



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Organizational and other matters

Fourteenth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Summary

In the present report, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment describes the work it undertook in 2020.

Following a brief introduction, the Subcommittee provides an update on developments relating to the system of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including visits, the increase in the number of States parties and in designated national preventive mechanisms, and details concerning the operation of the Special Fund established under the Optional Protocol (sect. II).

The Subcommittee provides substantive information concerning developments in its working practices and comments on any issues it has faced when undertaking its work during the year under review (sects. III and IV).

The Subcommittee concludes the report by reflecting on future challenges and describing its plan of work (sects. V and VI), taking into consideration the limitations imposed by the coronavirus disease (COVID-19) pandemic.

A statement adopted by the Subcommittee on 25 March 2020, entitled “Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic”, is contained in an annex to the present report.



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I. Introduction

1. Reflecting article 16 (3) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in accordance with rule 33 of its rules of procedure, the Subcommittee prepares an annual report on its activities as a public document. Pursuant to these provisions, the Subcommittee, in the present report, addresses its activities from 1 January to 31 December 2020. The Subcommittee considered and adopted the report at its forty-third session, which was held online from 8 to 12 February 2021.

II. Year in review

A. Participation in the Optional Protocol system

2. As at 31 December 2020, a total of 90 States were a party to the Optional Protocol and 13 States were signatories.

The pattern of regional participation was as follows:

African States	23
Asia-Pacific States	12
Eastern European States	19
Latin American and Caribbean States	15
Western European and other States	21

The regional breakdown of the 13 signatory States was as follows:

African States	8
Asia-Pacific States	1
Eastern European States	1
Latin American and Caribbean States	1
Western European and other States	2

B. Organizational and membership issues

3. During the reporting period, the Subcommittee held three one-week sessions. The fortieth session (10–14 February 2020) was held in Geneva. The forty-first session (15–19 June 2020) and the forty-second session (9–13 November 2020) were held online as a result of travel restrictions necessitated by the coronavirus disease (COVID-19) pandemic.

4. There were some changes in the membership of the Subcommittee during the course of the year.¹ In accordance with the procedure pursuant to article 8 of the Optional Protocol, two new members, Cheikh Tourad Abdel Malick and Marina Langfeldt, joined the Subcommittee following the resignations for personal reasons of Haimoud Ramdan and Margret Osterfield, respectively. The new members assumed their duties upon taking their solemn oath at the fortieth session.

5. On 3 November, Sofia Vidali resigned from the Subcommittee for personal reasons. A new member will be appointed in accordance with the procedure pursuant to article 8 of the Optional Protocol.

6. On 22 October 2020, at the eighth meeting of States parties to the Optional Protocol, 12 members were elected, including 5 current members, to fill the vacancies arising in respect of members whose terms of office were expiring on 31 December 2020. The terms of office

¹ The list of members is available at www.ohchr.org/EN/HRBodies/OPCAT/Pages/Membership.aspx.

of all the newly elected members commenced on 1 January 2021 and are for a period of four years, expiring on 31 December 2024.

7. There were no changes in the structure of the Subcommittee's regional teams, nor in the composition of its working groups during the year under review.

8. The regional teams examine the implementation of the Optional Protocol within their region, reporting to the Subcommittee in plenary session, and make recommendations as appropriate. During the reporting period, the heads of the regional teams were as follows: for Africa, Gnambi Garba Kodjo; for Asia and the Pacific, June Caridad Pagaduan Lopez; for Europe, Daniel Fink; and for Latin America, Maria Dolores Gomez. The composition of the regional teams is available on the Subcommittee website.²

9. The Subcommittee's permanent working groups on jurisprudence and practice and on health aspects of torture prevention met in person at the fortieth session and online (as committees of the whole) at the forty-first and forty-second sessions. The working group on the Special Fund met online at the forty-first session. At its fortieth session, the Subcommittee established an ad hoc working group to consider the drafting of a general comment on article 4 (1) of the Optional Protocol, which has continued to meet online intersessionally.

