatedly called upon to examine conditions of detention in the light of the standard set by Article 3. On a number of occasions the Court has found that detention conditions constitute a violation of this Article.

The Court has repeatedly held that Article 3 demands that “*the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his health and well-being are adequately secured.*”⁶⁶

⁶⁶ *Poltoratskiy v Ukraine* App no 38812/97 (29 April 2003). See also *Kudla v Poland* App no 30210/96 (26 October 2000) and *Aerts v Belgium* App no 25357/94 (30 July 1998).

In view of the absolute character of Article 3, this standard applies regardless of the difficulties a State may be facing in coping with an influx of migrants and asylum seekers, although the Court has acknowledged on more than one occasion that the difficulties posed by the arrival of large numbers of asylum seekers are real.⁶⁷

8.3.1 Torture v. cruel, inhuman and degrading treatment

Although both forms of harm are proscribed by the Convention, there is a distinction between them.

Torture is an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment. In fact the Court has held that: *“it was the intention that the convention with its distinction between torture and inhuman treatment should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.”*⁶⁸

Treatment has been held by the Court to be inhuman because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.

Treatment has been considered degrading when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience. In considering whether treatment is degrading within the meaning of Article 3, the Court will take into account whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3.

It is however clear that for a punishment or treatment associated with it to be considered inhuman or degrading:

- The suffering or humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.⁶⁹
- It must attain a minimum level of severity – not every instance of ill-treatment will reach this standard and qualify as a violation

8.3.2 Assessment of ill-treatment

When assessing whether a particular form of treatment attains the minimum level of severity required if it is to fall within the scope of Article 3, the Court takes a number of factors into account. In the words of the Court, *“the assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.”*⁷⁰

The facts of each individual case must therefore be assessed in light of the circumstances as a whole taking into account not only objective, but also subjective, factors.

External factors:	Personal vulnerability factors:
<ul style="list-style-type: none"> → Nature of treatment → Environment in which it took place → Duration of treatment 	<ul style="list-style-type: none"> → Age → Sex → Health condition → Physical/mental effect of treatment

⁶⁷ *Aden Ahmed v Malta* App no 55352/12 (23 July 2013). See also *MSS v Belgium and Greece* App no 30696/09 (21 January 2011).

⁶⁸ *Ireland v The United Kingdom* App no 5310/71 (18 January 1978).

⁶⁹ *Jalloh v Germany* App no 54810/00 (11 July 2006).

⁷⁰ *Dougoz* (n 27).

Some of the objective factors the Court would take into account are the following:

Physical space – the availability or otherwise of sufficient space to accommodate detainees in conditions of dignity

Physical Conditions – this includes an assessment of the adequacy of all of the facilities available, including sanitary facilities, living space, and recreational facilities.

“The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were “degrading” from the point of view of Article 3. In deciding whether or not there has been a violation of Article 3 on account of the lack of personal space, the Court has to have regard to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each detainee must dispose of at least three square metres of floor space; and (c) the overall surface area of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.”

Aden Ahmed v Malta

“The Court reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3. Such elements include, in particular: access to outdoor exercise, natural light or air; availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements...”

Aden Ahmed v Malta, Ananyev and Others, and M.S.S. v. Belgium and Greece

*In **Aden Ahmed v Malta**, the Court noted with concern “the applicant’s statements that dormitories were shared by so many people with little or no privacy, that she suffered from heat and cold, that an inadequate diet was provided, that there was a lack of female staff to deal with the women detainees and above all that there was a lack of access to open air. The Court considers that suffering from cold and heat cannot be underestimated as such conditions may affect one’s well-being, and may in extreme circumstances affect health.”*

The Council of Europe Committee for the Prevention of Torture (CPT) has drawn up standards for the treatment of detainees, which States should follow to ensure that the conditions of detention are in line with the requirements of human rights law⁷¹. These standards apply not only to immigration detainees, but also to criminal detention.

