



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

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Forty-first session

Summary record of the first part (public)* of the 1st meeting

Held via videoconference on Monday, 15 June 2020, at 2 p.m. Central European Time

Chair: Sir Malcolm Evans

Contents

Opening of the session by a representative of the Secretary-General
Regional teams

* The summary record of the second part (closed) of the meeting appears as document [CAT/OP/41/SR.1/Add.1](#).

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The meeting was called to order at 2.05 p.m.

Opening of the session by a representative of the Secretary-General

1. **The Chair** said that the current meeting set a historic precedent for the Subcommittee and the treaty body system at large. Not only was it part of the first-ever session of any treaty body to be held entirely via teleconference, it was also the first time that the Subcommittee had held the opening segment of its session in public. Before the formal work of the Subcommittee began, he wished to pay tribute to the memory of a former member, Mr. Villavicencio Terreros, who had recently passed away. Mr. Villavicencio Terreros had been an effective, influential and universally respected colleague, whose departure from the Subcommittee at the end of 2018 had been a great loss.

2. **Mr. Salama** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) formally declared open the forty-first session of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He said that the current meeting demonstrated how treaty bodies could advance their crucial work through creative working methods, despite the challenges posed by the coronavirus disease (COVID-19) pandemic. That crisis had had an impact on the work of all the treaty bodies, but the Subcommittee had been particularly affected due to the specific nature of its work. As a result of global travel restrictions and the measures taken to protect persons in places of deprivation of liberty from the threat of infection, the Subcommittee had been unable to complete any of the visits that it had scheduled for the current year. Despite the suspension of visits and of in-person meetings, however, the Subcommittee had taken its work forward online and had held virtual dialogues with national preventive mechanisms and other stakeholders. It had also issued detailed practical guidance to States parties and national preventive mechanisms regarding the use of quarantine and measures to reduce the impact of the COVID-19 pandemic on persons deprived of liberty. That guidance was a key component of a compilation of treaty body recommendations relating to COVID-19 put together by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The High Commissioner had highlighted the situation of persons deprived of liberty in her statement of 25 March, in which she had called on Governments to take urgent action to protect the health and safety of persons in detention and other closed facilities during the pandemic. Echoing the recommendations of the Subcommittee, she had also urged Governments to work quickly to reduce the number of persons in detention. In cooperation with the World Health Organization, OHCHR had issued interim guidance on measures to reduce the impact of the pandemic on persons deprived of liberty.

3. While the treaty bodies were adapting and updating their working methods in the light of the unprecedented current situation, they were also working towards a stronger, more sustainable system in the long term. The 2020 review of the treaty body system by the General Assembly was a great opportunity to advance that goal. At the meeting to launch the review, held earlier in June 2020, the High Commissioner and other participants had highlighted common concerns and goals, including the shift to digital tools and the need to improve the predictability and accessibility of the work of the treaty bodies. They had also stressed the need to ensure that particular attention was paid to the unique mandate of the Subcommittee throughout the review process in order to ensure that it received adequate support and resources in the future.

4. As was the case for all treaty bodies, the quality of the Subcommittee's work was rooted in the quality of its membership. In October 2020, the States parties to the Optional Protocol would elect new members to the Subcommittee. He wished to encourage States parties to continue to nominate experts of high moral standing and recognized competence and experience in the area of torture prevention. The resources of the Special Fund established pursuant to article 26 of the Optional Protocol, which played an important role in supporting the practical recommendations that the Subcommittee made to States parties and national preventive mechanisms, were at a critically low level. He therefore also wished to appeal to all potential donors to support the Fund.

5. **The Chair** said that he wished to reiterate the importance of ensuring that the specific mandate of the Subcommittee was properly reflected throughout the treaty body strengthening process. He agreed that the Special Fund was a vital part of the Optional

Protocol system; its work had been hugely important and even transformational in some instances. He wished to encourage past and possible future donors to support the Fund.

6. The Subcommittee's programme of visits had been badly affected in recent times. It had had to be postponed in late 2019 because of budgetary constraints, and the COVID-19 pandemic had led to further delays. The Subcommittee looked forward to restarting its in-country visits as soon as possible. In the interim, it had issued advice relating to the COVID-19 pandemic (CAT/OP/10) and had worked with national preventive mechanisms to monitor the implementation of its recommendations in that regard. In its advice, the Subcommittee had stressed the vulnerability of persons deprived of liberty in the context of the pandemic, the need for national preventive mechanisms to continue their work and the continued responsibility of States for the health and well-being of the persons in its custody. It had suggested a number of measures to States parties, such as reducing overcrowding in detention centres through early and provisional release regimes, reviewing the administrative detention of migrants and the operations of closed refugee camps, ensuring that detainees were able to enjoy outdoor exercise and out-of-cell time in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, providing hygiene products to detainees free of charge, and ensuring that national preventive mechanisms could continue to operate in a manner that was appropriate to the current circumstances.