10. In June 2020, the Subcommittee held its forty-first session online, making it the first treaty body of the United Nations to undertake a full session and full programme of work in an online environment and using a variety of platforms, only one of which permitted simultaneous interpretation. Regional teams met at various times during the day to facilitate the participation of members and other participants from different time zones. The Subcommittee decided, for the first time, to publicly webcast its opening and closing meetings, which were also broadcast live on United Nations Web TV. The Subcommittee also held an online informal meeting of the States parties during the forty-first session, which was also webcast.

11. In November 2020, the Subcommittee held its forty-second session, which was also held online. The opening and closing meetings of the session were also webcast. At its forty-second session, the Subcommittee met with the Chair of the Committee against Torture to discuss issues of common interest. It also held online meetings with representatives of the Inter-American Commission on Human Rights, the Convention against Torture Initiative, the Association for the Prevention of Torture and a research team from Bristol University to discuss cooperation and substantive human rights issues. The Subcommittee continued its established pattern of cooperation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

C. Visits conducted during the reporting period

12. The Subcommittee commenced its first visit of the year, to Argentina, in March 2020, but it had to be abandoned almost immediately owing to emergency measures relating to COVID-19. Given the travel limitations related to the pandemic and the lack of available funding for its programme of visits, the Subcommittee was unable to undertake any of the other visits, which had been planned in accordance with its mandate under articles 11 to 13 of the Optional Protocol. In December 2020, a visit to Tunisia was planned and preparations for the visit were made. At the last moment, however, owing to logistical reasons, that visit also had to be abandoned.

² See www.ohchr.org/EN/HRBodies/OPCAT/Pages/ContactRegionalTeams.aspx.

D. Dialogue arising from visits, including publication of the Subcommittee's reports by States parties and national preventive mechanisms

13. The substantive aspects of the dialogue arising from visits are confidential. Reports are made public only with the consent of the recipient.³ By the end of 2020, the Subcommittee had transmitted a total of 94 visit reports to States parties and national preventive mechanisms, including within the reporting period to Ghana, Senegal (to both the State party and the national preventive mechanism), Switzerland (to both the State party and the national preventive mechanism) and the United Kingdom of Great Britain and Northern Ireland (to both the State party and the national preventive mechanism).

14. A total of 58 visit reports have been made public following requests from States parties or national preventive mechanisms under article 16 (2) of the Optional Protocol, including five in 2020, namely the reports addressed to the State party arising from the visits of the Subcommittee to Costa Rica, the Niger and Poland, and the reports addressed to the national preventive mechanisms of Poland and the United Kingdom. While fully respecting the principle of and right to confidentiality provided for in the Optional Protocol, the Subcommittee welcomes the increasing number of visit reports that are being published, believing that this reflects the spirit of transparency on which preventive visiting is based and facilitates better implementation of the respective recommendations. The Subcommittee encourages the recipients of reports to request their publication.

15. In conformity with established practice, the recipients of reports are requested to submit a written reply within six months of their transmission, giving a full account of the action taken and that will be taken to implement the recommendations contained in the reports. During the reporting period, the Subcommittee received six such replies, namely from Costa Rica (both from the State party and the national preventive mechanism), Maldives, Poland (both from the State party and the national preventive mechanism) and the United Kingdom (from the national preventive mechanism).

E. Developments concerning national preventive mechanisms

16. The Subcommittee has continued to engage in dialogue with States parties and signatories at its sessions concerning the designation or functioning of their national preventive mechanisms. At its fortieth, forty-first and forty-second sessions, it held meetings with representatives of Brazil, the Democratic Republic of the Congo, Ecuador, Gabon, Georgia, Guatemala, Mali, Mongolia and the State of Palestine.

