



Human Rights Treaties Branch, 15 July 2020

**Internal HRTB toolkit of
treaty law perspectives and
jurisprudence in the context of
COVID-19**

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Introduction: What is the toolkit and how to use it

1. The challenges unfolding with the COVID-19 pandemic impact the whole spectrum of human rights. This includes abuse of derogations, protection of vulnerable groups and people deprived of their liberty, women's rights, minorities as well as economic, social and cultural rights. In the midst of a sanitary crisis, as the one generated by the spread of COVID-19, it is essential to ensure the enjoyment of all human rights, without discrimination.
2. As the High Commissioner has stated, [“an emergency situation is not a blank check to disregard human rights obligations”](#).¹ More than ever, States must uphold the obligations that they are legally bound to meet under the treaties they have ratified.
3. This toolkit takes treaty law perspectives and jurisprudence and translates them into an operational contribution to strengthen the human rights-based approach to both UN and States' response to the COVID-19 pandemic.
4. Through a thorough and analytical overview of the relevant treaty provisions, their interpretation, and the jurisprudence of treaty bodies, the toolkit provides colleagues, including those in our field presences, the legal references to enable them to use the authority of treaty bodies to reinforce country-specific analysis and advocacy for a COVID-19 pandemic response consistent with international human rights treaties.
5. The toolkit requires adaptation to specific contexts as situations vary from country to country. It is also work in progress and will be updated continuously, as human rights challenges may keep changing in form and intensity.
6. The toolkit is an OHCHR document. At the same time, it is meant to be used in conjunction with the [public statements issued by treaty bodies](#), which should be disseminated widely.

¹ Statement by the UN High Commissioner for Human Rights at the informal briefing to the Human Rights Council on 9 April 2020

International Convention on the Elimination of Racial Discrimination (ICERD)

Introduction

1. The COVID-19 outbreak has prompted xenophobic attitudes against groups perceived as coming from areas where the virus has been particularly present. These attitudes include racist speech by State officials and the media, acts of violence and denial of services and acts of intimidation and harassment.
2. The implementation of measures taken to contain the spread of the virus may have a disproportionate negative effect on the enjoyment of human rights by specific groups that face structural racial discrimination.

Requirements of the Convention

Prohibition of discrimination on grounds of race, color, descent, and national or ethnic origin (arts. 1 and 2)²

3. States parties should ensure the enjoyment on an equal footing of human rights and fundamental freedoms “in the political, economic, social, cultural or any other field of public life.” In adopting measures to combat the spread of COVID-19, due consideration must be given to the specific needs of groups that have historically been confronted with racial discrimination, who in the current context have been erroneously associated with the outbreak and/or spreading the virus, and as a result have suffered from acts of discrimination, including denial of services. In this regard, States parties should ensure that those groups enjoy and exercise all their rights without discrimination.³

Racial hatred and discrimination (arts. 1, 4 and 7)⁴

4. States parties have the obligation to condemn any attempt to justify or promote racial hatred and discrimination, including by public authorities or institutions.⁵ The COVID-19 pandemic has generated racist and xenophobic attitudes, including hate speech by public officials and media, as well as violence against ethnic groups that are inaccurately associated to the virus. In this emergency context, States parties should take all necessary measures to prevent these acts and to ensure that all instances of racially motivated speech and acts of violence against specific individuals or groups are investigated and those responsible are prosecuted and punished in accordance with due process. States parties should also publicly condemn and disapprove discriminatory acts, as well as the stigmatisation and xenophobic and racist attitudes generated by the outbreak of COVID-19.

² See Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, CERD/C/GC/35, para. 9.

³ See Concluding observations for Greece (2016), CERD/C/GRC/CO/20-22, para 6; Nepal (2018), CERD/C/NPL/CO/17-23, para. 21; Sudan (2015), CERD/C/SDN/CO/11-16, paras. 6-7.

⁴ See Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech, CERD/C/GC/35, paras. 3, 22; 36, 37, 40 and 44.

⁵ See Concluding observations for Australia (2017), CERD/C/AUS/CO/18-20, para. 14.

Right to health (arts. 2 and 5)

5. States parties should ensure that everyone has access to health services and medical care without discrimination on the basis of race, colour, descent, national or ethnic origin, and must take into account how COVID-19 affects the most vulnerable groups, including ethnic and national minorities, indigenous peoples,⁶ people of African descent, Roma,⁷ and migrants, asylum seekers and refugees.⁸ In responding to the health emergency generated by the COVID-19 pandemic, States parties should adopt adequate measures to ensure that racially discriminated groups, have access without discrimination to quality and acceptable health care services including mental health. Language and cultural needs should be taken into account.

Access to information (arts. 2 and 5)

6. National or ethnic groups, indigenous peoples, as well as migrants, asylum seekers and refugees often face difficulties accessing public information, particularly in emergencies such as the COVID-19 pandemic. States parties should take measures to ensure that accurate information is available to all without discrimination, accessible, in different languages and culturally adapted for everyone in particular for ethnic or national minorities, as well as indigenous peoples, Roma and non-citizens.⁹

Specific groups (arts. 1, 2 and 5)

7. As a result of States parties' implementation of measures to combat the spread of the COVID-19, some specific racially discriminated groups are at higher risk of being excluded and/or denied the enjoyment of their rights, including right to work and to favourable conditions of work; social security; an adequate standard of living; physical and mental health; and access to international protection. States parties should pay attention to the specific needs of individuals and groups, whose rights might be at risk, particularly:
 - (a) Persons in detention that belong to ethnic minority groups, particularly those that are overrepresented in the penitentiary system, are at higher risk of discrimination, and denial of medical care;
 - (b) As a result of lockdown and closure of borders, migrants and asylum seekers held in detention could be detained for longer periods and might be at higher risk of contracting the virus due to the poor detention conditions and lack of possibility to exercise personal hygiene and social distancing;¹⁰
 - (c) Discrimination against migrant workers often results in precarious conditions of work, lack of access to social security, health services, and to an adequate standard of living. This discrimination might be aggravated by the effects of measures adopted to combat the spread of the virus;

⁶ See Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples, paras. 1 and 3; Concluding observations for Colombia (2019), CERD/C/COL/CO/17-19, para. 13; Colombia (2012), CERD/C/COL/CO/15-16, para. 12.

⁷ See Committee on the Elimination of Racial Discrimination, general recommendation No. 27 (2000) on discrimination against Roma.

⁸ See Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (1996) on article 5 of the Convention on refugees and displaced persons, para. 2b; Statement on Current Migrant Crises (2015), adopted under the Early Warning and Urgent Action Procedure; Concluding observations for Cyprus (2017), CERD/C/CYP/CO/23-24, para. 21.

⁹ See Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2005) on discrimination against non-citizens.

¹⁰ See Concluding observations for Greece (2016), CERD/C/GRC/CO/20-22, para. 23; Spain (2016), CERD/C/ESP/CO/21-23, para. 22; Norway (2015), CERD/C/NOR/CO/21-22, para. 36.

- (d) With the closure of borders, asylum seekers face more difficulties in accessing asylum and international protection procedures as well as other rights, such as health care.¹¹

Intersecting forms of discrimination on the grounds of gender and ethnic, national or descent origin (arts. 1 and 5)

- 8. Women belonging to particular groups based on national, ethnic or descent origin often face multiple forms of discrimination in accessing health care, social services, employment, social security and education due to their gender associated with any ground of racial discrimination. In the context of COVID-19, such women might therefore face additional barriers and obstacles in exercising their rights. Measures adopted by States parties in the context of this pandemic should take into account the gender-related dimensions of racial discrimination.¹²

Right to life and security (arts. 2 and 5)

- 9. Members of some specific groups might also face increased risk to their right to life and security in the context of this pandemic:
 - (a) The declaration of a state of emergency and the fact that States parties are focusing on combating the virus might put at risk the life and security of indigenous peoples' leaders and human rights defenders, who are engaged in defending the rights of their communities;¹³
 - (b) In some countries, persons with Albinism¹⁴ might be at risk of ritual killings and or dismemberment, since their body or part of it are considered, under witchcraft beliefs, to have healing powers;
 - (c) Indigenous peoples in voluntary isolation or initial contact¹⁵ require specific measures of protection, as they are extremely vulnerable to new or external diseases.

¹¹ See Concluding observations for Jordan (2017), CERD/C/JOR/CO/18-20, para 17; Peru (2018), CERD/C/PER/CO/22-23, para. 37.

¹² See Committee on the Elimination of Racial Discrimination, general recommendation N° 25 (2000) on gender-related dimensions of racial discrimination; Concluding observations for Sudan (2015), CERD/C/SDN/CO/12-16, para. 11.

¹³ See Concluding observations for Colombia (2019), CERD/C/COL/CO/17-19, para. 29 b); Mexico (2019), CERD/C/MEX/CO/18-21, para. 31.

¹⁴ See Concluding observations for Kenya (2016), CERD/C/KEN/CO/5-7, para. 34; South Africa (2016), CERD/C/ZAF/CO/4-8, para. 21.

¹⁵ See Concluding observations for Ecuador (2017), CERD/C/ECU/CO/23-24, para. 15; Peru (2018), CERD/C/PER/CO/22-23, para. 19b).

