

DIGNITY GUIDANCE DOCUMENT

GLOBAL GUIDANCE ON PREVENTIVE MONITORING OF PLACES OF DETENTION DURING THE COVID-19 PANDEMIC A PRACTICAL TOOL

By Lisa Michaelsen and Kalliopi Kambanella

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TABLE OF CONTENTS

INTRODUCTION	4
I. STATES' OBLIGATIONS IN RELATION TO PREVENTIVE MONITORING	5
II. GENERAL RECOMMENDATIONS TO PREVENTIVE MONITORING BODIES	5
III. ISSUES TO MONITOR RELATED TO THE PREVENTION AND CONTROL OF COVID-19 ("WHAT TO MONITOR")	5
1. EFFORTS TO REDUCE PRISON AND OTHER DETENTION POPULATION	6
2. LIMITATIONS AND/OR RESTRICTIONS ON THE RIGHTS OF PERSONS IN DETENTION	6
3. PREVENTION AND CONTROL OF THE SPREAD OF THE CORONAVIRUS	7
4. HEALTH CARE SERVICES	7
5. MEASURES FOR THOSE WORKING IN PLACES OF DETENTION	8
6. MONITORING PLACES OF QUARANTINE (WITHIN DETENTION FACILITIES OR FOR THE GENERAL PUBLIC)	8
IV. MONITORING METHODOLOGY DURING THE COVID-19 PANDEMIC ("HOW TO MONITOR")	9
V. CONCLUSION	12
REFERENCES	13

INTRODUCTION

Places of deprivation of liberty are enclosed environments with limited capacity to apply social distancing and other public health measures recommended to prevent the spread of COVID-19. Moreover, preventing and controlling this pandemic within places of detention poses significant dilemmas to the responsible authorities in terms of protecting public health while also respecting and fulfilling the rights of detainees. In some cases, public health measures may heighten the potential exposure to the risk of ill-treatment in places of detention.

Therefore, there is an increased need for effective and independent oversight to ensure that the risk of ill-treatment is mitigated and addressed appropriately by detaining authorities. Despite this increased need, preventive monitoring bodies are challenged in novel ways during the COVID-19 pandemic. As regular visits are, in many places, not possible and new issues are emerging in detention, there is a great need and potential for alternative and effective ways to monitor the conditions and treatment of people detained.

In response to this need, several international and regional bodies have issued recommendations on the emerging challenges and how monitoring bodies should approach their preventive mandate during COVID-19. This document aims to gather these recommendations for monitoring bodies, highlighting the most crucial areas to monitor and suggesting new methodological approaches within the COVID-19 context. This document is also informed by DIGNITY's extensive expertise gained through monitoring places of detention in Denmark, working with monitoring bodies in several regions (MENA, Africa, Asia) and membership in international bodies working against torture (UN Committee Against Torture, CoE Committee for the Prevention of Torture).

The guidance provided is relevant for all places of deprivation of liberty, whether within the criminal justice system (prison, pre-trial detention, police facilities) or in other contexts (refugee camps, immigration detention centres, psychiatric institutions, children and social care homes).

The purpose of this document is to support DIGNITY partners in delivering their preventive mandate during this pandemic. To do so, it outlines states' obligations regarding preventive monitoring, general recommendations to monitoring bodies, issues to monitor and methodological considerations. The relevant sources of this guidance and other useful sources of information are listed at the end.

I. STATES' OBLIGATIONS IN RELATION TO PREVENTIVE MONITORING

States must not use the pandemic as an excuse to discontinue or limit access of monitoring bodies to all places of detention that fall within the visiting mandate, including places of quarantine. Monitoring bodies should have access to all persons deprived of their liberty, including those in quarantine, and to all relevant information. Monitoring bodies should be the ones to decide if and how they will conduct visits to places of detention, taking into account all relevant COVID-19 considerations.

II. GENERAL RECOMMENDATIONS TO PREVENTIVE MONITORING BODIES

Visits of a preventive nature should still be undertaken while respecting necessary limitations in methodology, including legitimate restrictions currently imposed on social contact and by practicing the 'do no harm' principle and weighing it with the potential harm of lack of visits and transparency.

Monitoring bodies should monitor how state authorities are exercising their duty to prevent and control the spread of the virus, taking as point of departure the key international human rights principles and relevant recommendations and guidance for states and their prison authorities.

Monitoring bodies should familiarize themselves with knowledge about the coronavirus and the coronavirus disease (SARS-CoV-2 and COVID-19) as well as measures for prevention and control in places of detention. DIGNITY has already published a synthesis of global guidance and recommendations on how to prevent and manage COVID-19 in prisons (please see references).

