

# GUIDANCE

## Monitoring Places of Detention through the COVID-19 Pandemic



**This guidance is part of ODIHR’s ongoing efforts to respond to human rights challenges caused by the COVID-19 pandemic throughout the OSCE. It is a joint publication with APT, which provides strategic support to National Preventive Mechanisms and other detention monitoring bodies around the world.**



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# I. INTRODUCTION

The COVID-19<sup>1</sup> pandemic has placed much of the world's population in some form of isolation, confinement or quarantine. In this extraordinary situation, deprivation of liberty has taken on new dimensions. People detained prior to the pandemic have seen their rights restricted further and are exposed to greater health risks. Many others have had their freedoms severely curtailed, sometimes resulting in deprivation of liberty. Behind closed doors, far from public scrutiny, a person deprived of liberty faces risks of suffering cruel, inhuman, degrading treatment (ill-treatment), and even torture. These risks are significantly heightened during public health emergencies.<sup>2</sup> All people working in facilities of deprivation of liberty, whether correctional staff, healthcare professionals, social workers, or other support staff, are also under great pressure, facing increased risks to their physical and mental health, often in precarious working conditions.

In closed facilities such as prisons, pre-trial detention facilities, police lock-up cells, immigration or juvenile detention centres, psychiatric institutions, and aged or social care homes, residents are under the care and control of the authorities for most aspects of their daily lives. In such contexts, failing to protect persons deprived of liberty from a serious disease as a result of a lack of precaution or due diligence may amount to ill-treatment or even torture.<sup>3</sup>

National Preventive Mechanisms (NPMs),<sup>4</sup> which under the UN Optional Protocol to the Convention against Torture (OPCAT) have the mandate to monitor all places of deprivation of liberty, play an especially crucial role in ensuring the humane treatment of any person deprived of their liberty and in preventing torture and other ill-treatment in this context. The ongoing pandemic raises new challenges for NPMs with respect to their monitoring functions, as access to detention facilities has been severely restricted in almost all OSCE participating States. Likewise, the risk of infection for the monitors themselves, as well as individuals deprived of their liberty and staff, has reached unprecedented levels. NPMs have been forced to adapt their working methods and approaches, and a vast majority of them have resorted to “remote” monitoring.

The present circumstances, and the responses of some state authorities (confinement, curfew, additional restrictions for persons deprived of liberty, etc.), make the role of NPMs in preventing torture and other ill-treatment and protecting those deprived of liberty both more pressing and more difficult. This guidance aims to provide practical guidance on how NPMs can continue their monitoring functions in order to address these challenges. It is informed by research and consultations with over forty NPMs from across OSCE region and beyond.<sup>5</sup>

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1 For more information about COVID-19, the disease caused by the novel coronavirus, and the pandemic, see the World Health Organization (WHO) resources at <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>>.

2 UN Subcommittee for the Prevention of Torture (SPT), '**Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic**' (hereafter SPT, Advice to States and NPMs), 25 March 2020, para. 7.

3 See e.g. UN Special Rapporteur on torture and other cruel inhuman or degrading treatment, 'Interim report', **A/68/295**, 9 August 2013, para. 50; or OHCHR COVID-19 Dispatch – Number 2 at <[https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch\\_2\\_PlacesofDetention.pdf](https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf)>.

4 See United Nations, Optional Protocol to the Convention Against Torture (hereafter OPCAT), 2006, Art. 3; OHCHR, '**Preventing torture: the role of National Preventive Mechanisms – A practical guide**', Professional training series, No. 21, 2018; APT, '**National Preventive Mechanisms**'.

5 APT and ODIHR have collected the NPM practices presented in this document through webinars and online discussions with NPMs from the OSCE and all other regions of the world from 24 March to 15 May 2020.

## II. THE ROLE OF NPMS DURING THE COVID-19 PANDEMIC

### A. NPM MANDATE

The OPCAT mandates NPMs to visit all places of deprivation of liberty regularly, in order to prevent torture and other ill-treatment.<sup>6</sup> As per the OPCAT definition, 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”.<sup>7</sup> In its articles 19 and 20, the OPCAT outlines the mandate and powers of NPMs, which include access to all information concerning deprivation of liberty, unrestricted access to all places of deprivation of liberty for unannounced visits and access to any individual deprived of liberty for private interviews.<sup>8</sup>

This core mandate gains even more relevance in the context of a global health crisis. With widespread challenges and a greater need to protect the health, safety and human dignity of everyone deprived of liberty around the world, and the imposition of unprecedented restrictions on the freedom of movement and personal liberties of millions of people (sometimes amounting to deprivation of liberty if a person is not permitted to leave that public or private custodial setting), independent monitoring is more important than ever. Many participating States have enacted states of emergency, curtailing a range of human rights and fundamental freedoms during the

pandemic. However, the prohibition against torture and the obligation to prevent such acts is absolute and non-derogable, meaning that “the prohibition of torture, cruel inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies which threaten the life of the nation.”<sup>9</sup>

The OPCAT does not permit any restrictions to be imposed on NPMs’ visiting mandates.<sup>10</sup> The World Health Organization (WHO) has stressed the importance of independent monitoring and oversight in prisons and other places of detention in their interim guidance to states on COVID-19 and detention.<sup>11</sup> Decisions to undertake or suspend visits to places of deprivation of liberty fall within the prerogatives of NPMs themselves, and not of national, or subnational, authorities. As demonstrated by the examples below, safeguarding the integrity of their mandate is crucial for NPMs that have decided to suspend their in-person visits, to ensure that they retain full discretion over their resumption, as well as to prevent setting precedents that may prove harmful for their independence.

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6 OPCAT, 2006, Art. 1.

7 OPCAT, Art. 4.2.

8 OPCAT, Art. 19, 20.

9 SPT, Advice to States and NPMs quoting: UNCAT, Article 2(2) and ICCPR, Articles 4 and 7; see also OHCHR ‘**Guidance on Emergency Measures and COVID-19**’, 27 April 2020 and OSCE commitments e.g. Copenhagen, 16.3

10 The OPCAT clause contemplating the possibility of temporary restrictions to monitoring visits, under very exceptional circumstances, applies exclusively to the mandate of the UN Subcommittee on Prevention, and not to NPMs. OPCAT, Art. 14(2): “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. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.” This clause appears under Part III, “Mandate of the Subcommittee on Prevention,” of the Convention.

11 “The COVID-19 outbreak must not be used as a justification for objecting to external inspection of prisons and other places of detention by independent international or national bodies whose mandate is to prevent torture and other cruel, inhuman or degrading treatment or punishment [...]. Even in the circumstances of the COVID-19 outbreak, bodies of inspection in the above sense should have access to all people deprived of their liberty in prisons and other places of detention, including to persons in isolation, in accordance with the provisions of the respective body’s mandate”. In World Health Organization, **Interim Guidance – Preparedness, prevention and control of COVID-19 in prisons and other places of detention** (hereafter WHO, Interim Guidance), 15 March 2020, Section 3 Planning Principles and Human Rights Considerations.

## CURRENT PRACTICE – TAKING STEPS TO SAFEGUARD MANDATES

**Legally challenging mandate restrictions** – In New Zealand, the NPM questioned the authority of detention agencies to suspend all visits to places of deprivation of liberty, including statutory visitors like NPMs. The Human Rights Commission – which acts as the Central NPM – identified that such a measure is inconsistent with OPCAT, domestic legislation and constitutional conventions. “We wanted to push back against such measures immediately, in order to maintain the possibility to visit, if it was safe and appropriate for us to do so.”

**Recognized as “essential workers”** – In South Africa, there is a Presidential order forbidding all visits to prisons – including for the NPM. The NPM has worked to have their members and staff recognized as “essential workers”. They have received accreditation to that effect, which allows them to carry out some monitoring work despite curfew and restrictions of movement (e.g., roadblocks). In Cape Verde, the NPM has made a similar request for accreditation to safeguard its visiting privileges.

## B. EXPLORING THE BROAD SCOPE OF THE NPM MANDATE

The COVID-19 pandemic sheds light on the full spectrum of roles NPMs play in preventing torture and ill-treatment. While visits to places of detention are often the most visible aspect of the NPMs’ monitoring mandates, they represent but a fraction of NPMs’ work.<sup>12</sup> Information gathering, analysis (including triangulation), interviews, dialogue with the authorities, comments and recommendations on legislation and policy, play an important part in thorough and effective monitoring.<sup>13</sup>

Thanks to their combination of in-depth knowledge and understanding of all types of places of deprivation of liberty, their constructive dialogue with relevant authorities and independent scrutiny, NPMs are uniquely placed to contribute to the discussion on how to address the current situation from a preventive perspective. In several countries, NPMs have engaged early and proactively with authorities to request information, offer support and explore possible solutions in collaboration. In Armenia, the NPM immediately translated the guidance of the UN Subcommittee on the Prevention of Torture related

to COVID-19 into Armenian and sent it to the relevant authorities, including the Supreme Judicial Council, the Prosecutor General’s Office and the Ministries of Justice and Health, in order to inform the government’s actions according to these standards. In some contexts, NPMs are involved in crisis management and response. In Italy, the President of the NPM is part of the Ministry of Justice’s task force on detention and COVID-19, with the authorities recognizing the key role of NPMs in a crisis of this nature.

Faced with challenges in accessing places of deprivation of liberty, NPMs should strengthen their role as advocates for transparency and accountability, by publishing and disseminating data that they gather through their monitoring. NPMs disclose information both to the public at large and to the families of those deprived of liberty. In Brazil, for example, the Local Preventive Mechanism of the State of Rio de Janeiro publishes weekly monitoring reports consolidating all the information gathered through their remote monitoring activities, including health and sanitary conditions, preventive measures adopted by detention authorities, and COVID-19 cases and deaths inside places of detention.<sup>14</sup> In Italy, the NPM publishes an online bulletin on an almost daily basis.<sup>15</sup>

12 See OPCAT, Art. 19, for the large scope of the NPM mandate.

13 For detailed guidance on monitoring, see APT, *Monitoring Places of detention: A Practical Guide*, 2004.

14 See, Mecanismo Estadual de Prevenção e Combate à Tortura do Rio de Janeiro, ‘*Relatório Parcial sobre os impactos do COVID-19 no Sistema Prisional do Rio de Janeiro [Monitoring reports on the impacts of COVID-19 on the Prison system of Rio de Janeiro]*’, 03 May 2020.

