

# Oranga Tamariki Residence Visit

(OPCAT monitoring under COVID-19 Alert Level 4)

## Te Puna Wai ō Tuhinapo Youth Justice Residence

Virtual visit date: s 9(2)(a) OIA 2020

Report date: 17 June 2020



MANAAKITIA Ā TĀTOU TAMARIKI

Children's  
Commissioner

Released under the Official Information Act 1982

## Context

This brief report describes the information collected during the virtual monitoring 'visit' undertaken by the Office of the Children's Commissioner (OCC), to a secure residence, during the COVID – 19 epidemic. This visit was undertaken by s 9(2)(a) OIA from the Office of the Children's Commissioner.

The first New Zealand case of this virus was reported on 28 February 2020. The government subsequently announced four alert levels designed to reduce the spread of COVID-19, with increased restrictions on travel, work and services at each level<sup>1</sup>. On 23 March 2020, the Prime Minister announced New Zealand was moving to level three immediately and to level four within 48 hours. Level four, commonly described as a 'lockdown', was to extend for at least four weeks. This decision had particular implications for children and young people in secure residences.

Under the lockdown, almost everyone has been confined to their homes almost all the time. The exceptions have been essential workers who can leave their homes to go to work and essential travel which is limited to visits to the supermarket or pharmacy, and exercise close to home. Everyone except for essential workers has been required to stay inside their personal 'bubble' which consists of the people who make up their individual household.

For most people, opportunities for face-to face contact with people outside their bubble have been extremely limited. For children and young people living in a secure residence, the residence as a whole, or their unit within the residence, has become their bubble.

## Purpose of this monitoring visit

The purpose of this visit was to fulfil the international monitoring mandate of the Office of the Children's Commissioner, to monitor the safety and wellbeing of children and young people detained in secure locked facilities during this period of lockdown. Visits to places of detention are particularly important in situations where civil liberties have been severely restricted because of serious health risks.

The Children's Commissioner is a National Preventive Mechanism (NPM) under the Crimes of Torture Act (1989)<sup>2</sup>. The role of OCC is to visit youth justice and care and protection residences to examine the conditions and treatment of children and young people, identify any improvements required or problems needing to be addressed, and make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing ill treatment.

This visit was undertaken for the specific purpose of monitoring the safety and wellbeing of children and young people living in secure residences, and ensuring their rights were being upheld.

Given the virtual nature of these visits and the significant pressures on residence staff at this time, our primary focus was on interviewing children and young people and understanding their experience of the lockdown environment. In contrast to our usual practice, we did not interview the full range of Oranga Tamariki staff and stakeholders. For this reason, no ratings have been given.

---

<sup>1</sup> See <https://covid19.govt.nz/assets/resources/tables/COVID-19-alert-levels-summary.pdf>

<sup>2</sup> This Act contains New Zealand's practical mechanisms under the United Nations Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT).  
<https://www.occ.org.nz/our-work/monitoring/monitoring-work/why-we-monitor/>

## Our monitoring approach

In response to the level four announcement, OCC developed areas of inquiry specifically relating to COVID-19 using the domains for OPCAT monitoring<sup>3</sup>. An infographic on how we monitored during this time can be found in Appendix One.

This work was informed by advice provided to NPMs by local and international organisations<sup>4</sup>. Relevant advice for places of detention, provided by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is attached as Appendix Two.

Questions for children and young people, residence managers and health workers were developed against each OPCAT area of inquiry. We then designed a series of virtual monitoring engagements to offer children and young people the opportunity to talk about their experiences in secure residences.

We were particularly interested in children and young people's:

- understanding of and reaction to pandemic plans
- access to health care and hygiene equipment
- contact with staff, whānau and other people who are important to them
- access to activities and programmes, and
- understanding of plans for any transitions in and out of residence.

We also wanted to hear from residence managers about how practice is developing in the new lockdown environment, emerging challenges and strategies to address these.

Following the development of our questions, we worked with residences to adapt our engagement processes to best suit the needs of children and young people using the available communication equipment. As well as talking with children and young people, we also interviewed the residence manager and a member of the health team to understand their systems, practices and planning around COVID-19.

