



(RE)OPENING PRISON DOORS TO CIVIL SOCIETY

A CATALYST FOR IMPROVING DETENTION CONDITIONS

**COVID-19 AND DETENTION:
IMPACTS, LESSONS AND URGENT ACTIONS
GUIDANCE NOTE NO. 3
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ABOUT THE OMCT

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.

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I. INTRODUCTION

Civil society organisations (CSOs), national preventive mechanisms (NPMs), lawyers, families and the media have struggled to [access information](#) on conditions of detention and resume visits to places of detention¹ since Covid-19 was declared a global pandemic on 11 March 2020.

Despite calls to ensure the effective functioning of monitoring and oversight mechanisms in places of detention, as emphasised by the World Health Organization in its interim guidance² to States, the pandemic brought about the suspension or curtailment of monitoring work in places of detention, in the context of [closure policies applied](#) to reduce the risk of Covid-19 outbreaks within detention facilities.

While, in some countries, restrictions lasted for a short period and independent monitoring bodies, including NPMs and civil society organisations, were able to regain access relatively quickly, the disruption of regular monitoring work **is still affecting a number of countries** and it is feared that **the long-term impact of far-reaching restrictions on access to and transparency of places of detention will be felt for years to come.**

In a context where emergency measures adopted to prevent and control the Covid-19 pandemic led to an escalation of torture and other ill-treatment in places of detention worldwide,³ OMCT has documented up until this moment a wide array of strategies deployed by human rights organisations to quickly adapt and respond to the pressing need to continue their monitoring and protective function in times of Covid-19.⁴

Thus far many of these organisations continue to challenge the existence of a new layer of barriers to permitting access and face-to-face contact with detainees in places of detention adducing health protection reasons.

In **Benin**, a blanket ban on visits is still in place, including in places where children are deprived of liberty, according to the organisations ESAM and Changement Social Benin. The ban affects CSOs who were able to conduct regular visits for years prior to the pandemic. In **Cameroon**, CSOs that used to be permitted the entry before Covid-19, including [Center for human rights and democracy in Africa](#), have not been able to obtain an authorisation from the Penitentiary Administration since March 2020. In **Colombia**, human rights organisations with a mandate to monitor places of detention, notably [Comité de Solidaridad con Presos Políticos](#) (CSPP), were only allowed to resume in-person visits in October 2021, after prolonged advocacy efforts and litigation (see the box on page 6 for further details). A virtual visiting system had been put in place, with 25 prisons monitored by CSPP from distance via video-conference.

The Covid-19 pandemic has also served as a pretext to extend or stiffen bans and restrictions on CSO access. For instance, in **Uruguay**, CSOs such as [SERPAJ](#) have [not been able](#) to enter prisons in order to monitor and collect complaints since 2019, while there was no impediment prior to that. In **Turkey**, CSOs have not been allowed access to places of detention since 2015, with Covid-19 bringing about additional obstacles to external scrutiny (as developed in the box on pages 8-9 below).



In short, during the Covid-19 pandemic, CSO efforts resulted in thousands of detainees being protected from abusive action and long-awaited reform processes being initiated. Yet, their actions had a limited impact due to the reluctance of detention authorities and staff to cooperate with them and grant them access to detention facilities.

Two years and a half on, a key lesson learnt from Covid-19 is the urgent need to strengthen the recognition of CSOs as key monitoring actors that play an essential role in the prevention, documentation, protection, rehabilitation and accountability for torture and other cruel, inhuman or degrading treatment or punishment, both in normal times and in emergency or crisis contexts.

Why a Guidance Note on the role of civil society organisations as front-line players in multifaceted prevention endeavour?

Allowing regular and independent monitoring is key to reducing the likelihood or risk of torture and other ill-treatment in closed institutions, which are, by definition, out of the public eye.⁵ This equation lies at the foundation of the system set up through the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),⁶ which establishes a dual and complementary preventive system of regular visits to all places where persons are deprived of their liberty by an independent international (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - SPT -) and national monitoring bodies (NPMs). There are currently 91 States that have ratified the OPCAT.

Many NPMs played a crucial role during the Covid-19 pandemic, from its very early stages, in upholding the health, safety and personal integrity of persons held in places of detention and the staff, through an active and creative preventive monitoring approach. Among the key tasks and roles fulfilled, some of the most noteworthy include: the collection, including through remote and creative ways - such as joining closed groups on social media set up by people quarantined -, and regular publication of information about the evolution of the pandemic in places of detention; successful advocacy for the swift decongestion of crowded prisons or for the use of mitigating strategies, such as remote technologies, to preserve the right of detainees to remain in contact with the outside world; or the mobilisation of safe and innovative strategies to continue their monitoring and visiting work, on-site and remotely, including by pushing to be afforded the institutional guarantees necessary for their efficient functioning (e.g. through their recognition as “essential workers” or through additional resources) given the heightened risk of torture and ill-treatment.⁷

Also noteworthy is the [*Protocol for national preventive mechanisms undertaking on-site visits during the coronavirus disease \(COVID-19\) pandemic*](#) published by the SPT to encourage and facilitate national preventive mechanisms to continue or restart on-site, safe and effective visits during the pandemic, as well as the [*two Advices*](#) related to Covid-19.

