

The Right to Health Care in Prison during the COVID-19 Pandemic

A legal brief prepared by the Open Society Justice Initiative to assist legal practitioners in advocating and litigating prisoners' right to access health care during the COVID-19 pandemic

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Introduction and purpose of this legal brief

1. This legal brief provides an overview of the international and regional legal standards that guarantee access to health care in prisons. Applying a public health perspective to these standards and in light of policy and guidance provided by health authorities, including the World Health Organization, the brief details specific measures that the Open Society Justice Initiative considers States should implement in order to protect the rights to life and health of prisoners in the context of the COVID-19 pandemic.

2. COVID-19 is an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The virus can spread through droplets from nose or mouth when people cough, sneeze, or speak and can reach people within close proximity.¹ The World Health Organization (WHO) has therefore recommended keeping at least 1 meter (3 feet) distance between people and avoiding crowded places.² The outbreak of the COVID-19 pandemic, in early 2020, has led States to adopt drastic measures to protect people from being infected. Vulnerable groups—those more at risk of being infected—have been identified, and public health authorities have urged States to take special measures regarding these vulnerable groups. People deprived of liberty, and in particular prisoners, are among the vulnerable groups, given the overcrowding that characterizes a large number of prisons, the difficulty of securing physical distance, the often poor conditions of detention and poor ventilation in prisons, and the significant number of prisoners in vulnerable health situations.³ Moreover, the spread of transmissible diseases constitutes a public health concern especially in the prison environment,⁴ where diseases can spread rapidly due to the high concentration of persons in confined spaces.⁵ As underscored by the WHO, efforts to control COVID-19 in the broader community are likely to fail if strong measures are not taken in prisons and other places of detention.⁶ While other transmissible diseases such as tuberculosis and HIV are not uncommon in prisons, COVID-19 is exceptionally dangerous due to its highly contagious character, its presence in and spread to all segments of society, and its novelty. Despite the dangers posed by COVID-19, lessons can be learned from the prevention and control of other contagious

¹ World Health Organization, [Coronavirus disease \(COVID-19\) pandemic, Questions and answers](#), 17 April 2020, last accessed 6 July 2020.

² WHO, [Coronavirus disease \(COVID-19\) advice for the public](#), last updated April 29, 2020. A significant number of national authorities advise bigger distance, up to 1.5 to 2 meters (6 feet). See for example Centers for Disease Control and Prevention, [Coronavirus Disease 2019. Social Distancing](#), last updated May 6, 2020.

³ 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. 1-2. Open Society Justice Initiative, [Pretrial Detention and Health: Unintended consequences, deadly results. A global campaign for pretrial justice report](#), 2011, 82 pages.

⁴ *Cătălin Eugen Micu v. Romania*, ECtHR, Judgment of 6 January 2016, para. 56. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 533.

⁵ Inter-Agency Standing Committee, OHCHR and WHO, *Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty*, p. 2.

⁶ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 1.

diseases, and specific measures can and must be tailored to the problems posed by this new virus.

3. International law dictates that prisoners have the right to life, the right to be protected from torture and inhumane or degrading treatment, and the right to access health care. Therefore, States must adopt relevant measures to protect prisoners from COVID-19. The first priority is to establish physical distance among prisoners. Numerous international human rights institutions have urged a drastic reduction of the number of people detained, by slowing the number of new admissions, resorting to alternatives to deprivation of liberty, and accelerating the early, provisional, or temporary release of prisoners.⁷ In order to create sufficient space for prisoners in the context of COVID-19, States may be guided by the minimum standards⁸ and “desirable” higher standards⁹ developed by the European Committee for the prevention of torture (CPT) to define living space per prisoner.¹⁰ The CPT has repeatedly criticized the use of large-capacity dormitories that are often poorly ventilated, with poor access to sanitary facilities. These dormitories can become COVID-19 infection clusters given the close proximity they create among prisoners and the large number of prisoners housed in them.¹¹ When planning to release prisoners, States should pay special attention to prisoners at the most at risk of being infected, including people 65 years and older, pregnant women, and prisoners with lung disease, heart disease, diabetes, blood disorders, chronic liver or kidney disease, inherited metabolic disorders, developmental delays, or who are immunocompromised (cancer, HIV, autoimmune diseases).¹²

4. While efforts to reduce the number of individuals deprived of their liberty are crucial, they are not sufficient *per se*. States also have the responsibility to protect the health and

⁷ United Nations Office on Drugs and Crime, [COVID-19 preparedness and responses in prison](#), 31 March 2020, p.1. Inter-Agency Standing Committee, OCHR and WHO, [Interim Guidance COVID-19: Focus on persons deprived of their liberty](#), March 2020, p. 3. Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment, [Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic](#), Adopted on 25th March 2020, section II.9.(2). European Committee for the prevention of torture and inhuman or degrading treatment or punishment, [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#), Issued on 20 March 2020, para. 5. Inter-American Commission on Human Rights, [Resolution 1/20. “Pandemic and Human Rights in the Americas.”](#) Adopted on 10 April 2020, para. 45-46.

⁸ Cells of two or more prisoners should give at least 4m² of living space per prisoner – the place taken by sanitary facilities being excluded from the calculation. CPT, [Living space per prisoner in prison establishments: CPT standards](#), CPT/Inf (2015) 44, 15 December 2015, para. 9

⁹ The CPT promotes larger spaces for multi-occupancy cells, i.e. 10m² for two prisoners, 14m² for three prisoners and 18m² for four prisoners, considering that 4m² can still lead to cramped conditions. [Living space per prisoner in prison establishments: CPT standards](#), para. 16.

¹⁰ [Eleventh General Report on the CPT’s activities covering the period 1 January to 31 December 2000](#), CPT/Inf (2001) 16, 3 September 2001, para.29.

¹¹ *Ibid.*

¹² Centers for Disease Control and Prevention, [Coronavirus Disease 2019 \(COVID-19\): People Who May Be at Higher Risk](#), last accessed 11th June 2020. See also IACHR, [Resolution 1/20. “Pandemic and Human Rights in the Americas.”](#) para. 45.

life of prisoners who remain imprisoned during the COVID-19 pandemic.¹³ The United Nations, the Council of Europe, the Inter-American Human Rights system, and the African Human and Peoples' Rights system have developed norms and standards detailing the scope of the right to healthcare in prisons; these norms and standards establish States' duties in the context of the COVID-19 pandemic. The purpose of this brief is to detail the relevant international and regional norms on access to health care in prisons and, in light of public health guidance, to formulate specific measures to be implemented in order to protect prisoners from being infected by the new virus.

