



**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 2nd meeting

Held via videoconference on Thursday, 18 June 2020, at 2 p.m. Central European Time

Chair: Sir Malcolm Evans

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* The summary record of the second part (closed) of the meeting appears as document [CAT/OP/41/SR.2/Add.1](#).

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

Informal meeting with States parties

1. **The Chair**, recalling the financial difficulties that the United Nations system as a whole had faced in 2019, said that, although the treaty bodies had been able to hold their sessions as planned up to the end of that year, there had been insufficient funds to support the Subcommittee's essential mandate, which was to conduct visits to places of detention in States parties. For the first time in its history, the Subcommittee had had to postpone its programme of visits. It had been actively engaged in the preparations for the 2020 review of the treaty body system by the General Assembly and had repeatedly stressed the importance of ensuring that the Subcommittee's specific mandate was properly reflected throughout the treaty body strengthening process. Unfortunately, the United Nations was beset with financial problems anew. Any novel measures taken to alleviate the impact of those problems for the system as a whole should not negatively affect the Subcommittee's ability to fulfil its visiting mandate.

2. Since the beginning of the coronavirus disease (COVID-19) pandemic, the Subcommittee had focused on supporting the work of the national preventive mechanisms. At the outset, it had made clear that the visiting mandate of such mechanisms extended to places of quarantine. As restrictions had become more severe across the globe, the Subcommittee had issued advice relating to the COVID-19 pandemic and the work of national preventive mechanisms. In its advice, the Subcommittee had stressed the importance of ensuring the effective independent oversight of places of detention and the need for national preventive mechanisms to continue their work. It had likewise urged States parties to reduce overcrowding in places of detention in order to limit the risk of the spread of the virus and to adopt necessary health-care measures. Stressing the vulnerability and isolation of persons deprived of their liberty in the context of the pandemic, it had suggested a number of measures aimed at mitigating the lack of visitor access in most places of detention. The Subcommittee had followed up on the advice it had issued by sending letters to States parties and national preventive mechanisms requesting information on the implementation of its recommendations. 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. The heads of the Subcommittee's regional teams were invited to give a brief analysis of the replies received from States parties and national preventive mechanisms in their respective regions.

Regional team on Africa

3. **Mr. Ounnir**, speaking on behalf of Mr. Kodjo, head of the regional team, said that only 3 of the 23 States 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; the suspension of family visits and the installation and distribution of additional telephones; more frequent meal services; COVID-19 virus testing of prisoners about to be released; frequent disinfection of prison facilities; 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.

4. 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, and a lack of information on places of quarantine. A number of good practices that States parties should maintain once the pandemic had subsided had been identified, including the conduct of dialogue with national preventive mechanisms; adherence to the principle that freedom was the rule and detention the exception; and the maintenance of proper hygiene in places of deprivation of liberty.

5. National preventive mechanisms in the African region had responded in various ways to the advice issued by the Subcommittee, with only some conducting visits to places of detention. It was of the utmost importance that mechanisms should continue their work, regardless of the circumstances, which during the COVID-19 pandemic required specific

precautions during visits. National preventive mechanisms also provided a crucial link between the Subcommittee and States parties. He therefore urged any States parties that had not yet designated or established a national preventive mechanism to take steps in that regard; those that had already done so must ensure that the mechanism was provided with sufficient financial and human resources to fulfil its mandate. Cooperation between States parties and national preventive mechanisms was essential. The Subcommittee's mandate was not only to visit places of detention, but also to cooperate with national preventive mechanisms, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment.

Regional team on the Americas

6. **Ms. Comas-Mata Mira**, speaking on behalf of Mr. Fehér Pérez, head of the regional team, said that 8 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 their liberty, who suffered from overcrowding, a lack of drinking water, poor-quality food, 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 their liberty. The inability of prison authorities to compensate for the absence of supplies usually brought in by detainees' relatives, combined with a lack of dissemination of information, had triggered riots and protests in prisons. Any cases in which excessive force might have been used in responding to such incidents should be investigated.

7. 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 their liberty at risk, was unclear. Indeed, pockets of contagion had been identified in some places of deprivation of liberty. The Subcommittee had requested detailed information on how many people had benefited from measures to mitigate prison overcrowding, in part so that the impact of such measures could be better assessed. The Subcommittee had not received information on places of isolation and quarantine or on whether those places complied with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The regional team had been surprised to receive information indicating that early release regimes were being used specifically to mitigate prison overcrowding; such measures were not humanitarian concessions, but rather established rights of persons deprived of their liberty.