15 Italian NPM, ‘*Il Garante Nazionale Nei Giorni Dell’emergenza Covid-19*, [The national authority for the rights of persons deprived of liberty in the days of the COVID-19 emergency].

The pandemic also sets the stage for the NPMs to engage constructively with relevant authorities and influence law and policy on systemic issues that NPMs have been raising for years, such as overcrowding and alternatives to detention, or the excessive use of pre-trial detention. The COVID-19 crisis has brought to light the fact that some conditions of detention (e.g., overcrowding, access to hygiene products and facilities) represent

an unacceptable obstacle to public health and need to be urgently addressed. Therefore, the recognition of the need to address these issues and the reduced number of *on-site* visits could represent an opportunity for NPMs to focus their attention and efforts on advocacy, promoting legislative, administrative and judicial measures that could contribute to reducing overcrowding and pre-trial detention.

### **CURRENT PRACTICE – COLLABORATING TOWARDS COMMON OBJECTIVES**

In France, the NPM, together with the National Human Rights Institution (NHRI) and the ombuds institution, publicly requested the Ministry of Justice to reduce the prison population and lessen overcrowding.<sup>16</sup> The French Union of Penitentiary Directors issued a similar call, asking that the authorities make good on their commitment to have only one detainee per cell.<sup>17</sup>

In Italy, the NPM has been in close contact with penitentiary workers, volunteers operating in prison and a network of local oversight institutions.<sup>18</sup> Together they identified common objectives and presented some co-ordinated recommendations to the authorities.

In Honduras, the NPM advocated for the enactment of legislation aimed at reducing the number of pre-trial detainees. The law approved by the National Congress determines that individuals with pre-existing chronic diseases who belong to a risk group should have their detention revoked and replaced with a less severe non-custodial measure. Furthermore, the NPM worked with a team of medical doctors to identify detainees who fit that criteria and present a list of names to the Penitentiary Department and the competent court to enable their release.

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16 Le Monde, Op-ed 'Coronavirus : « **Sauvegardons les droits fondamentaux pendant la crise sanitaire** » [Protecting fundamental freedoms during the health crisis], 20 March 2020.

17 Ouest France, '**Coronavirus. Les directeurs de prison appellent à faire de l'encellulement individuel une priorité**' [Prison directors call for making individual cells a priority], 20 April 2020.

18 The network is composed of regional, provincial and municipal guarantors for the rights of persons deprived of liberty, co-ordinated by the NPM.

## CURRENT PRACTICE – ADDRESSING ABUSIVE USE OF IMMIGRATION DETENTION

Without any prospect of removal/deportation, the administrative detention of migrants solely on the grounds of immigration status cannot be justified.<sup>19</sup> Under international human rights law, immigration detention can only be lawful so long as returns/deportations are feasible and can indeed take place. In the present situation, this prospect is clearly absent. Public health cannot be used as a pretext to detain migrants without a valid legal basis. The Council of Europe Commissioner for Human Rights has called on member states to “review the situation of rejected asylum seekers and irregular migrants in immigration detention, and to release them to the maximum extent possible”.<sup>20</sup>

In France, for example, the NPM had recommended the temporary closure of administrative detention centres in light of the sanitary situation and the absence of deportation prospects.<sup>21</sup> In Spain, the ombuds institution called for the government to release those detained in immigration detention centres, putting forward similar arguments.<sup>22</sup> In the United Kingdom, Detention Action, a civil society organization (CSO) primarily working on issues of migration detention, challenged the legality of the administrative detention of migrants. While the court eventually ruled in favour of the government, this litigation contributed to positive measures to reduce the number of people detained and a review of all migration detentions.<sup>23</sup>

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- 19 For specific guidance on migration detention, see for example: the UN Inter-Agency Standing Committee, *Interim Guidance – COVID-19 Focus on Persons Deprived of Liberty* (hereafter IASC, Interim Guidance), p. 3; and the European Union Agency for Fundamental Rights and Council of Europe, ‘**Fundamental rights of refugees, asylum applicants and migrants at the European borders**’ 2020. For further reading, see PICUM, **COVID-19 Statement**, March 2020; IOM – UNHCR – OHCHR – **Joint Statement**, 31 March 2020; Amnesty International, ‘**Americas: release migrants and asylum-seekers from detention during covid-19 pandemic**’; Human Rights Watch, ‘**Europe: Curb Immigration Detention Amid Pandemic**’, 27 March 2020.
- 20 Council of Europe Commissioner for Human Rights, ‘**Commissioner calls for release of immigration detainees while Covid-19 crisis continues**’, 26 March 2020.
- 21 CGLPL, ‘**COVID-19 : le CGLPL s’est rendu dans les centres de rétention administrative de Paris-Vincennes et du Mesnil-Amelot**, [‘**The NPM visits administrative detention centers of Paris-Vincennes and Mesnil-Amelot**’]’, 17 April 2020.
- 22 See El Diario, ‘**El Defensor del Pueblo pide al Gobierno liberar a los inmigrantes de los CIE ante su imposible deportación por el coronavirus**’, [‘**The Ombudsman calls on the government to release immigrants in detention in light of the impossibility of deportations during the coronavirus**’], 19 March 2020.
- 23 See Detention Action, ‘**Over 350 Released From Immigration Detention And All Cases To Be Urgently Reviewed**’, 26 March 2020.



### III. MONITORING DURING COVID-19: METHODOLOGICAL CONSIDERATIONS FOR NPMS

As NPM members are impacted by the restrictive measures for the general population (such as physical distancing and restrictions of movement, as well as the lockdown of places of deprivation of liberty), they face challenges in implementing their regular visiting mandate. The question is not only whether to visit or not to visit, but also *how* to continue fulfilling their monitoring mandate, requiring new ways of combining remote monitoring with adapted methodology for on-site visits. NPMS have to adapt their working means and methods – from modifying practices relating to the collection and triangulation<sup>24</sup> of relevant, available information, to maintaining open lines of communication with persons deprived of liberty, and reviewing their internal working methods and protocols for visits.

#### A. CONSIDERATIONS FOR MAINTAINING ON-SITE MONITORING

The visiting activities of all NPMS in the OSCE region and beyond have been affected in one form or another by the current global health emergency. Aside from facing risks of infection when conducting monitoring visits, members of NPMS, like any ‘outsiders’, can also be vectors of transmission and therefore bring the virus into a place of deprivation of liberty. NPMS around the world have adopted a variety of responses to these challenges. These range from the continuation of all monitoring activities, including preventive visits (using adequate personal protective equipment (PPE), to the total suspension of visits and a reconsideration of monitoring methodologies.

At all times, NPMS are guided by the principle of ‘*do no harm*’. They are conscious that in effectively fulfilling their mandates and duties to protect those deprived of liberty, it is necessary to take all possible measures to avoid causing harm. This is particularly true when dealing with people in situations of vulnerability, for example older people and/or those who are immunocompromised or suffer from chronic conditions.<sup>25</sup> For NPMS, the principle of ‘*do no harm*’ also extends to those working in places of deprivation of liberty, as well as to NPM members and staff.<sup>26</sup> One of the first actions taken by the NPM of Kyrgyzstan was to help allocate donated protective suits, respirators, glasses and gloves to their staff.

In its Statement of Principles, the European Committee for the Prevention of Torture (CPT) has restated that monitoring mechanisms “remain essential safeguards” against torture and other ill-treatment.<sup>27</sup> The SPT also encouraged NPMS to continue their visiting activities, stating that “NPMS should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken”.<sup>28</sup> Both the SPT and the CPT have identified the ‘*do no harm*’ principle as the guiding maxim for NPMS to consider when assessing their monitoring mandate in the present situation.

Some NPMS have decided to continue conducting visits, but are reviewing and adapting their methodology and making use of PPE (see Section III. C). In certain contexts, NPMS have undertaken such visits in response to urgent issues arising from the current circumstances.

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24 For more guidance on triangulation methodology, see APT, *Monitoring Police Custody, A practical guide*, 2013, p. 34.

25 European Committee of the Prevention of Torture (CPT), ‘**Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic**’ (hereafter CPT, Statement of Principles), 20 March 2020, principle 10.

26 SPT, Advice to States and NPMS, para. 4.

27 CPT, Statement of principles, principle 10.

28 SPT, Advice to States and NPMS, para. 7.

## CURRENT PRACTICE – ON-SITE VISITS TO ADDRESS EXCEPTIONAL RISKS AND CHALLENGES

In Italy, the NPM found it necessary to conduct visits during and after widespread riots in prisons.<sup>29</sup>

In the United Kingdom, HM Inspectorate of Prisons developed a new approach, involving short scrutiny visits (one-day duration) carried out by a smaller delegation (two or three inspectors) to prisons and other places of deprivation of liberty. Such visits focus on issues essential to the safety, care and basic rights of those detained in the current circumstances.<sup>30</sup>

In Kazakhstan, the NPM was involved in the development of a plan with the Prosecutor General's Office, the Ministry of Interior, and CSOs for "special visits" during the lockdown to penitentiary facilities. This allowed the NPM to maintain preventive visits to selected places of detention in maximum compliance with sanitary and epidemiological requirements of the authorities.

In Chile, while the NHRI had initially decided to suspend visits, it nevertheless proceeded to respond to urgent issues, such as riots and escape attempts, by carrying out some targeted visits. During these visits, the Chilean NHRI called on the authorities to address inadequate treatment and conditions within pre-trial detention facilities. Following the NHRI's interventions, several detention centres carried out COVID-19 testing campaigns, improved hygiene and sanitary measures, and the authorities agreed to commute the sentences of 1,500 detainees to reduce overcrowding.

In Bolivia, during the early stages of the health emergency, the NPM carried out a preventive visit to a detention centre in La Paz where women are detained with their young children, in order to monitor health protocols and recommend appropriate health and hygiene measures. The NPM also distributed PPE and hygiene products to the women and their children, as the authorities were unable to carry out such distributions.