Yet, the Covid-19 pandemic laid bare pre-existing challenges and gaps, with many NPMs, NHRIs and other State monitoring mechanisms stopping their main functions or facing a very limited operational capacity, due to a wide range of reasons, including: structural under-resourcing curtailing the staff and resource capacity, concerns regarding their independence and autonomy or the existence of cumbersome administrative procedures or lack of cooperation from the authorities limiting their ability to respond quickly to the health emergency.

In this context, **civil society organisations across the globe stepped in during the Covid-19 pandemic to fill the information gap and provide an urgent response to immediate needs arising from the Covid-19 virus and the restrictions ordered to control the spread of the virus in places of detention.**⁸ In parallel, where NPMs or NHRIs were under-resourced or discontinued their functions, CSOs embraced an all-important watchdog role and called on them and on State authorities to bring their Covid-19 response into line with international human rights standards.

In many instances, close cooperation and coordination between NPMs and civil society organisations were pivotal to mitigate and counter the shortage of information through regular exchanges of information, which reciprocally strengthened the temporarily limited functioning and monitoring role of NPMs and CSOs.

It is also crucial to underscore that CSOs, as it will be developed in the following pages, have a scope of action vis à vis persons deprived of liberty which may defer from or exceed the preventive visiting focus of NPMs performing their functions according to Part IV of the OPCAT. Many of the organisations integrating the SOS-Torture Network within OMCT carry out visits to places of detention with a dual role: 1) examining, on a regular basis, the treatment of persons deprived of liberty and 2) engaging with and assisting persons deprived of liberty who allege to have been subjected to or face a high risk of torture and other ill-treatment, through the performance of individual and/or collective interventions, which can entail legal, medical, psychological, social support.

It is equally important to stress that there is a broader range of CSOs that develop and implement specific projects for the provision of services and humanitarian assistance inside places of detention, such as educational, health, religious and professional programmes. Such organisations may not necessarily have a human rights or monitoring mandate but are also essential to ensure the dignity and well-being of detainees.



It is worth highlighting that all States, regardless of the international treaties ratified, are bound by the absolute prohibition of torture and other ill-treatment, as a peremptory (jus cogens) norm of international law, which implies an obligation to take effective steps to prevent acts of torture and ill-treatment under their jurisdiction, including through the establishment of monitoring and oversight mechanisms.⁹

Most countries, with or without an OPCAT-compliant monitoring system, have set up or allow specialised monitoring by State and/or non-State bodies, ranging from national human rights institutions or bodies of a similar nature, internal administrative bodies, judicial bodies or mechanisms attached to specific ministries or the Parliament, to CSOs with an authorised visiting role.

In a world that remains vulnerable to public health and other types of emergencies, bearing in mind that the Covid-19 pandemic is not yet over and there are other global challenges, including the ongoing 2022 [monkeypox virus](#) outbreak, there is a **pressing need to reinforce collaborative action and continue to shine an urgently needed spotlight on detention settings under increasing strain and facing extraordinarily high levels of isolation.**

This Guidance Note aims to provide practical guidance for CSOs and practitioners on how to engage in successful legal, policy and advocacy interventions, notably vis à vis detention authorities, leading to the removal of legal and institutional barriers to their access to places of detention and support to persons deprived of liberty. By laying out arguments and strategies developed by CSOs in the context of Covid-19 and extending to the present moment, the document intends to strengthen and promote the recognition of CSOs as crucial actors in the monitoring of places of detention and in the crafting of emergency preparedness responses by authorities in charge of persons deprived of liberty.

To whom is this Guidance Note addressed?

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

The methodology of the Guidance Note

Over 40 members of the OMCT SOS-Torture Network took part in interviews, consultations and an online survey over the past year. The collection of data and expert views was complemented by virtual and in-person meetings of the OMCT Covid-19 Crisis Action Group,¹⁰ coordinated by the International Secretariat of the OMCT, in which key challenges and policy recommendations were identified; in addition, several of the experts of the mentioned group participated in the revision of the drafting process at various stages.

II. ARGUMENTS AND BEST PRACTICES

In the following pages, we will present arguments in favour of allowing CSO monitoring in places of detention, supported by specific best practice examples showing their practical and experience-based application, will be presented.

Reason 1: A key role in promoting access to information and transparency

Persons deprived of liberty are in a position of extreme vulnerability, irrespective of where they are held, due to the lack of visibility in the public sphere and the absolute dependence on and control by the institution in charge of their custody. Their “invisible” character was dramatically accentuated during the Covid-19 pandemic,¹¹ as documented by multiple sources.¹²

No access to information and transparency of places of detention can be ensured without effective external scrutiny mechanisms.¹³ Day to day operations and the management of places of detention need to be in the public domain to allow social control, oversight and accountability, an indispensable condition to keep the risk of torture and other ill-treatment at low levels.

Transparency increases the legitimacy of the management of places of detention and the public confidence in these institutions¹⁴ and it is a crucial requirement for the achievement of target 16 of the Sustainable Development Goals, with target 16.6 enshrining the importance of developing effective, accountable and transparent institutions at all levels.

As stated by the Special Rapporteur on torture, in order to establish and maintain independent monitoring, oversight and accountability mechanisms for the prevention of torture and corruption, **“States should provide a transparent and safe environment enabling and protecting the monitoring, reporting and advocacy activities of civil society organizations, human rights defenders and whistle-blowers and ensure their unhindered access to individual witnesses, victims or their relatives”**.¹⁵

The findings of independent monitors are also critical for journalists and media outlets covering places of detention, who often see their access to sites of detention restricted. The sharing of first-hand information allows them to raise greater public awareness of the impacts of detention.¹⁶



BEST PRACTICE

In the context of the entrenchment of restrictions on access to places of detention, the Constitutional Court of **Colombia** issued a ruling in June 2022¹⁷ to address the failure to execute judgment T-388 (2013), which had declared an “unconstitutional state of affairs” in the prison system.¹⁸ **The 2022 ruling orders the ministry of justice and the national penitentiary system (INPEC) to guarantee the access of civil society organisations, engaged in the monitoring of the implementation of the 2013 judgment, to prisons.**

In particular, the Court indicates that human rights organisations need to be ensured “**the permanent and timely possibility to enter the ERONs [prisons of the national penitentiary system] and access information on the prison and penitentiary system**” to be able to feed the Court with a vital source of information. The Court considers CSOs, along with State oversight bodies (notably the Ombudsman’s Office and the *Procuraduría General de la Nación - Office of the Inspector General -*),¹⁹ essential in the periodic reporting process on the status of implementation of judgment T-388. The Court alludes to the secluded nature of penitentiary institutions, exacerbated during the Covid-19 pandemic, to justify the need to grant unrestricted access to prisons to human rights organisations.

Reason 2: CSOs as a crucial source of first-hand knowledge and expertise

Detention authorities engaging with civil society organisations can benefit from valuable evidence-based knowledge which draws on accumulated inter-disciplinary experience as practitioners in the human rights, detention and criminal justice fields, among others. Detention institutions often recognise and value the benefits of high levels of cooperation with civil society actors, which can lead to the improvement of conditions of detention and the elimination of risks for the personal integrity of detainees and staff.

Likewise, NPMs and NHRIs often benefit from the involvement of civil society experts in detention-related activities, including collaboration and trainings in interview techniques, visiting procedures, the detection of signs and risks of torture and other ill-treatment, report writing or outreach activities.²⁰

Among the numerous examples identified by the SOS-Torture Network in the context of the adoption of emergency measures and reform agendas during the Covid-19 pandemic, the following two examples attest to the importance of fostering collaboration with CSOs, including by facilitating their access to places of detention and the direct and confidential contact with detainees.



BEST PRACTICE

In Italy, *Antigone* has been authorised by the Ministry of Justice to visit all adult detention facilities since 1998 and all juvenile facilities since 2008. Antigone conducts around 100 visits a year and publishes periodic reports that are a great tool to enhance transparency and formulate action-oriented recommendations. According to the Director of *Antigone*, Ms. Susanna Marietti, “States should grant access to prisons to civil society organisations with a monitoring mandate or expertise. CSOs are complementary and do not overlap with the work of the NPMs but rather support it”. During the pandemic, *Antigone* helped hundreds of prisoners to submit applications for home detention or for other needs and provided advice to the prison administration on the management of Covid-19 outbreaks. Given its knowledge of prisons, over the years *Antigone* has repeatedly been able to suggest improvements to the Italian penitentiary system, as recently in the case of reform proposals discussed by the Ministerial Commission on Prison Reform.

In Pakistan, *Justice Pakistan Project* (JPP) has provided expert advice to detention authorities and other actors of the criminal justice system to speed up the reduction of overcrowding and improve conditions of detention during the pandemic and in the long term. JPP developed a “system for allocating levels of care”, or vulnerability grading index, to enable individual prisons to reduce prison overcrowding, by identifying the most vulnerable prisoners according to the index and by encouraging the release of those identified to bring prisons down to a rate of occupancy that would enable effective social distancing. JPP also issued [policy recommendations](#) on these issues and an action plan for prison authorities on preventing and managing outbreaks of Covid-19 in prisons. All these efforts led to immediate releases and long-term decarceration initiatives.

Reason 3: Ability to react and respond quickly to crises

CSOs showed a great level of responsiveness and adaptability to address the immediate public health crisis in detention, sometimes with a temporary shift of the focus of their work from long-term goals to emergency relief and response. Increased levels of vulnerability, due to the lack of preparedness worldwide to manage a new threat shaking the infrastructure of detention facilities, were followed by multi-layered responses articulated by CSOs in record time.

On the one hand, CSOs experienced the same fate as other entities and institutions with procedures slowing down and challenges to the continuity of their work, while preserving the health and safety of their staff and their interlocutors. On the other hand, CSOs were best placed to reach communities and groups in situation of vulnerability, notably detainees and their families, due to their expertise, local presence and connections with local, grassroots and family networks.²¹ The independent and flexible character of CSOs enabled, as well, the fast and effective adaptation to maintain their core mission and the support to persons deprived of liberty.

That being said, the effectiveness of responses led by CSOs in places of detention was partly determined by the extent to which authorities allowed them to conduct on-site visits to places of detention and/or to put in place mitigation measures, such as remote monitoring strategies.

a) Immediate needs: Across the SOS-Torture Network, many organisations filled urgent gaps by addressing protection, health, material and psychosocial needs faced by persons deprived of liberty, through a combination of in-person and virtual strategies, and by joining efforts with other essential interveners, including family members, lawyers, medical personnel, social workers and NPMs / NHRIs. Relief efforts included the collection of medical supplies and equipment, protective gear, training of detention staff on infection prevention and control, and distribution of food supplies.

It is also worth highlighting the response of organisations and individuals working with torture victims to maintain the continuity of their activities, mobilising a wide array of tools, such as the combination of face-to-face interviews (when possible) with video conferencing, the use of self-help apps or telephone counselling, among others.²² The adaptation of their working methods prevented the discontinuation of psychological support, counselling and forensic evaluations, critical for documentation and rehabilitation work in support of victims of torture and other ill-treatment.

b) Emotional support: CSOs have been identified as a great source of moral and emotional support for detainees, and also for the families of those held behind bars. The possibility to receive visits from persons caring about one's well-being and conditions of detention, who often advocate on their behalf, taking into account the limited options of detainees to be connected to the outside world, has been crucial during the Covid-19 pandemic. It can also be essential in other contexts where detainees feel isolation from families and support networks.²³ This is specially the case for children deprived of liberty, who, in many countries, due to Covid-19 related restrictions, have seen their contact with their families drastically limited, or even entirely prohibited.

c) Detection of signs and risks of torture and other ill-treatment: CSOs play a vital role in the detection and collection of signs and allegations of torture and other ill-treatment, which often entails close collaboration with NPMs and other oversight bodies. This is particularly the case when organisations have been able to build a bond of trust with detainees and are linked to community-based support networks, relatives' associations and the like.²⁴ CSOs are key to channelling and processing complaints, and liaising with experts with whom an inter-disciplinary follow-up can be ensured (lawyers, psychologists, doctors and social workers).



BEST PRACTICE

In the state of Pernambuco (Brazil), the organisation *Gabinete Assessoria Jurídica Organizações Populares* (GAJOP) conducts regular inspections in children detention centres, called “Socio-Educational Units”. The pandemic context further accentuated the violence perpetuated within the juvenile system in this state and across Brazil. After several months in 2020 without access to the units, GAJOP resumed visits and detected many cases of abuse. During an inspection carried out in the Centro de Atendimento Socioeducativo of Cabo de Santo Agostinho, GAJOP verified cases of torture and other ill-treatment, one of them leading to a teenager losing an organ. **Following GAJOP’s intervention, the director of the centre was removed by judicial order.** Following a joint inspection to Recife’s Provisional Detention Centre (Cenip), with the Public Prosecutor’s Office of Pernambuco (MPPE) and the Public Defender’s Office of Pernambuco (DPPE), the Public Prosecutor’s Office requested the removal of the president of the Socio-Educational Care Foundation (FUNASE) and the director of the centre. In addition, in partnership with the National Mechanism for the Prevention and Combat of Torture, GAJOP requested the state Council for the Defense of the Rights of Children and Adolescents to create a sanitary protocol for the resumption of visits to the juvenile detention units by inspection and oversight organisations.²⁵

When access to places of detention is banned, suspended or limited, CSOs adapt their methods to developed alternative and complementary means to collect information about a detention facility and provide assistance to detainees. Yet, the level of protection and assistance afforded to persons held behind bars is limited, in these circumstances, due to the impossibility to conduct on-site visits and interviews with persons deprived of liberty and staff.



BEST PRACTICE

In Turkey, human rights organisations have not been able to access places of detention since 2015, coinciding with the breakdown of peace efforts and the escalation of the Kurdish crisis, followed by the failed coup d'état in 2016.

Turkey ratified the OPCAT in 2011. In January 2014 the government designated the National Human Rights Institution of Turkey (Human Rights and Equality Institution of Turkey (HREIT, **TIHEK** in Turkish) as a National Preventive Mechanism. There are serious concerns regarding the financial, functional and structural independence and competency of the members of the NPM within HREIT.²⁶

During Covid-19, the NPM, according to their public reports, suspended visits from March to December 2020.

Against this backdrop, the organisation *Civil Society in the Penal System (CISST)* developed various mechanisms, operating in parallel, to ensure continued monitoring during the Covid-19 lockdown: 1) with letters received from detainees (pre-trial and convicted detainees), CISST managed to receive information and collect complaints, covering up to 60% of prisons, including with political prisoners; 2) a call centre was established for detainees and family members. In situations of emergency, lawyers were mobilised to communicate with detainees and visit them when allowed; 3) Periodic pandemic reports were produced, which are available on the organisation's website, including in **English**; 4) a database was created on the incidence of the Covid-19 virus, complaints of torture and ill-treatment received, etc; 5) CISST, additionally, shared their hotline number via announcements in newspapers accessible to detainees.

As a result of these strategies, during Covid-19 times (spanning up until the present moment), CISST managed to communicate with 2667 detainees²⁷ and to address: restrictions on family visits and the impossibility of communicating with families and lawyers, including letters being blocked; health emergencies; situations of torture and other ill-treatment or imminent risk, including threats, poor conditions of detention, verbal or physical violence, long-term isolation; access to food and hygiene products.

d) Protection of the most vulnerable: CSOs have scaled their response to strengthen the protection of the most vulnerable in detention during the pandemic. OMCT network members and partners have concentrated efforts to mitigate the risk of long-term and irreparable harm caused by the isolation and added challenges related to access to health during the pandemic on different groups in situation of heightened vulnerability, including children, women, migrants, human rights defenders and LGBTIQ+ persons.



BEST PRACTICE

The blanket restrictions on access to places of detention have had particularly harmful effects on children deprived of liberty. In Nepal, [Advocacy Forum](#) (AF) collaborated with detention authorities to organise remote monitoring visits in child correction homes (CCH); coordinated the organisation of a health camp with medical consultations in detention centres for detained children; facilitated discussions among peer groups involving children in three CCH to alleviate the stress caused by their detention in the context of restrictions; filed habeas corpus to prompt the release of children in detention; and used public interest litigation to challenge the excessive use of force, abusive quarantine and poor detention conditions during the pandemic, leading to the release of 10 children.

The Covid-19 pandemic entailed very negative effects for the rights of women deprived of liberty, in particular their access to medical services and the communication with family members and close ones, which was abruptly disrupted. In Kyrgyzstan, the monitoring conducted by [the Association for the Protection of Human Rights in the Criminal Proceedings "Article 9"](#), in collaboration with the National Centre for the Prevention of Torture, during the pandemic revealed an acute shortage of female doctors, gender-sensitive mental health care, hygiene products, problems with pregnancy follow-up and preparation for childbirth as well as illegal restrictions on visits from lawyers and families. The findings of their visits were shared with the [United Nations Committee on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW) and the [United Nations Committee against Torture](#) (CAT) in the context of the respective periodic reviews of Kyrgyzstan.

e) Legal and advocacy strategies: In parallel, CSOs pushed for the adoption of short- and long-term measures to address systemic challenges in criminal justice and detention systems, which worsened during the Covid-19 pandemic. They developed strategies to hold their governments accountable for an abusive use of emergency powers. An overview of legal and advocacy strategies developed by CSOs to hold governments to account for ineffective or undemocratic crisis responses can be found in the OMCT report [Challenging detention and torture in times of Covid-19: Promising practices from human rights litigators and advocates from around the world](#) (February 2022).

Among these strategies, there are many examples of CSOs engaging with the CAT and other United Nations human rights treaty bodies during the pandemic, and as restrictions are progressively lifted, through the submission of alternative reports with specific sections on Covid-19 related issues identified in places of detention. These reports are the result of monitoring visits and the collection of testimonies among families and lawyers. As a direct outcome of these reports, the CAT was able to raise specific challenges and concrete and implementable recommendations, for instance in the context of the review of [Nigeria](#).²⁸

III. THE MONITORING ROLE OF CSOS ACCORDING TO INTERNATIONAL ANTI-TORTURE BODIES

The United Nations Committee against Torture (CAT) has raised the importance of the monitoring work of CSOs in places of detention on multiple occasions during the review of States' compliance with the obligations enshrined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; in particular, when interpreting and assessing the level of compliance with Articles 2, 11, 12, 13 and 16 of the Convention.

The involvement of civil society organisations in monitoring activities has been a strong and sustained focus of the CAT in relation to independent monitoring mechanisms, besides systematic recommendations urging States parties to become a party to the OPCAT and to establish a system with regular and unannounced visits by an independent monitoring mechanism.

In light of reported obstacles in gaining access to prisons to undertake monitoring activities, including denial of access, refusal of accreditation or other administrative restrictions and obstacles, the CAT has recommended that States take all appropriate steps to enable CSOs to carry out periodic, independent, unannounced and unrestricted visits to places of detention (e.g., [Cameroon](#), [Bolivia](#), [Thailand](#), [Panama](#), [Tajikistan](#), [Maldives](#), [Benin](#), [Uzbekistan](#), [United Arab Emirates](#), [Nigeria](#)), including by: granting access to all detention facilities in the country ([Belarus](#); with a focus on reception centres for asylum seekers and migrants, [Italy](#)); guaranteeing that CSOs can speak with detainees in private ([Canada](#)); and ensuring that monitors can report publicly on their findings ([Uzbekistan](#)).

In the case of Turkey, the CAT recommended the State party to **“adopt formal regulations explicitly authorizing human rights non-governmental organizations, medical professionals and members of local bar associations to undertake independent visits to places of detention”** ([Turkey](#); also [Lebanon](#)).