8. 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 their liberty, and food deliveries were accepted from such persons' family members. Among other good practices identified were remote monitoring techniques used by national preventive mechanisms and dedicated telephone lines 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 ombudsman's offices, and visit protocols had been redesigned to take account of social distancing and personal protection requirements.

Regional team on Europe

9. **Mr. Fink**, speaking as head of the regional team, said that since the region appeared to be approaching the end of the most restrictive period of pandemic management, the additional restrictions that had been placed on detainees' freedoms should be removed and the privileges and rights they had previously enjoyed should be reinstated.

10. Approximately three quarters of the 41 States parties and national preventive mechanisms in the region had responded to 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. The mechanisms' participation in each of those areas had shown that they could make a valuable contribution to the handling of emergencies; national authorities should keep that in mind when considering the mechanisms' future role.

11. Prison overcrowding diminished prisoners' quality of life, increased the likelihood of violence and limited the delivery of health care. Fortunately, in many countries, the authorities had responded to the pandemic by reducing the prison population, sometimes significantly. In many cases, States had introduced house arrest or home confinement with electronic monitoring; it was to be hoped that those measures would continue to be used after the pandemic. Another important development was that a number of immigration detention facilities had closed down. That had helped to improve the overall picture in respect of places of deprivation of liberty.

12. 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 virus from spreading rapidly in such places. In many places in Europe, prison staff and inmates were now receiving medical supplies, although vigilance and preparedness were still required. The Subcommittee also noted that 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. Prison services should be aware of the need to continue such approaches. Finally, he stressed that, as the Subcommittee's advice to States parties and national preventive mechanisms relating to the pandemic (CAT/OP/10) made clear, the monitoring of places of detention was essential and should continue during the pandemic.

Regional team on Asia and the Pacific

13. **Ms. Lopez**, speaking as head of the regional team, said that 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 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 mobile phones and had, in some cases, even provided them with new devices and Internet access. However, workable alternatives to the suspension of family visits had been insufficient. The regional team had also noted 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, although such methods were limited in their capacity to collect reliable information and therefore should not replace in-person visits and interviews with detainees.

14. Severe overcrowding, poor material and hygiene conditions in prisons and slow judicial processes remained the major challenges in the region. Too little use was being made of early releases, which were necessary for easing the high rates of prison overcrowding. Given the double stigma that former detainees now faced, there was a need to prepare families and communities for planned early releases. The regional team had also noted the plight of migrants and overseas workers who had been stranded as a result of lockdown measures, and the urgency of safeguarding their fundamental rights.

15. The pandemic had caused authorities to significantly tighten restrictions in places of detention, often while failing to apply sufficient mitigation measures. Quarantines, whether compulsory or not, were a form of deprivation of liberty that should be monitored, in both public and private settings. The regional team therefore called on States parties to urgently facilitate the lifting of temporary restrictions on access to places of detention and to allow national preventive mechanisms to fulfil their mandate to the greatest extent possible. Lastly, it encouraged States parties to actively engage and consult with national preventive mechanisms when drafting policies and developing measures on COVID-19-related matters.

16. **Ms. Robson** (United Kingdom) said that her Government welcomed the Subcommittee's efforts to adapt its working methods to the challenges posed by the pandemic, notably by holding its current session via videoconference. Her Government also appreciated the timely issuance of the Subcommittee's advice, which highlighted the

particular vulnerability of people deprived of their liberty. She would be interested in hearing about any useful innovations that the Subcommittee had adopted and its plans, if any, for their continued use.

17. **Mr. Jaber** (France) said that the Subcommittee was one of the treaty bodies that had been most successful in adapting their working methods to the current circumstances. In respect of the Chair's comments on the financial situation, he said that France would support an increase in the Subcommittee's resources in the discussions that would take place in the Fifth Committee of the General Assembly and during the 2020 review of the human rights treaty body system. Like many other countries, France had responded to the Subcommittee's request for information on measures taken in the context of the pandemic. It would be interested in hearing how the Subcommittee planned to use that information. For example, was the Subcommittee planning to prepare a report or guide on good practices for the benefit of Member States?

18. **Ms. Lecaros Terry** (Peru) said that her Government would have liked to have had more time to respond to the questionnaire that the Subcommittee had sent, especially since the pandemic had had a devastating impact in Peru. Nevertheless, the Government had informed the Subcommittee of the measures it had taken, and the national preventive mechanism had also submitted a response. Her delegation was also interested in knowing whether the Subcommittee intended to produce a report on good practices adopted in response to the pandemic.