In the vast majority of contexts, NPMs have suspended visits completely or in part – in line with the 'do no harm' principle – because they were unable to take sufficient precautionary measures to guarantee the health and safety of both the people they would encounter in places of deprivation of liberty and their own. The inability to take precautionary measures can be connected with a lack of adequate and/or sufficient PPE, as well as the conditions within the place of deprivation of liberty, which make social distancing guidelines and/or hand hygiene unfeasible.

Some monitoring bodies have decided to suspend full preventive visits but maintain individual private interviews with persons deprived of liberty. This allows for reduced exposure to infection of NPM members and detainees, while still allowing for the collection of specific and general information on the place of deprivation of liberty in question. In Georgia, the ombuds institution, in its function as the NPM, has maintained this type of visit throughout the crisis.

In the Australian state of New South Wales, the oversight body has conducted a virtual inspection of a correctional centre. The inspection process had been planned

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29 Italian NPM, '**Forte preoccupazione del Garante nazionale per le gravi violenze negli Istituti. Impegno per garantire informazione corretta sui provvedimenti adottati**' [Strong concerns of the national authority for the rights of persons deprived of liberty regarding serious violence in detention facilities. Commitment to ensure correct information on the measures taken], 9 March 2020.

30 See HM Inspectorate of Prisons, '**COVID-19 Updates**', and, the United Kingdom NPM, '**The UK National Preventive Mechanism – preventing ill-treatment in the context of COVID-19**', April 2020.

independently of COVID-19 and the oversight body had conducted a pre-inspection visit to the centre prior to the adoption of restrictive measures. The virtual inspection enabled confidential interviews with staff and prisoners to proceed during the week scheduled for the on-site inspection, with video footage and photos supplied to the inspection team in lieu of on-site observation. This exercise showed it is possible for some inspection work to continue during the COVID-19 pandemic,

albeit on a case-by-case basis depending on the size, security classification and complexity of any given correctional centre. In the United Kingdom, some NPM members have been able to monitor some aspects of police custody through videoconference technologies. In Kazakhstan, the NPM branch of East Kazakhstan and CSO partners held an online meeting with imprisoned people at a very early stage of the pandemic.

### **CURRENT PRACTICE – RATIONALE FOR CONTINUING OR SUSPENDING VISITS**

In deciding whether to continue or suspend visits to places of deprivation of liberty, NPMs have to weigh up a variety of factors. In Sweden, for example, when deciding how to conduct a visit, the NPM considers in particular:

- (1) the authorities' advice to avoid unessential travel between regions (in particular from the capital region);
- (2) ethical and health considerations of exposing persons deprived of liberty, staff and NPM members to additional risk, in particular for at-risk groups in detention who may not be able to avoid contact with monitors; and
- (3) priorities and resource allocation, considering the consequences of COVID-19 for persons deprived of their liberty.

## **B. REMOTE MONITORING**

As mentioned above, monitoring activities extend far beyond visits to places of deprivation of liberty. This section covers considerations for remote monitoring relevant both to situations in which NPMs wish to complement on-site visits and to those in which NPMs have decided to carry out remote activities.

One key aspect of on-site visits to places of deprivation of liberty is the collection of first-hand information from persons deprived of liberty, as well as from the relevant authorities. Access to information is a cornerstone of the NPMs' work, and NPMs should have unrestricted access to all

kinds of information, including medical files (anonymised as necessary).<sup>31</sup> Many NPMs have found alternative means and methods of gaining access to such information, which include first and second hand information.<sup>32</sup>

Following the '*do no harm*' principle, the use of electronic means to collect and process information, must be accompanied by additional data protection considerations. In fact, all processing of personal data, be it online or off, is subject to regulations and must respect the human rights, including data subjects' right to privacy.<sup>33</sup>

31 For more information on prisoner file management and access to information of external monitors according to the Mandela Rules, see **ODIHR/PRI Guidance Document on the Nelson Mandela Rules**, 2018, Chapters 1 and 7.

32 The impossibility of conducting personal visits limits the monitoring experience, as monitors are unable to make use of their senses, to touch, hear, smell, exchange looks and get a sense of the life in the place of deprivation of liberty. Such limitations should be recognized when conducting remote monitoring activities.

33 See, European Union, General Data Protection Regulation (GDPR), **EU 2016/679**, April 2016.

## **1. ADAPTED MEANS AND METHODS OF GATHERING FIRST-HAND INFORMATION**

First-hand information from within places of deprivation of liberty is a highly valuable resource for NPMs. Without physical access, collecting such information presents new challenges, which many NPMs have addressed with creativity.

In some cases, where NPMs have been unable to contact detainees themselves, they have made themselves available for direct contact, through telephone hotlines, e-mail, physical mail, and even social media. For

example, the Victoria ombuds institution (Australia) has set up a hotline for detainees to leave messages that are processed on the same day. Informational posters have been disseminated inside prisons and youth detention facilities to explain the new arrangements. These are important means of communication for persons deprived of liberty and at the same time an invaluable source of information for monitoring bodies. However, NPMs must be aware that the most proactive and outspoken individuals are those who reach out to them. In implementing its preventive mandate, the NPMs need to find alternative or additional ways of reaching the most silent and probably the most vulnerable people.

### **CURRENT PRACTICE – REMOTE INFORMATION COLLECTION DIRECTLY FROM THOSE DEPRIVED OF LIBERTY**

The Kazakh NPM reached an agreement with the Ministry of Interior and the Prosecutor General's Office to use video or telephone communications with detainees. Since the beginning of the COVID-19 pandemic and the health measures necessitated by it, the NPM has established a practice of interviewing people within the penitentiary system and other places of detention online. Also in Kazakhstan, the Union of Crisis Centres (which runs the #150 hotline for the domestic violence victims in the country) agreed with the Coalition against Torture to distribute this hotline number in all closed facilities. Detainees are able to call this line to inform Coalition lawyers about any violations of their rights and also to receive legal consultation.

In Georgia, the NPM has undertaken electronic monitoring of quarantine centres in creative ways. For instance, members of the NPM have joined closed Facebook groups for people quarantined in such centres (with the consent of the group members). This allows the NPM to access information about conditions and treatment shared by people held in the centres, including through live video broadcasting. The NPM has been able to identify and follow up with quarantined individuals in some cases.

In Lithuania, the Seimas Ombudsperson has started monitoring social care homes through social media. The Human Rights Division of the Seimas Ombudsperson's Office launched a private Facebook group named "Quarantine in social care institutions", where they collect information on conditions, good practices, challenges and experiences within those institutions in relation to the COVID-19 pandemic.

In Ireland, the Office of Inspector of Prisons (OiP) issued a special writing journal to 88 prisoners across several prisons. Prisoners who were/are under protective health measures by the Irish Prison Service were selected to take part in order to report their experiences of this period. The journals were left with the prisoners for 14 days with the aid of Irish Red Cross volunteers in each of the prisons involved.

In Paraguay, the NPM receives direct complaints from detainees through a telephone hotline. In addition, the NPM responded to a request from detainees to facilitate a videoconference meeting between them and a wide range of authorities – including judges, public defenders, public prosecutors and members of the Ministry of Justice. Following this meeting, a task force will be set up to address overcrowding in places of deprivation of liberty.

NPMs can consider establishing direct (remote) contact with individuals deprived of liberty through remote interviews. These should be subjected to the same principles as on-site interviews.<sup>34</sup> However, NPMs have to be aware of and weigh the risks for interviewees, as anonymity and protection are difficult if not impossible to maintain, increasing the risk of reprisals. Unlike onsite visits, the main challenge for NPMs in this case is the fact that contact with interviewees will likely need to be established by staff.

Distance and the use of communication technologies present additional challenges that need to be taken into account. Detainees must be granted a closed and secure area for such communication, without the presence of staff or others, to safeguard the privacy and confidentiality of the information exchanged. Monitors should be conscious of the risk that the conversation can be recorded, openly or covertly. Remote communication is likely to render trust and rapport building more difficult. In some places of deprivation of liberty with less restrictive regimes, such as elderly homes or drug rehabilitation centres, it may be easier for NPMs to establish direct remote contact with residents.

Approaching former detainees, in particular people who were previously detained in isolation or quarantine areas, either in prison settings or quarantine facilities, is an effective way of gathering information from those with first-hand experience. This can allow monitors to identify how isolation or quarantine was implemented and the procedures and safeguards in place.

Particularly in rapidly evolving situations, establishing and/or strengthening channels of communication with relevant authorities will strengthen NPMs' information-gathering abilities. Many NPMs have done this during the COVID-19 pandemic, sometimes on a daily basis as in Albania and Romania. In Portugal, the NPM strengthened information channels with authorities, reaching an agreement to share new orders for prison administrations with the NPM immediately. In the United Kingdom, the NPM was granted online access to the police tracking system and is now monitoring police custody remotely. In addition, establishing channels of communication with health professionals working in places of deprivation of liberty helps NPMs to better understand the conditions there and, thus, can assist in monitoring activities.

NPMs can recommend that administrations, secretariats, ministries, and authorities in charge of places of deprivation of liberty designate a dedicated contact person or focal point to be in regular communication with the NPM. The focal point can provide periodically updated information on the functioning of the place of deprivation of liberty, conditions within, health reports and detected cases. For example, in Hungary, the NPM requested the authorities to designate a contact person who would be available at short notice, and provide information about the setting up of new and temporary places of detention.

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34 See '4.4. Interviews with persons deprived of their liberty' in APT, *Monitoring Places of detention: A Practical Guide*, 2004.

## CURRENT PRACTICE – REMOTE MONITORING BY OBTAINING ACCESS TO FILES AND DOCUMENTS

Part of an NPM's regular monitoring activities is to request detailed information and documentation from relevant authorities or prison administrations, as their mandate permits.<sup>35</sup> Since the outbreak of COVID-19, some NPMs and oversight bodies have requested access to such information remotely. The quantity and quality of the available information will depend on the authorities' information-gathering practices and file/registration systems. Such information can include statistical data on arrests, arrest and detention records, prisoner file systems, occupancy rates and number of detainees per cell, policies and measures to prevent the spread of the virus, adapted and updated standard operating procedures, data on the use of force, on disciplinary sanctions, self-harm, suspected cases of ill-treatment and medical records (anonymised).<sup>36</sup>

In Brazil, the NPM requests information about infections and deaths inside the penitentiaries, as well as preventive health and sanitary measures being taken, from the prison administration.

