



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Follow-up advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*

I. Introduction

1. After issuing advice on places of quarantine in March 2020,¹ the Subcommittee issued advice in April 2020 to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic.² The Subcommittee then asked States parties and national preventive mechanisms to provide information on the measures taken to implement its recommendations.

2. The present advice was prepared on the basis of the information received, which the Subcommittee has decided to make public without referring to any specific State party or national preventive mechanism. The present advice complements the previous advice issued by the Subcommittee, and it is to serve as an instrument to evaluate both the measures implemented and the impact of those measures on persons deprived of liberty. It will also reinforce the universality of the measures taken to prevent torture and ill-treatment worldwide and to minimize the negative impact of the pandemic in places of deprivation of liberty.

3. The measures taken by some States parties in 2020 and summarized below demonstrate the capacity of adaptation of certain penal justice systems, including by reducing the population of places of deprivation of liberty, raising awareness about the pandemic, paying greater attention to hygiene, intensifying care for persons with health risks and introducing new means of communication with the outside world.

4. In the present advice, the Subcommittee expresses its concerns with regard to certain measures taken by States parties and the lack of political will to implement its recommendations. It also expresses its concerns regarding the means provided to national preventive mechanisms to continue monitoring places of deprivation of liberty during the pandemic.

5. In addition, the Subcommittee makes recommendations with regard to the new challenges, such as the administration of vaccination programmes and the consolidation of positive measures related to COVID-19.

6. The Subcommittee acknowledges that national preventive mechanisms in many States parties have clearly demonstrated their capacity of action during the pandemic, be it in the scrutiny of emergency legislation, in the monitoring of the adequate implementation of

* Adopted intersessionally by the Subcommittee on 31 May 2021, pursuant to article 11 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ CAT/OP/9.

² CAT/OP/10.



measures decided by national and local authorities, or in the prevention of inhuman or degrading treatment of persons in places of deprivation of liberty. They have proven to be an essential part of the Optional Protocol system of oversight of places of deprivation of liberty, including in some countries of the places of quarantine. Since the beginning of the pandemic, the Subcommittee continued to support States parties and national preventive mechanisms by advising and assisting them, despite temporary difficulties in fulfilling its visiting mandate.

7. Owing to the variety of legal systems and the terminology used in different regions, generic terms have been applied as much as possible in the present advice. Considering the variety of information received about the measures taken by States parties and national preventive mechanisms, only the information that is most relevant to the previous advice issued by the Subcommittee has been included.

II. Synopsis of information received from States parties and national preventive mechanisms

A. States parties³

8. The Subcommittee was informed about a number of measures adopted by States parties to reduce the impact of the pandemic, which were in line with the previous advice of the Subcommittee.

1. Measures to reduce the population in places of deprivation of liberty

9. The following measures were undertaken to reduce the population in places of deprivation of liberty:

- (a) Development of non-custodial measures, which were applied in cases involving:
 - (i) Persons in excessively long pretrial detention;
 - (ii) Persons serving custodial sentences of up to three years in prison;
 - (iii) Persons convicted of non-violent crimes who had served a significant part of their sentence;
 - (iv) Pregnant women or those incarcerated with their children;
 - (v) Persons in detention who had high health risks, including older persons and persons with disabilities;
- (b) Adoption and implementation of legislation on pardon or amnesty, or other similar measures, for certain categories of detainees;
- (c) Expansion of the use of electronic monitoring means, including house arrest;
- (d) Reduction of the number of persons placed in police custody and of the duration of their stay;
- (e) Temporary closure of detention centres or significant reduction of expulsion centres for migrants.

³ In total, 49 of the 90 States parties to the Optional Protocol submitted information to the Subcommittee. They include the following: Albania, Argentina, Armenia, Australia, Austria, Brazil, Bulgaria, Croatia, Cyprus, Denmark, Ecuador, Estonia, France, Georgia, Germany, Guatemala, Honduras, Hungary, Iceland, Italy, Kazakhstan, Lichtenstein, Lithuania, Madagascar, Maldives, Malta, Mongolia, Montenegro, Morocco, Netherlands, Panama, Paraguay, Peru, Poland, Portugal, Romania, Rwanda, Serbia, Slovenia, Spain, Sri Lanka, State of Palestine, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, and Uruguay.

2. Measures regarding hygiene, medical aspects and food, and alternative methods for maintaining family contact

10. The following measures were undertaken with regard to hygiene, medical aspects, food and maintaining family contact:

- (a) Identification of persons with health risks;
- (b) Emergency purchase of sanitary equipment and medical material for detention facilities, including personal protective equipment, delivery of hygiene goods to inmates and prison staff, and the reinforcement of cleaning and disinfection protocols;
- (c) Limitation of transfers of detainees between places of deprivation of liberty;
- (d) Creation of spaces for COVID-related isolation for incoming inmates and detainees with health risks, and for preventive isolation of inmates suspected of infection, that ensure an adequate detention environment for them, and the creation of visiting quarters that are appropriate for pandemic conditions;
- (e) Increase of delivery of goods, food, water, vitamins and food supplements to persons deprived of liberty;
- (f) Introduction of new means of communication, including tablets, mobile phones and the use of video calls, increased time for virtual contacts with the outside world, and increased use of postal communication with relatives;
- (g) Improved and expanded access to educational, recreational and sports activities, in particular for minors and young adults;
- (h) Production of masks in detention facilities as an occupational activity for detainees;
- (i) Provision of additional psychological support for detainees and families;
- (j) Provision of remote psychosocial consultations for detainees and families;
- (k) Provision of treatment outside of the institution for patients and/or residents of psychiatric and social care institutions.