19. **The Chair** said that the Subcommittee was in the process of analysing the information that the States parties had provided. In so doing, it was focusing on those measures that had proved successful and those that had been problematic, with a view to drawing lessons from their application. It had never intended to issue reports to individual countries; rather, it was considering what general guidance or support, or specific guidance or support on particular issues, could be provided to States parties and national preventive mechanisms in the light of the information received. Not only did the Subcommittee seek to gain a better sense of what constituted best practice under the current circumstances; it also planned to consider the future practices that were likely to emerge from the new ways of working that had been adopted, given that many national preventive mechanisms and other stakeholders had expressed a wish to continue their use. The Subcommittee would also decide, by the end of the session, whether or not to produce an updated or expanded version of its advice.

20. One development that the Subcommittee considered useful was the increased willingness of authorities to provide information about places of detention and the situation of detainees. In the past, the Subcommittee and national preventive mechanisms had been obliged to spend a significant amount of time gathering data during visits. Recent developments, however, seemed to have made it easier for the persons responsible for places of detention to disclose the required information. He hoped that in the future, the Subcommittee and national preventive mechanisms would be able to gather more information in advance, and thus be able to take full advantage of their visiting mandates by focusing on direct engagement with staff and detainees. The Subcommittee had also observed emerging practices that could be usefully embedded in the daily operations of detention systems, relating to improved levels of connectivity, transparency and contact with the outside world.

21. **Ms. Sveaass** said that since the beginning of the pandemic, the Subcommittee had maintained regular exchanges of information with States parties and national preventive mechanisms. It had also noted how the mechanisms had themselves addressed challenges and concerns and had encouraged and supported each other in the development of new practices, including means of facilitating contact between persons deprived of liberty and their family members.

22. **Mr. Fink** said that while the Subcommittee had previously used different videoconferencing platforms to meet with individual national preventive mechanisms, the recent roll-out of a new platform had allowed the Europe regional team to meet with them collectively for the first time. A meeting had been held with over 25 national preventive mechanisms in the region, at which the participants had discussed the monitoring work they had undertaken during the period of pandemic-related restrictions, and the best practices that they considered ought to be preserved. It had been a positive and encouraging

experience. He believed that the Subcommittee could learn from the recent developments by showing greater willingness to share its methods and expertise with national preventive mechanisms, and thus enhance collaboration.

23. **Ms. Paulet** said it was striking to note that, across the world, States had decided to adopt alternatives to deprivation of liberty, in keeping with the past recommendations of the human rights treaty bodies. The application of measures such as early release and parole had led to the release of significant numbers of prisoners, while many people charged with offences had been granted alternatives to pretrial detention. The closure of many immigration detention centres was also a positive development.

24. **The Chair** said that the responses of many national preventive mechanisms to the pandemic had been outstanding. It was a tribute to them and to the States parties in which they operated that they had the confidence and the capacity to work so effectively under such challenging circumstances. At the same time, the pandemic had shed light on the extent of the challenges that remained in many prison systems around the world, particularly those with high levels of overcrowding. There had been some excellent and innovative attempts to address those challenges, such as by seriously calling into question the need for pretrial detention or other custodial measures in certain circumstances. The enhanced use of electronic communication to allow detainees to maintain contact with the outside world was also to be commended. Many things that had previously been considered impossible to achieve within prison systems had in fact been achieved in a short period of time. As the restrictions introduced during the pandemic began to ease, it was important to retain those positive measures. The pandemic had also revealed that in some States parties there was a need for enhanced cooperation between national preventive mechanisms and State authorities, and a number of new issues had come to the fore; the Subcommittee's understanding of what constituted a "place of deprivation of liberty", for example, had been challenged by the experience of the pandemic. He wished to encourage all States parties to take part in discussions on such issues moving forward, in order to ensure that the Optional Protocol system was as effective as possible.

25. The Subcommittee would engage in a broad reflection on those issues with the Committee against Torture, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the United Nations Voluntary Fund for Victims of Torture in the context of a webinar to be held on the occasion of the United Nations International Day in Support of Victims of Torture, on 26 June 2020. Lastly, he wished to highlight the extraordinary work accomplished by the Special Fund established pursuant to article 26 of the Optional Protocol in helping States parties to implement the Subcommittee's recommendations and in supporting the work of national preventive mechanisms. The events of recent months had emphasized the importance of the work of those mechanisms and the need to support them. He therefore urged all potential donors to contribute resources to the Special Fund.

The public part of the meeting rose at 3.25 p.m.