In order to adapt to the lack of physical access, an organization monitoring mental health facilities and health services in prisons (justice health facilities) in Australian New South Wales conducted remote visits. By obtaining remote access to relevant documents and looking at individual files, registers, interviews with the detaining authorities, it was able to conduct a large part of its traditional physical monitoring activities, remotely. Monitors complemented these measures with more regular meetings with relevant authorities.

## 2. CREATIVE WAYS OF GATHERING SECOND-HAND INFORMATION

It may prove impossible to gather sufficient first-hand information for several reasons at present. While triangulating information received first-hand with other (secondary) sources is part of the NPMs' usual working methodology, the current challenges may require a heavier reliance on second-hand information and adapted triangulation methodology.

**Potential sources of information:** The families and relatives of those deprived of liberty are an important source for NPMs to turn to in their information-gathering efforts. During the COVID-19 pandemic, NPMs around the world have intensified their contact with families and relatives of persons deprived of liberty, including by establishing communication through social media networks and apps. However, because families have

also been directly affected by the restrictive measures in place, they have often, themselves, been unable to meet their detained relatives in person. NHRIs and ombuds institutions, as well as CSOs and human rights defenders' networks can be important sources of additional relevant information for NPMs on individual cases of ill-treatment or torture, in particular, which may help to inform the analysis of the overall situation. NPMs are also encouraged to strengthen and intensify their communication and information exchange with unions of staff working in places of deprivation of liberty and associations of families.<sup>37</sup>

Others such as lawyers, professors and social workers may have maintained open communication with, and even had physical access to, persons deprived of liberty. They may therefore constitute valuable sources of additional information. It is not uncommon for lawyers to conduct some 'indirect monitoring' when visiting their clients

35 OPCAT, Art. 20(a) and (b), and relevant national legislation.

36 For prison file systems, see Mandela Rules, chapters 7-10.

37 Audrey Olivier-Muralt, 'What Does Prison Monitoring and Oversight Mean in Times of COVID-19?' in ICPA Expert Network on External Prison Oversight and Human Rights, *Adapting To COVID-19, Prison Oversight and Monitoring During a Pandemic*, Special Issue 20 April 2020, p. 30.

deprived of liberty (whether police custody, pre-trial detention and administrative detention, or prison).<sup>38</sup> As mentioned above, interviews with recently released (including temporarily released) detainees may also

provide useful information. To that end, NPMs can request information from competent authorities about people recently released.

### **CURRENT PRACTICE – REMOTE MONITORING THROUGH INFORMATION COLLECTION BY NHRIS AND OMBUDS INSTITUTIONS**

Through the collection and processing of individual complaints, including in detention contexts, ombuds institutions and NHRIs may be able to provide an insightful analysis of the situation to assist NPMs in fulfilling their monitoring mandate.

In Portugal, where the NHRI performs the role of both NPM and ombudsperson (with some staff working across mandates), intra-institutional co-operation and exchange of information has been strengthened during this health emergency. As part of its remote monitoring activities, the NPM is able to update its knowledge on the situation in places of deprivation of liberty by consulting the individual complaints received by the ombuds' complaints department. The NPM has also strengthened its contacts with CSOs in contact with families of individuals deprived of their liberty.

In Italy, where the NPM was created as a new specialised institution, close co-operation with the Italian ombuds network, as well as with CSOs that have regular contact with individuals deprived of liberty and their families across the country, has also proved useful.

## **C. ON-SITE VISITS TO PLACES OF DEPRIVATION OF LIBERTY**

In its advice to NPMs, the SPT stated, "it is incumbent on NPMs to devise methods of fulfilling their preventive mandate in relation to places of deprivation of liberty which minimise the need for social contact but which nevertheless offer effective opportunities for preventive engagement".<sup>39</sup> This section aims to assist NPMs in this task by providing practical guidance on carrying out on-site monitoring visits to places of deprivation of liberty during the pandemic.<sup>40</sup> This is not an exhaustive

step-by-step guide to visiting, and should be read in conjunction with other relevant guidance documents.<sup>41</sup>

### **1. PREPARING FOR AN ON-SITE VISIT TO A PLACE OF DEPRIVATION OF LIBERTY**

The COVID-19 pandemic demands an adjustment of the methodology and logistics of visits to ensure that all health and hygiene precautions are in place in order not to expose the members of the monitoring team, persons deprived of their liberty, or staff to potential contamination. It is important to note that the circumstances may *de facto* prevent NPMs from carrying out unannounced

38 See DIGNITY and PCATI, *Documenting Torture While Providing Legal Aid: A Handbook for Lawyers*, June 2016.

39 SPT Advice to States and NPM, para. 12.

40 See, ICRC, "**COVID-19: Preparedness and Response in Detention**", 07 April 2020. See also, HM Inspectorate of Prisons, '**Health and safety guidance for short scrutiny visits during the COVID-19 outbreak**' (hereafter HMI Prisons, 'Health and safety guidance'), 20 April 2020.

41 See, APT, *Monitoring Places of detention: A Practical Guide*, 2004; APT, *Monitoring Police Custody, A practical guide*, 2013; ICRC, "COVID-19: Preparedness and Response in Detention"; WHO, Interim Guidance, and "Prevention and control of COVID-19 in prisons and other places of detention".

visits, or at least reduce the ‘surprise’ effect of some visits, as the monitoring team may have to contact relevant authorities in advance.

Monitoring bodies should therefore consider taking the following preparatory steps:

**a. Gather as much information as possible**

about the place to be visited, how it is affected by the virus and the restrictive measures in place. Seek information from a variety of sources, notably relevant authorities (including the management of places of deprivation of liberty to be monitored, relevant government departments and provisional committees for emergency or crisis management), staff (including healthcare staff), families, lawyers, CSOs, the press and social media.<sup>42</sup>

**b. Seek the advice and expertise of medical professionals,**

as their involvement can be essential to ensure both adequate monitoring, and the health and safety of the visiting team. Consulting an infectious disease and epidemiology specialist will help NPM members to understand better the risks of infection, and the necessary precautionary measure before, during and after the visit, and to develop a tailored and individualized oversight protocol. The NPM should also consider including a health specialist on the visiting team, in particular if the objectives of the visits are related to health and safety.<sup>43</sup>

**c. Determine which places of deprivation of liberty to prioritize,**

giving consideration to existing situations of vulnerability, new risks that the pandemic generates for the health, physical and psychological integrity of persons deprived

of liberty, as well as the impact of preventive health measures on fundamental rights and guarantees. These include the absolute prohibition against torture and other ill-treatment as well as the different impacts those measures may have on women and men, children, LGBTI people, elderly people or those belonging to a minority population. The NPM team should consider the impact of the virus, as well as of preventive measures and restrictions on places such as psychiatric institutions, immigration detention centres, and elderly and social care homes,<sup>44</sup> to decide which facilities to prioritize in its programme of visits. NPMs should also consider visiting temporary quarantine facilities,<sup>45</sup> as well as people confined at home in situations of particular vulnerability.

**d. Define the specific objectives of the visit,**

based on the information collected and the specific risks identified. The objectives of the visit should cover a number of issues, both related and unrelated to the current epidemiological situation. Indeed, some of the shortcomings regarding treatment and conditions of those deprived of liberty will have little to do with COVID-19, and must continue to be monitored. Other aspects such as the implementation of preventive measures and healthcare become particularly relevant (see section III).

**e. Acquire hand sanitiser and adequate personal protective equipment (PPE),**

in line with the general recommendation and guidelines of the World Health Organization and other relevant medical guidance.<sup>46</sup> Train monitors on how to safely use and dispose of such equipment. Depending on the methodology and objectives of the visit, the use of PPE may not be

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42 SPT, Advice to States and NPMs, para.13.7.

43 NPMs may consider reaching out to international organizations such as the International Committee of the Red Cross (ICRC), or Doctors Without Borders (MSF) for medical advice; see also APT, ‘**Treatment and detention regime of detainees suffering from tuberculosis**’ (hereafter APT, TB paper), May 2019, page 8.

44 While elderly and social care homes may be considered a priority due to the residents’ particular vulnerability to the virus; that same vulnerability is important to carefully consider in the do no harm analysis. Due to the particular vulnerability of such groups of people, NPMs may decide to privilege remote monitoring over on-site visits.

45 SPT, Advice to States and NPMs, para. 10.5.

46 WHO, Interim Guidance.



necessary or only some basic equipment, and in some cases, it may not be advisable, such as disposable gloves.<sup>47</sup> PPE may include surgical masks, disposable gloves, full gown protection or medical vest, disposable shoe covers, and eye protection (such as face shield or goggles).<sup>48</sup>

- f. Undergo medical examination and remain under close medical attention** prior to visits. Monitors with any symptoms potentially associated with COVID-19, such as fever, dry cough, body aches, headache, loss of taste and smell, or tiredness,<sup>49</sup> must not participate in the visit and should seek COVID-19 testing, if deemed medically necessary.<sup>50</sup> As a regular practice, members of the visiting team should check their body temperature within the 24 hours before the visit to make sure no sign of fever goes unnoticed.<sup>51</sup>
- g. Provide briefings to everyone in the visiting team ahead of the visit** to give a clear understanding of the new procedures. All people involved in the visit need to follow the same precautionary and safety procedures (e.g., use of PPE, medical check-up, monitoring body temperature). This includes support staff such as drivers and interpreters.
- h. Consider reducing the size of the visiting team, and the duration of the visit** Due to the particular circumstances of the pandemic, the monitoring team should include fewer members than in a usual visit (consider two to three members maximum per visit). This will also facilitate the physical distancing measures among the visiting team. Having shorter visits can also reduce the risk of transmission.<sup>52</sup>

- i. Allow members of the monitoring body to opt-out from the visit**, on the basis of an individual assessment. Members of monitoring bodies who belong to at-risk groups (elderly, those with a chronic condition or immunodeficiency) should take particular precautions, including, if deemed necessary, by excluding themselves from such visits.<sup>53</sup>
- j. Carefully and meticulously clean and disinfect the vehicle used to transport the visiting team**, before and after the visit.