B. National preventive mechanisms⁴

11. The Subcommittee was informed about the measures adopted by national preventive mechanisms to enable them to carry out their activities during the pandemic. Below is a summary of the most common measures reported to the Subcommittee:

- (a) Introduction of visiting protocols during the pandemic;
- (b) Acquisition of personal protective equipment to enable the continuation of detention visits, with some national preventive mechanisms focusing specifically on infected persons in places of deprivation of liberty;
- (c) The carrying out of monitoring visits to all types of places of deprivation of liberty with the necessary precautionary measures, with visits carried out by other means when they had to be interrupted;

⁴ In total, 64 national preventive mechanisms or similar bodies submitted information to the Subcommittee, from the following countries: Argentina, Armenia, Australia, Azerbaijan, Benin, Brazil, Bulgaria, Cabo Verde, Cambodia, Chile, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Italy, Kazakhstan, Kyrgyzstan, Lebanon, Lithuania, Maldives, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Netherlands, New Zealand, North Macedonia, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Serbia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Turkey, Ukraine and United Kingdom.

(d) The use of surveys, questionnaires, written inquiries, telephone interviews and video calls to monitor the situation of persons deprived of liberty and of personnel working in places of deprivation of liberty, in the absence of regular visits;

(e) The reinforcement of contact with the relevant authorities, including direct contact with places of deprivation of liberty and its medical staff, when regular visits had to be interrupted;

(f) Monitoring of places of compulsory quarantine, on the basis of relevant international standards, in particular through the examination of:

(i) The legal framework of quarantine and its application;

(ii) The fundamental rights and safeguards applied to those in quarantine;

(iii) Living conditions, and accessibility and quality of health care;

(iv) The situation of vulnerable groups, including women with young children, persons with disabilities, persons with health problems, older persons, LGBTIQ+ persons, undocumented migrants, ethnic and linguistic minorities, and drug users;

(g) Monitoring of social care homes for older persons and persons with disabilities and of children's homes through social network groups, which also enabled the provision of assistance to caregivers and families;

(h) Translation into national languages of the recommendations made by relevant international organizations and bodies, dissemination of the respective documents to the relevant authorities and support in their implementation, and the raising of awareness of the media and the population with regard to the documents;

(i) Comments and suggestions on pandemic-related emergency and other legislation pertaining to the deprivation of liberty and prevention of torture;

(j) Participation in the elaboration and implementation of health monitoring guides relating to the pandemic;

(k) The raising of awareness of the rights of persons deprived of liberty during the health crisis, and the undertaking of initiatives to strengthen relations with civil society organizations on the human rights of persons deprived of liberty;

(l) Creation of hotlines for persons deprived of liberty, their relatives, lawyers and prison staff, to complement the monitoring of the situation in places of deprivation of liberty;

(m) Establishment by the medical personnel of national preventive mechanisms of communication channels with the representatives of medical centres of places of deprivation of liberty in order to monitor the measures implemented and the difficulties encountered;

(n) Follow-up on new and temporary places of detention created during the pandemic to ensure their compatibility with human rights norms and internationally recommended measures;

(o) Reinforcement of regional cooperation among national preventive mechanisms, with a view to exchanging experiences on the measures taken in each country and to joining forces to take common actions.

III. Concerns regarding the implementation of measures

12. Based on the information received from States parties and national preventive mechanisms, the Subcommittee expresses concern that some of the measures taken in the context of the pandemic have a negative impact on the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

A. States parties

13. On the basis of the information received from States parties, the Subcommittee notes the following areas of concern:

- (a) Insufficient attention paid to the population at risk within places of deprivation of liberty;
- (b) Disproportionate tightening of security in many places of deprivation of liberty, including long periods spent locked up in the cells, excessive use of isolation measures and suspension of communication with the outside world, which in some regions has resulted in violence and riots;
- (c) Suspension of all existing forms of home leave for persons deprived of liberty;
- (d) Lack of adequate information provided to persons deprived of liberty, their families, staff and others, regarding the situation resulting from the pandemic and the measures taken in each place of deprivation of liberty;
- (e) Inadequate use of alternative measures to compensate for the suspension of family visits, including prohibition of digital means of communication;
- (f) Restriction or suspension of complaints mechanisms;
- (g) Lack of implementation of alternative measures to imprisonment, especially in cases of short custodial sanctions;
- (h) Discontinuation of therapeutic programmes in places of deprivation of liberty;
- (i) Massive, arbitrary arrests and excessive use of force by police for the purposes of implementing pandemic-related restriction measures, which in some instances involved the detention of groups of persons, without the necessary sanitary measures;
- (j) Insufficient provision of basic hygiene materials, personal protection equipment and health counselling for law enforcement, security and detention personnel, and insufficient health personnel dedicated to staff and detainees;
- (k) Failure to set up official data-collection mechanisms in places of deprivation of liberty on health, including on death, cause of death, or persons infected or placed in quarantine, and the excessive use of force, including cases of torture and ill-treatment, in relation to the pandemic.