III. ISSUES TO MONITOR RELATED TO THE PREVENTION AND CONTROL OF COVID-19 ("WHAT TO MONITOR")

During this pandemic, states have taken urgent public health measures to prevent and manage COVID-19 within society. In places of detention, such measures may pose significant challenges on state authorities in terms of protecting the health of detainees (and public health) while ensuring respect of other human rights. In practice, such measures may limit or restrict the enjoyment of human rights and increase the risk of being exposed to torture and ill-treatment. Therefore, it is paramount that monitoring bodies develop a thematic focus on issues related to the prevention and control of COVID-19 within places of detention while also maintaining their systemic and preventive approach.

In delivering their preventive mandate, monitoring bodies may consider monitoring the following issues:

1. EFFORTS TO REDUCE PRISON AND OTHER DETENTION POPULATION

In the COVID-19 context, overcrowding renders it virtually impossible to effect public health measures. Therefore, States should focus on efforts to address overcrowding in detention facilities by reducing new admissions and accelerating release through the use of non-custodial measures. DIGNITY has published a relevant Guidance Document on reducing overcrowding in pre-trial detention and prison outlining the available non-custodial alternatives to the deprivation of liberty and relevant COVID-19 considerations (please see references).

Breaches of COVID-19 restrictions should not lead to imprisonment; instead, they should be addressed through proportionate non-custodial sanctions (e.g. fines). Those violating COVID-19 restrictions should be treated with respect and in accordance with international human rights standards during their contact with law enforcement and other criminal justice actors.

In connection to reducing the population in detention, the following issues may be considered by monitoring bodies to assess the relevant efforts:

- ✓ Prioritization of the use of non-custodial measures at the pretrial and sentencing stage.
- ✓ Increasing prisoner releases through the use of early unconditional or conditional release schemes and other non-custodial measures for low-risk detainees and those most vulnerable during the pandemic (elderly, persons with underlying medical conditions).
- ✓ Effective functioning of the criminal justice process and fair trials (e.g. remote hearings)

2. LIMITATIONS AND/OR RESTRICTIONS ON THE RIGHTS OF PERSONS IN DETENTION

In general, any decision to limit or restrict the exercise of rights of persons in detention taken in relation to COVID-19 should respect the principles of legality, necessity and proportionality and be limited in scope and duration. Such measures should not be or seem of a punitive nature. At the same time, compensatory measures should be put in place to guarantee that the rights of detainees are still respected.

Based on these fundamental principles and the international standards on the treatment of detainees, monitoring bodies may decide to monitor the following issues:

- ✓ Provision of updated information to persons deprived of their liberty on limitations and restrictions applied, in a language they understand.
- ✓ Access to basic legal safeguards (notification of third party, access to a doctor and a lawyer).

- ✓ In the absence of a structured regime with activities, including education and work, compensatory measures should be put in place, such as increased access to library, television etc.
- ✓ Daily outdoor exercise.
- ✓ Contact with the outside world (possibility of visits under safe conditions, telephone, video etc.).
- ✓ Safe food provision.
- ✓ Complaint mechanisms.

3. PREVENTION AND CONTROL OF THE SPREAD OF THE CORONAVIRUS

States have a duty of care for those in their custody. This duty includes that prevention, control and mitigation measures are put in place so as detainees are protected from infection inside the facility, especially those most vulnerable (elderly and those with underlying medical conditions).

Measures to be assessed against relevant international standards and guidance include:

- ✓ Process of admission/entry to prison: screening, testing and medical quarantine for detainees, screening and testing for staff as well as screening for visitors in order to prevent the virus entering into the prisons.
- ✓ Measures to prevent the virus spreading among detainees and staff: social distancing, medical quarantine, limitations on detainees' transfers, hygiene (facilities and supplies such as water, soap and disinfectant), cleaning and disinfection of interior, personal protective equipment (PPE), training and sharing information with staff and detainees in relevant languages.
- ✓ Measures to prevent the virus spreading to the outside community: screening and testing of detainees on release as well as ensuring facilities and procedures for housing those exposed to and infected by the virus.

4. HEALTH CARE SERVICES

Persons deprived of liberty must be afforded equivalent level of health care as in the community. In the current COVID-19 context, this is an imperative to ensure that people in detention are protected and their right to health is respected. As the right to health care services extends beyond detention facilities, monitoring bodies may look into the co-ordination with national agencies, health care services, civil society or inter-governmental agencies to fill any service gaps.

In this regard, the following issues are important for monitoring bodies:

- ✓ Access to healthcare (equivalence of care).
- ✓ Clinical management of cases of coronavirus disease as well as referral to medical specialist care (e.g. Intensive Care Units).
- ✓ Psychological support for detainees based on their needs.