7. The Subcommittee had followed up on the advice that it had issued by sending letters to States parties and national preventive mechanisms requesting information on the implementation of its recommendations and the situation in each country. The high response rate to those letters had been hugely gratifying. Over half of all States parties and over 70 per cent of national preventive mechanisms had responded with the requested information.

Regional teams

8. **The Chair** invited the heads of the Subcommittee's regional teams to give a brief analysis of the replies received from States parties and national preventive mechanisms in their respective regions.

Regional team on Africa

9. **Mr. Kodjo**, speaking as head of the regional team, said that only 3 of the 23 State parties in the African region had replied to the Subcommittee's letters, while all 9 officially designated national preventive mechanisms and 4 other bodies effectively functioning as such had replied. The measures taken by States parties in the African region included the early release of some prisoners through the granting of pardons or provisional release; the quarantine of new prisoners in individual cells and the distribution of masks; the suspension of family visits and the installation of additional telephones to allow for contact with the outside world; COVID-19 virus testing of new prisoners and prisoners about to be released; frequent disinfection of cells, offices, toilets and kitchens in prisons; the provision of hand sanitizer to prisoners and staff; the issuance of detention orders in respect of only the most serious crimes; and other measures to protect the most vulnerable persons. Unfortunately, according to the information received, such measures did not apply to holding centres for refugees, migrants and internally displaced persons.

10. The principal difficulties apparent from the replies analysed by the regional team included a lack of data on the occupancy rate of places of detention, which made it impossible to know whether social distancing measures were respected; a lack of information on the number and situation of persons placed in quarantine and on the number of detainees who had tested positive for the virus and their treatment; and an occasional lack of cooperation between States parties and national preventive mechanisms. A number of best practices that States parties should maintain once the pandemic had subsided had been identified, including the conduct of dialogue with national preventive mechanisms; the maintenance of proper hygiene in places of deprivation of liberty; the implementation of measures to reduce overcrowding, including the adjustment of prison sentences, the use of provisional release and transfer regimes, and the application of non-custodial measures; and the conduct of health checks on new prisoners.

11. National preventive mechanisms in the African region had taken a variety of measures to fulfil their mandates during the pandemic, including the establishment of new channels of communication with prison authorities, through which they were able to monitor the situation in places of deprivation of liberty remotely. Some national preventive mechanisms had visited psychiatric establishments and juvenile detention facilities to monitor the application of hygiene and quarantine measures. Other actions included the submission of recommendations to prison authorities and the conduct of awareness-raising campaigns in collaboration with civil society organizations. However, little information regarding the results of such measures had been provided. Some national preventive mechanisms had simply passed on the Subcommittee's recommendations without taking steps to monitor their application, while others had received no information from the authorities regarding places of confinement and quarantine and had therefore been unable to fulfil their mandate. Certain national preventive mechanisms had simply ceased all visits without engaging in alternative forms of oversight. As in the case of States parties, some best practices had been identified in the work of national preventive mechanisms that should continue beyond the pandemic, including collaboration between such mechanisms and civil society in the monitoring of places of deprivation of liberty and the introduction of remote monitoring systems.

12. In conclusion, he wished to encourage all States parties and national preventive mechanisms in the African region to continue their efforts to stop the spread of the COVID-19 virus in places of deprivation of liberty; to maintain the measures introduced once the pandemic was over; and to strengthen their collaboration in the area of torture prevention. He urged those States parties that had not yet responded to the Subcommittee's letters to do so promptly, and called on any States parties that had not yet designated or established a national preventive mechanism to take steps in that regard.

Regional team on the Americas

13. **Ms. Gómez**, speaking on behalf of Mr. Fehér Pérez, head of the regional team, said that 7 of the 15 States parties in the region of the Americas and 11 national preventive mechanisms had responded to the Subcommittee's letters. The information received attested to the poor conditions in places of detention in the region and the vulnerability of persons deprived of liberty, who suffered from overcrowding, a lack of drinking water, unhygienic conditions and a lack of access to health care. Many States parties had prohibited visits to places of deprivation of liberty. While such a measure was important for preventing the spread of the virus in prisons, generally speaking, States parties were not meeting the basic needs of persons deprived of liberty. Riots and protests in prisons had been triggered by a lack of food, hygiene products and medicines, since prison authorities had been unable to compensate for the absence of supplies usually brought in by detainees' relatives. Prison officials had often responded to such protests with excessive force. Some measures had been introduced to mitigate prison overcrowding, including a reduction in pretrial detention, the granting of pardons, the use of early release regimes and the application of non-custodial measures. However, the impact of those measures on the high level of overcrowding, which placed persons deprived of liberty at risk, was unclear. No information had been received on the use of isolation or on whether cells used for isolation were sufficiently ventilated and spacious. Moreover, pockets of contagion had been identified in some places of deprivation of liberty.