B. National preventive mechanisms

14. On the basis of the information received, the Subcommittee shares concerns voiced by the national preventive mechanisms with regard to the execution of their mandate during the pandemic, including the following:

- (a) Suspension of national preventive mechanism visits or denial of access to places of deprivation of liberty, and the prohibition of remote monitoring by the mechanisms;
- (b) Insufficient additional material and financial resources received from the State to enable the national preventive mechanisms to carry out their activities during the pandemic;
- (c) Lack of consultations with national preventive mechanisms by States when creating COVID-19 task forces, and difficulties in conducting online meetings with the national authorities;
- (d) Issues related to ensuring confidentiality while using alternative means for conducting interviews with persons deprived of liberty.

IV. Further measures to be taken to reduce the negative impact of the pandemic and to prevent torture and ill-treatment

A. States parties

15. In the light of the above-mentioned measures and concerns, and in addition to its previous recommendations, the Subcommittee urges all States to:

(a) Include in the national vaccination programme, with priority, all persons deprived of liberty, all personnel, including medical, security, social, administrative and other personnel, of places of deprivation of liberty and staff of the national preventive mechanism;

(b) Inform all persons deprived of liberty and their relatives, regularly and comprehensively, about the vaccination programme, including its benefits and possible side effects, and ensure that vaccination is voluntary and based on informed consent;

(c) Continue the systematic screening for COVID-19 symptoms of all persons entering any detention facility, including new inmates, personnel and visitors, as long as the pandemic continues;

(d) Improve the environment in areas of quarantine inside places of deprivation of liberty so that they do not correspond to places of solitary confinement, and compensate for the social isolation by using any means to improve social and family contact;

(e) Continue improving levels of hygiene, and the accessibility and quality of health care;

(f) Continue efforts to reduce the prison population by pursuing policies such as early release, parole and non-custodial measures;

(g) Strengthen the efforts to consider the particular needs of women, juveniles, persons with disabilities, and LGBTIQ+ persons deprived of liberty, and since the pandemic exacerbates their vulnerability, assess the possibility of alternatives to detention;

(h) Ensure that persons deprived of their liberty whose mental health is affected by COVID-19 measures, including those persons in quarantine, in medical isolation units, in psychiatric hospitals or in places of detention, receive adequate counselling and psychosocial support;

(i) Take effective measures to ensure the protection of patients with COVID-19 inside care homes and psychiatric institutions, and provide them with basic emotional and practical support;

(j) Continue providing national preventive mechanisms with all the support required to carry out visits to places of deprivation of liberty during the pandemic.

B. National preventive mechanisms

16. In the light of the above-mentioned measures and concerns, and in addition to its previous recommendations, the Subcommittee urges the national preventive mechanisms to:

(a) Resume in-person monitoring of all places of deprivation of liberty, taking into consideration all precautionary sanitary measures;

(b) Advocate for access to vaccination programmes, on a voluntary basis, for all persons deprived of liberty, all personnel of places of deprivation of liberty, and the staff of national preventive mechanisms, and monitor the implementation of the vaccination programme;

(c) Continue and intensify efforts to scrutinize existing or draft legislation aimed at the reduction of the prison population;

(d) Scrutinize legislation, and especially emergency laws, with regard to maintaining or improving their capacity to visit places of deprivation of liberty;

- (e) Evaluate the experience gained while monitoring places of deprivation of liberty during the pandemic, with a view to strengthening their methods of work;
- (f) Enhance cooperation with other national preventive mechanisms and regional networks, in order to benefit from each other's experiences and share good practices;
- (g) Develop responses for exercising their mandate in all types of emergencies and have contingency plans ready for visiting under such conditions.

V. Conclusions

17. The Subcommittee remains supportive of States parties and national preventive mechanisms during the pandemic. As indicated in the Subcommittee's previous advice, it is not possible to predict how long the pandemic will last, or what the "new normal" in the post-pandemic world will be. However, the Subcommittee reaffirms the importance of preventive activities in places of deprivation of liberty while stressing the need to respect the "do no harm" principle. The Subcommittee will continue its work together with the national preventive mechanisms to avoid any protection gap for persons deprived of liberty.

18. The preventive system created by the Optional Protocol will continue to adapt its working methods for the benefit of persons deprived of liberty and of personnel of places of detention. The effective prevention of torture and ill-treatment require that the Subcommittee, States parties and national preventive mechanisms continue to respond to the current challenges by increasing cooperation and finding ways to fully implement the provisions of the Optional Protocol.