17. In accordance with its mandate under articles 11 (b) (i) and (ii) of the Optional Protocol, the Subcommittee established and maintained direct contact with national preventive mechanisms. During its sessions in 2020, the Subcommittee held meetings with the representatives of the national preventive mechanisms of Albania, Argentina, Armenia, Austria, Azerbaijan, Bolivia (Plurinational State of), Bulgaria, Cabo Verde, Cambodia, Chile, Costa Rica, Cyprus, Czechia, Denmark, Ecuador, Estonia, France, Georgia, Germany, Honduras, Hungary, Italy, Kazakhstan, Lebanon, Lithuania, Maldives, Mauritania, Mexico, Montenegro, Morocco, New Zealand, Paraguay, Peru, Poland, Portugal, Senegal, Serbia, South Africa, Spain, Sri Lanka, Togo, Ukraine, United Kingdom and Uruguay.

18. The Subcommittee and its members have continued to receive invitations to attend numerous national, regional and international meetings, mostly online, concerning the designation, establishment and development of national preventive mechanisms in particular and on the Optional Protocol in general. The Subcommittee is grateful to the organizers of those and all other events to which it has been invited. The Subcommittee would also be grateful if all invitations to official events and discussions could be made through the

³ Data concerning visit reports, including those that have been made public, are available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological.

Subcommittee secretariat in the Office of the United Nations High Commissioner for Human Rights (OHCHR).

F. Substantial non-compliance with article 17

19. At its twenty-seventh session, the Subcommittee decided to identify States parties whose establishment of their national preventive mechanism was substantially overdue and to record them on a list.⁴ The list is revised at each session of the Subcommittee, and States parties will be removed from the list once the threshold for such removal is met, namely, that the Subcommittee has received notification of the official designation of the national preventive mechanism and copies of the documentation providing for its establishment and effective functioning. As at 31 December 2020, the following 14 States parties were listed: Belize, Benin, Bosnia and Herzegovina, Burkina Faso, Burundi, Democratic Republic of the Congo, Gabon, Liberia, Mongolia, Nauru, Niger, Nigeria, Philippines and South Sudan.

20. This remains a matter of great concern to the Subcommittee, particularly since some of these States parties still appear to be making little if any progress towards fulfilling their obligations.

G. Special Fund established under the Optional Protocol

21. Support provided through the Special Fund established under article 26 (1) of the Optional Protocol is directed towards projects aimed at establishing or strengthening national preventive mechanisms, thereby contributing to the implementation of the relevant recommendations made by the Subcommittee following a visit to a State party or supporting educational programmes of national preventive mechanisms. In 2020, grants amounting to \$325,015 were awarded through the Special Fund to support 12 torture prevention projects in nine States parties during their implementation in 2021. The Subcommittee has assisted in the assessment of project proposals and recommendations for grants. The awarded projects are aimed at providing key support to some newly established national preventive mechanisms and strengthening the existing ones. They are also aimed at enhancing the knowledge and capacity of members and staff of the national preventive mechanisms in monitoring places of detention, increasing visibility of mechanisms and improving collaboration with relevant stakeholders on torture prevention.

22. The Subcommittee greatly appreciates the contributions made to the Special Fund during the reporting period by Czechia (\$8,550), France (\$23,686), Germany (\$113,765), Norway (\$119,895) and Spain (\$23,752), and a pledge made by Denmark (\$396,000). Nevertheless, it remains mindful of the fact that further contributions will be necessary to support projects during the 2021–2022 grant cycle and beyond. The Special Fund is an essential tool for supporting and complementing the implementation of Subcommittee recommendations aimed at the prevention of torture and ill-treatment. The Subcommittee therefore urges States to continue to provide the Special Fund with the financial support it requires.

23. Given the focus of the Fund on the establishment and strengthening of national preventive mechanisms, and in response to increasing demand from the field, OHCHR developed and launched in 2018 a practical guide on the role of national preventive mechanisms in preventing torture.⁵ The guide was prepared in close collaboration with the Subcommittee. Following the publication of Russian and Spanish versions of the guide in 2019, the Arabic and French versions have been prepared in the current reporting period, for issuance in 2021.