14. A number of good practices had been observed in the region. For example, where visits were prohibited, videoconferencing systems and cell phones were made available to persons deprived of liberty, and food deliveries were accepted from such persons' family members, although States were still responsible for providing for their basic food needs. Among other good practices identified were remote monitoring techniques used by national preventive mechanisms and a dedicated telephone line set up to enable persons deprived of their liberty to report complaints. Lastly, joint visits had been carried out with national human rights institutions, and visit protocols had been redesigned to take account of social distancing requirements.

15. During the most recent intersessional period, the regional team had held meetings with national preventive mechanisms, compiled and analysed the responses to the Subcommittee's letters and identified current challenges and good practices.

Regional team on Asia and the Pacific

16. **Ms. Lopez**, speaking as head of the regional team, said that 6 of the 13 States parties in the region and all 7 of the existing national preventive mechanisms had responded to the Subcommittee's letters. A number of good practices had been noted in the region, such as the introduction by some States parties of measures to identify suspect cases and to isolate probable cases. There remained, however, a severe lack of health-care personnel and protective supplies and inadequate access to polymerase chain reaction (PCR) testing, which in turn raised doubts about prevalence and fatality rates in places of detention. Given the prohibitions on physical visits and access to lawyers, States parties had allowed detainees more liberal use of their cell phones and had, in some cases, even provided them with new devices. In general, however, workable alternatives to the suspension of family visits had been insufficient.

17. Although one national preventive mechanism had proactively sought to inspect places of quarantine and submit recommendations, the regional team was concerned about the fact that most States did not recognize official places of quarantine as places of deprivation of liberty. There remained an outstanding question regarding detention personnel who had themselves been quarantined, voluntarily or involuntarily, and the application of the Subcommittee's advice on the pandemic in regard to such personnel.

18. The regional team welcomed new practices such as remote monitoring, the conduct of inspections via videoconference, and webinars on basic COVID-19 information and rights-based guidelines for detention personnel. One national preventive mechanism had arranged to hold secure interviews with detainees by telephone, in addition to face-to-face meetings with detention authorities. Another mechanism had set up teams to respond to emergency situations and complaints, following a prison riot sparked by the lack of quarantine facilities for newly admitted detainees. However, the capacity of those new methods to collect reliable information still needed to be evaluated.

19. Severe overcrowding, poor material and hygiene conditions in prisons, and slow judicial processes remained the major challenges in the region. The number of early releases was still very low. Specific programmes to prepare families and communities for such releases were necessary in a number of States parties.

20. The experience of national preventive mechanisms during the pandemic varied greatly. Whereas some had been classified as "essential services", others had seen their activities seriously hampered by lockdowns and other severe restrictions.

21. The regional team invited States parties to actively engage with national preventive mechanisms to draft policies and introduce new measures related to COVID-19 in places of detention. Policymakers should see national preventive mechanisms as natural allies to be consulted in the current extraordinary circumstances.

Regional team on Europe

22. **Mr. Fink**, speaking as head of the regional team, said that responses had been received from approximately three fourths of the 41 States parties and national preventive mechanisms in the region regarding the Subcommittee's request for information on measures taken during the COVID-19 pandemic. A number of constructive measures had been highlighted, including the review by national preventive mechanisms of draft legislation in line with article 19 of the Optional Protocol; the participation of those mechanisms in advisory committees set up by ministries of justice and health; and the role of the mechanisms in disseminating advice on management of the pandemic. In addition, a number of States parties had introduced measures to reduce the prison population, including early or conditional release, the delayed enforcement of short prison terms and non-custodial measures for petty offenders. The Subcommittee and national preventive mechanisms would advocate that such measures should continue to be applied in the future.

23. Although there had initially been a shortage of personal protective equipment and supplies in many places of deprivation of liberty, the health measures taken, including social distancing, had prevented the COVID-19 virus from spreading rapidly in such places. The steps taken to reduce the prison population had undoubtedly also helped to curb the spread of the virus. Lastly, a number of innovative approaches, such as the increased use of phones and the setting up of online platforms, had been adopted to mitigate the impact of

restrictions on movement during the pandemic. Those innovations would also allow for the continued monitoring of the treatment of persons deprived of their liberty.

The public part of the meeting rose at 3 p.m.