To ensure the experiences of children and young people could immediately inform practice we provided the residence manager with verbal feedback the day after our visit ended.

## Structure of this report

This report starts with a brief description of Te Puna Wai ō Tuhinapo youth justice residence, the number of young people living there and the circumstances surrounding our visit.

The next section lists our areas of inquiry then describes what we heard from various sources – the residence manager, a member of the health team and young people. To provide context, each area of inquiry begins with the information provided by the leadership team and a member of the health team about operational changes and the rationale for decisions made under lockdown. This is followed with descriptions of what we heard from the young people. The final section describes issues that came up during our monitoring visit along with our actions in response.

<sup>3</sup> <https://www.occ.org.nz/our-work/monitoring/monitoring-work/why-we-monitor/>

<sup>4</sup> These include, among others, the New Zealand Human Rights Commission in their role as the Central NPM for New Zealand, the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), and the Association for the Prevention of Torture (APT).

## **About Te Puna Wai ō Tuhinapo Residence**

Te Puna Wai ō Tuhinapo is a youth justice residence, located in Rolleston, Christchurch. The residence sits within a rural area, next to Rolleston Prison. It has 40 beds, spread across four units.

At the time of our visit, Te Puna Wai ō Tuhinapo had 30 young people in residence. They were split into three units, with one unit freed up to allow for an isolation unit. The three units were being used to increase 'physical distancing' by creating two bubbles. This means staff and young people from each unit did not mix with each other.

Interviews were conducted through video conferencing software Zoom, which was easily accessible for the residence. Each unit had an iPad set up in the classroom which allowed multiple interviews to occur across the units at one time.

We spoke with 17 young people across the three units.

## **Areas of inquiry**

Our interviews with young people and staff focused on eight areas:

- a) Pandemic plans
- b) Voices of children and young people
- c) Personal hygiene, cleaning and health
- d) Contact with whānau and significant others
- e) Activities and programmes
- f) Staffing and staff relationships with children and young people
- g) Responsiveness to mokopuna Māori
- h) Transitions in and out of the residences

The information gathered under each of these areas was as follows:

**a) Pandemic plans**

We heard from the residence management their pandemic plan was created in conjunction with the health team, based on Ministry of Health guidelines. The health team told us that at the time of planning there were no specific guidelines or advice for youth justice residences, so they looked at how rest homes were responding to the lockdown. Both the residence management and the health team told us they found communication with each other to be extremely helpful in planning for the lockdown. We also heard communication between the residence and Oranga Tamariki regional and national offices has been effective and useful.

The residence's health team and residence management have worked together to plan for any potential outbreak. This has involved moving the young people out of one unit and spreading them across the other two units. This has created a free unit which can be used as an isolation unit. The young people we spoke to had differing levels of understanding about whether this unit would be the isolation unit, or whether the Secure unit was being used instead.

We heard from the residence management they have explained to young people that Secure is not being used to isolate young people who are sick. However despite this, some young people thought they would go to the Secure unit if they were either symptomatic or confirmed as having the virus. We heard from some young people that they would try to keep any symptoms under wraps in order to avoid being placed in Secure.

We understand that before the unit was freed up for isolation, the Secure unit was used for testing and social isolation for a young person who had come in to the residence and reported feeling unwell. This young person remained in the Secure unit for three days awaiting test results. During our visit, this young person raised concerns with us about their time in the unit. These concerns have been followed up separately with the young person and residence management.

We heard from staff that the residence's pandemic plan includes:

- Each unit being in it's own bubble
- Separate break rooms for staff bubbles
- Physical distancing of staff where possible
- Specific staff identified to work in the isolation unit if required
- Contracting of more cleaning hours
- Trained casual staff who are able to work more hours if required.



### What we heard from young people

The majority of young people told us they knew about COVID-19 and understood what being in lockdown meant. We heard they get this information from staff as well as from radio broadcasts. We were also sent photos of posters, put up in the units, about COVID-19.