The CAT has stressed that the combined efforts of NPMs, national human rights institutions, civil society organisations, international organisations but also other formal State bodies, including judicial and legislative oversight bodies, are crucial to ensure effective scrutiny of places of deprivation of liberty. In the same spirit, it has encouraged increased cooperation between the NPM and civil society organisations (e.g., [Mexico](#)).

In the same vein, the SPT has noted that **“there should be no exclusivity in the preventive endeavour. Prevention is a multifaceted and interdisciplinary endeavour”**. In particular, the role of NPMs, national human rights and ombudsman institutions with a preventive mandate is **“supported and complemented by civil society, which also plays an important role in ensuring transparency and accountability by monitoring places of detention, examining the treatment of detainees and by providing services to meet their needs”**.²⁹

In the case of Tunisia, the SPT encouraged the NPM to “support international and national human rights organizations in lobbying the Government of Tunisia to guarantee them

continuing access to places of detention and to enable them to pursue their monitoring and oversight activities” and to **“work closely with civil society organizations in carrying out its functions, in particular by ensuring that visits to places of detention cover the entire national territory, but also by organizing awareness campaigns and training activities for the prevention of torture”**.³⁰ Similar to the CAT, the SPT recommends States and NPMs to engage with CSOs to seek synergies, including through increased participation in visits by the NPM and in its dialogue with the authorities.³¹

IV. CONCLUSION AND RECOMMENDATIONS

Civil society organisations working for the rights of persons deprived of liberty and criminal justice reform face, all too often and in too many places, obstacles and exclusion preventing their access to places of detention. Prison doors are closed to CSOs, impeding inspection, direct contact with detainees and engagement with staff and detention authorities.

Throughout recent history, and remarkably in the context of emergency responses, CSOs have made valuable contributions to access to information and transparency, shown great flexibility and built trust, expertise and legitimacy, backed by multiple recommendations from international human rights bodies, to be recognised and protected as vital monitoring actors in the prevention of and the protection from torture and other cruel, inhuman or degrading treatment or punishment.

During the Covid-19 pandemic, CSO efforts resulted in thousands of detainees being protected from abusive action and prompted reforms leading to better access to health services or the decongestion of places of detention. When human rights violations had already occurred, CSOs mobilised their networks and resources, conducted on-site and virtual visits, to prevent further abuses and set in motion strategies to pursue justice and redress for the victims.

But for CSOs to be able to operate effectively and make an optimal impact on the protection and promotion of the rights of persons deprived of liberty, they need to be afforded the necessary normative and institutional guarantees to access places of detention, play a meaningful role in the monitoring of conditions of detention and assist detainees at risk of torture and other ill-treatment. A paradigm shift is needed, by which justice systems and detention authorities embrace the paramount importance of being open to scrutiny and advice from CSOs and a range of actors involved in the prevention, investigation, sanction and reparation of torture and other ill-treatment, notably NPMs, NHRIs and other State bodies with monitoring and oversight roles, as well as international human rights and humanitarian bodies.

The arguments and examples included in this Guidance Note provide a tool for reflection and action for States and detention authorities aimed at building back better, by including CSOs in transparency and prevention of torture strategies. There is a human-rights based, practical and ethical imperative to engage in emergency preparedness now, putting the Covid-19 lessons into practice and ensuring that human rights of persons deprived of liberty are front and centre of design and implementation processes and strategies.

Recommendations to CSOs:

- ◇ Document and report on the legal, institutional, de facto obstacles that prevent CSOs from accessing places of detention to national and international monitoring and oversight bodies;
- ◇ Seek constructive engagement and collaboration with detention authorities and personnel to promote the observance and implementation of human rights standards, capitalising on the knowledge and expertise that CSOs can provide, as well as the willingness to assist;
- ◇ Engage with international anti-torture bodies, in particular CAT and SPT, with a view to promoting the inclusion of recommendations, in their reports, raising the need and importance of allowing CSOs access to places of detention;
- ◇ Advocate the ratification of the OPCAT;
- ◇ Promote the participation of CSOs and engage in the process of designing, establishing and maintaining independent and effective NPMs;
- ◇ Encourage the adoption of human rights-compliant emergency preparedness and response plans and protocols in places of detention, which should be designed with meaningful involvement of CSOs, the health community, associations of relatives of incarcerated people, among others;
- ◇ Advocate the revision and update of international rules and standards on the treatment of persons deprived of liberty in a manner that is informed by lessons learnt during the Covid-19 pandemic, including on issues related to access to information and external scrutiny, health standards and medical services, the notion of equivalency and the principle of non-discrimination, and the use of solitary confinement, among other issues.