⁴ www.ohchr.org/EN/HRBodies/OPCAT/Pages/Article17.aspx.

⁵ www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf.

H. Advice relating to the COVID-19 pandemic

24. During the course of the fortieth session of the Subcommittee, and in response to a request from a national preventive mechanism, the Subcommittee adopted a statement containing advice provided to the national preventive mechanism of the United Kingdom regarding compulsory quarantine for the COVID-19 pandemic (CAT/OP/9). Within a very short time, the enormity of the impact of COVID-19 on detention systems and detainees and on the work of national preventive mechanisms became ever more apparent. In response, the Subcommittee adopted a statement on advice relating to the COVID-19 pandemic through an intersessional adoption procedure on 25 March 2020. The statement was subsequently distributed to all national preventive mechanisms and States parties, and is reproduced as an annex to the present report.

25. Following the issuance of that advice, the Subcommittee contacted all national preventive mechanisms and States parties with requests for information concerning their responses to that advice and to the pandemic in general. The Subcommittee is very grateful to the many national preventive mechanisms and States parties who responded. The information that they provided has formed the basis of a series of ongoing dialogues and, alongside other sources of information, will be used to help guide the Subcommittee as it seeks to develop further guidance concerning effective prevention.

III. Engagement with other bodies in the field of torture prevention

A. International cooperation

1. Cooperation with other United Nations bodies

26. The Chair of the Subcommittee was unable to discuss the thirteenth annual report of the Subcommittee (CAT/C/69/3) with the Committee against Torture in plenary session at the Committee's sixty-ninth session owing to the cancellation of that session.

27. In accordance with General Assembly resolution 70/146, the Chair of the Subcommittee, together with the Chair of the Committee against Torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, presented the thirteenth annual report of the Subcommittee to the Assembly at its seventy-fifth session in an online meeting.

28. As a member of the meeting of the Chairs of human rights treaty bodies, the Chair of the Subcommittee participated in several informal online meetings of the Chairs during the year. At the informal meeting of the Chairs of human rights treaty bodies, which was held online from 2 to 5 June 2020, the Subcommittee was also represented by Nora Sveaass and Victor Zaharia.

29. On 26 June, the United Nations International Day in Support of Victims of Torture, a joint statement was issued by the Subcommittee on Prevention of Torture, the Committee against Torture, the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur on torture, highlighting the manner in which the COVID-19 pandemic was leading to an escalation of torture and ill-treatment worldwide, and the heightened risk of infection faced by torture victims and survivors and detainees.⁶

30. On 26 June, the Chair of the Subcommittee and the President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment also issued a joint statement emphasizing the absolute nature of the prohibition of torture and other forms of ill-treatment.⁷

⁶ www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?NTID=STM&MID=Sub_Committ_Torture.

⁷ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26003&LangID=E.

31. The Subcommittee continued to cooperate systematically with other mechanisms, including by transmitting to the Committee against Torture suggestions for it to consider that concern States parties to the Optional Protocol, the reports of which are to be considered at forthcoming sessions of the Committee, and issues for it to consider raising with States parties under the simplified reporting procedure.

32. The Subcommittee also continued its cooperation with the regional offices of OHCHR, the United Nations country teams and the Office of the United Nations High Commissioner for Refugees.

33. The Subcommittee continued to cooperate with the treaty body capacity-building programme, particularly in support of the work of national preventive mechanisms.

2. Cooperation with other relevant international organizations

34. The Subcommittee continued its cooperation with the International Committee of the Red Cross.

B. Regional cooperation

35. The Subcommittee continued its cooperation with regional organizations, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, building on the reciprocal exchange of letters to give effect to article 31 of the Optional Protocol in order to strengthen complementarity and subsidiarity. During its forty-second session, the Subcommittee also held an online meeting with the Inter-American Commission on Human Rights.