International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁶

Introduction

1. The COVID-19 pandemic and the response to it, including the closure of workplaces, disruption to supply chains, travel bans, restrictions on gatherings, have wide ranging effects on the enjoyment of a broad range of economic, social and cultural rights. Measures to combat the pandemic should not be discriminatory or have discriminatory effect or disproportionate impact on the most disadvantaged and marginalised or most affected in society.

Requirements of the Covenant

Maximum available resources and International assistance and cooperation (art. 2.1)

2. States parties have to take steps, individually and through international assistance and cooperation, to the maximum of their available resources, to achieve progressively the full realisation of economic, social and cultural rights. At the same time, States parties have the obligation to undertake immediate steps to ensure that the minimum content of the rights are met, even in cases of emergency (art 2.1).¹⁷

Domestic resources

3. States parties are required to mobilise resources domestically, and, in situations where these are inadequate, States parties must strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.¹⁸ This means that States parties must take a range of deliberate, concrete and targeted measures to respond to the COVID-19 pandemic and to mitigate their impact on those who are likely to be most affected.¹⁹ Key responses, such as the expansion of social protection and others described herein, require freeing supplementary resources, including through fiscal and monetary interventions.

International cooperation

4. States parties have an obligation to seek international cooperation and assistance when resources are lacking at the national level.²⁰ In the context of COVID-19, international cooperation is critical in preventing, addressing and following up to the effects of the pandemic, in medical, economic, social and other areas. The international community has a collective responsibility when addressing diseases that

¹⁶ The Committee on Economic, Social and Cultural Rights issued a statement on 17 April 2020, [Statement on the coronavirus disease \(COVID-19\) pandemic and economic, social and cultural rights \(E/C.12/2020/1\)](#).

¹⁷ See Concluding observations for Bulgaria (2019), E/C.12/BGR/CO/6, para. 9; Spain (2018), E/C.12/ESP/6, para. 14; South Africa (2018), E/C.12/ZAF/CO/1, para. 19.

¹⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations (contained in document E/1991/23), para. 13.

¹⁹ Ibid., para. 12; general comment No. 14 (2000) on the highest attainable standard of health, E/C.12/2000/4, para. 65.

²⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, E/C.12/GC/19, para. 55.

are easily transmissible beyond frontiers. Moreover, cooperation of countries that export medical goods and equipment or foodstuffs as well as transit countries is critical. Easing of economic sanctions as well as debt relief should be considered by States parties.²¹

Non-discrimination (arts. 2.2 and 3)

5. States parties undertake to guarantee that the rights will be exercised without discrimination of any kind and to ensure the equal rights of men and women.²² In the context of a global pandemic, States parties must put in place measures to identify and mitigate the impact of the pandemic on persons who are particularly vulnerable to discrimination due to their status (including health status or age, place of residence, economic and social situation or other status) or the situation they are in. In addition to direct discrimination, protection should also be afforded to individuals and groups that are more likely to be disproportionately affected by the pandemic and the response it, such as older persons, those in the informal economy or those living in informal settlements.

Limitations (art. 4)

6. Limitations on the exercise of economic, social and cultural rights are permitted only insofar as they have been approved by law, are compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. Any restriction or limitation on the grounds of health should be of limited duration, subject to review and the least restrictive alternative. It has further highlighted that in certain situations States parties need to impose limitations, which must be temporary, necessary, proportionate, and non-discriminatory.²³

Right to work (art. 6)

7. States parties should mitigate the adverse impact of COVID-19 responses on the employment and the remuneration of workers, such as unfair dismissals and layoffs, reduced working hours, modifications to the type of employment. Workers should be able to challenge related decisions. Special attention should be paid to marginalized and disadvantaged individuals, including unemployed persons, self-employed workers, workers in non-traditional forms of employment (own-account, temporary, casual workers), workers in the informal economy, and migrant workers. Any acts of discrimination relating to the COVID-19 in the workplace should be prohibited and prevented. Any measures relating to the labour market, envisaged by States parties to respond to economic fallout from the COVID-19 pandemic, should be centred on the Covenant rights.²⁴

Right to just and favorable conditions of work (art. 7)

8. States parties should ensure that safe and hygienic working conditions are guaranteed, especially for workers in the service sector and in domestic settings, who are exposed to a higher risk of contracting COVID-19, and the workers who are exempted from the lockdown, including workers in construction sites or in

²¹ See Committee on Economic, Social and Cultural Rights, statement on COVID-19 and economic, social and cultural rights (2020), para. 22.

²² See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, E/C.12/GC/20.

²⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 18 (2006) on the right to work, E/C.12/GC/18, paras. 6, 7, 11, 12, 19 and 31.

agriculture.²⁵ In particular, States parties should protect the safety and health of health workers, guarantee reasonable working hours and sufficient rest periods during the COVID-19 emergency²⁶ and provide them with support, including care services for dependents.

Trade unions rights (art. 8)

9. Effective participation of trade unions should be guaranteed at all levels of decision-making processes – workplace, industrial and national levels – so as to ensure the protection of workers' rights during the COVID-19 pandemic, including in the design of mitigation measures for the economy and the labour market.

Right to social security (art. 9)

10. Basic social security guarantees including universal access to the necessary health services and basic income security (e.g. in case of sickness, death, unemployment and loss of livelihood) should be ensured in the COVID-19 pandemic response. Social protection measures should ensure a minimum essential level that will provide for at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.²⁷ States parties should ensure that such benefits cover all marginalized and disadvantaged individuals, particularly those who are severely affected by the COVID-19.²⁸ In case of severe lack of resources, States parties should ensure minimum benefits for the selection of a core group of social risks and contingencies, made following a wide process of consultation.²⁹

Protection and assistance to the family (art. 10)

11. Older persons should be able to live in dignity and security.³⁰ States parties should protect older persons against abuse and neglect, including when they are in care facilities. As older persons are particularly vulnerable to severe and life-threatening infection, States parties should preserve the health of the elderly and ensure adequate care, treatment and rehabilitation for those who are ill. States parties should also ensure that, even in the event of a lockdown, independent living is adequately supported.³¹

Right to adequate housing (art. 11)

12. Adequate housing must be guaranteed, especially in States parties that have ordered the population to stay at home to contain the COVID-19 pandemic. States parties should adopt a moratorium on evictions and take urgent measures to provide homeless people with adequate shelter, which is the minimum core content of the

²⁵ See Committee on Economic, Social and Cultural Rights, statement on COVID-19 (2020), para. 5.

²⁶ See arts 7 (b), (d) and 12(2) (b), (c) of the International Covenant on Economic, Social and Cultural Rights; Committee on Economic, Social and Cultural Rights, general comment No. 23 (2016) on the right to just and favourable conditions of work, E/C.12/GC/23, paras 35-40; Concluding observations for Israel (2019), E/C.12/ISR/CO/4, para. 27.

²⁷ See Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, E/C.12/GC/19, paras. 4(b), 6 and 59(a); The Universal Declaration of Human Rights (1948), art. 25(1); Concluding observations for Israel (2019), E/C.12/ISR/CO/4, para. 35.

²⁸ See Concluding observations for Israel (2019), E/C.12/ISR/CO/4, para. 23(c).

²⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 19 (2008) on the right to social security, E/C.12/GC/19, paras. 31 and 59(a).

³⁰ See Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the rights of older persons, annex IV of E/1996/22, para. 5; statement on COVID-19 and economic, social and cultural rights (2020), paras. 5, 8, 15.

³¹ See Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the rights of older persons, annex IV of E/1006/22, para. 32.

right to adequate housing.³² An adequate shelter entails adequate privacy, space, security, sanitation and washing facilities, lighting and ventilation, and adequate location.³³ Such conditions must also be met for quarantine areas. Homeless people should not be punished for breaking stay-at-home rules.³⁴ States parties must also ensure sufficient quarantine capacity so that inadequate housing, such as overcrowded dwellings, does not lead to greater contagion risk. Effective preventive measures should be afforded to groups living in densely populated areas and informal settlements where physical distancing is difficult to apply.

Right to food (art. 11)

13. States parties should ensure that food remains available and that the dietary and other needs of individuals should be satisfied, in spite of disruptions in processing, transportation and distribution due to the pandemic. This requires cooperation between food-importing, food-exporting and transit countries to ensure distribution of food supplies. Hunger must be prevented at all times.³⁵ Stay-at-home rules should take account of the fact that many households are not able to store food, including due to lack of equipment or electricity. They should also consider challenges encountered by individuals, such as older persons, to access food. States parties must also take measures to prevent profiteering so that foodstuffs remain affordable, including for low-income groups. Other possible measures include lifting VAT on essential foodstuffs or subsidizing them.³⁶

Right to water (arts. 11 and 12)

14. As hand hygiene is key in the protection against COVID-19, States parties should ensure the delivery of water and hygiene products to communities who may lack access and sufficient washing facilities in densely populated areas and informal settlements, where dwellings may not be connected to public water networks.³⁷ Disconnection of water supply by public and private providers should be avoided.