⁷¹ Council of Europe, Council of Europe: Committee for the Prevention of Torture, The CPT Standards, 8 March 2011, CPT/Inf/E (2002) 1-Rev 2013 available at <<http://www.cpt.coe.int/en/documents/eng-standards.pdf>>.

CPT Standards (European Committee for the Prevention of Torture, 2011)

Requirements of police cells (if individuals are to be detained even for a short time):

- Be a reasonable size
- Have adequate lighting (sufficient to read by)
- Ventilation (preferably natural light)
- Means of rest e.g. bed
- If held overnight in custody: a clean mattress & blankets need to be provided

Persons in custody need to:

- Be allowed to comply with needs of nature/toilet facilities in clean decent conditions
- Be offered adequate washing facilities
- Have ready access to drinking water
- Given food at appropriate times including one full meal a day
- Right of access to a doctor
- Outdoor exercise if held for more than 24 hours

The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature.

All [prisoners] without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily. It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.

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In addition to these objective factors, the Court also considers subjective factors, such as:

The applicant's status as an asylum seeker – the Court has repeatedly stressed that the conditions of detention should be appropriate for the purpose and that asylum seekers are “*persons who have not committed criminal offences but who, often fearing for their lives, have fled from their own country*.”⁷²

The particularly vulnerable position of the individual – in its assessment of the case the Court takes into consideration the particular circumstances of the applicant, in order to determine how the conditions of detention affected him/her. In the case of *Asiya Aden Ahmed*, the Court held that, “*although not acknowledged by the domestic authorities in the AWAS procedure, the Court considers that the applicant was in a vulnerable position, not only because of the fact that she was an irregular immigrant and because of her specific past and her personal emotional circumstances (see also M.S.S., cited above, § 232), but also because of her fragile health.*”

Where the individual concerned has physical or mental health problems, these too would significantly impact the Court's assessment.

⁷² Suso Musa (n 18).

Detention of individuals with disabilities

In the case of Farbtuhs v Latvia (2002) the applicant complained that, in view of his age and infirmity, and the Latvian prisons' incapacity to meet his specific needs, his prolonged imprisonment had constituted treatment contrary to Article 3 of the Convention. The applicant had spent one year, nine months and 13 days in prison. The file showed that his condition was a cause for grave concern. He was 84 years old when he was sent to prison, paraplegic and disabled to the point of being unable to attend to most daily tasks unaided. In particular, he was unable to get up, sit down, move, get dressed or washed without assistance. Moreover, when taken into custody he was already suffering from a number of serious illnesses, the majority of which were chronic and incurable.

The Court found a violation of Article 3 and stated that when national authorities decided to imprison such a person, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity.

Detention of individuals with mental health problems

Kudla v. Poland (2000) concerned an individual who was detained on remand after he was charged with fraud and forgery. During his detention, he suffered from chronic depression and twice tried to commit suicide. He also went on hunger strike. On more than 70 occasions, he requested his release or appealed against decisions to hold him in detention. The applicant complained that when in detention he had not been given adequate psychiatric treatment, and that the conditions of his detention violated Article 3.

The Court accepted that the very nature of the applicant's psychological condition had made him more vulnerable than the average detainee and that his detention might have exacerbated to a certain extent the feelings of distress, anguish and fear in him, especially as from 11 June to 29 October 1996 he had been kept in custody despite a psychiatric opinion that continuing detention could jeopardise his life because of a likelihood of attempted suicide. Yet, since the suicide attempts could not be linked to a shortcoming on the authorities' part, the Court did not find it established that the applicant had been subjected to ill-treatment that attained a sufficient level of severity to come within the scope of article 3.

By contrast, in the case of M.S. v. UK (2012), the Court found a violation of Article 3. This conclusion was reached as the applicant, who had been arrested on suspicion of assaulting his aunt in her home, was in a situation of acute mental illness at the time of his arrest. He remained in police custody for more than 72 hours, locked up in a cell where he kept shouting, taking off all of his clothes, banging his head on the wall, drinking from the toilet and smearing himself with food and faeces. On the second day of his custody, the prosecution service concluded that there was insufficient evidence to charge him. After more than three days in detention, following the advice of the consultant forensic psychiatrist, he was taken in handcuffs to the clinic where he received treatment.