1. Regional webinars in South America

36. In response to multiple queries from national preventive mechanisms concerning their role in the response to the COVID-19 pandemic, a series of regional webinars was held with national preventive mechanisms in South America, commencing in February 2020, initially on a weekly basis, and subsequently on a monthly basis. The webinars sought to strengthen the capacity of national preventive mechanisms to respond to the pandemic and to provide a forum for the sharing of good practices, facilitating the delivery of technical assistance and enabling the sharing of information concerning the situation in places of deprivation of liberty in the region.

C. Civil society

37. The Subcommittee continued to benefit from the support of civil society, including the Association for the Prevention of Torture and a number of academic institutions, such as the Human Rights Implementation Centre at the University of Bristol. The Subcommittee also benefited from its contact with civil society organizations in preparation for visits, and it thanks those organizations for their work in promoting and supporting the Optional Protocol, despite the fact that none of those visits were concluded this year.

D. Informal working group on COVID-19

38. At their informal meeting, held from 2 to 5 June 2020, the Chairs of human rights treaty bodies agreed to establish an informal working group comprised of the treaty bodies' focal points for the review by the General Assembly of the human rights treaty body system in 2020. The working group was tasked with considering the impact of restrictions related to the COVID-19 pandemic on the methods of work of the treaty bodies; gathering information relating to the ability of the treaty bodies to work online during the COVID-19 pandemic; and reviewing the substantive comments made by the treaty bodies concerning the human rights implications of the pandemic. The working group held online meetings on 3, 10 and 17 July 2020, with approximately 28 members from all 10 treaty bodies participating.

Meetings were facilitated by Nora Sveaass (Subcommittee), and Otani Mikiko (Committee on the Rights of the Child) served as rapporteur.

39. The working group presented its report to the thirty-second meeting of the Chairs of human rights treaty bodies, which was held online from 27 to 30 July 2020. At that meeting, it was decided to establish a formal working group on COVID-19, comprising two representatives of each treaty body, with a view to coordinating responses to the impact of COVID-19 and considering how to address the gap in human rights monitoring arising from it. The Subcommittee is represented by Marina Langfeldt and Nora Sveaass. The working group commenced its work in September 2020 and held several meetings. Their work was facilitated by Alvaro Botero (Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families), and Otani Mikiko (Committee on the Rights of the Child) served as rapporteur.

IV. Developments relating to working practices

A. Visits

40. The Subcommittee had planned to undertake a programme of 10 visits in 2020, having been able to undertake only seven visits in 2019. It commenced its first visit of the year, to Argentina, in March 2020, but it had to be abandoned almost immediately owing to emergency measures relating to COVID-19. The Subcommittee was hoping it would have been able to recommence a reconfigured visiting programme in the autumn of 2020, but unfortunately this was not possible. Further to intense efforts after its forty-second session, the Subcommittee was, however, able to prepare a visit to be undertaken to Tunisia in early December. Owing to last-minute logistical problems, that visit could not take place.

41. The Subcommittee continues to stress the point it made in its eleventh annual report (CAT/C/63/4) – that is, that the inability of the Subcommittee to undertake a minimum of 10 visits per year significantly diminishes the preventive impact of the Optional Protocol and undermines the proactive nature of the system of prevention that it establishes. It is imperative that the Subcommittee be allocated the resources necessary to enable it to have a secretariat of adequate size and to resume its full visiting programme.

B. Meeting time

42. The necessity of holding its forty-first and forty-second sessions online has inevitably had an impact on the ability of the Subcommittee to conduct its business. Simultaneous translation was only available for two or four hours each day, and the time periods during which it was offered made it difficult for all members to participate. Consequently, the Subcommittee has requested that its forty-fourth session, to be held in June 2021, be of two weeks' duration, as previously agreed, in order to allow it to catch up on work that is outstanding.