## 2. DURING THE VISIT

During the whole course of the visit, monitors should apply the basic precaution measures recommended by the WHO and respect the principle of physical distancing. In addition, monitors should carry hand sanitiser and use it regularly to disinfect their hands (or disinfect/change gloves if relevant) during the course of the visit.

### Use of personal protective equipment (PPE)

It is important that monitors consider the adequacy and necessity of wearing PPE for their own protection and that of others, while also taking into consideration the negative effect wearing PPE may have on the perception of the monitoring team and trust of the individuals they are visiting. Monitoring body members should adapt the use of PPE to the nature of the activities undertaken (e.g., no close contact, some close contact, individual interviews without the possibility of physical distancing). The use of PPE can in no way substitute necessary hand hygiene, and can carry the risk of providing a false sense of security for monitors. The NPMs' PPE protocols will depend on contextual factors as well, relating to the measures taken and practices adopted in the places of deprivation of liberty visited.

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47 Note that gloves are not generally recommended when conducting visits to places of deprivation of liberty. When wearing gloves, monitors may gain a false sense of security. If not used properly, gloves are likely to become vectors of infection rather than effective protection. Further, wearing gloves will likely negatively affect the perception of the monitors by persons deprived of liberty and staff.

48 WHO, Interim Guidance.

49 WHO, Interim Guidance, page 10.

50 ICRC, COVID-19: Preparedness and response in detention.

51 *Ibid.*

52 See HMI Guidance.

53 APT, TB paper, page 9.

If monitors find it appropriate to use PPE during individual interviews, it is recommended also to provide similar PPE (e.g., a clean and disinfected mask) to the interviewees to wear during the interview. NPM members must be aware that the use of facemasks and other PPE during interviews is likely to create an important psychosocial barrier that may be detrimental to the gathering of information and to fostering trust with the interviewee.<sup>54</sup> It is important that monitors take the time to explain the reason for such measures, in an effort to dispel negative perceptions. Some persons deprived of liberty and members of staff may not understand the need for such precautionary measures and may take offence to practices such as physical distancing and the refusal to take part in traditional greetings (such as shaking hands).

Throughout the visit, the monitoring team should make an effort to avoid, as much as possible, touching any surfaces as well as their face and hair, and respect strict hand hygiene rules.

### **Areas and premises to visit inside places of deprivation of liberty**

Due to the high level of risk of spreading the virus in closed and confined spaces, especially in overcrowded areas, monitoring bodies could decide, exceptionally, not to enter the wards, cells or dormitories. In these cases, visits would be restricted to premises such as the administration/office area, clinics and healthcare offices, and courtyards. Nevertheless, to enable some monitoring in the ward, cells and dormitories, the monitoring team could make use of video-recording technologies. Monitors can ask to access video footage and obtain access to the closed-circuit television control centre, if available.<sup>55</sup>

People placed in quarantine and isolation areas within detention facilities are in a particularly vulnerable situation as they already experience limited contact with the outside world, but also contact with other inmates and staff gets further curtailed. Thus, they are disproportionately affected by restricted access to their surroundings

outside the place of deprivation of liberty. These could therefore be prioritized by the visiting team as a key area for inspection. Particular precautions and PPE protocols may need to be observed when visiting areas of quarantine and/or isolation.

### **Interviews in places of deprivation of liberty**

If the monitoring team decides to conduct interviews, it is essential that the appropriate distance advised by health authorities be kept during the entire interview between each of the monitors, and with the person deprived of liberty or member of staff being interviewed. Especially during the pandemic, individual interviews should be favoured over group interviews.

In Georgia, the ombuds institution conducted private interviews in facilities in which the monitor could be separated from the detainee by a glass or acrylic barrier. Prior to the COVID-19 crisis, the authorities had been using these facilities for family visits (a practice that the NPM had condemned, for its placement of unnecessary barriers between detainees and their loved ones). It is important to ensure that the room and the set-up both guarantee privacy and confidentiality of the exchange of information and that the conversation is held out of hearing of officials or staff of the place of deprivation of liberty.

Another strategy to be considered could be to interview detainees in open-air areas, such as courtyards, which would allow for a safe distance to be maintained between the monitor and interviewee and reduce the potential for transmission.

If the NPM decides to carry out individual interviews, it needs to decide which criteria or strategies to apply for selecting interviewees. Different selection approaches may be adopted, such as *ad hoc* or spontaneous selection, pre-identification of individuals or groups of particular concern or random sampling. It may be of particular relevance to interview individuals who have spent time in isolation or quarantine because of their confirmed or suspected COVID-19 status, as they will be

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54 APT, TB paper.

55 APT/PRI, 'Video recording in police custody'.

able to provide a detailed account of all health and sanitary measures in place, as well as the implementation of safeguards to prevent torture or other ill-treatment.<sup>56</sup>

As they are likely to carry out fewer interviews, NPMs may have to increase their efforts in triangulating the information gathered through registers, records, files and other relevant documents. Registers and logs of material supplies, use of force, outings and disciplinary measures, can all give a picture of daily life in the place of deprivation of liberty. Monitors should also consult internal rules, operational protocols, contingency plans and any other documents that can help them better understand the functioning of the place of deprivation of liberty in these exceptional circumstances.

### **3. AFTER THE ON-SITE VISIT**

Monitoring does not end with the visit and, as such, some precautionary measures are necessary after the on-site visit is over. It is recommended that monitors participating in visits undergo regular medical examinations, paying particular attention to any symptoms indicating a COVID-19 infection.

After participating in a monitoring visit, NPM members may decide to place themselves in voluntary home quarantine for 14 days before conducting another visit to

rule out contamination.<sup>57</sup> This will likely affect the NPM's overall capacity to conduct on-site visits and should be taken into account in the overall planning, objective setting and prioritization of NPM activities.

The monitoring team must elaborate and adopt a procedure for the adequate decontamination and safe disposal of their PPE. All PPE used during a visit (e.g., masks, gloves, gowns and medical shoe covers) should be immediately discarded in an appropriate plastic bag after leaving the place of deprivation of liberty and before entering the vehicle. Anti-bacterial/disinfectant solutions and other cleansing products should be kept inside the vehicle so all monitors can clean their hands before getting inside the vehicle. If any piece of clothing was exposed during the visit, it should be cleaned and disinfected before entering the vehicle, with regular household detergent followed by disinfectant.<sup>58</sup>

### **4. REPORTS AND PUBLIC COMMUNICATION**

As this is an especially challenging time for transparency and access to information on the situation of individuals deprived of liberty, it may be of particular importance that NPMs make their findings public and disseminate the information gathered as widely as possible, also for those family members and relatives whose visits are suspended or restricted.

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56 For further information on interviewee selection, see APT, '**Briefing N°2 The Selection of Persons to Interview in the Context of Preventive Detention Monitoring**', April 2009.

57 See, HMI of Prisons, 'Health and safety guidance', para. 8: Frequency of Deployment.

58 WHO, Interim Guidance, page 20.

## IV. NEW RISKS AND CHALLENGES

The reality of deprivation of liberty contributes to heightened risks of contamination and spread of the virus during this public health emergency. Health in detention should follow the principle of equivalence of care. However, overcrowding, insufficient access to hygiene products and facilities, and healthcare provision and services that do not meet community standards, tend to create high-risk environments.<sup>59</sup> Individuals deprived of their liberty are also likely to be more vulnerable to the virus than the general population, due to the greater incidence of co-morbidities (e.g., diabetes, tuberculosis, immunodeficiency) and the generally reduced state of health among detainee populations.<sup>60</sup> Further, restrictions on visits and contact with the outside world place persons deprived of liberty in more vulnerable situations, increasing the risk of ill-treatment or constituting in itself cruel, inhuman or degrading treatment.<sup>61</sup>

The nexus of COVID-19 and deprivation of liberty has given rise to many considerations, risks, and challenges that NPMs must grapple with, including with respect to their monitoring activities. For analytical purposes, they are organized in three separate categories related to virus spread, new restrictions within places of deprivation of liberty and restrictive measures within broader society.

### A. PREVENTING CONTAMINATION IN PLACES OF DEPRIVATION OF LIBERTY: RISKS AND CHALLENGES

The health and sanitary conditions of persons deprived of liberty and of staff in places of deprivation of liberty are central to the monitoring activities of many NPMs in the OSCE region and around the world during the pandemic.

Monitoring health and hygiene conditions in order to save lives in places of detention requires an examination of the protocols and response plans authorities have implemented. This includes the authorities' own monitoring of the epidemiological situation in their facilities, the availability of hygiene products (e.g., PPE, soap) and equipment, as well as specific measures in place for the protection and care of people in vulnerable situations. Likewise, a focus on overcrowding and ensuring space for physical distancing is critical. It is key for NPMs to pay close attention to the situation of staff, who are under tremendous pressure and at high risk of contracting the virus making them potential transmitters of the disease.<sup>62</sup>

### 1. IMPLEMENTATION OF PROTECTION MEASURES AND PROTOCOLS

Monitoring bodies should check whether:

- a. Emergency operational and procedural regulations and protocols have been elaborated, including contingency plans, risk assessments and checklists.<sup>63</sup> These should all aim to protect those who work and live in places of deprivation of liberty from infection. All regulations and protocols should be human rights-compliant. There must be particular attention to whether the protocols address instances of physical contact and the use of force that involve touching and escorting persons deprived of liberty (e.g., breaking up fights, use of restraints, handcuffing, providing care) and how these measures can still be performed in a safe way for both the agent/staff members and detainees.

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59 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 17 December 2015, Rule 24; Body of Principles, Principle 24; see also SPT Advice to States and NPMs, para. 4.