The Court considered that it was clear from the evidence that there was a real concern on the part of the police to see the applicant transferred to a therapeutic setting as quickly as could be arranged and that the police endeavoured continuously to bring this about. However it was also clear that "the applicant was in a state of great vulnerability throughout the entire time at the police station, as manifested by the abject condition to which he quickly descended inside his cell. He was in dire need of appropriate psychiatric treatment, as each of the medical professionals who examined him indicated. The Court considers that this situation ... diminished excessively his fundamental human dignity. ... Throughout the relevant time, the applicant was entirely under the authority and control of the State. The authorities were therefore under an obligation to safeguard his dignity, and are responsible under the Convention for the treatment he experienced."

EXERCISE:

Read the case study below and conduct an assessment in terms of art 3 to ascertain whether the conditions in which the detainee is detained amount to cruel, inhuman and degrading treatment.

Sameer is an Indian national and a Sikh by ethnic origin. In 1990, when he was 14 years old his parents were murdered whilst he was present in the house and he was subjected to abuse including anal rape with a bottle by four masked gunmen. He left India in June 1994, and travelled to Germany via Moscow, where he remained for about 8 months. While there he was subjected to sexual abuse, raped and forced into prostitution before illegally entering the UK under a false passport in February 1995.

Sameer remained undetected and at large in the UK, taking various jobs, until he was arrested for violent criminal offences committed on 25 September 2006 for which he was sentenced to sixteen months imprisonment. During his time in custody, Sameer was placed under medical supervision on several occasions due to repeated instances of self-harm, a suicide attempt and for having a fragile emotional state. Medical examinations during this time confirmed that he had indeed been a victim of rape a number of times and he bore physical scars to this effect.

Sameer applied for asylum in February 2009. When his prison sentence came to an end in April 2009, the UK Borders Agency determined that he should be detained pending deportation. During an initial review, it was noted that “he is believed to be in good health” and “there are no compelling or compassionate circumstances” militating against his detention. During this first period of his immigration detention, Sameer was again placed under constant supervision due to his very low mood and his threats of self-harm. He was placed on anti-psychotic medication. The situation deteriorated and Sameer again self-harmed by cutting his wrists twice in a month and then making a ligature out of his shoelaces which led to him being placed under constant supervision. His legal representatives asked the UKBA to arrange for a medical assessment at the prison, which was not forthcoming.

In June 2009, when he was being transferred to a hearing, Sameer escaped, only to be found hiding in the bushes outside the centre a couple of hours later. He was arraigned for escaping and remanded in custody. He was seen by another doctor who noted that he was severely depressed with psychotic symptoms. A subsequent assessment by a psychiatrist noted that Sameer’s mental state had deteriorated since his initial time of detention and that he was suffering from a severe depressive illness with psychotic features, and this had probably been the case for the past four months. Sameer needed consistent treatment with antidepressants and antipsychotic medication and the psychiatrist considered that there was a significant risk of suicide if his mental state did not improve. Another psychiatrist who reviewed Sameer at this time came to the same conclusion. Sameer was then transferred to a low-secure mental health unit, where there were further incidents of self-harm yet his condition stabilised.

In April 2010, a psychiatrist who assessed Sameer noted that he did not suffer from severe mental illness, but his symptoms might be amenable to psychological treatment, which did not necessarily require detention in a hospital setting. This assessment was confirmed by a psychologist who assessed Sameer after meeting him on sixteen occasions and who determined that he was suffering from a personality disorder. Both the psychiatrist and the psychologist recommended that Sameer be released from detention as he needed access to supportive relationships and environment. During this time Sameer was sentenced for escaping and as he had already served more time in prison than his sentence he was again transferred to detention.