V. Looking forward

43. The visiting work of the Subcommittee was, in effect, put on hold during 2020 as a result of the COVID-19 pandemic. The Subcommittee is also aware that the financial outlook for the treaty body system as a whole is precarious and currently unclear as a result of the uncertain state of the 2020 review. The Subcommittee remains very concerned that the 2020 review process may not fully engage with the needs of the Subcommittee, given its unique mandate among the treaty bodies. The Subcommittee has fully embraced carrying out work online with national preventive mechanisms and with States parties to the extent that it is compatible with its mandate, and it will continue to do so. The Subcommittee is, however, particularly anxious that it be understood that it is a visiting mechanism, and that visiting places of detention in States parties is at the heart of its mandate. This cannot be done virtually or remotely. There is no place for a “digital shift” – as has been suggested for the treaty bodies as a whole – when it comes to the work of the Subcommittee.

44. Despite the difficulties posed by the COVID-19 pandemic with regard to its work, the Subcommittee appreciates the outstanding work undertaken by many national preventive mechanisms within the Optional Protocol system during the pandemic. The innovative ways in which they have approached their work has been a testament to their commitment to their role. That role has even greater importance owing to the increased restrictions and reduced transparency and oversight of places of detention that have resulted from the measures introduced in response to the spread of the coronavirus within most systems of detention. The Subcommittee has been evaluating the responses of States parties and of national preventive mechanisms to the pandemic and will be seeking to distil what lessons can be learned from those responses. On the immediate front, it is imperative that those States parties that have not yet established national preventive mechanisms in accordance with their Optional Protocol obligations – as outlined in detail in the thirteenth annual report of the Subcommittee – do so as a matter of urgency. The experience of the pandemic has once again underlined the crucial role played by national preventive mechanisms within the Optional Protocol system, including as the “front line” in the prevention of torture and other cruel, inhuman and degrading treatment or punishment.

VI. Plan of work

45. The Subcommittee has already announced visits to numerous countries, which remain to be undertaken. The Subcommittee will review and endeavour to undertake as many of its previously announced visits as is appropriate in the coming year in the light of the evolving situation regarding the global pandemic. In accordance with its established practice, further announcements concerning future visits may be made after future sessions.

Annex

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

I. Introduction

1. Within the space of a few short weeks, coronavirus disease (COVID-19) has had a profound impact on daily life, with many impositions of severe restrictions upon personal movement and personal freedoms, aimed at enabling the authorities to better combat the pandemic through public health emergency measures.
2. Persons deprived of their liberty comprise a particularly vulnerable group, owing to the nature of the restrictions that are already placed upon them and their limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems.
3. In several countries measures taken to combat the pandemic in places of deprivation of liberty have already led to disturbances both inside and outside of detention facilities and to the loss of life. Against this background, it is essential that State authorities take full account of all the rights of persons deprived of liberty and their families, as well as of all staff and personnel working in detention facilities, including health-care staff, when taking measures to combat the pandemic.
4. Measures taken to help address the risk to detainees and to staff in places of detention should reflect the approaches set out in the present advice, and in particular the principles of “do no harm” and “equivalence of care”. It is also important that there be transparent communication to all persons deprived of liberty, their families and the media concerning the measures being taken and the reasons for them.
5. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies that threaten the life of the nation.¹ The Subcommittee has already issued guidance confirming that formal places of quarantine fall within the mandate of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/9). It inexorably follows that all other places from which persons are prevented from leaving for similar purposes fall within the scope of the mandate of the Optional Protocol and thus within the sphere of oversight of both the Subcommittee and of the national preventive mechanisms established within the framework of the Optional Protocol.
6. Numerous national preventive mechanisms have asked the Subcommittee for further advice regarding their response to this situation. Naturally, as autonomous bodies, national preventive mechanisms are free to determine how best to respond to the challenges posed by the pandemic within their respective jurisdictions. The Subcommittee remains available to respond to any specific request for guidance that it may be asked to give. The Subcommittee is aware that a number of valuable statements have already been issued by various global and regional organizations, which it commends to the consideration of States parties and national preventive mechanisms.² The purpose of the present advice is also to offer general guidance

* Adopted by the Subcommittee on 25 March 2020, pursuant to article 11 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ See article 2 (2) of the Convention against Torture and articles 4 and 7 of the International Covenant on Civil and Political Rights.