60 See SPT, Advice to States and NPMs, para. 7.

61 OSCE/ODIHR and PRI, Guidance Document on the Nelson Mandela Rules, Chapter 5, para. 7.

62 For more specific guidance on measures relating to the staff of detention facilities, see WHO interim guidance; IASC, Interim Guidance, p. 6; Prison Reform International, 'Briefing note – Coronavirus: Healthcare and human rights of people in prison', 16 March 2020, p 12-13.

63 WHO, Interim Guidance, page 12.

- b. The measures take the gender aspect into consideration, namely how emergency operational and procedural regulations and protocols, including restrictive health measures, affect women and men differently, both those working in places of detention and those deprived of liberty. The protocols developed should take into account the different needs of women and men, as well as addressing the need of particularly vulnerable individuals in detention such as children, people with disabilities, ethnic or religious minorities, or LGBTI people.<sup>64</sup>
- c. All staff have been adequately informed and trained on new procedures as well as on skills and behaviour related to healthcare and hygiene provisions.<sup>65</sup>
- d. Such protective measures and protocols encompass:
  - i. Access to medical care and treatment without discrimination to all persons deprived of liberty.<sup>66</sup>
  - ii. Measures in place to guarantee the adequate cleaning and disinfection of spaces that may have been contaminated before they are reused.<sup>67</sup>
  - iii. Personal hygiene items such as soap, sanitizers and detergents made available at no cost to staff, employees and persons deprived of liberty.<sup>68</sup>
  - iv. The availability and access to sufficient and adequate PPE, as well as adequate training on proper use, for all personnel, including custodial staff, transport service staff, healthcare workers, and other supporting personnel, such as cleaning and kitchen staff.<sup>69</sup>
- v. An adequate testing policy for persons deprived of liberty and staff by the relevant authority, as well as the availability of COVID-19 test kits.
- vi. General precautions for infectious respiratory diseases, as advised by the WHO, such as hand hygiene, physical distancing, respiratory etiquette (covering coughs and sneezes), or use of hand sanitizer.<sup>70</sup>
- e. There are clear and adequate guidelines and policies regarding social security coverage, sick leave and healthcare benefits for staff that provide clear instructions, sufficient economic security and effectively enable any staff member with symptoms of COVID-19 to stay at home.
- f. Measures exist to address understaffing due to the pandemic, such as establishing agreements with other governmental agencies and ministries to allocate temporary personnel, including health and social services professionals.
- g. There are clear and adequate health and hygiene guidelines and protocols for visits with families, legal counsel and other relevant people.
- h. There are established procedures for screening on admittance and release, including a medical examination of individuals upon admission and quarantine upon medical advice,<sup>71</sup> as well as access to sufficient testing and preventive

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64 See *Preventing and Addressing Sexual and Gender-based Violence in Places of Deprivation of Liberty: Standards, Approaches and Examples from the OSCE Region* (Warsaw: ODIHR, 2019) <<https://www.osce.org/odihr/427448>>.

65 IASC, Interim Guidance, page 6.

66 *Ibid.*, page 4.

67 WHO, Interim Guidance; European Centre for Disease Prevention and Control (ECDC), 'Guidance on environmental cleaning in the context of the COVID-19 outbreak'.

68 IASC, Interim Guidance, page 4.

69 WHO, Interim Guidance.

70 *Ibid.*

71 IASC, Interim Guidance, page 4.

isolation protocols prior to release.<sup>72</sup> If a person to be released is ill, measures should be taken to ensure they have proper access to health-care and follow up.<sup>73</sup>

## 2. OVERCROWDING AND PHYSICAL DISTANCING

The current situation has highlighted additional consequences of overcrowding in detention. While NPMs reiterate their recommendations for authorities to tackle overcrowding, they may now be in a better position to attract attention to this necessity.<sup>74</sup> Many authorities around the world have proactively adopted measures to reduce overcrowding (including in the migration and psychiatric contexts), ranging from alternative measures to detention, suspension of sentences, amnesties, reduction of arrests and police custody, increased use of bail or bond and conditional releases.<sup>75</sup> During the pandemic, NPMs have advocated for such measures, monitored their roll-out and implementation, and the criteria and methodology for identifying detainees to be released. The NPM of Senegal has, for example, shared with the authorities a list of relevant criteria to consider when rolling out their release plan. It is important that such decisions be taken following vulnerability and risk assessments, in accordance with clear and transparent criteria, without discrimination. Risk assessments should include gender aspects, such as the protection of victims of domestic violence, which affects a large number of women and children.<sup>76</sup>

The UN High Commissioner for Human Rights has emphasised that “[n]ow, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.”<sup>77</sup>

Monitoring bodies should check:

- a. The occupancy rate of places of deprivation of liberty, and protocols/measures in place to allow for physical distancing between persons deprived of liberty, as well as with members of staff. Such measures include limiting the number of people per room/cell and alternating schedules for the use of common spaces;
- b. Whether authorities have taken steps to reduce the population of places of deprivation of liberty, e.g., reducing arrests, admissions, or commuting or shortening sentences, and if so, the criteria on which decisions are based, whether the evaluation respects the principle of non-discrimination and whether it takes into consideration particular situations of vulnerability, such as health (e.g., immunocompromised people or with those chronic conditions), age, gender and disability.<sup>78</sup> Attention should also be paid to the nature of the offence and the recidivism risk to the community when making decisions related to early release schemes. In cases of amnesties, convicted perpetrators of torture should not be eligible.<sup>79</sup>
- c. Whether decisions about early release have been implemented in good faith.
- d. That all individuals have been deprived of liberty with sufficient legal grounds and as a matter of last resort, most notably in cases of pre-trial detention and administrative detention on the basis of the immigration status.

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72 Nelson Mandela Rules, Rule 30.

73 IASC, Interim Guidance, page 4.

74 For specific recommendations on measures relating to overcrowding and alternatives to detention, see for e.g. CPT, Statement of Principles, principle 5; Statement of the UN High Commissioner for Human Rights; Statement of the Council of Europe Commissioner for Human Rights; UNODC position paper; Commonwealth Human Rights Initiative (at section 3).

75 For examples of such measure see [APT information hub](#).

76 It is important to note here that persons convicted for domestic violence, for e.g., may pose a serious risk if released in their household, particularly in times of confinement. See, Statement of the UN High Commissioner for Human Rights; Statement of Arab Reform Initiative.

77 UN High Commissioner for Human Rights, ‘**Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet**’, 25 March 2020.

78 See, Amnesty International, ‘**Joint Public Statement Turkey: Rights Groups Call For Urgent Release Of Imprisoned Journalists, Human Rights Defenders And Others, Now At Risk Of COVID-19**’, EUR 44/2047/2020, 30 March 2020

79 See, [APT Guide on Anti-Torture legislation](#).

## CURRENT PRACTICE – ADDRESSING OVERCROWDING

In March 2020, in its capacity as NPM, the Cyprus ombuds institution addressed a letter to the Ministry of Justice and Public Order, the Ministry of Health and the Ministry of Labour, Welfare and Social Insurance. The statement contained a list of guidelines and specific recommendations, in accordance with the CPT's Statement of Principles, relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic and requested the government to adhere to them.

Following the letter, the Ministry of Justice proceeded to amend the relevant law and, as a result, 137 detainees received early release from the Nicosia Central Prison. A number of detainees were placed under the Open Prison Scheme, while others started serving the remainder of their sentence at home, under electronic surveillance/monitoring (trackable bracelet). These measures contributed significantly to the decongestion of the overcrowded prison facility.<sup>80</sup>

## B. MORE RESTRICTIVE DEPRIVATION OF LIBERTY REGIMES: RISKS AND CHALLENGES

In their efforts to prevent contamination, authorities have put in place a wide range of restrictions for persons deprived of liberty. The suspension of family visits, as well as social, professional and religious activities greatly reduce detainees' interaction with the outside world, leading to experiences of isolation that can have a serious and lasting impact on the individuals.<sup>81</sup> Moreover, contact with the outside world is a key safeguard against torture and provides opportunities for reporting ill-treatment.<sup>82</sup>

Often, people entering a place of deprivation of liberty in the midst of this pandemic have been placed in preventive isolation or quarantine from the general population. Such isolation is sometimes abused, constituting *de facto* solitary confinement.<sup>83</sup> In certain contexts, restrictive measures in detention, together with the suspension of judicial hearings, present a threat to legal and procedural safeguards against torture and other ill-treatment, and arbitrary detention, as well as fair-trial rights.

### 1. RIGHT TO CONTACT WITH THE OUTSIDE WORLD

A person deprived of liberty is already in a situation of isolation from loved ones and from the outside world. Restrictive preventive measures exacerbate this reality, with potentially devastating impact on their physical and mental health. Such isolation can have particularly serious consequences for people in situations of particular vulnerability, such as children or those with psychosocial disabilities. There are also contexts in which a detainee's subsistence relies in part or in whole on family support and contributions (e.g., where practices require that families provide food or hygiene products). As this negatively affects one of the main fundamental rights of people deprived of liberty – the right to have contact with the outside world at regular intervals – it is key that those restrictions are temporary and accompanied by sufficient compensatory alternatives.<sup>84</sup> NPMs should assess the impact that such measures may have over time, and in particular for people in situations of particular vulnerability (e.g., people with disabilities, the socially isolated and the elderly).

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80 In open prison schemes **prisoners** are trusted to serve their sentences with minimal supervision and perimeter security and are often not locked up in their prison cells. Prisoners may be permitted to take up employment while serving their sentence.

81 See, Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, **A/HRC/38/36**, 2018, para. 91.

82 OSCE/ODIHR and PRI, Guidance Document on the Nelson Mandela Rules, Chapter 5, para 13-15.

83 Such confinement shall not be used as a punitive or disciplinary measures, and cannot exceed 15 days. See Nelson Mandela Rules 43, 44.

84 Nelson Mandela Rules, Rule 58

Therefore, monitoring bodies should check:

- a. That all restrictions are proportional to the stated aim, legal, necessary, applied on a temporary basis, without discrimination, and accompanied by sufficient compensatory alternatives to alleviate the impact.<sup>85</sup>
- b. What alternative measures are taken to enable minimum contact between persons deprived of liberty and family members or loved ones, such as increased access to telephones (including cell phones),<sup>86</sup> access to videoconferencing technologies,<sup>87</sup> internet/email, video communication and other appropriate electronic means. Such contacts should be facilitated

and encouraged, and be frequent and free.<sup>88</sup> In addition, and notably in view of triangulating information, NPM members can inquire about statistics of the use of such devices, about the frequency and length of contact and ask to check the corresponding registers.