Sameer’s lawyers made specific requests for his mental condition to be taken into account by the authorities at the time of transfer and for his medical file to be transferred with him. They attempted to ensure that Sameer got the medication he needed and informed the officers that he remained a suicide risk. Logs at the prison and detention centre confirmed this exchange between lawyers and authorities. Sameer was transferred to a detention centre in late April 2010 where he remained until August 2010.

The case officer assessing Sameer upon admission noted that while Sameer claimed to be mentally ill 'we have no evidence of this. He has been assessed as not needing detention under the mental health act. Mr S claims that he self prescribed by taking medication provided by his partner. This was all considered when the asylum claim was refused. He claims he is a victim of torture. He claims that he was sent to Europe (Germany) as a young man where he was frequently raped in exchange for money. This was fully considered when his asylum claim was refused.' The case officer noted that he intended to contact the healthcare team at the centre for an assessment of Sameer's current health.

Sameer was subsequently seen by a doctor who was concerned at his condition, noting his low mood and history of suicide attempts in the clinical notes. During this time he was served with the notice of deportation. Medical professionals who were present noted that he started reporting both auditory and visual hallucinations as well as deliberate self-harm. They noted that Sameer was at very high risk of self-harm and that he had a four year mental health history which had included admission to a psychiatric hospital. In subsequent days, Sameer made repeated efforts at self-harm, events which were noted by detention officers and which led him to be put under constant watch. Within days of his detention commencing, S was experiencing mental problems again and his hallucinations had returned.

Sameer moved room at about this time in order to share with friends although he was still hearing voices. His condition appeared to have stabilised. However, the following day, Sameer cut his left wrist and sucked his own blood and was placed on constant watch again. Despite this, at the end of the day he was found to have cut his wrist again with a razor blade and was holding a piece of paper with hand drawn faces on it, of persons said to have told him to cut himself. His anti-psychotic medication was increased. Subsequent reviews in the days that followed noted a consistent pattern of self-harm attempts.

Matters continued much as before and although Sameer was receiving support from his roommate he continued to hear voices urging him to harm himself. The centre's visiting psychiatrist concluded that Sameer was not fit to be detained. The same was noted in a follow-up visit a month later. The psychiatrist now noted that Sameer was becoming withdrawn, not answering questions, not eating and depending on his roommate who was caring for him and helping him with self-hygiene and care. The psychiatrist recommended that Sameer receive in-patient care and treatment and referred him for hospitalisation. Further self-harm attempts were noted throughout this time.

Dr X, a psychiatrist who assessed Sameer in July 2010 noted that it was unclear why Sameer hadn't yet been transferred to a psychiatric facility when it was clear that he needed specialised psychiatric care. On subsequent visits, Dr X was left to wait for hours before being allowed in the centre and then told that she would not be unable to visit due to lack of available escorts. Sameer attempted self-harm again and was found by a detention officer being pulled naked down a corridor by other detainees who were seeking to control his behaviour. Later that day he was seen with shoelaces in his hands which were prised away from him. Sameer was transferred to a psychiatric facility in August 2009.

Module 9: Who will guard the guardians? Monitoring conditions of Detention

Introduction

The aim of this section is to provide basic information on some of the monitoring bodies with whom issues and concerns relating to breaches of EU or human rights law, by the law, policy and/or conditions of detention, could be raised.

The material provided should be supplemented by information regarding:

- national monitoring bodies
- what data to collect and how it should be collected and recorded
- how the data compiled will be used by the country office in its advocacy activities

In addition to challenging the lawfulness of detention or the adequacy of the conditions in which a person is detained before a Court or other judicial authority, it is also possible to bring complaints or to provide information regarding breaches of human rights within the context of detention before competent monitoring bodies.

There are monitoring bodies at international, regional and national level. This section provides information on a few of these bodies, with the main focus being on international and regional monitoring bodies.