5. MEASURES FOR THOSE WORKING IN PLACES OF DETENTION

This pandemic poses a risk both to detainees and staff working in places of detention. Therefore, measures should be put in place to adequately protect staff from infection and enable them to carry out their duties in a safe and professional manner.

In this regard, monitoring bodies may consider the following issues:

- ✓ Provision of reliable, accurate and up-to-date information on the management of COVID-19 in the facility.
- ✓ Training for staff on COVID-19 and preventive measures.
- ✓ Clear guidelines for staff on procedures for sick leave when experiencing symptoms of COVID-19 or after contact with a detainee infected with coronavirus.
- ✓ Appropriate protective measures (personal protective equipment- PPE) and availability of handwash and disinfectants, especially in situations where close contact with detainees is required, such as use of force, use of means of restraint and body searches.
- ✓ Contingency plans for understaffing during the pandemic.
- ✓ Psychological support for staff based on their needs.

6. MONITORING PLACES OF QUARANTINE (WITHIN DETENTION FACILITIES OR FOR THE GENERAL PUBLIC)

Any place where a person is held in compulsory quarantine and is not free to leave is considered a place of deprivation of liberty and therefore falls within the visiting mandate of preventive monitoring bodies. Places of quarantine may be designated for the general public in case of suspected or confirmed cases of COVID-19. In addition, people already detained (for example prisoners) may also be placed in quarantine in a designated space within the detention facility. Although quarantine is imposed for the public benefit, it should not result to human rights violations, notably ill-treatment.

The following issues are of relevance while monitoring places of quarantine for the general public or detained populations:

- ✓ Quarantine must be applied in a non-discriminatory manner. It should be based on an independent medical evaluation and be legal, necessary and proportionate. It should also be limited in time. Clear and transparent rules and procedures for the use of quarantine should be in place and relevant information available to people concerned.
- ✓ Information on the reasons, duration and conditions of quarantine should be provided to the affected persons from the outset in a language they understand.
- ✓ Access to basic legal safeguards (access to a doctor and independent medical advice, access to a lawyer and notification of a third party).
- ✓ The human rights principles and standards that apply to people in detention should also be respected during placements in quarantine. This is especially relevant to the material conditions in places of quarantine (access to hygiene, healthcare, outdoor exercise) and the basic rights during quarantine (contact with the outside world, activities etc.).
- ✓ Quarantine should never result in de facto solitary confinement (confinement 22 hours or more a day without meaningful human contact). Therefore, meaningful contact with the outside world and activities for persons in quarantine should be in place to prevent human rights violations and serious mental health consequences.
- ✓ Sufficient capacity for quarantine that responds to the need.
- ✓ Psychological support based on the needs.

IV. MONITORING METHODOLOGY DURING THE COVID-19 PANDEMIC (“HOW TO MONITOR”)

The pandemic has already profoundly affected the daily life of all members of society and will probably continue to do so for a considerable time to come. The working methodology of monitoring bodies is also challenged since the possibility for regular visits to places of detention may be limited while additional considerations on COVID-19 precautions are required. Monitoring bodies must be conscious of the “do no harm” principle as they undertake their work. This may mean that they will need to adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public, detention staff, detainees and themselves. The overriding criterion must be the effectiveness in securing the prevention of torture and ill-treatment for those in detention. Responding to the current situation and the new challenges will require innovation and adaptability from the part of monitoring bodies.

IN ALL CIRCUMSTANCES THE MONITORING BODIES SHOULD:

- ✓ Discuss the implementation of preventive measures for COVID-19 with relevant national authorities (for example online meetings, telephone meetings etc).
- ✓ Collect and scrutinize data relevant to COVID-19 in places of detention. For example, numbers of prison population, detainees in quarantine, referrals of COVID-19 cases for specialized treatment outside the facility, new admissions, releases - including releases of detainees vulnerable to COVID-19, suspected and confirmed cases of COVID-19 among 1) newly arrived detainees 2) current and released detainees and 3) staff and management as well as COVID-19 related deaths in custody. Ideally, data should be collected on a regular basis and both on the institutional and national level to be able to follow the development of transmission of COVID-19.
- ✓ Stay updated and informed about new facilities where people are deprived of their liberty, hereunder quarantine facilities.
- ✓ Develop criteria determining when the monitoring mandate should be discharged via on the spot visits and when monitoring should rather be conducted remotely. This should be done balancing the risks of monitoring bodies becoming vectors of infection against the risks of physical absence of monitors.
- ✓ Set up complaint mechanisms and/or hotlines for detainees and staff (ensure confidentiality) to report poor conditions, ill-treatment and torture.

IF THE MONITORING BODY DECIDES TO CONTINUE ITS VISITS, THEN THE FOLLOWING CONSIDERATIONS ARE IMPORTANT:

- ✓ Consider shorter scrutiny visits with a thematic focus on the management of COVID-19 (a methodology developed and used by Her Majesty's Inspectorates of Prisons for England and Wales (HMIP)).
- ✓ Decide on the objective of the visit based on the information gathered and consider what facilities to prioritize (e.g. facilities with vulnerable groups, quarantine facilities, facilities where people deprived of their liberty as well as staff have complaints of measures taken during the COVID-19 pandemic or facilities where the monitoring body through other sources has information on critical conditions).
- ✓ Consider the composition of the monitoring team, hereunder:
 - i. Reduce the number of monitors to reduce the risk of transmission in and out of the visited facilities
 - ii. Monitors that belong to high-risk groups in relation to COVID-19 and monitors with relevant symptoms should not participate in visits

- iii. Ensure medical competence in the monitoring team. If this is not possible then seek medical advice before and after the visit
 - iv. Allow more time for planning and preparing for a visit (more coordination and logistics needed, more information gathering before visits)
 - v. Consider safe ways of transportation and 14 days interval between visits or conducting testing of members of the monitoring team after each visit (as per the recommendations of national health authorities) to reduce the risk of transmission between institutions
- ✓ Apply hygiene rules during transportation and visits – especially during meetings and interviews (handwashing, social distancing, hand sanitizer, personal protective equipment (PPE)) and follow the guidelines in the visited facilities.
 - ✓ Carefully plan what precautions to take when interviewing persons in quarantine (e.g. remote: by phone, online, through glass) or with personal protective equipment (PPE). Precautions may differ according to context (e.g. availability of phone/online tools/glass walls and PPE) and decisions must be based on the specific context and in accordance with the ‘do no harm’ principle.
 - ✓ Be aware that interviewing detainees while wearing personal protective equipment (PPE) may negatively affect the contact and trust-building between the interviewer and the interviewee. If interviews are done wearing PPE, it may be relevant to offer appropriate PPE to the person interviewed as well. Take relevant decisions based on the specific context.
 - ✓ Include considerations on deciding upon notified or unnotified visits. In general, unnotified visits may increase the risk of transmission as the visit cannot be planned according to social distancing, appropriate locations for meetings and interviews as well as practical details of the visit. Furthermore, unnotified visits may put an extra burden on staff and management in a time of a public health crisis.
 - ✓ Prior to visits, the monitoring team could ask for written information from the visited facilities as well as central authorities on the management of COVID-19.

IF VISITS ARE NOT CONSIDERED POSSIBLE, THE MONITORING BODY COULD REMOTELY MONITOR THE SITUATION THROUGH THE FOLLOWING METHODS:

- ✓ Gather written information and data from facilities and from the central authorities. This could be focused on the management of COVID-19 as well as other measures relating to the prevention of torture and ill-treatment. Additional information on this could be gathered by phone/audio/video (while always ensuring confidentiality).
- ✓ Gather information from current detainees and staff by other means (for

example interviews on phone/video/audio connection or questionnaires (ensure confidentiality).

- ✓ Gather additional information from interviews with recently released ex-detainees, family members of detainees and lawyers (for example on hygiene conditions in the facility, access to healthcare as well as screening on admission and release).
- ✓ Consider coordination and collaboration with NGOs and civil society organizations working with persons who are deprived of their liberty.
- ✓ When monitoring without access, the monitoring body should take into careful consideration the reliability of information gathered and apply meticulous triangulation to ensure the validity of the information and enable it to submit effective recommendations.

V. CONCLUSION

The prohibition of torture and other cruel, inhuman and degrading treatment or punishment cannot be derogated from even at times of emergencies like this pandemic. Persons deprived of liberty are vulnerable to human rights violations due to the restrictions and the conditions within detention. The role of monitoring bodies in ensuring that the rights of persons deprived of liberty are being respected is always paramount. Even more so, in the context of this public health emergency.

With their extensive expertise and experience, monitoring bodies are well-placed to identify the relevant protection gaps and offer effective recommendations to address them. By adapting their substantive focus and working methodology, monitoring bodies can continue to deliver firmly grounded reports and effective recommendations to address the emerging issues in detention. They can also strengthen their follow-up procedures and meaningfully engage in a constructive dialogue with state authorities. The way monitoring bodies adapt and respond to the current challenges will re-define and further establish their role as a credible and impartial actor in torture prevention.

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