- c. That the restriction of family visits does not affect the ability of family members or relatives to continue providing food and other supplies for detainees, in accordance with local and regular practices.<sup>89</sup> NPM members should inquire whether this right is being respected and ask after the cleaning/disinfection procedures in place for such packages.

### CURRENT PRACTICE – FACILITATING CONTACT WITH THE OUTSIDE WORLD

In Italy, Antigone, a CSO working closely with the Italian NPM, collected and distributed 3,000 mobile phones to prisons, to allow prisoners to maintain contact with their families.

In Albania, the NPM liaised with penitentiary officials to ensure that videoconferencing technologies were functioning properly, to guarantee contact outside the place of deprivation of liberty.

## 2. RIGHT TO ACCESS INFORMATION

Some of the violent unrest and disturbance inside prisons during this pandemic have taken place because of a lack of proper information provided to and communication with detainees about the nature, rationale and scope of the preventive measures adopted.<sup>90</sup> Timely access to accurate information is crucial, as well as being a fundamental right for persons deprived of liberty.<sup>91</sup>

Therefore, monitoring bodies should check whether:

- a. Detainees and their families promptly receive all relevant information about the preventive measures adopted, their duration and the reasons for them.<sup>92</sup> This information should be communicated in a language and format that detainees can access and understand,<sup>93</sup>

85 See CPT, **21st General Report**, 2011, para. 55; See also European Prison Rules, Rule 3; Nelson Mandela Rules, Rule 37.

86 IASC, Interim Guidance, page 5

87 Fair Trials International, **Safeguarding the Right to a Fair Trial during the Coronavirus Pandemic: Remote Criminal Justice Proceedings** (hereafter Fair Trials, Remote Criminal Justice Proceedings), 30 March 2020.

88 SPT, Advice to States and NPMs.

89 *Ibid.*, para. 9.12.

90 See, APT Info-Hub, Issue: Communal Violence and Unrest in Detention.

91 See, Nelson Mandela Rules, rules 41, 54, 55, 63; Body of Principles, principle 28.

92 SPT, Advice to States and NPMs.

93 IASC, Interim Guidance, page 5.



including necessary accommodations for detainees with disabilities.<sup>94</sup>

- b. Persons deprived of liberty receive information on how to contact the NPM, other monitoring bodies and relevant complaint mechanisms, promptly and confidentially.<sup>95</sup> NPMs, ombuds institutions and other specialized organizations should disseminate their contact information among detainees and within detention facilities, through posters, flyers or mailboxes in places accessible to detainees.

### 3. LEGAL AND PROCEDURAL SAFEGUARDS AND FAIR-TRIAL RIGHTS

Restrictions on access to and contact with persons deprived of liberty also negatively impact legal and procedural safeguards against torture and other ill-treatment, affect fair-trial rights and can lead to an increase in arbitrary detention.<sup>96</sup> Preventive measures cannot be used as a pretext to erode rights and guarantees of persons deprived of their liberty. While some modifications (e.g., use of videoconference or telephone, use of physical and/or personal protective equipment) may be necessary, the rights to legal aid and legal representation, for instance, must remain effective (including for those detained in quarantine centres and migration detention). The same goes for the prohibition of arbitrary detention (including in the migration context, and for psychiatric patients) and the right to a fair trial. As it is the case for the absolute prohibition against torture and

ill-treatment,<sup>97</sup> the UN Human Rights Committee has clearly stated that even in declared states of emergency, states cannot, under any circumstances, arbitrarily deprive people of liberty or deviate from fundamental fair-trial principles.<sup>98</sup> Suspension of judicial hearings cannot be absolute, as urgent matters, such as *habeas corpus* cases must continue to be heard.<sup>99</sup>

Therefore, monitoring bodies should verify whether:

- a. Arrangements are made to maintain and secure the ability to meet with legal counsel,<sup>100</sup> at least through phone communication or other electronic means, such as videoconferencing, and that it is facilitated by being made available free of charge.<sup>101</sup>
- b. These arrangements are put in place in a way that ensures the strict confidentiality of such privileged communication. Persons deprived of liberty should have access to secure spaces for confidential discussions that cannot be heard by members of staff. Remote communication channels should be secure to avoid interception or recording of calls.<sup>102</sup>
- c. Procedural rules and guidelines were issued by the judicial system regarding court hearings and judicial proceedings, and that those rules do not lead to an absolute suspension of all judicial hearings.<sup>103</sup>

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94 Information about requests and complaints should be made available “in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals”, and it should be displayed “prominently in all places of deprivation of liberty”. In UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim report to the General Assembly, 9 August 2013, **A/68/295**, para. 80.

95 SPT, Advice to States and NPMs, para. 13.6.

96 For specific guidance on legal safeguards in the context of covid-19, see IASC, Interim Guidance (at pages 3, 5); SPT, Advice to States and NPMs (at para. 9); PRI, Briefing note (at p. 8); CPT, Statement of Principles (principle 9).

97 Statement of the UN High Commissioner for Human Rights and OHCHR “**Emergency Measures and COVID-19 Guidance**”, 27 April 2020: “...Certain rights, including the right to life, the prohibition against torture and other ill-treatment, and the right not to be arbitrarily detained continue to apply in all circumstances.”

98 UN Human Rights Committee, ‘General Comment No. 29: Article 4: Derogations during a State of Emergency’, **CCPR/C/21/Rev.1/Add.11**, 2001, at para. 11.

99 Fair Trials, Remote Criminal Justice Proceedings.

100 IASC, page 5.

101 Fair Trials, Remote Criminal Justice Proceedings.

102 *Ibid.*, page 5.

103 For more detailed information about particular issues to monitor regarding the right to a fair trial during the coronavirus pandemic, monitors are encouraged to consult the recent publication by Fair Trials International (see footnote above).

- d. All the regular measures to document and investigate cases of death in custody are maintained,<sup>104</sup> including for suspected or confirmed

cases of COVID-19, and that the pandemic does not allow for exception in that regard

#### **CURRENT PRACTICE – ENABLING EFFECTIVE IMPLEMENTATION OF SAFEGUARDS**

In Serbia, the Protector of Citizens issued an opinion to the Ministry of Justice about the exercise of the right to a fair trial and called on the ministry to take all measures within its competence to allow access to alternative means of communication (videoconferencing) between defendants and their defence attorney.

In Norway, the Directorate of the Norwegian Correctional Services issued updated guidelines stating that representatives from police/prosecution and defence lawyers “should be urged to, and be provided with the possibility to, conduct communication with the client using a video-link.” The Norwegian correction services plan to provide 800 tablets for this purpose.<sup>105</sup>

#### **4. ISOLATION AND CONFINEMENT AREAS**

In many places of deprivation of liberty, confirmed or suspected COVID-19 patients are placed in areas segregated or separated from the general population. Quarantine areas are also used to preventively isolate those entering prison from the general population for the first 14 days after their arrival.

According to existing standards, the pandemic is not justification to undermine the observance and respect of all fundamental rights that must be assured to any person deprived of liberty.<sup>106</sup> In their efforts to prevent the spread of the virus, the detaining authorities cannot take measures that violate the human rights of those it aims to protect and must review the necessity and proportionality of these measures regularly.<sup>107</sup> The *PLANN* (proportionality, lawfulness, accountability, necessity and non-discrimination) principles developed by the CPT may constitute useful guidance for both national authorities and NPMs.<sup>108</sup> These principles are relevant

in the scrutiny of measures such as the placement of incoming detainees in preventive isolation.

Therefore, monitoring bodies should verify whether:

- a. Isolation or confinement is limited in time,<sup>109</sup> proportionate, subject to procedural safeguards and imposed on the basis of an independent medical evaluation only, never as a disciplinary measure of punishment.<sup>110</sup>
- b. People are isolated in dignified conditions, without undue or excessive restrictions on their rights, and that the measures do not constitute *de facto* solitary confinement.
- c. Measures are in place to guarantee that persons deprived of liberty:
  - i. Are informed of the reason for their confinement;<sup>111</sup>

104 See, Inter-American Commission on Human Rights (IACHR), ‘**Report on the Human Rights of Persons Deprived of Liberty in the Americas**’, 2011, para. 271.

105 Europris, Directorate of Norwegian Correctional Service, ‘**Prevention Measures in European Prisons against COVID-19**’, 23 March 2020.

106 WHO, Interim Guidance; Relevant rules include in particular: Nelson Mandela rules, Bangkok Rules.

107 For relevant considerations, see CPT, *21st General Report*, 2011 (at para. 55); Mandela Rules, Rule 37; European Prison Rules, Rule 3.

108 CPT, *21st General Report*, 2011, para. 55.

109 IASC, Interim Guidance, page 5.

110 SPT, Advice to States and NPMS, para. 9.14.

111 WHO, Interim Guidance.

- ii. Have access to proper medical attention, treatment and care;
  - iii. Have the right to notify a third party, to communicate with family members and legal counsel, even if only possible remotely. All persons deprived of liberty placed in preventive isolation for health reasons should be allowed meaningful human contact every day;<sup>112</sup> and
  - iv. Have access to daylight and physical exercise, including outdoors.
- d. New physical arrangements observe the same separation and protective rules regularly in place to protect the physical integrity of people at higher risk of suffering violence and discrimination from other detainees. Women and children in detention, LGBTI people, ethnic or religious minorities, members of rival gangs or criminal factions, sex offenders, police officers or other law enforcement officials in detention are among those who may be particularly vulnerable.

### C. NEW RESTRICTIVE MEASURES IN RESPONDING TO THE PANDEMIC

In responding to the pandemic, authorities around the world have adopted restrictive measures of varying scope and nature, often applicable to the entire population. In certain circumstances restrictive measures such as quarantine, curfew or confinement orders can amount to deprivation of liberty, if people are not allowed to leave their public or private custodial setting. In such

cases, NPMs have a mandate to monitor these facilities, and ensure that certain conditions and guarantees are respected.<sup>113</sup> The implementation and enforcement of all restrictive measures, must respect basic rules and principles of law enforcement,<sup>114</sup> and respect the prohibition of arbitrary detention.