5. Section A of the brief will recall the international legal framework of the right to health care for prisoners. Section B will provide an overview of the overarching international principles that govern access to health care in prison. Section C will then draw on international and regional sources to set out the minimum standards States must meet to adequately protect the health of prisoners. Section C looks into four areas of preventive medicine, including the educational and supervisory role of health care services in prisons, personal and environmental hygiene, testing, and personal protective equipment. The brief then outlines the duty to ensure prisoners' access to treatment and medication, as well as the need for physical distance, medical isolation, and contact with the outside world in Sections D and E, respectively. In Section F, the brief recalls the duty of States to conduct proper investigations on deaths in custody. Finally, Section G will explore the need for new forms of transparency at a time when many monitoring bodies cannot carry out their duties on the ground.

6. The rules described in this brief apply to all categories of prisoners,¹⁴ including untried prisoners (those who "have been remanded in custody by a judicial authority"¹⁵) and convicted prisoners (prisoners "who have been deprived of their liberty following conviction").¹⁶ Many of the standards are also applicable to persons in police custody, (although it is important to bear in mind that remand prisoners should not be held in police detention facilities for prolonged periods).¹⁷ By contrast, immigration holding facilities,

¹³ United Nations Office on Drugs and Crime, [COVID-19 preparedness and responses in prison](#), 31 March 2020, p.1. See also Penal Reform International, [Coronavirus: Healthcare and human rights of people in prison. Briefing note](#) (available in 6 languages), 16 March 2020, p. 4-10.

¹⁴ United Nations, General Assembly, [The United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (hereafter the Nelson Mandela Rules), Resolution 70/175 adopted on 17 December 2015, Preliminary observation 3.

¹⁵ Council of Europe, [Recommendation Rec\(2006\)2 of the Committee of Ministers to member states on the European Prison Rules](#), Adopted on 11 January 2006 and revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies (hereafter the European Prison Rules), Rule 10.1.

¹⁶ *Ibid.*

¹⁷ [Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018](#), CPT/Inf (2019) 7, para.32. In addition, persons held in police custody must have immediate access to a lawyer and the possibility to have a medical examination by a doctor of their choice, in addition to any medical examination carried out by a doctor called by the police authorities. UN Human Rights Council, [Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention](#), Resolution 31/31 adopted on 24 March 2016, articles 6-8. [2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991](#), CPT/Inf (92) 3, 13 April 1992, para. 36. African Commission on Human and Peoples' Rights, [Resolution on the Guidelines and Measures for the prohibition and prevention of torture, cruel,](#)

psychiatric care establishments, social care institutions, and detention centers for juveniles are not included in the scope of this brief.

7. The Open Society Justice Initiative encourages lawyers to use the research and arguments in this brief to support domestic, regional, and international advocacy and litigation. The Justice Initiative has made every effort to ensure the information presented here is accurate. However, this brief is provided for information purposes only and does not constitute legal advice. It is important to emphasize that COVID-19 is a new disease and medical experts are still in the process of discovering its characteristics and the protective measures that help in curbing infection. The protection of prisoners' right to health must therefore be secured according to the evolving recommendations issued by health authorities, while always respecting international human rights law.

A. Access to health care is a fundamental right for prisoners

8. The right to health is a **fundamental right** and every person is entitled to “the highest attainable standard of health conducive to living a life in dignity.”¹⁸ Access to health care is also **internationally recognized** as a fundamental right for prisoners by the United Nations (Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners),¹⁹ the Inter-American Commission on Human Rights (Principle X of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas),²⁰ the Council of Europe (Rule 39 of the European Prison Rules),²¹ and the African Commission on Human and Peoples' Rights (Articles 20 and 31 of the Guidelines and Measures for the prohibition and prevention of torture, cruel, inhuman or degrading treatment and punishment in Africa).²² States are responsible for providing health care to prisoners, and have a duty to ensure the health and well-being of persons deprived of their liberty.²³ States also cannot invoke economic hardship to justify prison conditions that do

inhuman or degrading treatment and punishment in Africa (hereafter the Robben Island Guidelines) adopted during the 32nd ordinary session, October 17-23 2002, article 20.

¹⁸ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000 U.N. Doc. E/C.12/2000/4, para. 1. See also *Hernández v. Argentina*, IACtHR, Judgment of 22 November 2019, para. 76.

¹⁹ The Nelson Mandela Rules, Rule 24.1.

²⁰ Inter-American Commission on Human rights (IACHR), *Resolution 1/08. Principles and best practices on the protection of persons deprived of liberty in the Americas*, Adopted during the 131st regular period of sessions, March 3-14 2008, OEA/Ser/L/V/II.131 doc. 26, Principle X.

²¹ European Prison Rules, Rule 39.

²² African Commission on Human and Peoples' Rights, The Robben Island Guidelines, articles 20 and 31.

²³ United Nations, Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the right to life*, 30 October 2018, CCPR/C/GC/36, para. 25. *Díaz Peña v. Venezuela*, IACtHR, Judgment of 26 June 2012, para. 135.

not comply with the minimum international standards or respect the inherent dignity of the human being.²⁴

9. The right to health care in prison derives also from the right to life²⁵ and the prohibition on torture and inhuman or degrading treatment.²⁶ As part of the duty to uphold the **right to life**, authorities are under an obligation to account for the treatment of people deprived of their liberty and must take appropriate steps to safeguard the lives of those within their jurisdiction.²⁷ These obligations are especially pertinent with respect to detainees, who are entirely under the control of the authorities and are in a particularly vulnerable position.²⁸

10. The **prohibition of torture** and inhuman or degrading treatment is also widely recognized as imposing on States the duty to secure the health and well-being of persons deprived of their liberty by, among other things, providing them with requisite medical assistance.²⁹ Indeed, “an inadequate level of health care can lead rapidly to situations falling within the scope of the term ‘inhuman and degrading treatment.’”³⁰

B. Overarching principles

11. The provision of health care in prison is governed by four overarching principles affirmed by international law: the equivalence of care, the necessity to take into account the specific needs of prison populations, medical confidentiality, and the non-discrimination principle. These principles must guide any action taken by States when implementing measures to protect the health of prisoners.

²⁴ United Nations, Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the right to life*, para. 25

²⁵ Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 4 of the American Convention on Human Rights (ACHR). Article 2 of the European Convention on Human Rights (ECHR). Article 4 of the African Charter on Human and Peoples’ Rights.

²⁶ Article 7 ICCPR. Article 5 ACHR. Article 3 ECHR. Article 5 of the African Charter on Human and Peoples’ Rights.

²⁷ *Carabulea v. Romania*, ECtHR, Judgment of 10 July 2010, para. 108. See also: *Ghimp and others v. The Republic of Moldova*, ECtHR, Judgment of 30 October 2012, para. 41. *J. v. Perú*, IACtHR, Judgment of 27 November 2013, para. 372. *Chinchilla Sandoval et al. v. Guatemala*, IACtHR, 29 February 2016, para. 170-171.

²⁸ *Slimani v. France*, ECtHR, Judgment of 27 October 2004, para. 27. See also: *Lykova v. Russia*, ECtHR, Judgment of 22 December 2015, para. 114. *Lysias Fleury et al. v. Haiti*, IACtHR, Judgment of 23 November 2011, para. 84

²⁹ UN Committee Against Torture (CAT), *Observations of the Committee on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, 16 December 2013, UN-Doc. CAT/C/51/4, para. 16 and 24. *Kudla v. Poland*, ECtHR (Grand Chamber), Judgment of 26 October 2010, para. 94. *Tibi v. Ecuador*, IACtHR, Judgment of 7 September 2004, para. 156. *Vélez Loor v. Panama*, IACtHR, Judgment of 23 November 2010, Series C No. 218, para. 198. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 31 December 2011, para. 519.

³⁰ *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, CPT/Inf (93) 12, 4 June 1993, para. 30.

12. When organizing health care services in prisons, States must guarantee the equivalence of care, which requires care to be provided to detainees in conditions comparable to those enjoyed by patients in the outside community.³¹ The Inter-American Commission on Human Rights calls for the enjoyment of the “highest possible level” of care for prisoners.³² After initially adopting a cautious approach for convicted prisoners,³³ the European Court of Human Rights (Grand Chamber) has now endorsed the principle of equivalence of care, stating: “medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole.”³⁴

13. The provision of health care in prison must also align with the specific needs of the prison population and conditions of detention.³⁵ Many prisoners are in poor health even before incarceration, and the deprivation of liberty often leads to additional health problems, due to the shock of the incarceration and the unhealthy conditions of detention and overcrowding.³⁶ Health care workers must therefore be familiar with specific forms of prison pathology and adapt their treatment methods to the conditions imposed by detention, including in the context of COVID-19.

14. Rules of medical confidentiality must be strictly respected when providing health care to persons detained in prison.³⁷ Accordingly, all medical examinations of prisoners should be conducted out of the hearing and—unless the doctor concerned requests otherwise—out of the sight of prison officers, and prisoners should be examined on an individual basis and not in groups.³⁸ The results of medical examinations and tests must be treated with the same respect for confidentiality as is normal according to medical ethics in general medical practice.³⁹ Medical files should be kept under doctors’ exclusive responsibility; non-

³¹ The Nelson Mandela Rules, Rule 24. *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, 4 June 1993, para. 38. See also [Report to the Government of the United Kingdom on the visit to Gibraltar carried out by the CPT from 13 to 17 November 2014](#), CPT/Inf (2015) 40, para. 41. [Blokhin v. Russia](#), ECtHR (Grand Chamber), Judgment of 23 March 2016, para. 137.

³² IACHR, *Resolution 1/08. Principles and best practices on the protection of persons deprived of liberty in the Americas*, Principle X.

³³ [Aleksanyan v. Russia](#), ECtHR, Judgment of 22 December 2008, para. 139.

³⁴ [Blokhin v. Russia](#), ECtHR (Grand Chamber), Judgment of 23 March 2016, para. 137.

³⁵ IACHR, Organization of American States, [Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners](#), Submission to the Open-Ended Intergovernmental Expert Group On The Standard Minimum Rules For The Treatment Of Prisoners Vienna, Austria, 25 – 28 March 2014, UNODC/CCPCJ/EG.6/2014/INF/2, p 5. *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, para. 75.

³⁶ Penal Reform International, [Health in prisons: realizing the right to health. Penal Reform Briefing nr.2](#), 2007 (2), p. 2.

³⁷ The Nelson Mandela Rules, Rule 32. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle X. European Prison Rules, Rule 42.3(a).

³⁸ *Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992*, para. 51. See also SPT, [Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives](#), 6 February 2009, CAT/OP/MDV/1, para. 184 and 231.

³⁹ WHO, Regional Office for Europe, [Prisons and health](#), 2014, p. 11.

medical staff should not be allowed to access them.⁴⁰ In the context of the COVID-19 pandemic, adequate measures should be taken to prevent stigmatization or marginalization of infected people or those considered to be potential carriers of viruses.⁴¹

15. Conditions of detention in prisons and access to health care should be guaranteed without any kind of discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.⁴² The non-discrimination principle creates a special obligation: States must take account of the individual needs of prisoners, in particular the most vulnerable ones.⁴³ Considering that the pandemic is deepening pre-existing inequalities and exposing vulnerabilities,⁴⁴ prisoners most at risk of suffering from COVID-19 must be identified⁴⁵ and have their needs addressed urgently.⁴⁶

C. Preventive medicine

16. According to international law, the provision of health care in prison is not limited to the treatment of sick prisoners: it includes also social and preventive medicine.⁴⁷ To meet their legal responsibility in providing social and preventive medicine in prisons during the COVID-19 pandemic, States must demonstrate adequate intervention in four areas: the educational and supervisory role of health care staff, personal and environmental hygiene, the organization of testing, and access to personal protective equipment.

⁴⁰ The Nelson Mandela Rules, Rule 26. *Third General Report on the CPT's activities covering the period 1 January to 31 December 1992*, para. 50.

⁴¹ Inter-Agency Standing Committee, OHCHR and WHO, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, p. 4.

⁴² The Nelson Mandela Rules, Rule 2.1. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle II. European Prison Rules, Rule 13.

⁴³ The Nelson Mandela Rules, Rule 2.2. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle II.

⁴⁴ United Nations, [Policy Brief: The Impact of COVID-19 on Women](#), 9 April 2020, p. 2.

⁴⁵ See also above para. 3.

⁴⁶ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, Section II.9 (1). CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 6. IACHR, *Pandemic and Human Rights in the Americas*, p. 3 & 6.

⁴⁷ The Nelson Mandela Rules, Rule 25.1. [Report on the visit to "the former Yugoslav Republic of Macedonia" carried out by the CPT from 21 September to 1 October 2010](#), CPT/Inf (2012) 4, para. 71.

Educational information and the supervisory role of health care staff

17. United Nations standards stress the duty of prison health care services to evaluate, promote, protect, and improve the physical and mental health of prisoners.⁴⁸ These preventive tasks have very concrete implications when it comes to combating the spread of COVID-19. The prison health care service should circulate adequate educational information to prisoners, staff, and visitors, covering topics including: the nature of the disease and its transmission route, attitudes to be adopted and protective measures to be taken (including physical distance, use of personal protective equipment, hand washing, cleaning, and disinfection), possible symptoms, and the treatment that will be available.⁴⁹ Staff should receive specific training on COVID-19 infection, transmission, and prevention.⁵⁰ For prisoners and visitors who are not in command of the national language, there may be a need to develop translations or visual materials to address language barriers. Brief, informational factsheets, flyers, posters, and videos should be placed in prison common areas and in areas designated for visits.⁵¹ The International Committee of the Red Cross developed videos and supporting documents in 11 languages to provide staff, prisoners, and visitors with information on how the COVID-19 pandemic has affected conditions of detention.⁵²

18. Per international law, the prison health care service must also supervise, regularly inspect, and advise the prison's management on the hygiene and cleanliness of the institution and the prisoners (including sanitary installations and access to running water), the suitability and cleanliness of the prisoners' clothing and bedding, and the ventilation of the institution.⁵³ In the context of the COVID-19 pandemic, the health care service should therefore actively advise on hygiene and cleanliness measures needed to protect the health of prisoners, in light of recommendations issued by international bodies and health authorities in the country.

⁴⁸ The Nelson Mandela Rules, Rule 25.1.

⁴⁹ *Third General Report on the CPT's activities covering the period 1 January to 31 December 1992*, para. 54. WHO, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance, 15 March 2020, p. 14.

⁵⁰ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance*, p.14. CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 3. See also *Report on the visit to "the former Yugoslav Republic of Macedonia" carried out by the CPT from 21 September to 1 October 2010*, para. 71.

⁵¹ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance*, p. 15. Specific attention should also be paid to indigenous peoples. United Nations, Department of Economic and Social Affairs Indigenous Peoples, *Los Pueblos Indígenas y el COVID-19*, last accessed 15th June 2020. UN Expert Mechanism on the Rights of Indigenous Peoples, *COVID-19 yet another challenge for indigenous peoples*, 6 April 2020.

⁵² International Committee of the Red Cross, *COVID-19: Preparedness and response in detention. Safeguarding the health of detainees, staff and communities.*, 7 April 2020 (last accessed 11th June 2020).

⁵³ The Nelson Mandela Rules, Rule 35. European Prison Rules, Rule 44.

Personal hygiene

19. Prisoners should be provided with running water, adequate quantities of essential personal hygiene products necessary for health and cleanliness that are free of charge, and access to adequate bathing and shower installations.⁵⁴

20. In response to the COVID-19 pandemic, international organizations have issued detailed guidance to criminal justice institutions, affirming that adequate hygiene is essential to protect the rights to health and life of prisoners and to contain the spread of highly contagious diseases, such as coronavirus, in the prison environment.⁵⁵ In this regard, they reiterate the importance of frequent handwashing and recommend constant and free-of-charge⁵⁶ access to soap, water, and personal towels, as well as hand sanitizer when handwashing is not possible.⁵⁷

Environmental hygiene

21. States are also under the duty to ensure that all parts of a prison regularly used by prisoners are properly maintained and kept clean at all times.⁵⁸ The CPT underlines that “the standard of accommodation is central to the quality of life within a prison,”⁵⁹ and the ECtHR adds that “access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining prisoners’ sense of personal dignity.”⁶⁰ The overall

⁵⁴ The Nelson Mandela Rules, Rules 16 and 18. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XII(2). IACHR, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, p. 6. European Prison Rules, Rule 19.4. [Report to the Greek Government on the visit to Greece carried out by the CPT from 28 March to 9 April 2019](#), CPT/Inf (2020) 15, para. 32. [Report to the Albanian Government on the visit to Albania carried out by the CPT from 10 to 21 May 2010](#), CPT/Inf (2012) 11, para. 55.

⁵⁵ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section II.9 (10). WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance*, p. 13.

⁵⁶ See below, Section D. Access to treatment and medication.

⁵⁷ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance*, p. 13. The WHO recommends the use of chlorine-based gels in prisons. Alcohol-based sanitizers could be used if accompanied with adequate security measures to avoid misuse.

⁵⁸ The Nelson Mandela Rules, Rule 17. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XII(1). European Prison Rules, Rules 19.21 and 19.5.

⁵⁹ [Report to the Bulgarian Government on the visit to Bulgaria carried out by CPT from 13 to 20 February 2015](#), para. 38.

⁶⁰ [Ananyev and Others v. Russia](#), ECtHR, Judgment of 10 January 2012, para. 156. See also [Montero-Aranguren et al \(Detention Center of Catia\) v. Venezuela](#), IACtHR, Judgment of July 5, 2006, para. 97. [Pollo Rivera et al. v. Peru](#), IACtHR, Judgment of 21 October 21 2016, para. 159

hygiene conditions should be of satisfactory standard (in particular with appropriate occupancy levels, access to direct sunlight, good ventilation, and satisfactory hygiene standards),⁶¹ should meet all health requirements, and should respect privacy.⁶² Poor conditions of detention are likely to facilitate the spread of transmissible diseases.⁶³

22. Prisons must adopt specific rules to prevent the spread of COVID-19. Every prisoner should be provided with hygiene products, such as general cleaning materials, free of charge,⁶⁴ to keep their clothing and living area clean.⁶⁵ This is crucial, because environmental disinfecting is essential to containing the spread of the virus given that “people may become infected by touching contaminated surfaces or objects and then touching their eyes, nose or mouth.”⁶⁶ Additionally, phones, showers, sinks, toilets, and other high-touch surfaces should be disinfected between uses.⁶⁷ Prison authorities should ensure that places and objects like yard equipment, furniture, and transport vans, are cleaned and disinfected several times per day, and that areas where a person confirmed with or suspected to have COVID-19 spent time are thoroughly cleaned and disinfected. The WHO also recommends, in the context of the pandemic, that cleaning and disinfecting is “followed consistently and correctly” by trained personnel.⁶⁸ The WHO also holds that “[c]leaning with water and household detergents and with disinfectant products that are safe for use in prison settings should be used for general precautionary cleaning.”⁶⁹

23. Every prisoner should be provided with a separate bed and with separate and sufficient bedding, which shall be clean when issued, kept in good order, and changed often enough to ensure its cleanliness.⁷⁰ The mattress, blankets, and bed linens should be clean and washed at regular intervals.⁷¹ To address the risk posed by the COVID-19, the WHO recommends cleaning them with regular laundry soap and water or machine-washing at

⁶¹ [Report on the visit to the Transnistrian region of the Republic of Moldova carried out by the CPT from 27 to 30 November 2000 and Responses of the local authorities of the Transnistrian region](#), CPT/Inf (2002) 35, para. 48. African Commission on Human and Peoples’ Rights, [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa \(the Luanda Guidelines\)](#), Adopted during its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014, para. 25g.

⁶² The Nelson Mandela Rules, Rule 13. European Prison Rules, Rules 18.1 and 19.3.

⁶³ *Eleventh General Report on the CPT’s activities covering the period 1 January to 31 December 2000*, para. 31.

⁶⁴ See below, Section D. Access to treatment and medication.

⁶⁵ European Prison Rules, Rules 19.5. and 19.6.

⁶⁶ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance*, p. 11.

⁶⁷ Yale University, Stanford University, and the Oswaldo Cruz Foundation (FIOCRUZ), [Opinion of medical experts submitted to the Tribunal Estadual do Rio de Janeiro in case on matter of Ação Civil Pública #0087229-92.2020.8.19.0001](#), June 2020.

⁶⁸ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance*, p. 20.

⁶⁹ *Ibid.*

⁷⁰ The Nelson Mandela Rules, Rule 21. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XII(1). European Prison Rules, Rule 21. African Commission on Human and Peoples’ Rights, *The Luanda Guidelines*, para. 25g.

⁷¹ *Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 13 to 20 February 2015*, para. 38.

60–90°C with common laundry detergent.⁷²

Testing

24. Testing is an important tool to correctly detect COVID-19 cases and avoid further infections. According to the WHO, “efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control measures, adequate testing, treatment and care are not carried out in prisons and other places of detention as well.”⁷³ States must ensure “widespread access to testing...for detainees...[and] prison personnel,”⁷⁴ and should perceive both prisoners and staff as priority categories for testing. To define when to carry out testing in the context of COVID-19 pandemic, lessons can be learned from approaches promoted by international bodies for the prevention of tuberculosis in prison,⁷⁵ taking into account the specific needs of newly arrived prisoners, other prisoners during the period of detention, and staff.

25. International human rights law unanimously stresses the need for detainees to have a medical examination at the time of admission,⁷⁶ “in particular in the interests of preventing the spread of transmissible diseases.”⁷⁷ Contagious prisoners should be isolated for the period of infection.⁷⁸ Although securing the prisoner’s consent prior to any kind of treatment is the rule, mandatory examinations are accepted if based upon law, in clearly and strictly defined exceptional circumstances with respect to the principle of non-discrimination.⁷⁹ Both the WHO and the CPT have underscored the need for systematic

⁷² WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance*, p. 21. See also WHO, *Water, sanitation, hygiene, and waste management for the COVID-19 virus*, Interim measures, 23 April 2020, p. 5.

⁷³ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 1.

⁷⁴ Spokesperson for the UN High Commissioner for Human Rights, *Press briefing note on Americas / Prison conditions*, 5 May 2020.

⁷⁵ Tuberculosis is also spread from person to person through the air, when ill people cough, sneeze or spit. WHO, *What is TB? What is TB? How is it treated? Q&A*, 18 January 2019

⁷⁶ The Nelson Mandela Rules, rule 30. IACHR, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle IX(3). The European Prison Rules, Rule 42.1.

⁷⁷ WHO, Regional Office for Europe, *Prisons and health*, 2014, p. 56. IACHR, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, para. 168. *Report to the Danish Government on the visit to Denmark carried out by the CPT from 3 to 12 April 2019*, CPT/Inf (2019) 35, at para. 61.

⁷⁸ The Nelson Mandela Rules, Rule 30(d). IACHR, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, para. 261. European Prison Rules, Rule 42.3(f). See below Section E. Physical distance and medical isolation.

⁷⁹ Council of Europe, Committee of Ministers, *Recommendation No. R (98) 71 of the Committee of Ministers to Members States concerning the ethical and organizational aspects of health care in prison*, adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies, para. 16.

testing for tuberculosis of newly arrived prisoners.⁸⁰ To prevent the spread of COVID-19 in prison, all newly arrived prisoners should also be, as a rule, systematically tested. However, such systematic testing may be difficult to implement in countries where testing material is not available for the general population. As an alternative, and as recommended by the WHO, upon admission prisoners should be tested for fever and lower respiratory tract symptoms, and isolated⁸¹ if they have symptoms compatible with COVID-19, or if they have a prior COVID-19 diagnosis and are still symptomatic, until there can be further medical evaluation and testing.⁸²

26. While in detention, prisoners should have access to a doctor at any time and without undue delay.⁸³ In the context of the COVID-19 pandemic, they should have access to testing as soon as they present symptoms. If a prisoner or a staff member is tests positive, prisoners and staff members who were in contact with that person in the previous two weeks should also be tested.⁸⁴ In addition, proactive and regular testing of all prisoners could help detect outbreaks early and protect prisoners, staff, and the community.⁸⁵ Massive testing is recommended by the WHO to protect prisoners against tuberculosis, but the WHO acknowledges such testing may not be sustainable in some settings due to cost and other logistical barriers.⁸⁶ The same difficulties may arise with COVID-19 testing, where testing resources are not available in the general community. However, mass testing should be organized when a cluster of infections has been identified in a specific prison, or even a specific section of a prison if there is no circulation of people and goods between the sections.

27. Testing must also apply to prison staff given their close interaction with prisoners and their constant circulation between the community and the prison facility, or among various prison facilities. Infected prison staff may bring coronavirus from the community into the prison, as well as out of the prison to their communities—thereby perpetuating the spread. The WHO recommends systematic temperature screening of all prison employees before

⁸⁰ WHO, Regional Office for Europe, *Prisons and health*, 2014, p. 56. [Report to the Danish Government on the visit to Denmark carried out by the CPT from 3 to 12 April 2019](#), CPT/Inf (2019) 35, para. 61.

⁸¹ See below, Section E. Physical distance and medical isolation.

⁸² WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 4. Other countries have applied a systematic quarantine of newly arrived prisoners for 14 days, with proper medical assessment and testing of prisoners presenting symptoms, while systematic isolation is not recommended by WHO given negative impacts unnecessary isolation may have on mental health. See Ireland, [Department of Justice and Equality, Information regarding the Justice Sector COVID-19 plans](#) (last accessed 1st June 2020). WHO, Regional Office for Europe, [FAQ: Prevention and control of COVID-19 in prisons and other places of detention](#), last accessed 4th June 2020.

⁸³ *Third General Report on the CPT's activities covering the period 1 January to 31 December 1992*, para. 34. The Nelson Mandela rules, Rule 27.1. IACHR, *Principles and best practices on the protection of persons deprived of liberty in the Americas*, Principle X.

⁸⁴ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 14.

⁸⁵ Inter-Agency Standing Committee, WHO and OHCHR, *Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty*, p. 4.

⁸⁶ WHO, Regional Office for Europe, *Prisons and Health*, p. 77.

they enter the prison;⁸⁷ staff presenting symptoms or having been in contact with a positively tested person should be given a COVID-19 test.

Personal protective equipment (PPE)

28. Currently, States vary in their approaches towards wearing masks in public. However, it is well established that people infected with COVID-19 can transmit the virus before symptoms develop and masks help stop the spread of the virus.⁸⁸ According to recent recommendations, masks should be obligatory in many places—especially where respecting physical distancing is not possible—such as shops, public transportation, or other confined or crowded environments.⁸⁹

29. In prisons, which are often densely populated and where prisoners often cannot maintain the required minimum physical distance, masks should be distributed to each incarcerated person as a matter of principle. Masks are classified as personal preventive equipment (PPE) and as such are an essential component of preventive medicine. Masks should be distributed to each incarcerated person free of charge. At a minimum, prisoners should be obliged to wear masks when in contact with prisoners from other cells or with prison staff. Masks should be replaced or washed according to the recommendations issued by health authorities. The same rules apply to staff members when in contact with prisoners.

D. Access to treatment and medication

30. International law stresses that all prisoners should have prompt access to the medical care necessitated by their state of health, in conditions similar to those in the outside community.⁹⁰ The ECtHR adds they must receive the treatment corresponding to the diseases they were diagnosed with, as prescribed by competent doctors, which must include a comprehensive treatment strategy aimed at adequately treating the health problems or

⁸⁷ WHO, Regional Office for Europe, *FAQ: Prevention and control of COVID-19 in prisons and other places of detention*, last accessed 4th June 2020. This approach has been developed for example in Ireland, [Department of Justice and Equality, Information regarding the Justice Sector COVID-19 plans](#) (last accessed 1 June 2020).

⁸⁸ WHO, [Advice on the use of masks in the context of COVID-19. Interim guidance](#), April 6, 2020, p. 1-2.

⁸⁹ WHO, [WHO Director-General's opening remarks at the media briefing on COVID-19](#), Press release, 5 June 2020.

⁹⁰ The Nelson Mandela Rules, Rule 27.1. [De la Cruz-Flores v. Peru](#), IACtHR, Judgment of 18 November 2004, (Series C) No. 115, para. 132. [Ivko v. Russia](#), ECtHR, Judgment of 15 December 2015, para. 94.

preventing their aggravation.⁹¹ Treatment must be properly administered and monitored by qualified medical staff.⁹² If the health of a prisoner requires their transfer to the hospital, they must be transported with the promptness and in the manner required by their state of health.⁹³ The decision to transfer should be made exclusively by qualified medical staff.⁹⁴

31. In applying these legal principles, all prisoners suspected or confirmed to have COVID-19 should have access to health services, including urgent, specialized health units outside the prison system, without undue delay, in particular for respiratory isolation and treatment.⁹⁵ The WHO and Office of the High Commissioner for Human Rights (OHCHR) have recommended prison services develop close links with community health care and other health care providers⁹⁶ and know which hospitals have capacity to provide specialized services (such as respiratory support, intensive care units). The WHO also noted that “consideration should be given to protocols that can manage the patient on site with clear criteria for transfer to hospital, as unnecessary transport creates risk for both transport staff and the receiving hospital.”⁹⁷

32. Prisoners should have access to the necessary health care services (examinations, treatments, and medication) free of charge and without discrimination on the grounds of their legal status.⁹⁸ This rule should also apply to the provision of hygiene and cleaning products and masks, as they are part of preventive health care and remain the best ways to prevent the spread of the virus in a public health context.

⁹¹ [Wenner v. Germany](#), ECtHR, Judgment of 1 September 2016, at para. 57. [Nogin v. Russia](#), ECtHR, Judgment of 15 January 2015, para. 84. See also [De la Cruz-Flores v. Peru](#), IACtHR, Judgment of 18 November 2004, para. 132.

⁹² [Bamouhammad v. Belgium](#), ECtHR, Judgment of 17 November 2015, para. 122. *Report to the Greek Government on the visit to Greece carried out by the CPT from 28 March to 9 April 2019*, para. 47. *Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 13 to 20 February 2015*, para. 48. See also [Chinchilla Sandoval et al. v. Guatemala](#), IACtHR, 29 February 2016, para. 189.

⁹³ The Nelson Mandela Rules, Rule 27.1. [Hernández v. Argentina](#), IACtHR, Judgment of 22 November 2019, para. 88. [Raffray Taddei v. France](#), ECtHR, Judgment of 21 December 2010, para. 63. *Third General Report on the CPT's activities covering the period 1 January to 31 December 1992*, para. 37.

⁹⁴ [Report to the Serbian Government on the visit to Serbia carried out by the CPT from 26 May to 5 June 2015](#), CPT/Inf (2016) 21, para. 80.

⁹⁵ Inter-Agency Standing Committee, WHO and OHCHR, *Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty*, p. 4. WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance*, para 6.4.

⁹⁶ Inter-Agency Standing Committee, WHO and OHCHR, *Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty*, March 2020, p. 4.

⁹⁷ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance*, 15 March 2020, para 6.4. See also [Hernández v. Argentina](#), IACtHR, Judgment of 22 November 2019, para. 88.

⁹⁸ The Nelson Mandela Rules, Rule 24.1. United Nations, General Assembly, [Resolution 43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Principle 24. IACHR, *Principles and best practices on the protection of persons deprived of liberty in the Americas*, Principle X. *Report to the Greek Government on the visit to Greece carried out by the CPT from 28 March to 9 April 2019*, CPT/Inf (2020) 15, para. 51. [Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 8 to 21 December 2017](#), CPT/Inf (2018) 41, para. 83.

E. Physical distance, medical isolation, and contact with the outside world

33. Securing physical distancing is essential to prevent the spread of COVID-19, since the virus can spread when people cough, sneeze, or speak and can reach people who are in close proximity.⁹⁹ Specific measures to enable physical distancing are also necessary in prisons, but they should not undermine the fundamental rights of people in detention.¹⁰⁰ Any restrictive measure should have a legal basis and be necessary, proportionate, non-discriminatory, time-limited, respectful of human dignity, and subject to review.¹⁰¹ Prisoners should receive comprehensive information, in a language they understand, about any restrictive measures.¹⁰² Authorities should also guarantee transparency and constant monitoring of any restrictive measures applied.¹⁰³

34. Highly contagious diseases such as COVID-19 may require isolating prisoners who are infected or suspected of being infected, in order to prevent the exposure and infection of other prisoners or staff members.¹⁰⁴ According to the UN, a “failure to separate detainees with communicable diseases from other detainees could raise issues primarily under [right to life].”¹⁰⁵ International standards offer guidance on how to organize such isolation. First, medical isolation should be exclusively imposed when medically necessary¹⁰⁶ and should not take the form of solitary confinement,¹⁰⁷ which grounds are of a fundamentally different nature.¹⁰⁸ The principle of medical isolation and its conditions should be decided by health

⁹⁹ WHO, *Coronavirus disease (COVID-19) advice for the public*, last updated April 29, 2020. See above para. 3.

¹⁰⁰ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section I.3. UN High Commissioner of Human Rights, [Urgent action needed to prevent COVID-19 - rampaging through places of detention](#), Geneva, March 25, 2020.

¹⁰¹ CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 4. IACHR, “*Pandemic and Human Rights in the Americas*,” para. 48.

¹⁰² CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 4.

¹⁰³ Inter-Agency Standing Committee, OHCHR and WHO, *Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty*, p. 5.

¹⁰⁴ The Nelson Mandela Rules, Rule 30(d). IACHR, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, para. 397.

¹⁰⁵ UN Human Rights Committee, *Cabal and Pasini Bertran v. Australia*, Communication No. 1020/2001, U.N. Doc. CPR/C/78/D/1020/2001, 19 September 2003, para. 7.7.

¹⁰⁶ See for example: *Martaklis and Others v. Greece*, ECtHR, Judgment of 9 July 2015, para. 71. [Report to the Greek Government on the visit to Greece carried out by the CPT from 4 to 16 April 2013](#), CPT/Inf (2014) 26, para.128.

¹⁰⁷ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section II.9 (14).

¹⁰⁸ [21st General Report on the CPT's activities covering the period 1 August 2010 to 31 July 2011](#), CPT/Inf (2011) 28, 10 November 2011, para. 54.

care professionals¹⁰⁹ and not ignored or overruled by non-medical prison staff.¹¹⁰ Isolation should never last for a period longer than medically required.¹¹¹ Health care staff should pay particular attention to isolated prisoners,¹¹² who should be provided with meaningful human contact every day.¹¹³ The decision to isolate a prisoner should be communicated to that prisoner, who should have the opportunity to notify a third party about his state of health.¹¹⁴

35. In the context of COVID-19, medical isolation should be limited to prisoners who are infected or suspected of being infected.¹¹⁵ The WHO recommends isolating them in single accommodation, and if not possible, to accommodate detainees with similar risk factors and exposures together under temporary quarantine. Prisoners suspected of being infected should be under medical observation at least twice a day, including by taking body temperature and checking for symptoms of COVID-19.¹¹⁶ Isolation should terminate as soon as ill prisoners have recovered and have ceased to be contagious; and isolation of prisoners suspected of being infected should stop after 14 days from the date of last possible day of suspicious contact.¹¹⁷

36. The damaging effect of prolonged solitary confinement on the mental, physical, and social health of prisoners has been internationally recognized and States have been urged to limit its use to very exceptional circumstances.¹¹⁸ States should therefore never use *de*

¹⁰⁹ 21st General Report of the CPT's activities covering the period 1 August to 31 July 2011, para. 62.

¹¹⁰ WHO, Regional Office for Europe, *Prisons and Health*, 2014, p. 68-69. *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, p. 5.

¹¹¹ WHO, Regional Office for Europe, *Prisons and Health*, 2014, p. 68-69.

¹¹² The Nelson Mandela Rules, Rule 46.

¹¹³ CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para. 8.

¹¹⁴ The Nelson Mandela Rules, Rule 68. See also WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, p. 5.

¹¹⁵ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, p. 21.

¹¹⁶ WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, p. 21.

¹¹⁷ WHO, *Considerations for quarantine of individuals in the context of coronavirus disease (COVID-19): interim guidance*, 29 February 2020, p. 2. WHO, Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*, p. 21.

¹¹⁸ United Nations, *Basic principles for the treatment of prisoners*, Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, Principle 7. UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim report to the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, 5 August 2011, para. 62-63. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 413. *Suárez Rosero v. Ecuador*, IACtHR, Judgment of 12 November 1997, Para. 89-90. *Penal Miguel Castro-Castro v. Perú*, IACtHR, Judgment of 25 November 2006, para. 323. *21st General Report on the CPT's activities covering the period 1 August 2010 to 31 July 2011*, para 53. *Ramírez Sanchez v. France*, ECtHR, Judgment of 4 July 2006, para. 121-124. *Razvyazkin v. Russia*, ECtHR, Judgment of 3 October 2012, para. 104. WHO, Regional Office for Europe, *Prisons and Health*, 2014, p. 27.

facto isolation or solitary confinement of prisoners as a preemptive measure to organize physical distance.

37. International bodies have stressed that maintaining meaningful contacts with others is important for the well-being of prisoners.¹¹⁹ During the COVID-19 pandemic, in order to prevent the spread of the virus in prison, visits of families and friends may be temporarily restricted. Such restrictions should be replaced by an increased access to alternative means of communication (such as telephone or videoconferencing) without creating any financial burden on prisoners.¹²⁰ The restrictive measures should be regularly evaluated, in light of the evolution of the pandemic in that country, the needs of the specific prisoner, and the facilities available in the prison. Restrictions on communications and alternative ways to communicate with the outside world should be clearly communicated to all prisoners and their visitors in a language they understand, with an indication of how long the restrictions are likely to last.¹²¹

38. Prisoners should have access to a lawyer as part of their right to a fair trial and as a safeguard against ill-treatment.¹²² Access to a lawyer is critical for prisoners awaiting trial, but also for sentenced prisoners, since a lawyer can help them address the concerns they may have in prison, such as ill-treatment or adequate access to health care during the COVID-19 pandemic. Restrictions on this fundamental right should be exceptional, and justified by compelling reasons based on an individual assessment of the particular circumstances of the case.¹²³ In the context of COVID-19, the ability of prisoners to meet with their legal counsel must be maintained and authorities should ensure that lawyers can

¹¹⁹ *2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991*, CPT/Inf (92) 3, 13 April 1992, para. 51. IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, para. 576-578. [Lopez et al v. Argentina](#), IACtHR, Judgment of 25 November 2019, para. 118.

¹²⁰ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section II.9(11), CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, para 7. Inter-Agency Standing Committee, OHCHR and WHO, *Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty*, p. 5. UN High Commissioner for Human Rights, [Urgent action needed to prevent COVID-19 - rampaging through places of detention](#), statement of 25 March 2020.

¹²¹ UN High Commissioner for Human Rights, *Urgent action needed to prevent COVID-19 - rampaging through places of detention*, Statement of 25 March 2020. See also the video material developed by the International Committee of the Red Cross: International Committee of the Red Cross, [COVID-19: Preparedness and response in detention. Safeguarding the health of detainees, staff and communities](#), 7 April 2020 (last accessed 11 June 2020).

¹²² The Nelson Mandela Rules, Rule 61. European Prison Rules, Rules 23.1-23.6. IACHR, *Principles and best practices on the protection of persons deprived of liberty in the Americas*, Principle V. [Ibrahim and Others v. United Kingdom](#), ECtHR, Judgment of 13 September 2016, para. 255. *21st General Report of the CPT's activities covering the period 1 August to 31 July 2011*, para. 20.