Recommendations to States and detention authorities:

- ◇ Take the necessary steps to enable civil society organisations to carry out periodic, independent and unrestricted visits to all places of detention, including (non-exhaustive list):

Police stations, prisons, pre-trial detention centres, quarantine or containment centres, juvenile detention centres, social care homes, security and intelligence service premises, detention under military facilities, administrative detention facilities, unofficial places of detention, psychiatric institutions, drug rehabilitation centres, homes for the elderly, migrant detention centres, reception centres for asylum seekers and migrants, including centres for unaccompanied children and other places where people may be deprived of their liberty, run by public or private entities;

- ◇ Ensure the adoption of normative and institutional guarantees and regulations to grant CSOs access to all detention facilities, preventing arbitrary or unlawful restrictions, authorising them to undertake visits in the conditions described in the first recommendation, as well as: to conduct interviews with detainees in private; to guarantee their access to information; and to carry out actions and provide services in favour of the rights of persons deprived of liberty;
- ◇ Guarantee that rules and regulations adopted on CSO access are transparent and include objective and reasonable criteria as well as safeguards to prevent that decisions are left to the subjective assessment of detention managers;
- ◇ Ensure that places of detention are open as much as possible to the media, to enable the wide dissemination of information and the sensitisation of public opinion;
- ◇ Authorise independent monitoring bodies and the media to enter and use recording devices, such as cameras, cell phones, tape- or video-recorders, to bear witness to life and conditions in detention settings;
- ◇ Ensure, in events of public health relevance, the provision of the necessary biosecurity items to protect the life and health of detainees, staff and independent monitors who enter places of detention, in accordance with the relevant national and international health guidelines. In no case shall the lack of such elements constitute an obstacle to the entry of independent monitors;
- ◇ Guarantee that CSOs can report publicly on their findings and recommendations, without fearing reprisals for their human rights and monitoring work;
- ◇ Promote collaboration, coordination and complementarity of CSOs with NPMs and other State monitoring bodies;
- ◇ Establish and ensure the effective and independent functioning of NPMs - through ratification and implementation of the provisions of the OPCAT, including an inclusive process carried out in consultation with CSOs -. NPMs should be able to decide freely, without exception, about the choice, format and moment to conduct monitoring visits (in accordance with public health best practice), including in times of crisis or emergency;
- ◇ Ensure that in times of crisis or emergency, including health emergencies, independent national and international monitors are afforded the institutional guarantees necessary for their efficient functioning and access to places of detention, including through their recognition as “essential workers”, given the heightened risk of torture and other ill-treatment. Such guarantees should be incorporated in emergency preparedness and response protocols adopted by detention authorities, which must be public;

- ◇ Ensure that places of detention provide timely, accurate and culturally and linguistically-appropriate information to those deprived of liberty about any emergency affecting the facility, including (when related to a health emergency) about prevention, treatment and any public health measures being undertaken.
- ◇ Include in training programmes for staff working in detention facilities specific modules on the value of transparency in places of detention and the importance of allowing and promoting external scrutiny;
- ◇ During and in anticipation of a health emergency, include in training programmes for staff working in detention facilities specific modules on the basics of disease transmission in congregate settings and preventive measures.
- ◇ Promote transparency and meaningful involvement of CSOs, NHRI and NPMs over policies, legal and administrative framework, budget building relating to detention, through participatory processes, open data and information sharing.

Recommendations to NPMs and NHRIs:

- ◇ Actively engage and collaborate with CSOs, promoting the recognition of their monitoring and assistance role in places of detention, including through the joint establishment of clear frameworks for cooperation and mutual support;
- ◇ Urge the adoption of human rights-compliant emergency preparedness and response plans and protocols in places of detention, which should be the result of a participatory and inclusive design process. Such protocols should establish guarantees for the effective functioning of independent monitoring bodies in times of emergency.

