EQUIPO ARGENTINO DE ANTROPOLOGÍA FORENSE
Av. del Libertador 8151 C1429BNC
Ciudad Autonoma de Buenos Aires Argentina
(54 11) 5275 0552
eaaf@eaaf.org

SUBJECT: TECHNICAL REPORT ON MEASURES FOR PREVENTING TRANSMISSION AND HANDLING THE DECEASED BY COVID-19 IN DETENTION CENTERS.

PLAINTIFF: CENTRO DE DERECHOS HUMANOS MIGUEL AGUSTÍN PRO JUÁREZ A.C. (Human Rights Center Miguel Agustín Pro Juárez A.C.)

ACTING DISTRICT JUDGE IN THE STATE OF MORELOS, WITH RESIDENCE IN CUERNAVACA

We, Mercedes Doretti and Luis Fondebrider from **the Argentine Forensic Anthropology Team (EAAF),** and Luis Prieto Carrero, submit this technical report on the Measures for Preventing Transmission and Handling the Deceased due to COVID-19 in Detention Centers, to be considered alongside the lawsuit to which this report is attached.

RELEVANT BACKGROUND AND QUALIFICATIONS

Mercedes Doretti, Argentine Forensic Anthropology Team (EAAF)

1. I am Mercedes Doretti, a forensic anthropologist who investigates human rights violations, collects evidence, and presents critical findings to courts, human rights organizations, and special commissions in dozens of countries. I hold a bachelor's degree in anthropological sciences from the University of Buenos Aires, Argentina (1987), and completed courses in biological anthropology and biomechanics at Hunter College, City University of New York. In 1984, I co-founded the Argentine Forensic Anthropology Team. I continue to serve as a senior researcher at EAAF, as

a member of the executive board, and as the director of the organization's programs in Central America, Mexico, and the United States. I lead the EAAF offices in New York and Mexico. I worked in more than 25 countries in Latin America, Africa, Asia, and Eastern Europe in forensic training and investigations for national and international courts and tribunals and for transitional justice mechanisms at their request and/or at the request of local and international organizations, NGOs, as well as victims' families associations. I am a co-founder of the Latin American Association of Forensic Anthropology (ALAF), and from 2003 to 2005 I served as the president of ALAF. From 2008 to 2014, I served as a Member of the Board and Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture. In 1990 and in 1999, I received the Human Rights Watch Monitor Award. In 2006, I received the Washington Office on Latin America Award in Washington DC. In 2007, I received the MacArthur Fellowship Award. I was awarded an honorary doctorate from the Argentine National University in Buenos Aires in 2014 and another honorary doctorate from the New School, New York City in 2016. In April 2018, I received approval from the Mexican Senate to serve as an independent forensic expert on the National Council of Citizens, a non-governmental advisory committee that will advise Mexico's new National System for the Search of Missing Persons. I also serve on the panel of forensic experts for selecting the members of the board of directors for the Mexico's Extraordinary Forensic Identification Mechanism (MEIF).

2. I do not receive any fees for my work on this report.

Luis Fondebrider, the Argentine Forensic Anthropology Team (EAAF)

3. I am Luis Fondebrider, the president of the Argentine Forensic Anthropology Team (EAAF.) After graduating in Anthropology in 1984, I founded and preside over the EAAF, a pioneering group in the application of forensic science to recover and identify victims of repression during the Argentine military dictatorship. My work as the head of the EAAF enabled me to collaborate with different international organizations, such as the United Natio ns, as a member of international tribunals and working committees. I served as an advisor in research projects on cases of political violence in about forty countries in South America, Asia, Africa, Europe, and the Middle East. I am a founding member and the current president of the Latin American

Association of Forensic Anthropology (ALAF). Since 2000, I teach Legal Medicine and Ethics at the Medical School of the University of Buenos Aires.

4. I do not receive any fees for my work on this report.

Luis Prieto Carrero, Member of the National Corps of Forensic Physicians of Spain

5. I am Dr. Luis Prieto Carrero, a medical doctor and surgeon, specialist in Legal and Forensic Medicine with a degree in Dentistry, University Specialist in Techniques and Procedures in Pathological Anatomy, University Specialist in Anthropology and Forensic Biology. I am a member of the National Corps of Forensic Physicians of Spain. I work for more than 30 years as an active medical examiner. I work currently at the Medico-Legal Institute (IML) of the Community of Madrid. I am a Professor at the School and Department of Legal Medicine of the Complutense University of Madrid for more than 20 years. I have extensive experience working as an external consultant to various international institutions and organizations (EAAF, International Committee of Red Cross, United Nations, International Criminal Court, and Inter-American Court of Human Rights). I serve as an External expert of the Mechanism for the Prevention of Torture in Spain (Ombudsman.) In 2014-2019, I also served as an elected member of the Scientific Technical Committee of the Medical Forensic Council (Pathology Section) of the Ministry of Justice, in Spain)–. I am a member of the Group of Experts on Events with Multiple Victims of the National Corps of Forensic Physicians.

6. I do not receive any fees for my work on this report.

TECHNICAL OPINION

7. In the context of exceptional situations such as the current COVID-19 pandemic, where the risk of contagion endangers the health and life of the population, States must weigh the role of custody and security with the obligation to ensure the right to health of persons deprived of their liberty and prevent violations of their rights; avoiding overcrowding and ensuring hygiene and sanitation in prisons and other

detention centers under State custody (psychiatric hospitals, social assistance centers) as indicated by various United Nations Special Procedures and the United Nations High Commissioner for Human Rights[1].

8. The COVID-19 pandemic has led to the isolation, confinement or quarantine of a large part of the world's population, with special significance for those previously deprived of their liberty, those who have had their rights restricted and have been exposed to an increased risk to their health, due to the long-term confinement conditions in which they live.

9. In these circumstances, preventing the introduction of the virus into prisons and other detention facilities is an essential element in preventing or minimizing the occurrence of serious infections and outbreaks.

10. The development of contingency plans is therefore essential to ensure adequate health response and to keep places of detention safe.

11. The joint statement of UNODC (United Nations Office on Drugs and Crime), WHO (World Health Organization), Joint United Nations Programme on HIV/AIDS (UNAIDS) and Office of the United Nations High Commissioner for Human Rights (OHCHR) on COVID-19 in prisons and other detention centers stresses the need to minimize the occurrence of this disease in these settings and to ensure the implementation of adequate preventive measures to prevent major and ongoing outbreaks. Such measures should have a gender perspective, establish an updated system of coordination between the justice and health sectors to properly inform the prison staff, and ensure that all human rights in these settings are respected.[2]

12. These measures should aim at:
    - Implementing protection measures and protocols
    - Reducing overcrowding

[1] INFORMATION NOTE: COVID-19, prison overcrowding, and serving sentences for serious human rights violations –https://www.ohchr.org/SP/Issues/TruthJusticeReparation/Pages/infonotecovid.aspx
[2] Joint statement by UNODC, WHO, UNAIDS and OHCHR on COVID-19 in prisons and other detention centers. May 13, 2020

- Ensuring human health, safety, and dignity
- Respecting human rights

Implementing protection measures and protocols

13. Emergency regulations and protocols (contingency plans, risk assessment) should be developed to protect those working and living in detention places from infection, and all personnel should be adequately informed and trained in such procedures including health care and hygiene.

14. These protocols must address, in particular, the issues of physical contact and the use of force (handcuffing, fighting interventions, use of containment elements…) and how such measures can be carried out safely for the staff and persons deprived of their liberty, considering, as well, the gender aspects.

Reducing overcrowding

15. An occupancy ratio should be sought to maintain the physical distance between people deprived of liberty and staff, limiting the number of persons per cell/room and alternating schedules for the use of common spaces. Similarly, placement procedures should be considered to allow people at higher risk to be separated from others in the most effective and least disruptive manner possible.

16. The WHO and the Committee for the Prevention of Torture of the Council of Europe recommended to Member States greater use of alternative measures to preventive detention, commutation of sentences, early and conditional release; taking into account persons with special vulnerability such as chronic or immunosuppressed patients, elderly or people with disabilities, pregnant women and women with dependent children; and the reevaluation of the need to continue involuntary hospitalization of psychiatric patients, discharging or releasing of residents from social care homes, where appropriate, and refraining from detaining migrants as much as possible.

Ensuring human health, safety, and dignity

17. The provision of medical care for persons in prisons and other places of detention is the responsibility of the State[3], which must provide the same standards of medical care as those available in the outside community, without discrimination based on their legal status. It is considered necessary to pay attention to the specific needs of persons in deprivation of liberty, with special consideration to vulnerable and/or at-risk groups (elderly or patients with previous pathologies) performing diagnostic tests of COVID-19 and ensuring access to intensive care when necessary.

18. In order to identify possible cases of COVID-19, screening procedures for admissions and departures should be incorporated, including a medical examination upon admission with the possibility of imposing quarantine under medical advice. When entering prisons and other places of detention, all persons should be examined for fever and symptoms of the lower respiratory tract. In case of symptoms compatible with COVID-19, or a previous diagnosis of COVID-19 with persistence of symptoms, they should be placed in medical isolation, where the medical assistance they may require will be provided.

19. Health protection measures and protocols include[4]:
    - Access to medical care and treatment, without discrimination, to all persons deprived of their liberty.
    - Measures to ensure proper cleaning and disinfection of spaces that may be contaminated prior to use.
    - Personal hygiene items such as soap, disinfectants, and detergents, at no cost to staff and inmates.
    - Availability and access to personal protective equipment (PPE) as well as adequate training for its use by all personnel, including custody, transportation, healthcare workers and other support personnel such as the cleaning and cooking staff.
    - Adequate diagnostic testing policy.

[3] Preparation, prevention, and control of COVID-19 in prisons and other places of detention. Interim guidance. World Health Organization. Regional Office for Europe. 15 March 2020
[4] IASC, Interim Guidance

- General measures of hand hygiene, interpersonal distance, respiratory etiquette (covering nose and mouth when coughing or sneezing) and use of hand sanitizers.

20. Hygiene measures should be shared with family members, legal advisors, and other persons who may establish contact with those deprived of liberty.

Respecting human rights

21. In addition, persons deprived of liberty face the risk of cruel, inhuman or degrading treatment, or even torture, which has increased significantly during public health emergencies, outside public scrutiny[5]. Shortcomings in the protection of persons deprived of liberty from serious diseases as a result of the lack of preventive measures or due diligence may also lead to ill-treatment or even torture[6].

22. The current crisis demonstrates the need to put human rights first in decision-making in the context of the pandemic, so that each action taken is based on a comprehensive assessment of its impact on the rights of individuals[7].

23. While it is legitimate and reasonable to suspend non-essential activities, the rights of persons deprived of their liberty should be fully respected during the pandemic. This includes access to personal hygiene measures (water and soap) and the right to daily access to outdoor areas (at least one hour). This also includes additional psychological support, including increased access to alternative means of communication (telephone, telematics) in compensation for restrictions of contact with the outside world.

[5] Guidance. Monitoring Places of Detention through the COVID-19 Pandemic. OSCE/OIDHR and APT. Poland 2020

[6] UN Subcommittee for the Prevention of Torture (SPT). Advice of the Subcommittee on Prevention of Torture to states Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic. 25 March 2020

[7] Council of Europe. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Declaration of Principles Concerning the Treatment of Persons Deprived of Liberty in the Context of the Pandemic in Coronavirus Disease (COVID-19). 20 March 2020 (CPT/Inf(2020)13

24. Temporary restrictive measures imposed to contain the spread of the virus should be lifted as soon as they are not necessary, especially limitations of contact with the outside world and the reduction of available activities.

25. In cases of medical isolation of a detainee who is infected or suspected to be infected with COVID-19, the person should be provided with significant human contact every day.

26. The national and international monitoring instruments of the detention centers must continue to their work, which should not be restricted with the excuse of the circumstances of the COVID-19 outbreak.[8]

TREATMENT OF THE DECEASED FROM COVID-19 IN DETENTION CENTERS

27. Except in cases of hemorrhagic fevers (such as Ebola, Marburg) and cholera, dead bodies are generally not infectious, and up to this date, there is no scientific evidence that proves that a COVID-19 corpse is still infectious.

28. The World Health Organization (WHO) has developed the following guidelines on the infection prevention and control for the safe management of corpses in the context of COVID-19[9]:

    - Respect and protect the dignity of the dead, their cultural and religious traditions, and their families at all times.
    - Avoid hasty disposal of a dead from COVID-19.
    - Keep both the movement and handling of the body to a minimum.
    - Wrap body in cloth and transfer it as soon as possible to the mortuary area;.

    There is no need to disinfect the body before transfer to the mortuary area;

[8] Interim Guidance – Preparedness, prevention and control of COVID-19 in prisons and other places of detention. 15 March 2020
[9] World Health Organization. (2020). Infection prevention and control for the safe management of corpses in the context of COVID-19: Provisional guidance, 24 March 2020 https://apps.who.int/iris/handle/10665/331671

- – Body bags are not necessary, although they may be used for other reasons (e.g. excessive body fluid leakage) Prepare and wrap up the corpse for transfer from the patient's room to the autopsy unit, funerary company, crematorium or burial site.

Ensure that personnel who interact with the body (health care or mortuary staff, or the burial team) apply standard precautions, including hand hygiene before and after interaction with the body, and the environment; and use appropriate personal protective equipment (PPE) according to the level of interaction with the body, including a gown and gloves. If there is a risk of splashes from the body fluids or secretions, personnel should use facial protection, including the use of face shield or goggles and medical mask; Ensure that any body fluids leaking from orifices are contained;

- No special transport equipment or vehicle is required.

If the family wishes only to view the body and not touch it, they may do so, using standard precautions at all times including hand hygiene. Give the family clear instructions not to touch or kiss the body;

- Embalming is not recommended to avoid excessive manipulation of the body.
- Adults over the age of 60 and immunocompromised persons should not interact directly with the body.

29. Authorities should manage each situation on a case-by-case basis, balancing the rights of the family, the need to investigate the cause of death and the risks of exposure to infection.

30. In cases of death in custody, International Humanitarian Law and International Human Rights Law provide for the obligation to investigate it, even when it is of apparently natural cause and has not occurred in the place of custody, for example, in a hospital to which they have been transferred. An appropriate investigation which includes autopsy by legal-medical experts is, in these cases, a guarantee to society that authorities comply with the law and that none of these deaths is the result of ill-treatment, torture or lack of proper care.

31. A joint action procedure by penitentiary institutions, including health and forensic institutions, should be established for the management of deaths among the population deprived of liberty, in accordance with the requirements of the law and the international standards they apply.

32. The current international standards for their research are reflected in the document called Minnesota Protocol[10], whose objectives are summarized below:
    - Clarifying the circumstances in which the death has occurred
    - Reducing trauma to close relatives
    - Prosecuting and punishing those responsible, if any, and
    - Preventing future cases of deaths in custody.

33. This requires the action of the forensic services in order to carry out the examination of the corpse adapted to the current circumstances of the pandemic[11], and always with the adoption of the required biosecurity measures, to determine the cause and circumstances of the death, as well as to identify them, if necessary.

34. Safety procedures for people who died of infection by the COVID-19 virus should be consistent with those used in any autopsy of people who have died of acute respiratory disease. If a person dies during the infectious phase of COVID-19, the lungs and other organs may continue to harbor live viruses, so additional respiratory protection is needed during procedures that can generate aerosols (for example, procedures that generate small particle aerosols, such as the use of electric saws or the washing of intestines) and minimize the personnel involved in the autopsy.

Argentine Forensic Anthropology Team (EAAF)

Luis Fondebrider and **Mercedes Doretti**

and

Luis Prieto Carrero

[10] *Minnesota Protocol on the Investigation of Potentially Illicit Deaths (2016)*, Office of the United Nations High Commissioner for Human Rights, New York and Geneva, 2017.

[11] Spanish Society of Forensic Pathology. Recommendations for forensic medical action in the lifting of the corpse and medical-legal autopsies in the face of the pandemic situation generated by COVID-19. Version 1.1, 01.06.2020