



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

Advice provided by the Subcommittee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus (COVID-19 virus)*, **

1. The National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland has asked the Subcommittee for advice concerning the exercise of the mechanism's mandate in places where persons are held in compulsory quarantine for reasons of public health protection.
2. The Subcommittee notes that article 4 of the Optional Protocol provides that:
 - (a) Each State party is to allow visits, in accordance with the Optional Protocol, by the mechanisms referred to in articles 2 and 3 of the Optional Protocol to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence;
 - (b) For the purposes of the Optional Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.
3. It follows from this definition, read in conjunction with article 19 (a) of the Optional Protocol, concerning the visiting powers of national preventive mechanisms, that any place where a person is held in quarantine and from which he or she is not free to leave is a place of deprivation of liberty for the purposes of the Optional Protocol and so falls within the visiting mandate of a national preventive mechanism.
4. Although not expressly stated, it is implicit from the structure of the Optional Protocol that national preventive visits may, like those of the Subcommittee, be temporarily restricted in accordance with article 14 (2) of the Optional Protocol. Article 14 (2) provides that objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit; and that the existence of a declared state of emergency as such is not to be invoked by a State party as a reason to object to a visit.
5. This suggests that while a visit may be objected to on grounds of public safety, which might include a medical emergency necessitating quarantine, this could only be a temporary restriction and could not prevent visits to the place of quarantine completely. In

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other words, there would need to be a particular reason why such a visit should not take place at a particular point in time, rather than that such visits should not take place at all.

6. This confirms the view that places of quarantine fall within the visiting mandate of a national preventive mechanism, although access may be restricted temporarily for strictly limited reasons and not on the basis that the place in question is a place of quarantine.

7. The Subcommittee notes that the Optional Protocol provides that national preventive mechanisms are to have access to all places of detention and their installations and facilities (art. 20 (c)) and the opportunity to have private interviews with the persons deprived of their liberty without witnesses (art. 20 (d)).

8. The Subcommittee recognizes that while quarantine is imposed for the public benefit, it must not result in the ill-treatment of those detained. The role of the national preventive mechanism is to ensure that all fundamental safeguards are respected, including the right to be informed about the reason for being placed in quarantine, to have a third party notified, to have access to independent legal advice and to be seen by a doctor of one's own choice.

9. In addition, sufficient and appropriate measures should be put in place in order to prevent violations of the prohibition of ill-treatment. Such violations can include (or flow from) discriminatory practices and actions that have the effect of stigmatizing or marginalizing particular groups of persons. Such persons may include those individuals and groups who are considered to be at risk of contracting, or being potential carriers of, viruses.

10. While the visiting mandate of a national preventive mechanism includes places of compulsory quarantine, such mechanisms must be mindful of the "do no harm" principle when exercising that mandate. This may require adaptations to normal working practices in the interests of those in quarantine and those undertaking a visit, and with regard to the general interest in halting the spread of the illness. For example, the opportunity to interview in private may reasonably be ensured by methods that prevent the transmission of infection, and members of a national preventive mechanism accessing places of quarantine might legitimately be subject to medical checks and other forms of inspection and restriction to ensure the integrity of the quarantine, as would be the case for others servicing the needs of those being detained.

11. In reports arising out of such visits, the national preventive mechanism must be careful to respect the confidentiality of those detained and not contribute to the potential stigmatization of and/or risk of discrimination against those who have been subjected to compulsory quarantine. Further helpful guidance can be found in the relevant documents published by the Centers for Disease Control and Prevention and the World Health Organization.¹

¹ See www.cdc.gov/infectioncontrol/guidelines/isolation/prevention.html and www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance.