

BREAKING THE WALLS OF SILENCE

ACCESS TO INFORMATION FOR DETAINEES IN A WORLD WITH COVID-19

**COVID-19 AND DETENTION:
IMPACTS, LESSONS AND URGENT ACTIONS
GUIDANCE NOTE NO. 1
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The OMCT works with around 200 member organisations, which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide.

Together, we make up the largest global group actively standing up to torture in more than 90 countries. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims.

Our international secretariat is based in Geneva, with offices in Brussels and Tunis.

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INTRODUCTION

Nearly two years after the onset of the Covid-19 pandemic, restrictions and measures related to the prevention and control of the pandemic in places of detention have affected all aspects of day-to-day life and conditions of detention. This has impacted over 11 million persons held in penal institutions,¹ over 250,000 children held in detention facilities and many thousands more held in other places of deprivation of liberty.² Basic rights, such as the right to communicate with the outside world, the right to health, the right to food and the right to complain about situations of torture and other cruel, inhuman or degrading treatment or punishment, have been compromised.

Some governmental authorities have argued that restrictions are necessary to contain the spread of the virus in places of detention. With a view to ensuring the protection of public health during a pandemic, in many countries, nonetheless, public health, health and civil society organisations (hereinafter, CSOs) have denounced the lack of official data, or the provision of unreliable or manipulated data,³ on Covid-19 cases, infection rates, health conditions and deaths of persons deprived of liberty. A similar trend has been identified with regards to vaccination campaigns in places of detention.

Why a Guidance Note on access to information concerning persons deprived of liberty?

The lack of transparency that has characterised the management of the Covid-19 pandemic in places of detention has increased the difficulties in assessing the scope of the challenges faced by persons deprived of liberty. In turn, it has restricted the ability to formulate measures and develop policies based on scientific evidence and international human rights standards.

The lack of access to information and collective isolation that detainees face in many countries, which preceded Covid-19 but have worsened since, also have grave implications for upholding the absolute prohibition of torture and other ill-treatment.



This Guidance Note is thus drafted in response to the urgent need for increased and sustained disclosure of information (on different levels, concerning persons deprived of liberty, their families and the general population) in the context of the management of the Covid-19 pandemic and as we move out of it. Transparency needs to be accorded high priority in short- and long-term detention reform plans.



This urgency is based on the assumption that, in prisons and other places of detention, the impact that the perpetuation of closure policies has had on detainees' health, well-being, personal integrity and freedom from torture and other ill-treatment is enormous and unjustified. This urgency is heightened by the fact that even after two years after the declaration of the Covid-19 pandemic, many of these challenges remain unaddressed.

To whom is this Guidance Note addressed?

This Guidance Note is primarily addressed to civil society organisations, notably the members of the OMCT's SOS-Torture Network. The Guidance Note is also addressed to national preventive mechanisms (NPMs) and other bodies in charge of the monitoring and oversight of places of detention, as well as to the administration and staff of places of deprivation of liberty.

Given that CSOs have been crucial in exposing the neglect endured by those behind bars throughout the Covid-19 pandemic, **their actions and pressure are all the more needed now**, as some of these 'temporary' closure policies and restrictions may continue indefinitely or become permanent fixtures.

By setting out arguments and strategies, the **Guidance Note aims to provide practical guidance for CSOs and other practitioners on how to engage in successful legal, policy and advocacy interventions, notably vis à vis criminal justice and detention authorities, seeking to prompt better, speedier access to information** concerning the personal integrity and health of persons deprived of liberty, as well as the ongoing restrictions and contingency protocols.

The purpose, methodology and scope of the Guidance Note: A Call to Action

The challenges, policy arguments and goals reflected in this Guidance Note have been identified under the guidance and recommendations of the **OMCT Covid-19 Crisis Action Group**,⁴ established last year.

Information and data for this Note have been gathered through a [survey](#) (in English, French, Spanish, Russian and Arabic) circulated in October 2021 among the SOS-Torture Network members, as well as experts in criminal justice, detention, gender, children and health. Complementary research (meetings with the Covid-19 Crisis Action Group's experts, literature research, interviews) was conducted in the last six months.



This Guidance Note aims to:

1. Identify the extent to which the challenges and restrictions affecting access to information of persons deprived of liberty are still in place and their impact.
2. Provide arguments and action-oriented recommendations that can be adopted to contribute to an increased collection and accessibility of information.
3. Share legal and advocacy strategies used by CSOs to engage authorities in steps towards increased access to information.

This Guidance Note would not have been possible without the rapid and engaging responses provided by the members of the SOS-Torture Network and other partners that contributed to our call for inputs.

While the term “place of detention” is broadly understood to include any place where a person is deprived of liberty (prisons -civilian and military-, police stations, juvenile justice establishments, social care and rehabilitation homes, homes for elderly, psychiatric institutions, immigration detention facilities, among others),⁵ this Guidance Note will focus mainly on places of detention for adults under the criminal justice system and, in a more limited way, on the challenges faced by children in detention, as well as migrants held under administrative detention schemes. Nonetheless, some of the strategies and best practices identified in this document are also applicable to other types of detention facilities, although they require additional or specific approaches and/or considerations that are beyond the scope of this Guidance Note.

I. SETTING OUT THE PROBLEM: LACK OF TIMELY AND ACCURATE INFORMATION ON THE INCIDENCE AND THE IMPACT OF THE PANDEMIC ON PERSONS DEPRIVED OF LIBERTY

International standards and timely declarations have highlighted the importance of disseminating information related to the ongoing public health emergency, especially in relation to the impact upon people deprived of liberty. Despite this, many States across the globe have failed to promptly and comprehensively report on the incidence of the pandemic and its impact upon detainees.

Insufficient, inaccurate and outdated information, along with a lack of disaggregated data, appears to have been the global norm during the early months of the pandemic, according to responses compiled in our survey.

The lack of transparency and information has an impact on: 1) individuals in detention settings, 2) family members of such individuals, 3) the public.

Due to pressure and advocacy from CSOs, relatives of detainees (often organised through networks) and monitoring and oversight bodies, there has been an increased openness and disclosure of periodic information in many countries.

However, in relation to detainees, the failure by authorities to disseminate information concerning health and other public interest information remains a major challenge and concern.⁶ **This includes a lack of information on vaccination plans and levels of coverage, as well as the lack of disaggregated data that would enable an assessment of individual exposure to the virus and other risks in detention.**

In many countries, the penitentiary and juvenile detention institutions have not yet reported basic information about the spread of Covid-19, or the most fundamental data including the number of cases, protocols and restrictions in place.⁷

In some cases, the levels of opacity were so severe that relatives of detainees were informed of their family members' deaths from Covid-19, without having been previously informed that they had contracted the virus and were subsequently ill from it.⁸ Such conduct contravenes internationally established principles on the treatment of persons deprived of liberty.⁹

As an illustrative example, in **Brazil**, several researchers conducted a study in 2021 based on the collection and analysis of posts on social media (Instagram, Twitter and a WhatsApp channel) published by persons deprived of liberty and their relatives. The most recurrent complaints were related to the lack of consistent and timely information, including on individual cases, which was aggravated by the underreporting of official data on Covid-19 in Brazilian prisons. After one year of monitoring, researchers concluded that there was a "manipulation of data on the situation of prisons, based on a narrative that builds an image of transparency and efficiency, but misinforms with outdated and largely underreported figures".¹⁰

National Preventive Mechanisms and other independent oversight bodies have also reported difficulties in accessing public information about the impact of Covid-19 in places of detention (e.g., in **Argentina**).

The shortage of information has also affected migrant detention centres. In **Mexico**, the National Institute of Migration had failed to publish information concerning cases of Covid-19 in the Migratory Stations, Provisional Stays and all other places of migrant detention. Furthermore, it had withheld more general information from the public such as the number of persons in migratory detention, the rate of occupation relative to capacity and, if applicable, their conditions of vulnerability (among others, persons over 60 years of age, persons with comorbidities, persons with a disability and minors). The judiciary ordered precautionary measures compelling authorities to report and disclose the mentioned data after several injunctions filed by CSOs.¹¹

In the **United States**, the Immigration and Customs Enforcement (ICE) failed to provide adequate information to individuals held in immigration detention. In one study, 85 percent of those surveyed first heard about Covid-19 in detention by watching the news on television, while ICE staff in some facilities attempted to downplay the significance of Covid-19 and actively prevented people from learning about the virus from the news by asking them to change the television channel.¹²

II. THE IMPORTANCE OF GUARANTEEING ACCESS TO INFORMATION IN THE CONTEXT OF A GLOBAL HEALTH PANDEMIC

1. Information saves lives: The right to access information during a health emergency equally applies to and protects persons deprived of liberty

The Covid-19 pandemic has highlighted the heightened importance of information in times of crisis. Access to information is important both individually and as a means to protect other rights, such as the personal integrity of those who are most vulnerable, including persons deprived of liberty. However, we have seen gaps and authorities are falling behind in the collection and delivery of information concerning detained people.

In August 2020, the UN Committee on Economic, Social and Cultural Rights called on States to provide “access to information concerning the main health problems in the community, including methods of preventing and controlling them” as part of the core obligation to protect the right to health.¹³

Disseminating health information is of particular importance during a health emergency, as the Aarhus Convention enshrines, and it must be “disseminated immediately and without delay to members of the public who may be affected”.¹⁴ Information concerning persons under the custody / guardianship of States clearly falls within the scope of “range of information of **public interest**”.¹⁵

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), in March 2020, urged States and National Preventive Mechanisms to:

“[e]nsure that all detainees and staff receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them.”¹⁶

The Inter-American Commission on Human Rights (IACHR) has said that States should: “**proactively report** in detail on the impact of the pandemic and on emergency spending, and do so in an open format accessible to all vulnerable groups, in accordance with best practices internationally”.¹⁷

Places of detention should be transparent and open to public scrutiny, as secrecy is a major obstacle to upholding the rights of persons deprived of liberty. In particular, producing reliable, transparent and up-to-date data is essential in the development of effective responses for the prevention and mitigation of the spread of Covid-19 or other infectious diseases in detention facilities.

Information should be collected and published by all detention facilities in the following areas:



Public level:

- a. Laws, executive orders and specific protocols issued by each place of detention to prevent and contain cases of Covid-19 contracted by persons deprived of liberty, those working in places of detention and in the surrounding community;¹⁸
- b. Protocols on the entry of persons and items, restrictions adopted on communication with the outside world and transfers on health grounds, etc.;
- c. Data on the number of cases of Covid-19 among detainees and staff. Such data should include, among other data points: cumulative number and number of currently active cases, case numbers and rates by gender, ethnicity, age, medical history, number of people in isolation or quarantine in the facilities;
- d. Cumulative number of Covid-19 tests;
- e. Number of current and previous hospitalisations due to Covid-19, and the number of individuals necessitating ICU care;
- f. Total number of vaccine doses (and type) and number of both partially and fully vaccinated eligible detainees and staff in places of deprivation of liberty;
- g. Statistics and reports about the mental health of persons deprived of liberty and its deterioration during the pandemic and about the specific policies and protocols designed to mitigate the impacts of segregation upon the mental health of detainees and their families.¹⁹



Persons deprived of liberty and their families / support networks

- h. Basic information on the nature of the virus, how it spreads, its health impact, preventive measures, should be shared with those detained in a manner that respects and reflects their level of health literacy and their native language;
- i. Regular information and updates should be provided on the health status of detainees infected with Covid-19 and on the measures taken to guarantee their health and prevent the contamination of others, including measures of isolation and quarantine;
- j. Timely updates on changes in the protocols of each place of detention and explanation of reasons for any restrictions;

All data should be updated daily, be disaggregated by facility and by age, gender, ethnicity, disability, country of origin, type of facility, facility ownership and socioeconomic status. It should be easy to locate on the institution's website and on community notice boards.

2. Increased transparency leads to safer prison environments

The lack of information has been reported to lead to increased anxiety and tensions in detention settings. Riots have broken out in many countries in reactions of anger and powerlessness to the secrecy and scarcity of information including information about the pandemic and its evolution. Many criminal justice institutions believe that security will be compromised if the public is permitted to know how these institutions perform²⁰ and, in particular, how they manage the Covid-19 health crisis. On the contrary, shielding information from the public view undermines the efforts towards increased transparency and may lead to increased tensions and distress over the systemic lack of transparency.

On a related note, the lack of accurate information and education about the Covid-19 vaccines, coupled with high levels of mistrust, has led to high rates of vaccine hesitancy and refusal among persons deprived of liberty.²¹

3. Centralised data to control the pandemic effectively and avoid gaps and asymmetry in information

CSOs have reported particular difficulties in obtaining information corresponding to local and remote prisons and police stations. The ministries in charge of the penitentiary systems, with the support of public health authorities, should collect, centralise and publicise information from all places of detention, places of quarantine and police stations. This should include facilities that are run as part of the criminal justice system, as well as those that are privately run, that are in remote and rural areas and those run by local authorities. This would allow the competent ministries and State authorities to assess the full impact of Covid-19 on places of detention across the country, and enable appropriate mitigation responses in all regions. To this end, local prisons and other places of detention must cooperate by collecting and sharing their data with the relevant State / central authorities.



There are several examples of good practice that could be fostered. Among these are Covid-19 information hubs which provide daily updates on the epidemiological situation in detention settings. They also publish pandemic mitigation plans, visiting protocols and other documents that provide important information regarding the safety and well-being of those living and working in detention facilities.²²

It is crucial to bear in mind:

- The heightened importance of information in times of crisis.
- The right of access to information is important both as an aim and as a means to protect other rights, such as the personal integrity of persons deprived of liberty.
- Lack of information leads to increased anxiety and tensions in detention settings.
- Central authorities need to make sure that local and remote prisons and police stations collect, share and publicise information.

III. CSO STRATEGIES TO BREAK THE OPACITY AND FILL THE INFORMATION GAP CONCERNING THE IMPACT OF COVID-19 ON PERSONS DEPRIVED OF LIBERTY

Civil society organisations have mobilised an impressively wide array of resources and strategies to push governments and prison administrations to lift the veil of secrecy. At the same time, they have developed their own methods of bridging the gap and collecting information about infection rates and deaths in places of detention. This has enabled them to scrutinise the effectiveness of the measures taken by governments and penitentiary institutions in response to the pandemic. In this section, the main strategies that have been developed will be laid out, along with specific case studies which may be of interest and applicable in other countries.

1. Communication with inmates and with relatives or networks of relatives

One of the most common strategies reported by CSOs in our survey responses has been increased communication with inmates, often via landline or cellular telephones. This has been crucial for the collection of information on Covid-19 outbreaks and as a means of denouncing negligence in the treatment of seriously ill persons deprived of liberty.

However, there are also countries such as **Venezuela, Brazil and Cambodia**, where CSOs have not been able to stay in contact with detainees. In such situations, communications with family associations and relatives (if not discontinued due to Covid-19 restrictions) have been vital, as it is often the sole source of information by which CSOs can continue to monitor the well-being of persons deprived of liberty. CSOs have reported the establishment or reinforcement of contact with the relatives of detainees, grassroots and social movements and associations of families. Some of these were created during the Covid-19 pandemic to mobilise for the rights of their detained loved ones.



In **Brazil**, associations of families have mobilised for the provision of basic services and a channel of communication with those deprived of liberty. Chapters of the *Agenda Nacional pelo Desencarceramento* (National Agenda for Decarceration) encompass most regions in the country and create spaces of exchange and advocacy, as well as the channelling of claims to CSOs and State authorities. **Social media** has been key in spreading information from detainees and their loved ones, which is treated and sent to official channels (public defenders, prosecutors, ombudsperson) and used anonymously in **campaigns** to pressure officials and expose the situation.

2. Access to information requests

It is important to continue to respond to requests for information during a pandemic. As the Inter-American Commission on Human Rights has noted, States should:

“Ensure the right to access public information in the framework of the emergency caused by COVID-19 and not set general limits based on reasons of security or public order. The bodies and officials that guarantee this right should give priority to requests for access to information related to the public health emergency ... If deadlines for requests for information on matters not linked to the pandemic have to be extended, governments should explain the denial, set a time period in which the obligation will be met, and allow for appeals against such decisions.”²³

Freedom or access to information (FOI) requests have been submitted by CSOs around the world. Although not always granted, they have been one of the most effective tools used to obtain information about the situation in places of detention during the Covid-19 pandemic. Nonetheless, the processing of access to information requests has slowed down during the pandemic with unjustifiable delays,²⁴ even though requests for information relating to the pandemic should be prioritised.²⁵

In **Peru**, CSOs requested statistical information through the mechanism of the Law of Transparency and Access to Public Information. Information was delivered, however, it failed to comply with the period established by law (the law establishes a maximum period of 10 working days, except for a duly justified request for an extension and the information was delivered after 25 working days). In **North Macedonia**, the *Helsinki Committee for Human Rights* submitted multiple requests for information. The Directorate for the Execution of Sanctions, the Ministry of Health, the Ministry of Justice and the penitentiary institutions responded in a timely manner. Among the information provided were details on the measures undertaken to prevent the spread of the virus in places of detention, individual cases of detainees who had contracted the virus and information regarding access to health care in the midst of the pandemic. In **Brazil**, the *Criminal Justice Network*, coordinated by *Gabinete de Assessoria Jurídica às Organizações* (GAJOP), documented the situation in four states (Bahia, Sao Paulo, Pernambuco and Rio de Janeiro) through FOI requests and contact with local leaders and family members, and recently published its findings.²⁶

3. Public interest and habeas corpus litigation

Habeas corpus petitions, used to bring a detainee before a court to determine if the person's detention is lawful, have been used in some countries as a collective legal action to prompt the release of large numbers of persons deprived of liberty and/or to improve their conditions of detention in a short period of time. Civil society organisations have also used constitutional public interest litigation to file collective petitions without specifying plaintiffs, in efforts to address protection gaps in the Covid-19 framework.

Such legal actions have also been used to curb secrecy in places of detention. For instance, in **Mexico**, *Documenta A.C.* filed and won two landmark collective amparo actions involving the right to information. The first action, filed on 24 April 2020, prompted the Court to order a wide array of measures to protect persons deprived of liberty in 39 psychiatric hospitals.²⁷ The second amparo, filed on 29 May 2020, concerned the protection of persons involuntarily deprived of liberty in 350 drug treatment residences. In both cases, the Courts requested authorities to guarantee that those deprived of liberty and their

families could have access to information on the measures taken to control the spread of the Covid-19 virus in the respective institutions.

In **Colombia**, a coalition of CSOs, composing the Civil Society Follow-up Commission, which monitors the implementation of two Constitutional Court rulings, which declared an unconstitutional state of affairs in the penitentiary system,²⁸ triggered an injunction²⁹ before the Constitutional Court. The Court requested urgent information from various government authorities on the measures that had been taken in prison settings in response to Covid-19.

4. Communication with oversight entities, including NPMs and legislative bodies

In countries such as **Malaysia** and **India**, CSOs have sought to obtain information through the submission of parliamentary questions by members of the parliament, which are answered by the relevant minister.

While NPMs have also reported difficulties in accessing public information about the impact of Covid-19 in places of detention, a good practice identified in **Argentina** was the regular sharing of the information they had access to with CSOs. In **Italy**, for many months after the start of the pandemic, the NPM was the only authority that was providing information, while state penitentiary institutions remained silent.



The importance of the cooperation of NPMs with CSOs in the context of the pandemic has been underlined by the SPT, recommending them “the undertaking of initiatives to strengthen relations with civil society organizations on the human rights of persons deprived of liberty.”³⁰

5. Advocacy, sensitisation and campaigning

In **Cambodia**, local CSOs have conducted advocacy meetings, engaged with media and held diplomatic briefings. Their concerns have been echoed by the international community, which has called “on the prison authorities to act with greater transparency and to immediately publish complete information on the number of positive cases recorded in prisons and to take immediate action to protect the lives and health of people in detention, including by urgently reducing overcrowding in all prisons across the country”.³¹

In **Indonesia**, CSOs, including *KontraS* (Commission for the Disappeared and Victims of Violence), have raised their concerns through media releases and by engaging in lobbying actions with the Ministry of Law and Human Rights. While the government has provided information on the measures taken to prevent the spread of Covid-19 in places of detention, other information such as the number of active Covid-19 cases in prisons is still not being provided to the public.

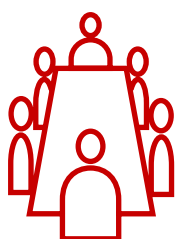
In **Honduras**, CSOs requested and held a public hearing before the Inter-American Commission on Human Rights to put pressure on the authorities.³² Advocacy efforts led to the publication of public bulletins.

In **Catalonia** (Spain), *Iridia* and *Migra Studium Foundation* filed numerous complaints before the judges in charge of the alien detention centres (*Centros de Internamiento de Extranjeros-CIE*). They also held press conferences and a demonstration, held in June 2021, and staged social media campaigns that called for increased transparency and contact with the outside world within immigration detention centres.³³ In the same vein, campaigns that denounced the lack of information prompted the prison administration to establish a direct channel of information for relatives of persons deprived of liberty and granted public access to statistics on the number of cases of Covid-19.

In **Hungary**, the Hungarian Helsinki Committee asked the authorities and the Ombudsperson to provide transparent information; submitted FOI requests; provided accessible information notes for detainees' family members; and communicated through the media. They turned to the Ministry of Interior, the National Prison Service, the Prosecutor's Service and the Ombudsperson. Information regarding rules in prison related to Covid-19 was regularly shared with the public. Data obtained through FOI requests were made available.

In **Russia**, access to information has been sporadic. In isolated cases, the CSOs received answers to their requests. Human rights organisations have been continuously highlighting the deteriorating situation, with increasing Covid-19 infection rates among prisoners in one of the regions. They succeeded when the head of the regional FSIN (the federal prison services) held a press conference where he announced figures on the infection rates among prisoners. This was the first occasion where the officials publicly acknowledged cases of Covid-19 among prisoners.

At the beginning of the pandemic, in **Italy**, there was a total lack of information from the prison administration. Subsequently, following pressure exerted by the national NPM and CSOs such as *Antigone*, the Ministry of Justice started releasing information to a limited extent. *Antigone* kept collecting information through lawyers, prison operators and relatives of prisoners. *Antigone* strongly advocated with the government for prison transparency.



In Tunisia, the OMCT Tunisia holds regular meetings with the general inspectorate of the prison administration. During the Covid-19 pandemic, the exchanges were crucial to obtain updates about the restrictions in force, the spread of Covid-19 in the prisons, the access to health, including mental health and the measures taken to guarantee the communication of detained persons with the outside world. Furthermore, to provide information and mitigate the stress related to the adoption of lockdown measures and reduced contact with family members, the OMCT Tunisia, together with *Psychologues du Monde Tunisie (PDM-T)* and the prison administration, produced a **sensibilisation video for detainees and prison agents to explain the psychological impact of confinement on the confined. The video had over 28,000 views.**

6. Collection of data by CSOs to reduce the information gap

In countries where information had not been collected nor made available by public authorities, civil society organisations have filled the vacuum by publishing timely bulletins or setting up online platforms, e.g., observatories, to track the incidence of the virus in places of detention.

In **Pakistan**, *Justice Project Pakistan* created a live global map tracking all reported positive tests among prisoners across the world.³⁴

In **Mexico**, there was a lack of information from authorities at the federal and state level concerning numbers of Covid-19 cases, deaths and protocols or measures taken to mitigate and manage the spread of the virus in the prison system. In response, *Documenta A.C.* set up a specific monitoring tool.³⁵ The Observatory on Covid-19 and the penitentiary system collects information through various ways, such as via: networks of relatives of detainees, the National Human Rights Commission (which hosts the NPM) and state commissions, monitoring and collecting data from media articles, and access to information requests.



In **Russia**, the *Public Verdict Foundation*, together with other human rights organisations and lawyers, created an interactive map called “The Grey Zone”.³⁶ This tracks incoming reports from prisons, the media and members of CSOs on the situation regarding infection rates and vaccinations.

In **India**, challenged by the lack of data from competent authorities, the *Commonwealth Human Rights Initiative* (CHRI) collected data from media reports and from the minutes issued by the High Powered Committees, to track Covid-19 cases and deaths in prison.³⁷

7. Research partnerships with academic institutions

Academics who study health and human rights have partnered with CSOs to conduct systematic research about conditions in places of detention. Such research can be generated from available (yet limited) public data sources, or via qualitative methods such as focus groups or interviews with individuals in detention or those just released. In the US, the organization Physicians for Human Rights has partnered with Harvard Medical School faculty and students to conduct interviews with individuals recently released from Immigration Detention that uncovered failures on many levels, including in access to information³⁸, and analysed publicly available data on rates of Covid-19 in immigration detention comparing them to community-based rates and documenting the vastly higher rates in those settings than in the general population.³⁹

8. Working with and supporting whistleblowers

Legal aid organizations can work with individuals working in detention settings and obtain information from them, with whistle-blower legal protections, on the status of Covid-19 in detention, local conditions or communication barriers at the sites. For example, in the **US**, several health professionals working in immigration detention facilities have discussed their experiences through legal whistleblower protections which generated information otherwise not available to the public.⁴⁰

IV. RECOMMENDATIONS

The Covid-19 pandemic has laid bare the heightened importance of information in times of crisis and brought to the fore systemic and profound flaws and gaps when it comes to the right of detainees to access and receive information.

The following recommendations are aimed at informing legal and advocacy strategies to uphold the right of persons deprived of liberty to receive reliable, accurate and up-to-date information:

- ◇ Access to information constitutes a vital safeguard to protect the personal integrity and dignity of persons deprived of liberty. Disseminating health information is of particular importance during a health emergency and detention authorities should not incur delays or put obstacles and difficulties to access information in a timely and regular fashion, using Covid-19 as a pretext.
- ◇ In order to allow CSOs, NPMs and other experts to assess the impact of two years of restrictions, which have dramatically increased the isolation of detainees, it is of utmost urgency that States deliver information on: the health status, including mental health, of persons deprived of liberty, the roadmap for the removal of the restrictions in place, and the measures taken to respond to the ongoing health emergency and future outbreaks, as well as their compliance with international human rights standards.
- ◇ Each prison administration from now on should have a public and accessible protocol which specifies the steps it will take (regular press conferences, bulletins, agreement with NPM, etc) to guarantee transparency in the event of an emergency (which could be the new variant of Covid-19 or a different emergency).
- ◇ States and, in particular, prison and detention authorities should be mindful of the importance of disclosing information in times of crisis, particularly in the context of a health pandemic, as lack of transparency is an important risk factor for increased tensions and violence in detention facilities. Increased access to information for detainees and family members is a crucial factor to making prisons and other places of deprivation of liberty safer and more secure to persons deprived of liberty, staff and visitors.
- ◇ Prison administrations and administrations of other places of deprivation of liberty should make accessible to all detainees

information, including the relevant forms to be filled out, concerning the activation of claims and procedures related to their rights in detention and existing possibilities for temporary and early release schemes.

- ◇ A good number of countries have improved communication channels with detainees, their relatives and the general public to explain and share updates about pandemic-related measures and restrictions. Others have reacted following the pressure put by CSOs - and also NPMs and the judiciary, among others - that have used successful legal and advocacy strategies in many countries as summarised in these pages. The anti-torture movement should continue promoting such strategies and good practices to ensure that they have positive lasting effects on the levels of transparency in traditionally opaque detention administrations. The access of journalists to places of detention, with all the required sanitary and security protocols, should also be fostered as a means of enhancing transparency.

NOTES AND REFERENCES

1. Penal Reform International, [Global Prisons Trends 2021: Prisons in Crises](#), 2021.
2. In the United States (US) alone, around 182,869 immigrants are held in detention facilities per year (2020) according to the [Global Detention Project](#).
3. E.g., in Uzbekistan, civil society sources have disputed the official Covid-19 statistics and compiled and shared on social media lists of deaths which are likely due to the virus. These numbers significantly exceed the official statistics. See: International Partnership for Human Rights (IPHR) and Association for Human Rights in Central Asia (AHRCA), '[Human rights impact assessment of the Covid-19 response in Uzbekistan](#)', 2020. In Russia, CSOs have at times received information that contradicts statements made by the Federal Penitentiary Service that the "situation was under control"; In Honduras, contradictory information has also been detected in official data. See more examples in the following sections.
4. The OMCT Covid-19 Crisis Action Group brings together 13 key experts and practitioners with vast knowledge of the array of normative and practical challenges that affect persons deprived of liberty, to act as a steering wheel and advisory body incorporating the various dimensions and strategies to be rolled out in OMCT's Covid-19 and detention work. The members are: Uju Agomoh (Nigeria), Nayomi Aoyama González (Mexico), Sarah Belal (Pakistan), Adam Bodnar (Poland), Enrique Font (Argentina), Osman Işçi (Turkey), Nika Kvaratskhelia (Georgia), Mohamed Lofty (Egypt), Sabrina Mahtani (Sierra Leone, United Kingdom), Susanna Marietti (Italy), Ranit Mishori (United States of America), Om Prakash Sen Thakuri (Nepal), Ana Racu (Moldova).
5. According to Article 4 of the [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), "places of detention should be understood as « any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence." (Article 4.1)
6. See also, [Follow-up to the first advice of the Subcommittee to States parties and national preventive mechanisms relating to Covid-19 pandemic](#), CAT/OP/12, 18 June 2021, para. 13(d): SPT notes with concern "lack of adequate information provided to persons deprived of liberty, their families, staff and others, regarding the situation resulting from the pandemic and the measures taken in each place of deprivation of liberty".
7. Countries include India, Belarus and Hungary.
8. E.g. information provided by *Fundación Comité de Solidaridad con los Presos Políticos* (FCSP) in Colombia. See also (in Portuguese) Pastoral Carcerária, '[Questionário sobre coronavírus nas prisões revela que situação no cárcere está muito pior um ano após o início da pandemia](#)', April 2021.
9. Notably, General Assembly, [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Nelson Mandela Rules), Resolution 70/175, adopted on 17 December 2015, Rule 69: "The prison administration is obliged to notify the next of kin or emergency contact in the event of a prisoner's serious illness, injury or transfer to a health institution, and in the event of death of a prisoner."
10. InfoVírus, '[Política de morte: Registros e denúncias sobre Covid-19 no Sistema penitenciário brasileiro 2020/2021](#)', pp. 4-6.
11. Such as the one registered under File 534/2020, filed by the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH). More information can be found in: [Informe sobre los efectos de la pandemia del COVID-19 en las personas migrantes y refugiadas](#), coalition of organisations, p. 86 and following.
12. Physicians for Human Rights (PHR), [Praying for Hand Soap and Masks](#), 12 January 2021.
13. Committee on Economic, Social and Cultural Rights, [General Comment No. 14: The Right to the Highest Attainable Standard of Health \(Art. 12\)](#), 11 August 2000, para. 44.
14. United Nations Economic Commission for Europe (UNECE), [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (Aarhus Convention), adopted 25 June 1998, in force 30 October 2001.
15. International Mandates for Promoting Freedom of Expression, '[Joint Declaration on Access to Information and on Secrecy Legislation](#)', 6 December 2004.
16. SPT, [Advice to States parties and National Preventive Mechanisms relating to the Coronavirus Pandemic](#), 25 March 2020, 9(17).
17. Resolution No. 1/2020, note 28. In the same vein, the African Commission on Human and Peoples' Rights has stated: "In times of public health emergencies, members of the public have

- the right to receive factual, regular, intelligible and science-based information on the threat COVID19 poses to their health, the role and impact of the measures adopted for preventing and containing the virus, the precautionary measures that members of the public should take and on the scale of the spread.”
18. E.g., including information regarding the specific measures taken for the prevention of the spread of coronavirus, like screening and testing procedures for new prisoners and disinfection and biosecurity measures in cells and common facilities, etc.
 19. See, among others, recommended metrics and features for Covid Data Dashboards in: Deitch M. & Bucknall W, *Hidden Figures: Rating the COVID Data Transparency of Prisons, Jails and Juvenile Agencies*, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, March 2021, p. 7.
 20. Geraghty S. & Velez M., *‘Bringing transparency and accountability to criminal justice institutions in the South’*, Stanford Law & Policy Review, Vol. 22:2, 2011, p. 455.
 21. Stern Marc F. and others, *‘Willingness to Receive a COVID-19 Vaccination Among Incarcerated or Detained Persons in Correctional and Detention Facilities – Four States’*, *Morbidity and Mortality Weekly Report*, Vol. 70:13, 2 April 2021, pp. 473-477.
 22. See, e.g., Scottish Prison Service (SPS), *COVID-19 Information Hub*, with daily Covid-19 updates and easy access to up-to-date visiting protocols and other institutional plans that set out the restrictions and measures in place. In Moldova, the official website of the National Prison Administration (www.anp.gov.md, <https://www.facebook.com/anp.gov.md>) publishes periodic bulletins with statistics reporting the number of Covid-19 infections and deaths in penitentiary facilities, as well as the measures that are being taken by the authorities to prevent the spread of the virus.
 23. Inter-American Commission on Human Rights, *Resolution No. 1/2020*, Pandemic and Human Rights in the Americas, 10 April 2020, para. 32. In the same vein, the African Commission on Human and Peoples’ Rights (ACHPR) has stated: *“In times of public health emergencies, members of the public have the right to receive factual, regular, intelligible and science-based information on the threat COVID19 poses to their health, the role and impact of the measures adopted for preventing and containing the virus, the precautionary measures that members of the public should take, and on the scale of the spread”*. See: ACHPR, *‘Press Statement on human rights based effective response to the novel COVID-19 virus in Africa’*, 2020.
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 29. Constitutional Court, *‘Sala Especial de Seguimiento a la situación carcelaria solicitó información sobre medidas por emergencia de Covid-19’*, 31 March 2020.
 30. SPT, *‘Follow-up to the first advice of the Subcommittee to States parties and national preventive mechanisms relating to Covid-19 pandemic’*, CAT/OP/12, 18 June 2021, para.11(k).
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 32. See press release: IACHR, *‘OHCHR and IACHR concerned about the situation of personas who are deprived of liberty in Honduras’*, 16 September 2020.
 33. Among other interventions, see: Iridia, *‘Human rights organisations file a complaint to denounce the conditions of persons detained in CIE under lockdown measures’*, 17 November 2020.
 34. See: Justice Project Pakistan, Interactive map with the number of prisoners infected by and dead from Covid-19 worldwide: <https://www.jpp.org.pk/covid19-prisoners/>
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 37. Commonwealth Human Rights Initiative, *‘COVID-19 State response to the coronavirus pandemic in India’*.
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