² See, for example, World Health Organization, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance”, 15 March 2020; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the

within the framework of the Optional Protocol for all those responsible for, and undertaking preventive visits to, places of deprivation of liberty.

7. The Subcommittee would emphasize that while the manner in which preventive visiting is conducted will almost certainly be affected by necessary measures taken in the interests of public health, this does not mean that preventive visiting should cease. On the contrary, the potential exposure to the risk of ill-treatment faced by those in places of detention may be heightened as a consequence of such public health measures taken. The Subcommittee considers that national preventive mechanisms should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken. It is particularly important at this time that national preventive mechanisms ensure that effective measures are taken to reduce the possibility of detainees suffering forms of inhuman and degrading treatment as a result of the very real pressures that detention systems and those responsible for them now face.

II. Measures to be taken by authorities concerning all places of deprivation of liberty, including detention facilities, immigration detention centres, closed refugee camps, psychiatric hospitals and other medical settings

8. It is axiomatic that the State is responsible for the health care of those whom it holds in custody, and that it has a duty of care to its staff and personnel working in detention facilities, including health-care staff. As set out in rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

9. Given the heightened risk of contagion among those in custodial and other detention settings, the Subcommittee urges all States to:

(a) Conduct urgent assessments to identify those individuals most at risk within the detained populations, taking account of all particular vulnerable groups;

(b) Reduce prison populations and other detention populations, wherever possible, by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of the non-custodial measures indicated, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(c) Place particular emphasis on places of detention where occupancy exceeds the official capacity, and where the official capacity is based on a calculation of square metreage per person that does not permit social distancing in accordance with the standard guidance given to the general population as a whole;

(d) Review all cases of pretrial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases;

(e) Review the use of immigration detention centres and closed refugee camps with a view to reducing their populations to the lowest possible level;

(f) Consider that release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive for COVID-19 virus or are particularly vulnerable to infection;

(g) Ensure that any restrictions on existing regimes are minimized, proportionate to the nature of the health emergency, and in accordance with law;

coronavirus disease (COVID-19) pandemic”, CPT/Inf(2020)13, 20 March 2020. Available at <https://rm.coe.int/16809cfa4b>.

- (h) Ensure that the existing complaints mechanisms remain functioning and effective;
- (i) Respect the minimum requirements for daily outdoor exercise, while also taking account of the measures necessary to tackle the current pandemic;
- (j) Ensure that sufficient facilities and supplies are provided free of charge to all who remain in detention, in order to allow detainees the same level of personal hygiene as is to be followed by the population as a whole;
- (k) Provide sufficient compensatory alternative methods, where visiting regimes are restricted for health-related reasons, for detainees to maintain contact with families and the outside world, including telephone, Internet and email, video communication and other appropriate electronic means. Such methods of contact should be both facilitated and encouraged, as well as frequent and provided free of charge;
- (l) Enable family members or relatives to continue to provide food and other supplies for the detainees, in accordance with local practices and with due respect for necessary protective measures;
- (m) Accommodate those who are a greatest risk within the remaining detained populations in ways that reflect that enhanced risk, while fully respecting their rights within the detention setting;
- (n) Prevent the use of medical isolation taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards;
- (o) Provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible;
- (p) Ensure that fundamental safeguards against ill-treatment, including the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of detention, remain available and operable, restrictions on access notwithstanding;
- (q) Ensure that all detainees and staff receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them;
- (r) Ensure that appropriate measures are taken to protect the health of staff and personnel working in detention facilities, including health-care staff, and that they are properly equipped and supported while undertaking their duties;
- (s) Make available appropriate psychological support to all detainees and staff who are affected by these measures;
- (t) Ensure that, if applicable, all the above considerations are taken into account with regard to patients who are involuntarily admitted to psychiatric hospitals.