As with all the other sections of this manual, the information provided here is not exhaustive. It is meant to give an indication of the types of monitoring bodies available and how they may be used.

9.1 International Monitoring Bodies



Within the UN structure there are several bodies set up to monitor States' compliance with their human rights obligations. Some, such as the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Human Rights Committee (HRC) or the Committee on the Elimination of Racial Discrimination (CERD) are known as treaty bodies, as they were created to monitor the implementation of specific treaties⁷³.

Over the years, the United Nations also developed an independent and ad hoc system of fact-finding outside the treaty framework, which is referred

⁷³ Treaty bodies have been set up to monitor the implementation of the six core United Nations human rights treaties: the Human Rights Committee (HRC) monitors the implementation of the International Covenant on Civil and Political Rights; the Committee on Economic, Social and Cultural Rights (CESCR) monitors the International Covenant on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination (CERD) monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; the Committee on the Elimination of Discrimination against Women (CEDAW), monitors the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women since 1981; the Committee Against Torture (CAT) monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each committee is composed of a number of independent experts. The Committee on the Rights of the Child (CRC), composed of 10 independent experts, has monitored the Convention on the Rights of the Child since 1991.

to as extra-conventional mechanisms or "Special Procedures". Independent experts report in their personal capacity as special rapporteurs or as members of working groups, most of which have a specific country or thematic focus.⁷⁴ One potentially important thematic mandate for JRS offices working in detention is that of the Special Rapporteur on the Rights of Migrants.

9.1.1 Universal Periodic Review (UPR)

The UPR was created by UN General Assembly Resolution 60/251 on 15 March, which states that the Human Rights Council is to *'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States'*.⁷⁵

The UPR is described as *'a unique, State-driven process'* which involves a review of the human rights records of all UN Member States by the UPR Working Group, which consists of the 47 members of the Council, but any UN Member State can take part in the discussion. The review takes place under the auspices of the Human Rights Council. The review provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The aim of this review is the improvement of the human rights situation in every country.⁷⁶

The review takes the form of an interactive discussion between the State under review and other UN Member States, and looks into adherence to: the Charter of the UN; the Universal Declaration of Human Rights; human rights instruments to which the State is party; voluntary pledges and commitments; and applicable international humanitarian law. During the discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The duration of each review is now three hours and thirty minutes.

The review is based on:

- Information provided by the State, through the form of a national report;
- Information contained in reports of independent human rights experts & groups, human rights treaty bodies, and other UN entities;
- Information from other stakeholders including national human rights institutions and non-governmental organizations.

Within the review process, NGOs can:

- Submit information to be added to the "other stakeholders" report considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting.
- Attend the UPR Working Group sessions and make statements at the regular session of the Human Rights Council when the outcomes of the State reviews are considered.

For information and guidance relating to submission of reports to the UPR, see Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review Mechanism available at: <http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf>

⁷⁴ For more information on the UN system for the protection of human rights see <http://www.un.org/en/rights/>.

⁷⁵ United Nations General Assembly, Resolution No 60/251, Human Rights Council (15 March 2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement>.

⁷⁶ For more information, including a calendar of upcoming reviews, see United Nations Human Rights, 'Universal Periodic Review' (2015) <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> and United Nations Human Rights 'Basic Facts about the UPR' (2015) <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

9.1.2 Special Rapporteur on the human rights of migrants

The main functions of the Special Rapporteur are:

- To examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation;
- To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;
- To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur.

The Special Rapporteur undertakes the following activities in fulfilment of these functions⁷⁷:

- Acts on information received regarding alleged violations of the human rights of migrants: sends urgent reports and communications to governments to clarify and bring matter to their attention
- Conducts country visits – fact-finding missions upon invitation of the government to examine the state of protection of the human rights of migrants in the country; submits a follow-up report to the HRC
- Presents an annual report to the HRC about global protection of migrants' human rights

The Special Rapporteur receives communications both regarding specific individual complaints as well as the general situation of migrants' rights in a particular country.