¹²³ [Ibrahim and Others v. United Kingdom](#), ECtHR, Judgment of 13 September 2016, para. 258. See also UN, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 18.

still speak with their clients confidentially.¹²⁴ Where necessary in light of compelling circumstances, alternative settings such as video-conferencing could be organized, but they must guarantee lawyer-client privilege, confidential communication, and safeguards against reprisals and intimidation.¹²⁵ Such restrictions and alternatives should be clearly communicated to the prisoners in a language they can understand, with an indication of how long the restrictions are likely to last.

F. Duty to investigate deaths in prison

39. Tragically, prisoners have died from COVID-19. Based on States' responsibility to protect life of prisoners and protect them from torture and ill-treatment, authorities have the duty to investigate deaths in custody to establish the factual circumstances surrounding the death and identify lessons to be learned in order to prevent similar lethal incidents. These rules fully apply to deaths that occur in prisons during the COVID-19 pandemic.¹²⁶

40. According to well established human rights law, deaths in custody (or soon after transfer from prison), must be reported to an authority independent from the prison system and mandated to conduct impartial investigations into the circumstances and causes of the death.¹²⁷ The investigation must ascertain, *inter alia*, the cause of death, the facts leading up to the death (including any contributing factors), and whether the death might have been prevented.¹²⁸ An autopsy should be carried out and the prison's management and medical services should be provided with the conclusions of autopsy reports (or at least information

¹²⁴ Inter-Agency Standing Committee, OHCHR and WHO, *Interim Guidance. COVID-19: Focus on Persons Deprived of Their Liberty*, p. 5. SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section II.9(16).

¹²⁵ OMCT, [Building our Response on COVID-19 and Detention - OMCT Guidance brief to the SOS-Torture Network and partner organizations](#), 15 April 2020, p. 13.

¹²⁶ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killing has underscored that "Death resulting, in whole or in part, from the denial of such essentials to life as potable water, safe and sufficient food, sanitation, adequate space, proper ventilation, or adequate medical care is thus an arbitrary death for which the State is responsible." United Nations Human Rights Special Procedures, Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, [COVID-19 and Protection of right to life in places of detention](#), p. 2.

¹²⁷ The Nelson Mandela Rules, Rule 71. [Prizreni v. Albania](#), ECtHR, Judgment of 11 June 2019, para. 40. [Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018](#), CPT/Inf (2019) 7, para. 77. African Commission on Human and Peoples' Rights, The Luanda Guidelines, Rule. 21. [Ximenes-Lopes v. Brazil](#), IACtHR, Judgment of 4 July 2006, para 148. IACHR, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, para. 325-327. The ECtHR refers to deaths that happened "in suspicious circumstances," while the Nelson Mandela Rules, the CPT's standards, the IACHR, and the Luanda Guidelines require an investigation for all cases of death in custody. The IACtHR refers to any violation of the right to life and personal integrity.

¹²⁸ [Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018](#), para. 77.

on the cause of death), as well as the results of any judicial investigation.¹²⁹ The ECtHR has underscored that investigations must be effective, meaning “capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible;” authorities should “act of their own motion once the matter has come to their attention;” and the investigations should be “prompt and expedited in a reasonable delay.”¹³⁰ The IACtHR also stressed that authorities have the duty to conduct *ex officio* impartial and effective investigations, without any delay.¹³¹ The relatives of the deceased person must receive relevant information concerning the circumstances of the death.¹³²

41. Causes of and possible factors that contributed to a death in prison must be carefully examined by the prison management in order to define whether the death could have been prevented and whether new measures or protocols should be adopted. Therefore, an analysis should be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred.¹³³

G. Need for increased transparency

42. Inspection and monitoring visits play a key role in the prevention of torture and ill-treatment in places of deprivation of liberty.¹³⁴ The numerous challenges posed by the pandemic require close monitoring of the situation in prison in order to assess how prisoners’ rights to life, health, and well-being are being protected. According to the CPT, “States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine.”¹³⁵ The Subcommittee on the Prevention of Torture (SPT) also encouraged National Preventive Mechanisms (NPMs) to continue to carry out their inspection missions.¹³⁶ However, both the SPT and the CPT

¹²⁹ [Report on the visit to “the former Yugoslav Republic of Macedonia” carried out by the CPT from 6 to 9 December 2016](#), CPT/Inf (2017) 30, at para. 42. [Report to the Serbian Government on the visit to Serbia carried out by the CPT from 26 May to 5 June 2015](#), para. 84.

¹³⁰ *Prizreni v. Albania*, ECtHR, Judgment of 11 June March 2019, para. 42-43

¹³¹ [Vera Vera et al v. Ecuador](#), IACtHR, Judgment of 19 May 2011, para. 87.

¹³² [Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018](#), para. 75.

¹³³ [Report to the Spanish Government on the visit to Spain carried out by the CPT from 6 to 13 September 2018](#), CPT/Inf (2020) 5, para. 75. [Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018](#), para. 77.

¹³⁴ United Nations, [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly, Resolution A/RES/57/199, Preamble. See also Association for the Prevention of Torture, [Yes, torture prevention works. Insights from a global research study on 30 years of torture prevention](#), September 2016, p. 35-36.

¹³⁵ CPT, [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#), para. 10.

¹³⁶ SPT, [Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic](#), section I.7.

asked monitoring bodies to adhere to the “do no harm” principle, in particular when dealing with older persons and persons with pre-existing medical conditions.

43. However, confinement rules imposed by authorities in many countries—as well as the closure of borders—have prevented many monitoring bodies including NPMs, the CPT, and the SPT from carrying out their duties through their traditional working methods that include field visits. Therefore, they are not able to directly assess the treatment of prisoners and how their health is being protected against COVID-19.¹³⁷ Therefore, States should assume an increased duty of transparency towards detainees, their families, and the public in general. Prisons cannot remain opaque worlds during such a critical period. Applied to the provision of health care, this extended duty of transparency should lead States to provide detailed information on the measures taken regarding health care for prisoners.¹³⁸ States should also communicate data on a regular basis, including the number of cases detected, the number of deaths (including among staff members), and the number of cases referred to the authorities in charge of investigations. Everyone—whether in prison or outside— would benefit from such transparency, as well as from the other steps outlined in this brief. Prison authorities themselves will benefit from measures that keep themselves, their families, and their communities safe from disease—and that allow them to demonstrate they care about vulnerable people under their charge.

¹³⁷ NPMs have of course developed other ways to exercise their responsibilities.

¹³⁸ SPT, *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*, section I.4.