III. Measures to be taken by authorities in respect of those in official places of quarantine

10. The Subcommittee has already issued advice on the situation of those held in quarantine (CAT/OP/9). To that advice, the Subcommittee would further add that:

- (a) Those individuals who are being temporarily held in quarantine are to be treated at all times as free agents, except for the limitations necessarily placed upon them in accordance with the law and on the basis of scientific evidence for quarantine purposes;
- (b) Those being temporarily held in quarantine are not to be viewed or treated as if they were detainees;
- (c) Quarantine facilities should be of a sufficient size and have sufficient facilities to permit internal freedom of movement and a range of purposive activities;

(d) Communication with families and friends through appropriate means should be encouraged and facilitated;

(e) Since quarantine facilities are a de facto form of deprivation of liberty, all those so held should be able to benefit from the fundamental safeguards against ill-treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of their being in quarantine, in a manner consonant with their status and situation;

(f) All appropriate measures must be taken to ensure that those who are, or have been, in quarantine do not suffer from any form of marginalization or discrimination, including once they have returned to the community;

(g) Appropriate psychological support should be available for those who need it, both during and after their period of quarantine.

IV. Measures to be taken by national preventive mechanisms

11. National preventive mechanisms should continue exercising their visiting mandate during the COVID-19 pandemic; however, the manner in which they do so must take into account the legitimate restrictions currently imposed on social contact. National preventive mechanisms cannot be completely denied access to official places of detention, including places of quarantine, even if temporary restrictions are permissible in accordance with article 14 (2) of the Optional Protocol.

12. The objective of the Optional Protocol, as set out in article 1, is to establish a system of regular visits, whereas the purpose, as set out in the preamble, is the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment, this being a non-derogable obligation under international law. In the current context, this suggests that it is incumbent on national preventive mechanisms to devise methods for fulfilling their preventive mandate in relation to places of detention that minimize the need for social contact but that nevertheless offer effective opportunities for preventive engagement.

13. Such measures might include:

(a) Discussing the implementation and operation of the measures outlined in sections II and III above with relevant national authorities;

(b) Increasing the collection and scrutiny of individual and collective data relating to places of detention;

(c) Using electronic forms of communication with those in places of detention;

(d) Establishing national prevention mechanism hotlines within places of detention, and providing secure email access and postal facilities;

(e) Tracking the setting up of new and temporary places of detention;

(f) Enhancing the distribution of information concerning the work of the national preventive mechanism within places of detention, and ensuring there are channels allowing prompt and confidential communication;

(g) Seeking to contact third parties (e.g., families and lawyers) who may be able to provide additional information concerning the situation within places of detention;

(h) Enhancing cooperation with non-governmental organizations and relief organizations working with those deprived of their liberty.

V. Conclusion

14. It is not possible to accurately predict how long the current pandemic will last, or what its full effects will be. What is clear is that it is already having a profound effect on all

members of society and will continue to do so for a considerable time to come. The Subcommittee and national preventive mechanisms must be conscious of the “do no harm” principle as they undertake their work. This may mean that national preventive mechanisms should adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public; staff and personnel working in detention facilities, including health-care staff; detainees; and themselves. The overriding criterion must be that of effectiveness in securing the prevention of ill-treatment of those subject to detaining measures. The parameters of prevention have been widened by the extraordinary measures that States have had to take. It is the responsibility of the Subcommittee and of national preventive mechanisms to respond in imaginative and creative ways to the novel challenges they face in the exercise of their mandates related to the Optional Protocol.