For more information on communicating with the Special Rapporteur see: <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Communications.aspx>

9.2 Regional Monitoring Bodies

This section examines the role and function of the monitoring bodies within the Council of Europe framework – the Commissioner for Human Rights and the Committee for the Prevention of Torture. It also briefly examines the role of the European Commission in monitoring the implementation of the relevant EU Directives.

9.2.1 Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe entrusted with promoting the awareness of and respect for human rights in all forty-seven Member States of the Council of Europe. This office cannot act upon individual complaints but can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.

This is achieved through country visits and dialogue with national authorities and civil society. As a rule, country visits would include:

- Meetings with representatives from government, parliament, judiciary, civil society and national human rights structures;
- Meetings with ordinary people with human rights concerns;
- Visits to places of human rights relevance, including prisons, psychiatric hospitals, centres for asylum seekers, schools, orphanages and settlements populated by vulnerable groups.

As a follow up to the visit a report or a letter may be addressed to the authorities of the country concerned containing an assessment of the human rights situation and recommendations on how to

⁷⁷ For more information see <<http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>>.

overcome shortcomings in law and practice. The Commissioner may also intervene as a third party in the proceedings of the European Court of Human Rights, either by submitting written information or taking part in its hearings.⁷⁸

9.2.2 Committee for the Prevention of Torture (CPT)

The CPT organises visits to places of detention, in order to assess how persons deprived of their liberty are treated. Places monitored by the CPT include: prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc. CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private, and communicate freely with anyone who can provide information.

After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised in its report. Reports and communication with governments are confidential. Governments may, and often decide to, publish the CPT reports at a later stage.

CPT delegations carry out visits on a periodic basis (usually once every four years), but additional "ad hoc" visits are carried out when necessary.

The Committee must notify the State concerned that it intends to carry out a visit. After notification, the CPT delegation may go to any place where persons may be deprived of their liberty at any time and without notice.

For more information on upcoming visits and on the work of the CPT more generally see: <http://www.cpt.coe.int/en/>

The findings of the CPT about detention conditions in a particular country are often cited by the ECHR in its judgments, and are widely considered to be a credible, accurate and objective source of information on detention conditions in a particular country.

9.2.3 European Commission

The authorities in each Member State are responsible for implementing EU legislation in national law and enforcing it correctly, and they must guarantee citizens' rights under these laws.

Anyone may lodge a complaint with the Commission against a Member State for any measure (law, regulation or administrative action) or practice attributable to a Member State which they consider incompatible with a provision or a principle of EU law. You do not have to demonstrate a formal interest in bringing proceedings. Neither do you have to prove that you are principally and directly concerned by the infringement complained about. To be admissible, a complaint has to relate to an infringement of EU law by a Member State. It cannot therefore concern a private dispute.

Complaints must be:

- Submitted in writing, by letter, fax or e mail;
- Complete & accurate & refer to:
 - the facts complained of;
 - the steps taken to achieve redress
 - when possible, provisions of EU law considered to have been infringed

Infringement proceedings are proceedings instituted by the Commission against Member States which fail to comply with EU law. The proceedings start with information gathering: upon receiving the complaint the Commissioner requests further information from the Member State. The complainant's identity is not disclosed unless the Commission is given express permission to do so. Once the

⁷⁸ For more information see ECHR (n 1) Article 36 and Rules of the Court as amended in 2014, Rule 44, available at <http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf>.

Commission has received information from both parties, a decision is taken regarding the action to be implemented.

If the Commission considers that there may be an infringement of EU law which warrants the opening of an infringement procedure, it addresses a "letter of formal notice" to the Member State concerned, requesting it to submit its observations by a specified date.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "reasoned opinion" to the Member State, clearly and definitively setting out the reasons why it considers there to have been an infringement of EU law and calling on the Member State to comply with EU law within a specified period (normally two months).

If the Member State fails to comply with the reasoned opinion, the Commission may decide to refer the case to the Court of Justice of the European Union.

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