#### 1. NEW TYPES OF PLACES OF DEPRIVATION OF LIBERTY

Authorities around the world have established quarantine or confinement centres, for confirmed or suspected COVID-19 carriers. Such centres constitute a *de facto* place of deprivation of liberty, and fall within NPMs' monitoring mandates.<sup>115</sup> Quarantine or confinement centres have been established in many places, ranging from ships, hotels, private homes, to makeshift facilities.

Those 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 law and on the basis of scientific evidence, for public health purposes. They should not be perceived or treated as detainees.<sup>116</sup>

Therefore, monitors should check whether:

- a. The size of the facility is sufficient, with enough space to permit internal freedom of movement; and whether a range of purposive activities are offered.<sup>117</sup>
- b. Measures and policies are implemented to protect those quarantined from suffering any form of marginalisation or discrimination.<sup>118</sup>

112 CPT, Statement of Principles, Principle 8. For the definition of solitary confinement and prohibited practices of isolation, see Nelson Mandela Rules 44 and 45 as well as ODIHR/PRI Guidance on the Nelson Mandela Rules.

113 SPT, '**Advice to the NPM of the UK regarding compulsory quarantine for coronavirus (COVID-19 virus)**', CAT/OP/9, 31 March 2020.

114 See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the eight UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990.; Code of Conduct for Law Enforcement Officials, A/34/168, December 1979. See also International Committee of the Red Cross (ICRC), '**International Rules and Standards for Policing**', June 2015.

115 SPT, '**Advice to the NPM of the UK regarding compulsory quarantine for coronavirus (COVID-19 virus)**', CAT/OP/9, 31 March 2020.

116 SPT, Advice to States and NPMs, para. 10.1, 10.2.

117 SPT, Advice to States and NPMs, para. 10.3.

118 SPT, Advice to States and NPMs, para. 10.6.

- c. Psychological support for those who need it is available, both during and after their period of quarantine.<sup>119</sup>
- d. All fundamental safeguards against ill-treatment mentioned above in section IV.B are effectively implemented.

## 2. EXCESSIVE USE OF FORCE, ARREST AND DETENTION POWERS

The implementation by law enforcement of confinement, quarantine or curfew measures has led to excessive use of force, and/or excessive arrest and detention – often on an unclear legal basis.<sup>120</sup> NPMs have scrutinized and monitored law enforcement responses in various contexts. In keeping with their preventive mandate, NPMs have a key role to play in monitoring altercations that are likely to lead to deprivation of liberty. Further, as law enforcement is implementing administrative orders that restrict movement and liberties, there is a strong argument to be made that such law enforcement responses fall squarely within the NPM monitoring mandate. Since

the beginning of the pandemic, NPMs in their respective countries have reported mass arrests and detention, leading to situations in which people who have violated curfew or confinement rules find themselves in crowded cells and detention centres in unhygienic conditions. Using force and detention to implement physical distancing and confinement measures is not only counterproductive from a public health perspective, but may also violate human rights law if a clear legal basis is absent, and the principles of necessity and proportionality are not followed.

Monitoring bodies should check that:

- a. “Even during states of emergency, the use of force remains guided by the principles of legality, necessity, proportionality and precaution, [that] the use of force and of firearms [...] be avoided, and that all possible non-violent means [...] be exhausted before resorting to violent ones.”<sup>121</sup>
- b. All deprivation of liberty is decided on the basis of clear legal grounds, following necessary proceedings and with the effective implementation of all relevant safeguards.

119 SPT, Advice to States and NPMs, para. 10.7.

120 See Statement of Special Rapporteurs, “COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs”, 17 April 2020.

121 Statement of Special Rapporteurs, 17 April 2020. For guidance on monitoring weapons and restraints, see OMEGA Research Foundation, Economic and Social Research Council, University of Exeter, “**Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors**”.

## V. CONCLUSION

This health emergency of unprecedented scope greatly affects the work of NPMs. They face numerous challenges, from the need to adapt their monitoring methods and the challenge of carrying out *in situ* visits without causing harm, to new and evolving issues and risk factors. NPMs in the OSCE region and around the world have shown tremendous adaptability, unquestionably rising to the challenge of ensuring that all deprived of liberty remain protected and free from torture and ill-treatment. The global nature of this emergency represents a unique opportunity for NPMs from across the globe to exchange promising practices and learn from each other.

The current situation has also brought advocacy opportunities for NPMs and openings for constructive dialogue with the relevant authorities. By fully endorsing this aspect of their mandate, NPMs can play a decisive role in addressing issues, such as overcrowding or the excessive use of pre-trial and administrative detention. Many governments have taken positive steps since the outbreak of the pandemic, by adopting alternative measures to detention and decreasing the number of arrests, thus reducing the overall population of people in places of deprivation of liberty. NPMs have an opportunity to ensure that the current situation becomes a turning point and has a positive effect on the condition of persons deprived of liberty, now and in the aftermath of the COVID-19 pandemic.

## VI. ADDITIONAL READING

### Guidance on COVID-19 and deprivation of liberty

- World Health Organization, '**Interim Guidance – Preparedness, prevention and control of COVID-19 in prisons and other places of detention**' (hereafter WHO, Interim Guidance), 15 March 2020.<sup>122</sup>
- UN Inter-Agency Standing Committee (OHCHR and WHO), '**Interim Guidance – COVID-19 Focus on Persons Deprived of Liberty**', March 2020.
- United Nations Office on Drugs and Crime (UNODC), '**Position Paper – COVID-19 preparedness and responses in prisons**', 31 March 2020.
- UN Subcommittee for the Prevention of Torture (SPT), '**Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic**', 25 March 2020.
- European Committee of the Prevention of Torture (CPT), '**Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic**', 20 March 2020.
- European Union Agency for Fundamental Rights and Council of Europe, '**Fundamental rights of refugees, asylum applicants and migrants at the European borders**' 2020.
- Fair Trials, '**Safeguarding the Right to a Fair Trial during the Coronavirus Pandemic: Remote Criminal Justice Proceedings**', 30 March 2020.
- Prison Reform International, '**Briefing note – Coronavirus: Healthcare and human rights of people in prison**', 16 March 2020.
- OMCT, '**Building Our Response On COVID-19 And Detention, OMCT Guidance brief to the SOS-Torture Network and partner organizations**', April 15 2020.
- ICPA Expert Network on External Prison Oversight and Human Rights, '**Adapting To COVID-19, Prison Oversight and Monitoring During a Pandemic**', Special Issue 20 April 2020.
- Commonwealth Human Rights Initiative, '**COVID – 19 and Prisons in the Commonwealth: Ensuring An Effective Response**', 2020.
- ICRC, '**COVID-19: Preparedness and response in detention, instructional videos from ICRC for detainees, staff and visitors**', 7 April 2020.
- HM Inspectorate of Prisons, '**Health and safety guidance for short scrutiny visits during the COVID-19 outbreak**', 20 April 2020.
- UNODC, WHO, UNAIDS, and OHCHR '**Joint Statement on COVID-19 in Prisons and Other Closed Settings**', 13 May 2020.
- WHO Regional Office for Europe: '**Frequently Asked Questions: Prevention and control of COVID-19 in prisons and other places of detention**'
- WHO Regional Office for Europe: '**Checklist for self-assessment of the preparedness, prevention and control of COVID-19 in prisons and other places of detention**'
- WHO Regional Office for Europe: '**Fact sheet – Information for people in prison**'
- WHO Regional Office for Europe: '**Fact sheet – Information for visitors**'
- Leaving no one behind in prison health: the **Helsinki conclusions** (2020)

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<sup>122</sup> Russian version at [http://www.euro.who.int/ru/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020/\\_recache](http://www.euro.who.int/ru/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020/_recache)

- IDLO, UN Women, UNODC, **Justice for Women amidst COVID-19**;
- JUSTICIA and Fair Trials, **Rights Behind Bars During Covid-19** and
- **Pre-trial detention: It's time for EU action to end excessive use**; and
- WHO, **Leaving no one behind in prison health**, Helsinki Conclusions.

### Advocacy Statements

- UN High Commissioner for Human Rights, '**Urgent action needed to prevent COVID-19 "rampaging through places of detention" – Bachelet**', 25 March 2020.
- Statement of Special Rapporteurs, '**COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs**', 17 April 2020.
- Council of Europe Commissioner for Human Rights, '**Call for release of immigration detainees while Covid-19 crisis continues**', 26 March 2020.
- The Council of Europe Commissioner for Human Rights, '**COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe**', 06 April 2020.
- Arab Reform Initiative, '**COVID-19: Urgent Measures Must Be Taken by MENA Governments to Protect the Prison Population**', 24 March 2020.
- ODIHR, **Overcrowded shelters put migrants at unacceptable risk amidst pandemic, OSCE human rights head says**, 4 May 2020.

### Monitoring Guidance

- APT, '**Monitoring Places of detention: A Practical Guide**', 2004.
- APT, '**Monitoring Police Custody, A practical guide**', 2013.
- APT, '**Treatment and detention regime of detainees suffering from tuberculosis**', May 2019.
- APT/PRI, '**Detention Monitoring Tool – Addressing risk factors to prevent torture and ill-treatment**', 2015 (2nd ed.).
- Omega Research Foundation and the University of Exeter, **Monitoring Weapons and Restraints in Places of Detention: A Practical Guide**

### Resource pages

- APT, **COVID-19 And Persons Deprived Of Liberty, Information Hub**.
- DIGNITY, **Synthesis of Global guidance and recommendations on how to prevent and manage COVID-19 in prisons**.
- European Prison Observatory (EPO), **COVID-19: what is happening in European Prisons**.
- Fair Trials **COVID-19 Justice Project**.
- Omega Research Foundation, **Mapping cases of excessive use of force by law enforcement**.
- Prison Insider, **Coronavirus: Prison fever**.
- World Prison Brief, '**International News and Guidance on COVID-19 and Prisons**'.