Right to health (art. 12)

15. States parties must ensure that health facilities, goods and services are available, physically and economically accessible, adequate, and of good quality, whether privately or publicly provided.³⁸ Equal and timely access to basic preventive and curative goods and services, such as screening, protective equipment, drugs and treatments³⁹ as well as an adequate system of urgent medical care⁴⁰ must be guaranteed. In some cases, measures such as the control of the marketing of medical equipment and medicines by third parties⁴¹ or mobilisation of health care resources in the private sector may be needed. Additional demands in times of health

³² See Committee on Economic, Social and Cultural Rights, statement on COVID-19 and economic, social and cultural rights (2020), para. 15.

³³ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing (contained in E/1992/23), para. 7.

³⁴ See Concluding observations for Denmark (2019), E/C.12/DNK/CO/6, para. 48.

³⁵ See Concluding observations for the Philippines (2016), E/C.12/PHL/CO/5-6, para. 48.

³⁶ See Committee on Economic, Social and Cultural Rights, statement on COVID-19 and economic, social and cultural rights (2020), para. 17.

³⁷ *Ibid.*, para. 5 and 17.

³⁸ See Concluding observations for Denmark (2019), E/C.12/DNK/CO/6, para. 63; Israel (2019), E/C.12/ISR/CO/4, para. 57.

³⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, E/C.12/2000/4, para. 17.

⁴⁰ *Ibid.*, para. 16.

⁴¹ *Ibid.*, para. 35.

emergencies and epidemics require the injection of supplementary resources for the provision of goods and services, but also to ensure health-related social protection.⁴²

Education (art. 13)

16. Continued access to education in spite of pandemic-related measures in place, including through distance learning where possible, as well as measures to prevent drop-out at all levels should be ensured.

Science (art. 15)

17. States parties should encourage and promote scientific research concerning the pandemic, such in relation to the tracking of the spread of COVID-19, data collection and analysis, and development and testing of potential treatments.⁴³ Decisions on measures taken should be based on scientifically proven evidence. States parties have both an individual and joint responsibility to control diseases, including by making available relevant technologies.⁴⁴ Considering the confinement measures in place, States parties should address the issue of digital divide, including by ensuring access to electricity and the Internet that are affordable for all.

⁴² See Concluding observations for Cyprus (2016), E/C.12/CYP/CO/6, para. 40.

⁴³ See Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020) on science and economic, social and cultural rights, E/C.12/GC/25, para. 82.

⁴⁴ See Committee on Economic, Social and Cultural Rights, general comment No 14 (2000) on the highest attainable standard of health, E/C.12/2000/4, paras. 16, 40.

International Covenant on Civil and Political Rights (ICCPR)

Introduction

1. The International Covenant on Civil and Political Rights entails a range of obligations and responsibilities for States parties, also when they respond to the COVID-19 pandemic. There are the significant risks for challenges but also opportunities for progress within the crisis and how States parties, institutions, groups and individuals respond. Practices that raise significant concerns under international human rights law are emerging. A preliminary and non-exhaustive outline is below.

Requirements of the Covenant

The right to life (art. 6)

2. Article 6 establishes that the right to life is the supreme right, from which no derogation is permitted, even in public emergencies. It is a prerequisite for the enjoyment of all others. The right to life requires States parties to ensure individuals freedom from acts and omissions that are intended or may be expected to cause their unnatural or premature death.⁴⁵ The right to life, as a non-derogable right, must be upheld in all responses to COVID-19, including the provision of healthcare to those infected by COVID, as well as to those whose life could be impacted by restrictions on other forms of health care, including abortion services. States parties must also refrain from the lethal use of force, extrajudicial killings and other practices impacting the right to life when enforcing emergency provisions and/or when faced with dissent from those critical of Government responses.

Non-discrimination, including incitement to discrimination (arts. 2 and 20)

3. It is feared that the COVID-19 crisis is disproportionately impacting people depending on factors, such as their age, socio-economic status and/or belonging to a minority or indigenous group. Article 2 of the ICCPR provides protection from discrimination in relation to the rights within the Covenant without distinction of any kind.
4. The public discourse on the COVID-19 crisis has seen political leaders, and others, associating the virus with national and regional characteristics, inflaming discriminatory attitudes, racism and xenophobia. Incidences of racially motivated violence, linked to COVID-19 have been seen in a number of countries. Article 20 prohibits advocacy of national or racial hatred that constitutes incitement to discrimination, hostility or discrimination in relation to essential services and goods that could affect their right to life.

States of emergency (arts. 4, 12, 21 and 22)

5. As a response to COVID-19, States parties across the world are enacting states of emergency and imposing restrictions on various rights, most visibly the rights to freedom of movement, assembly and association. Article 4 allows for the derogation

⁴⁵ See Human Rights Committee (2018), general comment No. 36 (2019) on the right to life, CCPR/C/GC/26, para. 3.

of certain rights (with the exception of articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 1)⁴⁶ in times of public emergency that threatens the life of the nation. There is an obligation for states of emergency to be limited to the extent strictly required by the exigencies of the situation, relating to the duration, geographical coverage and material scope, and any measures of derogation resorted to because of the emergency.⁴⁷ States parties are required by the ICCPR to immediately inform other States of derogations from the Covenant, through the intermediary of the Secretary-General. As of 6 April 2020, only eight States parties⁴⁸ had notified other Member States through the Secretary-General of their derogations.

6. The jurisprudence of the Committee on states of emergencies, includes concerns about the lack of notification of other States about derogations, the compliance of emergency measures with the rationale and scope of article 4 (1) of the Covenant and the Committee's general comment No. 29 (2011), the lack of a legal basis and/or judicial oversight for states of emergency, non-compatibility with legal provisions on states of emergency with the Covenant and its interpretation and derogations from non-derogable rights.⁴⁹

Conditions of detention (arts. 10 and 6)

7. Detainees around the world, including in prisons and immigration detention facilities, are particularly vulnerable to COVID-19, due to the rate at which infectious diseases can spread in such settings. Such risks will be exacerbated for those in overcrowded facilities or where healthcare services cannot be accessed. Article 10 establishes that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The jurisprudence of the Committee indicates that the application of such provisions confer a duty on States parties to address overcrowding, provide adequate access to healthcare services facilities in detention facilities, prevent death in detention and explore non-custodial alternatives.

Right to privacy (arts. 17 and 3)

8. Responses to COVID-19 have included practices that raise many privacy concerns, including the use of drones to monitor compliance with emergency measures, widespread collection of data on movements of people and health data, and data security breaches. States parties have an obligation to protect individuals from

⁴⁶ The right to life (art. 6), the prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent (art. 7), the prohibition of slavery, slave-trade and servitude (art. 8, paras. 1 and 2), the prohibition of imprisonment because of inability to fulfil a contractual obligation (art. 11), the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty (art. 15), the recognition of everyone as a person before the law (art. 16), and the freedom of thought, conscience and religion (art. 18).

⁴⁷ Human Rights Committee, general comment No. 29 (2001) on states of emergency, CCPR/C/21/Rev.1/Add.11, para 4.

⁴⁸ Guatemala, Latvia, Estonia, Armenia, Ecuador, Romania, Peru, Georgia.

⁴⁹ See Concluding observations for Tunisia (2020), CCPR/C/TUN/CO/6, paras. 29-30; Tajikistan (2019), CCPR/C/TJK/CO/3, paras. 21-22; Equatorial Guinea (2019), CCPR/C/GNQ/CO/1, paras.20-21; Nigeria (2019), CCPR/C/NGA/CO/2, paras. 14-15); Eritrea (2019), CCPR/C/ERI/CO/1, paras. 15-16); Guinea (2018), CCPR/C/GIN/CO/3, paras.13-14; Sudan (2018), CCPR/C/SDN/CO/5, paras.10-11; Liberia (2018), CCPR/C/LBR/CO/1, paras. 12-13; Guatemala (2018), CCPR/C/GTM/CO/4, para. 38-39; Mongolia (2017), CCPR/C/MNG/CO/6, paras 15-16; Thailand (2017), CCPR/C/THA/CO/2, paras. 5-6; Jamaica (2016), CCPR/C/JAM/CO/4, paras. 27-28. This includes both countries that have formally notified other countries of derogations and those that have not. The countries that made formal derogations in the last five years for situations other than COVID-19 are Guatemala, Peru, Thailand, Ukraine, France, Ecuador, Turkey and Jamaica. See A/70/40, A/71/40, A/72/40, A/73/40 and A/74/40.

unlawful and arbitrary interference with their privacy, family, home or correspondence. To be lawful, interferences must be mandated by State party legislation. Interferences can be lawful but remain arbitrary when they are not in line with the provisions, aims and objectives of the Covenant, as well as reasonable under the circumstances.

Public participation, including the right to receive information (arts. 25 and 19)

9. Misinformation, censorship and barriers to access to the Internet, and their impact on people's ability to participate in an issue of public interest, have emerged as significant issues within COVID-19 responses. States parties have an obligation under article 25 to allow all citizens, without discrimination, the right and opportunity to take part in the conduct of public affairs, both directly and through elected officials. Article 19 establishes a requirement for all individuals to be able to receive information. Restrictions can be placed on article 19 requirements if they are outlined in law and required by circumstances, including protection of national security or of public order, or of public health or morals.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁰

Introduction

1. The confinement imposed during the COVID-19 crisis, while necessary to contain the pandemic, may disproportionately limit women's access to health care, education and employment, in particular for disadvantaged groups of women, and increase their risk of gender-based violence in the domestic sphere. States parties to the CEDAW Convention have an obligation to ensure that the measures taken to address the COVID-19 pandemic do not directly or indirectly discriminate against women.

Requirements of the Convention

Women's Right to health (arts. 10 (h), 12 and 14 (2) (b))

2. Pandemics pose a significant threat of exacerbating existing gender inequalities. Women are disproportionately exposed to COVID-19 as primary caregivers for sick family members and due to their high representation in the health work force. States parties must address women's increased risk through preventive measures and by ensuring access to early detection and treatment of COVID-19. Restrictions on freedom of movement must not undermine women's access to health care, including sexual and reproductive health services and information. States parties should provide training to health workers on the particular gendered risks associated with COVID-19, including for maternal health during pregnancy, childbirth and the post-partum period, and maintain psychological counselling services to address women's mental health issues due to experiences of violence, social isolation and related depression.

Gender-based violence against women (arts. 2 and 5)

3. Women and girls face an increased risk of domestic and other forms of gender-based violence during confinement together with abusive partners and family members. States parties should review existing referral pathways to ensure that women who are victims or at risk of gender-based violence have effective access to protection orders, medical and psychosocial assistance, alternative housing and rehabilitation programmes. Shelters must be continuously accessible in all parts of a State party, including in rural areas, as long as the resources are available, and abide by health protocols to minimize the risk of contagion.
4. States parties should adopt gender-sensitive protocols and guidelines for social and health workers to respond adequately to the needs of women subjected to gender-based violence during the COVID-19 pandemic. States parties have a due diligence obligation to investigate, prosecute and punish perpetrators of gender-based violence and provide adequate reparation to women subjected to such violence. They must minimize disruptions in law enforcement, train the judiciary, the police and law

⁵⁰ The Committee on the Elimination of All Forms of Discrimination against Women issued a statement on 21 April 2020, entitled Call for joint action in the times of the COVID-19 pandemic, and a Guidance Note on CEDAW and COVID-19. Both documents are available on the [website of the CEDAW Committee](#). A related [press release](#) was issued on 22 April 2020.

enforcement officers on gender-sensitive responses in cases of gender-based violence resulting from the COVID-19 pandemic, and ensure women's access to justice, including through modern information and communications technology (ICT).

Disadvantaged groups of women (arts. 1, 2, 12 and 14)

5. Measures introduced in times of health emergencies should not disproportionately affect the rights of disadvantaged groups of women and girls, such as women and girls with disabilities, older women, refugee, migrant and internally displaced women and girls, women and girls living in poverty, single mothers, indigenous women and girls, women in detention and lesbian, bisexual and transgender women. For example, States parties should ensure that basic services such as health care and inclusive education remain accessible for women and girls with disabilities during times of confinement and reduced service delivery, including in rural areas. States parties should mitigate the disproportionate impact of COVID-19 on the health of older women and on those with pre-existing health conditions by ensuring their access to health care through targeted measures such as medical home visits or the provision of safe transport or psycho-social counselling to address their mental health situation during social isolation. States parties should also address discrimination against lesbian, bisexual and transgender women in access to health care and ensure that they have access to safe shelters and support services whenever exposed to gender-based violence during home confinement.
6. States parties should ensure that migrant women and girls, including those in an irregular situation and those without health insurance, have adequate access to health care and that health care providers are not under a duty to report them to immigration authorities. Women in detention must have adequate access to medical screening and treatment. As preventive measures to reduce contagion in places of detention, States parties should immediately release women political prisoners, including women human rights defenders, and consider alternatives to detention such as judicial supervision or suspended sentences with probation, in particular for women who are detained on grounds of administrative or other non-severe offences.

Girls' and women's access to education (arts. 2 and 10)

7. School and university shutdowns due to the COVID-19 outbreak increase the pressure on girls and women to fall back into stereotypical domestic roles. States parties should raise awareness among parents about the importance of girls' continuous education and take measures such as online learning programmes to ensure girls' and women's access to education during the COVID-19 pandemic and provide alternative educational tools in rural and remote areas where internet access is limited. States parties must provide such measures free of charge to all girls, in particular at the primary level of education.

Women's employment and social protection (arts. 2, 11 and 13)

8. Women in low-paid jobs and in informal, temporary or other precarious forms of employment are particularly affected by the economic consequences of the COVID-19 crisis. Immediate response and recovery plans should address gender inequalities in employment, promote the transition of women from the informal economy to the formal economy, and provide subsidies or low-interest loans for women's small and medium enterprises. States parties should provide gender-responsive social protection systems that reduce gender inequalities to mitigate the economic impact of the COVID-19 pandemic on women, including women engaging in unpaid domestic and agricultural or work in family enterprises.

Convention on the Rights of the Child (CRC)⁵¹

Introduction

1. The COVID-19 pandemic poses challenges to the enjoyment of children's rights under the Convention, in particular the rights to non-discrimination; life, survival and development; access to appropriate information; protection from all forms of violence, abuse, neglect and exploitation, including sexual abuse; the enjoyment of the highest attainable standard of health; an adequate standard of living; education; leisure, play and recreation; and the right of the child to have his or her best interests taken as a primary consideration.

Requirements of the Convention

The right to non-discrimination (art. 2)

2. States parties should ensure access to the mentioned rights for all children, including those in situations of particular vulnerability, such as children with disabilities, children living in poverty, children in street situations, migrant, asylum-seeking, refugee and internally displaced children, minority and indigenous children, children living in alternative care, children with underlying health conditions like HIV/AIDS, and children deprived of their liberty.

The right of the child to have his or her best interests taken as a primary consideration (art. 3 (1))

3. States parties should ensure that their response to the COVID-19 pandemic reflects the principle of the best interests of the child, particularly in situations of crisis and limited resources, such as on which services are considered essential.

The right to life, survival and development (art. 6)

4. Every child has the inherent right to life and States parties should ensure to the maximum extent possible the survival and development of the child. States parties should take all available measures to protect children from infection with the COVID-19 and treat infected children.

Access to appropriate information (art. 17)

5. States parties should disseminate accurate information to children about the COVID-19 pandemic and the means to protect themselves in accessible and child-friendly formats in the languages spoken in their territories, or in formats accessible for children with disabilities, migrant children and children living in areas with limited Internet access.

⁵¹ The Committee on the Rights of the Child issued a statement on 8 April 2020 entitled [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children.](#)

The right to protection from all forms of violence, abuse, neglect and exploitation, including sexual abuse (arts. 19 (1), 28 (2) and 34)

6. The majority of violence and abuse against children occurs in the home and the imposed restrictions on movement that confine children and adults to their homes may expose children to increased physical and mental violence. States parties should ensure that child social protection services remain functioning and available, including home visits when necessary, and strengthen their phone and online reporting and referral mechanisms, such as a toll-free 24-hour helpline. States parties should also upscale their sensitization and awareness activities through TV, radio and online channels.

The right to the enjoyment of the highest attainable standard of health (art. 24 (1))

7. States parties should ensure access to affordable and quality COVID-19 related health care and services, including testing, treatment and a potential future vaccine, for all children. They should also ensure that, despite the increasing pressure on the health systems and the scarcity of resources owing to the COVID-19 pandemic, children have access to health care, including for pre-existing conditions and for mental health.

The right to an adequate standard of living (art. 27)

8. States parties' strategies to mitigate the economic and social impact of the COVID-19 pandemic should include specific measures to protect children, including those aimed at reducing poverty, and ensuring access to affordable food, clean water and sanitation facilities.

The right to education (art. 28 (1) (a))

9. Where, and while education facilities, in particular primary schools, are closed in response to the COVID-19 pandemic, States parties should provide students with alternative teaching methods which should be accessible to all children and take into account unequal access to resources and technology.

The right to rest, leisure, recreation and cultural and artistic activities (art. 31)

10. In view of the closure of many schools, playgrounds, public parks and cultural establishments, States parties should explore alternative and creative solutions for children to enjoy these rights, without excluding external activity respecting the need to ensure personal security, but including by promoting child-friendly cultural and artistic activities on TV, radio and online.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Introduction

1. The Covid-19 pandemic represents a challenge for States parties in combatting torture and cruel, inhuman and degrading treatment or punishment (other ill-treatment) under their jurisdictions, in particular, inside places of deprivation of liberty. The insufficient access to water and hygiene products inside places of detention, the often overcrowded facilities, the inadequate access to healthcare and the pre-existing medical condition of a large proportion of the prison population, affected by chronic and infectious diseases, are objective factors for a rapid spread of COVID-19 and a significant increase of the risk of mortality among persons affected. The anxiety of contagion in overcrowded facilities coupled with the temporary suspension of family visits and activities with outsiders have already triggered widespread protests inside prisons all over the world, resulting in the deaths of prisoners.
2. Racially motivated attacks, including against people wrongfully associated with the spread of the virus, and the lack of personnel are contributing risk factors.
3. The pandemic has also resulted in the suspension of asylum seeker applications in certain countries, leading to cases of refoulement, including to countries where there are substantial grounds for believing that they would face a real risk of being subjected to torture or other ill-treatment.

Requirements of the Convention and the Protocol

Absolute prohibition of torture (arts. 2(2), 11, 12 and 16)

4. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, including during states of emergency and other exceptional circumstances.⁵² Authorities should take measures to prevent and investigate any possible torture or ill-treatment during arrests and detention, particularly of persons in situations of vulnerability (including minorities, migrants, women, LGBTI persons, people with disabilities)⁵³ or any attacks against the population, especially on discriminatory grounds,⁵⁴ both inside and outside places of deprivation of liberty.⁵⁵

⁵² Article 2 (2), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, general Comment no. 2 on the implementation of article 2, [CAT/GC/2](#), para. 1.

⁵³ See Concluding observations for Bulgaria, CAT/BGR/CO/6, par. 30 b) and d).

⁵⁴ See Concluding observations for the Russian Federation, CAT/C/RUS/CO/6, para. 33 a). See also *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 10.5.

⁵⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (the [Nelson Mandela Rules](#)), UN Doc A/RES/70/175 (17 December 2015), Rules 57(3), 71.

Fundamental legal safeguards (art. 2)

5. All detainees, including those arrested for breaching lockdown and curfews imposed to contain the spread of COVID-19, should be afforded all the fundamental legal safeguards from the outset of the deprivation of liberty:⁵⁶ (i) being informed about their rights, reasons for the arrest and charges against them, in a language that they understand; (ii) requesting and receiving a medical examination and having access to medical assistance upon request; (iii) having confidential access to counsel or to free legal aid; (iv) notifying a family member or a person of their choice; (v) having their detention recorded; (vi) being brought before a judge within 48 hours; (vii) right to habeas corpus procedure.⁵⁷

Overcrowding and alternatives to detention/confinement (arts. 2, 11 and 16)

6. Overcrowding, together with poor material conditions in places of deprivation of liberty, may lead to situations of ill-treatment or even torture,⁵⁸ and could favour the rapid spread of COVID-19. States parties should significantly reduce overcrowding by actively promoting alternatives to pre-trial detention and to incarceration, such as bail, house arrest, suspended sentences, parole or early release, taking into account the nature and gravity of the offence and the personality and situation of vulnerability of the offender⁵⁹ (for example, people with high-risk conditions and pregnant women). States parties should also refrain from detaining undocumented migrants and apply alternatives to immigration detention instead,⁶⁰ as the immigration detention would not be necessary nor proportionate for as long as there are no prospects of imminent and safe deportations. They should also prioritize the use of community and family-based alternatives⁶¹ for persons with mental and psychosocial disabilities and people in social care homes.

Prison healthcare (arts. 2, 11 and 16)

7. Denial or failure to provide a detainee with medical treatment may amount to cruel or inhuman treatment.⁶² Persons deprived of their liberty should enjoy the same standards of health care that are available in the community, and prison healthcare services should be integrated in the national public health system.⁶³ An initial medical screening should take place within a short time of admission, and thereafter as necessary, to screen for contagious diseases and provide for the clinical isolation and adequate treatment. Health professionals should also look for any signs of torture and other ill-treatment during medical screenings, and these cases should be properly documented and reported through independent and confidential channels.⁶⁴ All

⁵⁶ See Concluding observations for Uzbekistan, CAT/C/UZB/CO/5, para. 30; *Ndarisigaranye v. Burundi* (CAT/C/62/D/493/2012), para. 8.4; *Hany Khater v. Morocco* (CAT/C/68/D/782/2016), para. 10.10; *Ali Aarrass v. Morocco* (CAT/C/68/D/817/2017), paras. 8.5-8.6. See also [UN Body of principles](#) for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 10, 13-18, 23-26.

⁵⁷ Nelson Mandela Rules 6-9, 26, 30-31, 54-55, 61, 119.

⁵⁸ See Concluding observations for the former Yugoslav Republic of Macedonia CAT/C/MKD/CO/3, para. 19. See also *Kirsanov v. Russian Federation* (CAT/C/52/D/478/2011), para. 11.2.

⁵⁹ United Nations Standard Minimum Rules for Non-custodial Measures ([the Tokyo Rules](#)), 3.2.

⁶⁰ See Concluding observations for Cyprus, CAT/C/CYP/CO/4, para. 17; Concluding observations for the Republic of Moldova, CAT/C/MDA/CO/3, para. 28.

⁶¹ See Concluding observations for Serbia, CAT/C/SRB/CO/2, para. 18(a).

⁶² See Concluding observations for Romania, CAT/C/ROU/CO/2, para. 14 and *Ali Aarrass v. Morocco* (CAT/C/68/D/817/2017), para. 8.5.

⁶³ See Concluding observations for Argentina, CAT/C/ARG/CO/5-6, para. 23-24.

⁶⁴ *Ibid.*

health consultations must be held confidentially.⁶⁵ Protocols must be in place for the evacuation of medical emergencies.⁶⁶ A stock of essential medicines and equipment must be held within the prison. Medical personnel should prepare for the negative impact restrictions may have on detainees' mental health. Authorities should ensure that the national health guidelines to fight the pandemic are applied in prisons, including the need to maintain hygienic conditions and facilitating access to soap and water, paying particular attention to prisoners at risk.⁶⁷

Contact of detainees with the outside world (arts. 2, 11 and 16)

8. Family should be informed of any transfer, serious injury or illness of a detainee. Limitations on visits or home permits due to the pandemic, as well as any limitations on activities, should only be applied if necessary and justified according to the circumstances, be communicated to all persons deprived of their liberty, and limited to the shortest time possible. Alternative measures such as prolonged telephone time or skype calls should be available, as well as the right to send and receive emails on secure networks. Telephone calls with lawyers or monitoring mechanisms should be allowed to take place as often as possible. Equal and regular access to radio, television and newspapers is particularly important, also for persons under medical isolation. Access to consular assistance for foreign detainees is an important right that can reduce risks of ill-treatment.⁶⁸

Isolation (arts. 2, 11 and 16)

9. The use of medical isolation must be regulated and strictly supervised by medical staff, for as short a time as possible, and with the possibility of judicial review.⁶⁹ A person placed in isolation should have meaningful human contact every day and should benefit from equivalent general living conditions as in the rest of the prison.⁷⁰

Staff in charge of detainees (arts. 2, 10 and 11)

10. Authorities should always ensure an adequate ratio between detainees and personnel, who should be properly selected and trained, factoring in the potential impact of the pandemic on staff, and avoiding the delegation of power to detainees, particularly the control over goods, medicines and disciplinary measures.⁷¹

Complaints procedures (arts. 2, 11, 12, 13 and 14)

11. States parties are under an obligation to guarantee the right to complain about any mistreatment and about prison conditions. These mechanisms should be accessible, confidential and impartial, and there should be an adequate system of protection of witnesses/complainants.⁷² Detainees should also have the opportunity to complain

⁶⁵ Ibid.

⁶⁶ See Concluding observations for Sri Lanka, CAT/C/LKA/CO/5, para. 36.

⁶⁷ Nelson Mandela Rules 24, 25, 30, 31, 34.

⁶⁸ Nelson Mandela Rules 24, 25, 30, 31, 34.

⁶⁹ See *Vogel v. New Zealand* (CAT/C/62/D/672/2015), para. 7.3, Concluding observations for New Zealand, CAT/C/NZL/CO/6, para. 15.

⁷⁰ Nelson Mandela Rules 37, 42, 46.

⁷¹ Nelson Mandela Rules 1, 40, 57.3, 71, 74, 75, 76.

⁷² See Concluding observations for Kyrgyzstan, CAT/C/KGZ/CO/2, para. 6. See also *Asfari v. Morocco* (CAT/C/59/D/606/2014), para. 13.5.

freely and confidentially to independent oversight bodies by telephone, email or through designated complaint boxes.

Non-refoulement (art. 3)

12. The principle of non-refoulement of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is absolute.⁷³ Each State party must apply the principle of non-refoulement in any territory under its jurisdiction or any area under its de jure or de facto control or authority, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law. The tightening of border controls and the travel restrictions cannot result in the closure or suspension of asylum procedures, or pushing people back to situations of danger. Screening arrangements, testing and quarantine measures should be in place to respond to any health-related issues.

⁷³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, [CAT/C/GC/4](#), para. 9. See also *Erdogan v. Morocco* (CAT/C/66/D/827/2017), para 9.2.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)⁷⁴

Introduction

1. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) was created as States were convinced that further measures were necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.
2. To this end, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”) was established in 2007. It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment, the relevance of which has been further highlighted by the COVID-19 pandemic.
3. It is difficult to predict how long the current COVID-19 pandemic will last or what its cumulative effects will be on the situation of persons deprived of liberty. But the pandemic represents a very serious challenge to the penitentiary and other custodial systems. This includes the work of torture preventive bodies that is related to visiting and inspecting places of deprivation of liberty.
4. This is particularly relevant as the OP-CAT obliges each State party to establish independent national bodies for the prevention of torture and ill-treatment with a mandate to visit places of deprivation of liberty.
5. These are called national preventive mechanism (NPM), and their main function is to visit places of deprivation of liberty to ensure that the rights of those deprived of their liberty are respected. The COVID-19 pandemic has raised many questions regarding how these preventive mechanisms can continue their work. What is clear is that national preventive mechanisms must continue their important work in visiting places of deprivation of liberty, hence ensuring that the rights of those deprived of liberty continue to be respected.
6. Ultimately, States are the duty bearers for people deprived of their liberty, and a heavy responsibility lies with them to make sure that the COVID-19 pandemic is not used as an excuse to lower the protection of the rights of those that the States deprive of their liberty.

⁷⁴ The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued an advice on 25 March 2020 ([Advice provided by the Subcommittee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus \(COVID-19 virus\) \(CAT/OP/9\)](#)) and on 7 April 2020 ([Advice of the Subcommittee to States and national preventive mechanisms relating to the coronavirus disease \(COVID-19\) pandemic \(CAT/OP/10\)](#)).

7. The below paragraphs reflect the jurisprudence and recommendations of the SPT to States parties and national preventive mechanisms in relation to the COVID-19 pandemic.

Obligations of States parties

8. Measures taken to combat the pandemic in places of deprivation of liberty have led to disturbances both inside and outside of detention facilities, due to uncertainties created by the pandemic for the daily life of those detained. The pandemic has also led to the establishment of compulsory places of quarantine.⁷⁵ Measures must therefore be taken to help address these situations, based on the two fundamental ideas which are the 'do no harm' and the 'equivalence of care' principles^{76,77}.
9. On 25 March, the SPT issued a [public advice](#) to States parties (and national preventive mechanisms) on how to respond to the COVID-19, given the heightened risk of contagion among those in custodial and other detention settings, and the obligation of States to protect them against the pandemic. The SPT recommended, amongst other measures, the following:
 - (a) States parties must conduct urgent assessments to identify those individuals most at risk within the detained populations, taking account of all particular vulnerable groups;
 - (b) States parties must reduce prison populations and other detention populations, wherever possible, by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so⁷⁸,
 - (c) States parties must review all cases of pretrial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases;
 - (d) States parties must review the use of immigration detention centres and closed refugee camps with a view to reducing their populations to the lowest possible level;
 - (e) States parties must respect the minimum requirements for daily outdoor exercise, while also taking account of the measures necessary to tackle the current pandemic;
 - (f) States parties must enable family members or relatives to continue to provide food and other supplies for the detainees, in accordance with local practices and with due respect for necessary protective measures;
 - (g) States parties must ensure that appropriate measures are taken to protect the health of staff and personnel working in detention facilities, including health-care staff, and that they are properly equipped and supported while undertaking their duties;

⁷⁵ https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/2020.03.03-Advice_UK_NPM.pdf

⁷⁶ Nelson Mandela Rules 24.

⁷⁷ <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

⁷⁸ **States parties must take** full account of the non-custodial measure, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

- (h) States parties must ensure that those who are, or have been, in quarantine do not suffer from any form of marginalization or discrimination, including once they have returned to the community;
- (i) States parties must ensure that all detainees and staff receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them;
- (j) States parties must ensure that communication with families and friends through appropriate means should be encouraged and facilitated for those in quarantine.

Role of national preventive mechanisms

10. As independent bodies, national preventive mechanisms are free to determine how best to respond to the challenges posed by the current situation. However, the SPT considers that the national preventive mechanisms must at all times operate in accordance with the “do no harm” principle as they continue their work. This means that national preventive mechanisms must adapt their working methods to meet the situation caused by the pandemic in order to safeguard those in detention or deprived of liberty; staff and personnel working in these facilities, including health-care staff; and themselves.
11. The overall goal is to maintain an effective prevention, which requires national preventive mechanisms to respond to the COVID-19 challenges in novel ways, so that they can responsibly continue to exercise their torture prevention mandate under the Optional Protocol. These new ways could include what the SPT has already [advised](#), such as:
 - a. Discussing the implementation and operation of the emergency measures with relevant national authorities to ensure that the rights of detainees are respected, and that the respective States parties live up to their legal obligations as per the OP-CAT;
 - b. Establishing national prevention mechanism hotlines within places of detention, and providing secure email access and postal facilities;
 - c. Tracking the setting up of new and temporary places of detention;
 - d. Seeking to contact third parties (e.g., families and lawyers) who may be able to provide additional information concerning the situation within places of detention;
 - e. Enhancing cooperation with non-governmental organizations and relief organizations working with those deprived of their liberty.
12. Concerning places of quarantine, the SPT has [advised](#) that any place where a person is held in quarantine and from which he or she is not free to leave is a place of deprivation of liberty for the purposes of the Optional Protocol, and so falls within the visiting mandate of a national preventive mechanism.

13. While a visit by a national preventive mechanism to said place may be objected to on grounds of public safety, which might include a medical emergency necessitating quarantine, this could only be a temporary restriction and could not prevent visits to the place of quarantine completely.
14. In other words, there would need to be a particular reason why such a visit should not take place at a particular point in time, rather than that such visits should not take place at all.

Conclusion

15. The pandemic crisis has exacerbated the risk of torture and ill-treatment for people deprived of their liberty. Under no circumstances must the COVID-19 pandemic be used to circumvent or distract from the universally recognized duty of States parties, in close cooperation with national preventive mechanisms and the SPT, to eradicate all forms of torture and other cruel, inhuman or degrading treatment or punishment in places of deprivation of liberty.
16. Likewise, the measures States parties take to combat the pandemic must not in themselves create situations or conditions that would constitute ill-treatment.
17. The SPT remains involved in monitoring the current situation and providing support to the States parties and the national preventive mechanisms during this delicate period. The SPT is also following up on the situation, especially concerning how its Advices⁷⁹ ⁸⁰ are being implemented at the national level.
18. Despite the fact that the pandemic represents a serious challenge for the penitentiary systems, the rights of those deprived of liberty cannot, in any way, under no circumstances, be derogated.

⁷⁹ Advice provided by the Subcommittee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus (COVID-19 virus)

⁸⁰ Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)⁸¹

Introduction

1. The COVID-19 pandemic has implications on the enjoyment of the rights of migrant workers and member of their families,⁸² irrespective of their migration status,⁸³ enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention). Migrant workers enjoy all other rights contained in other international human rights instruments.

Requirements of the Convention

Non-discrimination (art. 7)

2. States parties undertake, in accordance with the international human rights instruments, to respect and ensure to all migrant workers and members within their territory or subject to their jurisdiction, the rights provided for in the Convention without distinction of any kind, including their nationality. These apply to all migrant workers and members of their families, including those in an irregular situation".⁸⁴ Any response to the COVID-19 pandemic must therefore include migrant workers in a non-discriminatory manner and prevent stigmatization or marginalization.⁸⁵ COVID-19 does not discriminate against any person, hence States parties must not discriminate in their response.

Right to freedom to leave any State and enter and remain in the State of origin (art. 8)

3. Migrant workers shall be free to leave any State, including their own. This right might be subject to restrictions as long as they are provided by law, are necessary to protect, inter alia, public health or the rights and freedoms of others and are consistent with the other rights of the Convention. Migrant workers also have the right to enter and remain in their own State.

⁸¹ The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and UN Special Rapporteur on the human rights of migrant issued a [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants](#) on 26 May 2020.

⁸² Further referred to simply as migrant workers which includes families.

⁸³ The Convention distinguishes between migrant workers and members of their families in a documented or regular and in an non-documented or irregular situation as defined in article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:

"For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article."

⁸⁴ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, para. 18.

⁸⁵ See Concluding observations for Senegal (2016), CMW/C/SEN/CO/2-3, para. 23 (b).

Right to life and right to medical care (arts. 9 and 28)

4. All migrant workers enjoy the right to life (article 9) and article 28 provides that migrant workers shall have the right to receive any medical care urgently required for the preservation of their life or avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State party concerned. Such emergency medical care shall not be refused by reason of any irregularity with regard to stay or employment.
5. The Committee interprets article 28 broadly: “Article 28 of the Convention provides for migrant workers...to have the right to receive any medical care urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals. States parties are obliged to ensure that all persons, irrespective of their migration status, have effective access to at least a minimum level of health care on a non-discriminatory basis”.⁸⁶
6. Migrant workers in a non-documented or irregular situation might be unable or unwilling to access medical care services or provide information on their health status for fear of being subjected to repressive measures such as criminalisation of irregular migration, detention, expulsion, or family separation, or face other obstacles such as costs, linguistic or cultural barriers, or simply lack of accessible information.
7. States parties should implement legislative, policy, administrative, and other measures, including firewalls between law enforcement authorities and medical care providers, to address these impediments and disseminate information related to the COVID-19 pandemic in media formats and languages most frequently used or understood by migrant workers. See also article 43, paragraph 1 (e) of the Convention below.

Right to freedom of expression, including to seek, receive and impart information (art. 13)

8. Public information messaging on COVID-19 must be accessible to all migrant workers in media formats, including where available through an open Internet, and languages that are most frequently used or understood by them in the respective State party. Civil society organizations, including migrants’ organizations, should participate in disseminating such information.⁸⁷

Right to privacy (art. 14)

9. Measures taken by States parties to monitor the COVID-19 pandemic, including the use of (mass) surveillance, must not be arbitrary nor unlawful, and discriminatory towards migrant workers, including those in an irregular situation. In particular, States parties must protect their medical information.

Right of migrant workers deprived of their liberty to be treated with humanity (art. 17)

10. Migrant workers often face overcrowding and lack of access to basic services in immigration detention, putting them at high risk of infection with the coronavirus, States parties must take all measures to prevent the outbreak of COVID-19 in such settings, including by considering alternatives to detention, such as release.

⁸⁷ See also the information on art. 33 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families referred later in this note (para. 13).

“In order to respect the inherent dignity of migrant workers deprived of their liberty, States parties are obliged to ensure adequate conditions in line with applicable international standards, including the provision of adequate sanitary, bathing and shower facilities; adequate food (including appropriate food for those observing religious dietary laws) and drinking water; ... [and] access to qualified medical personnel”⁸⁸ “States parties must ensure separate facilities for men and women, [and] ensure the provision of gender-specific health care services”.⁸⁹ “Special measures should be taken to protect vulnerable people deprived of their liberty, including access to adequate health services, medication and counselling”.⁹⁰

Right to freedom from collective expulsion (art. 22)

11. The right to freedom from collective expulsions, including at States’ borders, is a specific right of migrant workers, irrespective of their migration status. “Article 22 of the Convention prohibits collective expulsion and provides procedural safeguards in individual expulsion proceedings with respect to both regular and irregular migrant workers and members of their families”.⁹¹ States parties that have not done so yet should discontinue executing expulsion decisions in order to avoid unnecessary travel and continue to guarantee the right to asylum.

Right to have recourse to consular or diplomatic protection and assistance (art. 23)

12. Article 23 of the Convention provides that migrant workers, irrespective of their migration status, have the right to recourse to the protection and assistance of consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognised in the present Convention are impaired, in particular, in case of expulsion, but also in relation to any human rights issue arising from the COVID-19 pandemic.

Right to information (art. 33)

13. Article 33 includes a specific right of migrant workers, not explicitly protected in other human rights treaties: They have, inter alia, the right to be informed by the State of origin, the State of employment or the State of transit, on their rights arising under the Convention, their rights and obligations under the law and practice of the State concerned, including rights related to, and restrictions imposed upon them due to the COVID-19 pandemic. Such information may be disseminated by the State party directly and/or provided by employers, trade unions or other appropriate bodies or institutions, including civil society organizations such as migrants’ organizations, free of charge, and, as far as possible, in a language they are able to understand.⁹²

⁸⁸ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, para. 20.

⁸⁹ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, para. 45.

⁹⁰ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, para. 46.

⁹¹ See International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, para. 49.

⁹² See also the information on art. 13 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families above, para. 8.

Obligation of all migrant workers to comply with the laws of the State of employment or transit (art. 34)

14. Unlike other international human rights treaties, article 34 of the Convention contains a specific obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States, which extends to restrictions imposed by States due to the COVID-19 pandemic, provided that such restrictions are non-discriminatory.

Right to equal access to housing and social and health services (Art. 43 (1) (d) and (e))

15. Migrant workers often live in overcrowded, unhygienic conditions, including in camps for migrant workers or informal settlements. Especially those in an irregular situation might be disproportionately at risk of homelessness and have difficulties accessing shelters. They are therefore particularly vulnerable to the spread of the COVID-19. Article 43, paragraph 1 (d) and (e) of the Convention provides that regular migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to access to housing, including social housing schemes, and to social and health services, provided that the requirements for participation in the respective schemes are met. States parties should refrain from forced evictions of and provide for access to housing and shelters for migrant workers, in particular during the COVID-19 pandemic.

Migrant workers in countries in crisis

16. States of origin, transit and destination may also refer to the Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disasters, 2016,⁹³ to ensure that crisis management and emergency response as well as recovery plans take into account the particular needs of migrant workers, irrespective of their migration status.

⁹³ https://micicinitiative.iom.int/sites/default/files/document/micic_guidelines_english_web_13_09_2016.pdf.

Convention on the Rights of Persons with Disabilities (CRPD)⁹⁴

Introduction

1. The measures taken by governments to contain and control the spread of COVID-19 may affect persons with disabilities disproportionately due to both newly emerging and long-standing barriers. Persons with disabilities requiring specific forms of assistance, support or adjustments may face additional challenges to access them and to exercise their rights. General individual self-care and other preventive measures against the COVID-19 outbreak might entail further challenges for persons with disabilities that must be taken into account.
2. The respect for the inherent dignity of persons with disabilities and individual autonomy as well as the principle of equality and non-discrimination should be incorporated into all measures taken by States parties in order to ensure that persons with disabilities are not left behind and that potential disproportionate impacts of crisis-management measures are appropriately addressed. While the key CRPD provisions to consider in relation to the COVID-19 pandemic are noted in this document, all of its articles and principles are interrelated and should be applied together.

Requirements of the Convention

Consultation and participation of persons with disabilities through their representative organizations (Arts. 4.3, 31, and 33.3)⁹⁵

3. States parties should closely consult with and actively involve persons with disabilities, through their representative organizations, when enacting pre-existing policies regarding emergencies, introducing new measures, both mainstream and disability-specific, and monitoring their implementation of all COVID-19 containment measures in order to protect the rights of persons with disabilities. States parties should ensure consultations with persons with disabilities through their representative organizations and their meaningful participation in decision-making

⁹⁴ The Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility issued the following joint statement: [Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility](#).

See also: [United Nations, Policy Brief: A Disability-Inclusive Response to COVID-19, May 2020](#).

⁹⁵ See for example, Committee on the Rights of Persons with Disabilities, general comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, CRPD/C/GC/7, para. 78, 94 (i) as well as CRPD/C/1/Rev.1 : Guidelines on independent monitoring frameworks and their participation in the work of the CRPD. See also A/74/55, para. 31; Concluding observations for Paraguay (2013), CRPD/C/PRY/CO/1, paras. 27, 28; Concluding observations for Australia (2013), CRPD/C/AUS/CO/1, paras. 22, 23; Concluding observations for the Dominican Republic (2015), CRPD/C/DOM/CO/1, para. 19; Concluding observations for the United Arab Emirates (2016), CRPD/C/ARE/CO/1, para. 22. The Committee has systematically recommended that States parties implement the Sendai Framework for Disaster Risk Reduction 2015–2030 (A/74/55, para. 74); [Statement on Disability Inclusion in the Third World Conference on Disaster Risk Reduction and Beyond, 2014](#) and [Statement of the on disability inclusion for the World Humanitarian Summit, 2015](#).

processes in response to the crisis as well as in impact- assessments. Consultations should include organizations representing the wide diversity of persons with disabilities, which should be also reflected in the collection and presenting of statistics about the COVID-19 crisis.

Equality and non-discrimination (Arts. 5, 8, 10, and 28)⁹⁶

4. States parties must ensure that persons with disabilities enjoy their rights on an equal basis with others at all times and are entitled to equal and effective protection against discrimination on all grounds. States parties should take all appropriate steps to ensure that persons with disabilities can benefit, on an equal basis with others, from general or individual protection measures, health services, including life-saving measures, social protection, quarantine facilities and provisions, and the distribution of essential supplies in the context of the COVID-19 crisis. States parties must also take measures, including awareness raising initiatives, to prevent perpetuating prejudices against and stereotypes about persons with disabilities that might negatively affect their autonomy and independence, decision-making, and value of life.

Accessibility (Arts. 9 and 25)⁹⁷

5. States parties should take appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public, both in urban and in rural areas. States parties should ensure accessibility of all public information, particularly information on public health management, specific COVID-19 prevention and containment measures, and information relating to essential supplies and services.
6. All available measures should be taken to ensure that public information is provided on accessible platforms (hotlines, websites, radio, video, leaflets), including through augmentative and alternative formats, modes and methods of communication, such as text messages; captioning, sign language interpretation and Easy Read. All health services, including remote/telephone medical advice, and quarantine facilities should be accessible for persons with disabilities on an equal basis with others.

Freedom from torture or cruel, inhuman or degrading treatment or punishment and freedom from exploitation, violence and abuse (Arts. 15 and 16)⁹⁸

7. The current search for a vaccine against COVID-19 should ensure that persons with disabilities are not subject to any form of scientific experimentations or tests without their free and informed consent. States parties should take measures to prevent and address violence against persons with disabilities, including domestic violence, during confinement. Accessible helplines and other measures should continuously be

⁹⁶ See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on Article 12: Equal recognition before the law, CRPD/C/GC/1; Committee on the Rights of Persons with Disabilities, general comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, para. 43, 44. See, for example, Concluding observations for Spain (2011), CRPD/C/ESP/CO/1, paras. 31, 32; Concluding observations for Costa Rica (2014), CRPD/C/CRI/CO/1, para. 58; Concluding observations for Canada (2017), CRPD/C/CAN/CO/1, para 47; A/72/55, para. 30; CRPD/C/15/4, para. 36, 45.

⁹⁷ See Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on Article 9: Accessibility, CRPD/C/GC/2, para. 25, 30, 36, 47.

⁹⁸ See for instance Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3; A/72/55, para. 21; Concluding observations for Kenya (2015), CRPD/C/KEN/CO/1, para. 30 (b); Concluding observations for Italy (2016), CRPD/C/ITA/CO/1, para. 40.

available for persons with disabilities, and pay particular attention to the situation of women, children, and older persons with disabilities.

Living independently and being included in the community (Arts. 14, 19)⁹⁹

8. States parties should particularly ensure the continuation and availability of a range of support in the community, including personal assistance and in-home support, as well as taking active measures to maintain supplies of certain essential services (i.e. food delivery services that might get overloaded due to increased demand), and ensuring that persons with disabilities are not affected disproportionately. Collective social distancing measures and quarantine may have a disproportional impact on persons with disabilities or aggravate previous situations of isolation faced by persons with disabilities. States parties must monitor the situation of persons with disabilities still living in institutions and other such places with a heightened risk of quick spread of the virus, and accelerate measures of deinstitutionalization of persons with disabilities from all types of institutions.

Health (Arts. 10 and 25)

9. States parties should take all appropriate measures to ensure access for persons with disabilities to health services and provide persons with disabilities with the same range, quality and standard of health care as provided to other persons. During the ongoing COVID-19 pandemic, States parties should prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.¹⁰⁰

⁹⁹ See Committee on the Rights of Persons with Disabilities, general comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5, para. 79; see also Concluding observations for Spain (2011), CRPD/C/ESP/CO/1, paras. 9 and 39; Concluding observations for Austria (2013), CRPD/C/AUT/CO/1, paras. 25, 26; Concluding observations for Guatemala (2016), CRPD/C/GTM/CO/1, para. 53; Concluding observations for Serbia (2016), CRPD/C/SRB/CO/1, para. 40.

¹⁰⁰ Additional resources: [Policy Brief: A Disability-Inclusive Response to COVID-19](#); [COVID-19 and the rights of persons with disabilities: guidance](#); [COVID-19: Who is protecting the people with disabilities? – UN rights expert](#); [Preventing discrimination against people with disabilities in COVID-19 response](#); [#AskWHO on disability considerations during COVID-19](#).

International Convention on the Protection of all Persons from Enforced Disappearance (ICPPED)

Introduction

1. In the context of the COVID-19 pandemic, it is of concern that related measures have reduced the capacity of all actors to take the necessary action to search for disappeared persons and investigate their alleged enforced disappearance. The measures adopted to fight against the virus such as confinement, or the re-deployment of security forces to control their implementation, affect the capacity of action and reaction of the family and relatives of disappeared persons, of the organizations that accompany them, but also of the State authorities in charge of search and investigation.
2. Such circumstances are particularly concerning regarding disappearances that occurred since the beginning of the pandemic, in which the immediate intervention of State authorities is required to search for the disappeared person. The passing of time reduces the possibilities to locate the person alive. These circumstances convert into an additional factor of victimization for the family and relatives of persons who have been disappeared for years, as authorities *de facto* suspend all measures to search for them and investigate their disappearance. Particular attention is also necessary to ensure that COVID-19 does not become an excuse for disappearing people.

Requirements of the Convention

No exceptional circumstances may be invoked as a justification for enforced disappearance: no one shall be subjected to enforced disappearance (art. 1)

3. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearances. This principle obviously applies in the context of COVID-19. The ongoing occurrence of enforced disappearances is of particular concern. State authorities and international organizations should also ensure that the COVID-19 pandemic does not become an excuse for disappearing people.

The search and investigation should be carried out without delay (art. 12)

4. As soon as the competent authorities become aware, by any means, or have indications that a person has been subjected to disappearance, they should begin the search immediately and expeditiously, even when no formal complaint or request has been made.¹⁰¹ Where necessary, search and

¹⁰¹ See Concluding observations for Colombia (2016), CED/C/COL/CO/1, paras. 20(a) and 26(a); Iraq (2015), CED/C/IRQ/CO/1, para. 20; Mexico (2015), CED/C/MEX/CO/1, paras. 28(a) and 41(a); Bolivia (2019), CED/C/BOL/CO/1, para. 21.

investigation activities should include visits to the relevant sites (art. 12).¹⁰² The COVID-19 context raises challenges on States parties' authorities to take action immediately and to visit relevant sites, in particular in terms of the specific protection measures made necessary for State agents, victims and civil society organizations who should be able to take part to the search and investigation.¹⁰³ However, the COVID-19 context cannot justify that the authorities fail to take immediate action to search for disappeared persons. Every day that passes puts the victim at further risk of mistreatment and death.

Identification and return of remains (arts. 15, 17(3) and 24(3))

5. States parties have the obligation to ensure that the recovery, identification, reporting and return of the remains of deceased persons to their families is carried out in a scientifically rigorous, dignified and respectful manner, in conformity with the highest standards.¹⁰⁴ These principles must be respected despite the various challenges raised by the COVID-19 context in that regard (examples: lack of access to dead bodies for health reasons; lack of capacity of competent authorities to reply to the demand in terms of return of the remains; unavailability of forensic experts as a consequence of the COVID-19 confinement measures, etc.).

Access to information (arts. 8, 12, 17(2)(f), 20(2) and 24)

6. Each victim has the right to know the truth regarding the progress and results of the investigation and the fate of the disappeared person, regardless of when the enforced disappearance was committed (arts. 8, 12, 24).¹⁰⁵ For many victims of enforced disappearances, access to information on the progress of the search or investigation is only possible through physical visits to the premises of the competent authorities. Such visits have been thoroughly limited in the current circumstances. Even when contact is possible through other means such as telephone or internet, victims have signalled to the Committee that no replies are being received.
7. Any person with a legitimate interest shall have access to the information related to an individual's deprivation of liberty.¹⁰⁶ In case of denial of access to that information, any person deprived of liberty or, in the case of a suspected enforced disappearance, any persons with a legitimate interest, is entitled to take proceedings before a court so that it can decide without delay on the lawfulness of the deprivation of liberty, and order the person's release if such deprivation of liberty is not lawful. This right may not be suspended or restricted in any circumstances (arts. 17(2)(f) and 20(2)).¹⁰⁷ The COVID-19 context will probably extend the delays in terms of access to such

¹⁰² See Committee on Enforced Disappearances, guiding principles for the search for disappeared persons (2019), CED/C/7, Principle 6: "The search should begin without delay" and Principle 10: "The Search should be organized efficiently", paras. 2 and 3.

¹⁰³ See Committee on Enforced Disappearances, guiding principles for the search for disappeared persons (2019), CED/C/7, Principle 14: "The search should be carried out safely."

¹⁰⁴ See follow-up observations on additional information submitted by Mexico (2019), CED/C/MEX/FAI/1, para.21; Concluding observations for Ecuador (2017), CED/C/EQU/CO/1, para. 10(b).

¹⁰⁵ See Concluding observations for Serbia (2015), CED/C/SRB/CO/1, para. 26; Japan (2018), CED/C/JPN/CO/1, paras. 25-26.

¹⁰⁶ See Concluding observations for Iraq (2015), CED/C/IRQ/CO/1, para. 29; Mexico (2015), CED/C/MEX/CO/1, para. 35; Honduras, (2018), CED/C/HND/CO/1, para. 33; Slovakia (2019), CED/C/SVK/CO/1, paras. 16-17.

¹⁰⁷ See Concluding observations for Iraq (2015), CED/C/IRQ/CO/1, para. 30; Burkina Faso (2016), CED/C/BFA/CO/1, para. 32; Japan (2018), CED/C/JPN/CO/1, para. 34; Slovakia (2019), CED/C/SVK/CO/1, para. 21.

remedies, while they remain particularly urgent in cases of unlawful detention and disappearance.

Access to places of detention and contact of detainees with the outside world (arts. 12 (3) (b), 17 and 18)

8. In the COVID-19 context, States parties must adopt all necessary measures to enable the contact of persons deprived of liberty with the outside world, be it remotely, and to allow the competent authorities to access places of detention safely, whenever necessary.

Access to truth, justice, and reparation (art. 24)

9. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, States parties have the obligation to undertake a thorough and impartial investigation without delay, even if there has been no formal complaint, and to ensure that the perpetrators are prosecuted and, if found guilty, are punished in accordance with the gravity of their acts.¹⁰⁸ States parties should also guarantee that any person who has suffered harm as a result of an enforced disappearance obtains reparation and prompt, fair and adequate compensation (art. 24).¹⁰⁹

¹⁰⁸ Mexico (2015), CED/C/MEX/CO/1, para. 28; Tunisia (2016), CED/C/TUN/CO/1, para. 23; Honduras (2018), CED/C/HND/CO/1, para. 26, Bolivia (2019), para. 21.

¹⁰⁹ Iraq (2015), CED/C/IRQ/CO/1, para. 32; Tunisia (2016), CED/C/TUN/CO/1, para. 23(d); Bolivia, CED/C/BOL/CO/1, para. 24(b).