NOTES AND REFERENCES

1. In the present Guidance Note, the term “place of detention” is used interchangeably with the term “place of deprivation of liberty” and it covers all places of detention pursuant to the definition contained in Article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). “Person deprived of liberty” is used interchangeably with the term “detainee”.
2. World Health Organization, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim Guidance*, 15 March 2020, p. 5.
3. See, for instance, statement issued by the European Union, [‘COVID-19 exacerbated the risk of ill-treatment and torture worldwide’](#), 26 June 2021.
4. Some of these strategies are outlined in OMCT, [Guidance Note no. 1: Breaking the Walls of Silence: Access to information for detainees in a world with Covid-19](#), published in April 2022, devoted to the lessons learnt and urgent actions required to guarantee access to information in places of detention in a world with Covid-19.
5. The Association for the Prevention of Torture (APT), [Monitoring places of detention: A practical guide](#), 2004, pp. 26-27.
6. United Nations General Assembly, [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), adopted by resolution A/RES/57/199, on 18 December 2002, entry into force on 22 June 2006.
7. See, among others, compilation of good practices published by APT and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), [Guidance: Monitoring Places of Detention through the COVID-19 Pandemic](#), 2020.
8. OMCT, [Challenging detention and torture in times of Covid-19: Promising practices from human rights litigators and advocates from around the world](#), February 2022.
9. United Nations Committee against Torture, *General Comment no. 2 on the implementation of article 2 by States parties*, [CAT/C/GC/2](#), 24 January 2008, para. 1.
10. 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).
11. It is worth noting that quarantines and lockdown measures in places of detention have been adopted in many countries during contagious disease outbreaks, but not on such a global scale.
12. See, for instance, Pérez-Sales P, [‘Impact of the COVID-19 pandemic on work with torture survivors: Clinical and community perspectives’](#), *Torture Journal*, published by International Rehabilitation Council for Torture Victims (IRCT), Volume 30, Number 2, 2020, pp. 6-7.
13. Office of the United Nations High Commissioner for Human Rights, [‘Preventing Torture, The Role of National Preventive Mechanisms, A Practical Guide’](#), *Professional Training Series no. 21*, HR/PT/PT/21, 2018, page 6.
14. APT, [Monitoring places of detention, a Practical Guide](#), 2004, p. 27.
15. United Nations General Assembly, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment*, 16 January 2019, A/HRC/40/59, p. 19. See also United Nations Convention against Corruption, Chapter 2, Article 13.
16. See, for instance, Fleay C., [‘The limitations of monitoring immigration detention in Australia’](#), *Australian Journal of Human Rights*, 2015, Volume 21(1) : 21-45, p. 28.
17. Corte Constitucional de Colombia, [Auto 896/22](#), 30 June 2022.
18. T-388 arises out of multiple individual *tutela* suits claiming violations of the rights of persons deprived of liberty. Tutela suits are the equivalent to the amparo in other Latin American countries, which are judicial suits aimed at protecting fundamental rights. The Constitutional Court can issue collective tutela judgments protecting a specific group of people or when there are persistent and widespread human rights affecting multiple persons which require coordinated action by multiple State bodies.
19. Colombia has not ratified the OPCAT.

20. The collaboration between CSOs and NPMs can take different forms. CSOs can be part of the NPM or integrate NPM consultative or advisory bodies. When CSOs do not have a formal role within the NPM structure, collaboration can be formalised through a memorandum of understanding that may include the articulation of CSOs visiting places of detention jointly with or in collaboration with NPMs, or more informal agreements or dynamics.
21. Brechenmacher S., Carothers T., Youngs R., *Civil Society and the Coronavirus: Dynamism Despite Disruption*, Carnegie Endowment for International Peace, April 2020, p. 3.
22. Pérez-Sales P, '[Impact of the COVID-19 pandemic on work with torture survivors: Clinical and community perspectives](#)', *Torture Journal*, published by International Rehabilitation Council for Torture Victims (IRCT), Volume 30, Number 2, 2020.
23. See, for instance, Fleay C., '[The limitations of monitoring immigration detention in Australia](#)', *Australian Journal of Human Rights*, 2015, Volume 21(1) : 21-45, p. 28.
24. As an illustrative example, Antigone reports having been the first entity to be able to file a criminal complaint and become a civil party in the trial for the alleged mass beating in the [prison of Santa Maria Capua Vetere](#) (Campania), which led to the indictment of 105 people including police officers and civil staff in the largest trial for torture in Europe, thanks to trust gained by the association, which led many prisoners and family members to report the violence they have suffered to them.
25. Further details on the monitoring strategies during the pandemic in the state of Pernambuco can be found in: GAJOP and Rede Justiça Criminal, [Pernambuco: Monitoramento e resistência às violações do Estado durante a pandemia](#), January 2021.
26. The HREIT has not been accredited by the Global Alliance of National Human Rights Institutions (GANHRI) and it has received multiple recommendations, including the need to amend Law no. 6701 on HREIT, to be brought in line with the UN Principles relating to the Status of National Human Rights Institutions (Paris Principles).
27. Available statistics cover the period 14 March 2020 - 31 August 2022.
28. See also CAT, Concluding observations in the absence of the initial report of Nigeria, [CAT/C/NGA/COAR/1](#), 21 December 2021.
29. SPT, [The approach of the Subcommittee on Prevention of Torture to the concept of prevention](#), CAT/OP/12/6, 30 December 2010, 5(h).
30. SPT, [Recommendations and observations addressed to the national preventive mechanism of Tunisia](#), [CAT/OP/TUN/2](#), 11 August 2017.
31. SPT, [Observations and recommendations addressed to the State party \(Brazil\)](#), 11 February 2016, [CAT/OP/BRA/3](#); SPT, recommendations and observations addressed to the national preventive mechanism of Hungary, [CAT/OP/HUN/2](#), 23 April 2021.

List of previous OMCT reports on Covid-19 and detention:

- OMCT, [Guidance Note no. 1: Breaking the Walls of Silence: Access to information for detainees in a world with Covid-19](#) (April 2022).
- OMCT, [Guidance Note no. 2: Breaking the Walls of Isolation: Restoring contact with families in a world with Covid-19](#) (April 2022).
- OMCT, [Briefing: Monkeypox: Ensuring rights while protecting the health of persons in detention and communities](#) (September 2022).
- OMCT, [Briefing Report: Challenging detention and torture in times of Covid-19: Promising practices from human rights litigators and advocates from around the world](#) (February 2022).
- OMCT, [Guidance Brief: Building our response on Covid-19 and detention](#) (April 2020).

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