*"So all it takes is to ask the staff and they will tell you a bit of some information about what is going on."*

*"They've just recently closed a unit down. I don't know what that was for but I'm assuming it will be for anyone new that's coming in while the Corona virus is happening."*

*"Nah I wouldn't tell anyone [about symptoms] coz you have to go to Secure."*

### b) Voices of children and young people

We heard from the Residence Manager the VOYCE Whakarongo Mai advocate has been in regular contact with young people. Some young people told us about VOYCE's involvement with the residence but not all had engaged with an advocate.

### What we heard from young people

The young people we spoke to all knew about Whaia Te Maramatanga and how the process worked. They said they are more likely to talk to a staff member about any concerns than use a Whaia Te Maramatanga form, however they would use them if they had a suggestion. Some young people described Whaia Te Maramatanga papers as 'snitch forms'.

§ 52(09/01) 04 young people told us they did not think there was enough food and that sometimes they were hungry. We did not specifically ask about food during this visit – the subject was brought up spontaneously, which indicates its importance to the young people. We raised this issue with the residence management team. They advised us that the menu meets regulations and in their view plenty of food was being provided. However they also acknowledged it can be difficult to manage expectations and preferences for up to 40 young people. It is important that the residence further explores this issue, to better understand and if necessary, address the concern that young people have raised.

*"Yeah I just talk to staff members - a certain staff member that you are comfortable telling them what the problem is."*

*"So people aren't happy because people are hungry afterwards."*

### c) Personal hygiene, cleaning and health

We heard from the health team they are testing every new young person who comes into the residence. This has been agreed by the Ministry of Health and Canterbury District Health Board. We were told that proactively testing was preferable to putting a new young person into isolation for 14 days, as staff were worried about the potential mental health impacts of a long period of isolation.

We heard from the health team they have access to personal protective equipment (PPE), and have been showing the care staff how to use it correctly. We heard from both the health team and young people, that young people are able to make appointments with the health team as usual.

One young person mentioned that since they had moved units due to COVID-19, they had not received their regular medication. This was raised with residence management who rectified the situation and then completed a full audit of the medication in the residence.

#### What we heard from young people

Young people told us there was more hand-washing and the units were being cleaned more thoroughly than usual. We also saw photos of hand sanitiser stations at the residence.

*"Staff are encouraging us to, you know every time we touch door handles or use the bathroom, to come out, wash our hands, use sanitiser. And every time they come on shift, they'll wipe down the door handles, wipe down the tables and all that."*

### d) Contact with whānau and significant others

We heard from residence management that since the lockdown, young people were offered more opportunities to contact whānau. Zoom video conferencing software is used where possible, however not all whānau have access to wifi or video-capable devices.

Use of audio visual facilities such as Zoom needs to continue once the lockdown has ceased. This allows young people to talk to members of their immediate and wider whānau and see them in their own home. It also saves whānau from always having to travel to their local Oranga Tamariki site, to use AVL equipment.

### **What we heard from young people**

Most young people told us they are having multiple daily phone calls, and these are of longer durations than they are used to. Young people who were able to use Zoom enjoyed this. One young person said their whānau are usually required to travel to the local Oranga Tamariki office to use the video conferencing equipment and that it was easier to do it from home.

*"Nah we get to normal call twice a day, but we video call once every Sunday."*

*"It went 'g', it went well. I got to see the house, I got to see the house again I haven't seen in a long time. I got to see our dogs and our cat."*

### **e) Activities and programmes**

We heard from the residence management that staff are trying to engage the young people in a range of in-house activities during the school holidays.

The manager told us the residence had been looking into getting tablets for each young person to use during their down time and in the evenings. Since the outbreak of COVID-19, the residence has been able to expedite the purchase of these as well as the installation of wifi in each unit. At the time of our visit, we were told appropriate content was currently being uploaded to the tablets and each tablet was being secured through a closed network.

### **What we heard from young people**

Most young people are generally enjoying the activities provided, however some said they were bored. Young people are still able to access physical activities in places such as the gym and each unit is able to use the courtyard to play sports.

*"Just quizzes n stuff, but nothing really interesting."*

*"They've set up programmes. Like heaps of programmes for us to do, so there's like Netflix or quizzes, what else is there? I don't know just heaps of like activities really, just yeah, it's all good."*



## f) Staffing and staff relationships with children and young people

We heard from residence management that staffing levels have been stable and there were many trained casual staff who could be called upon if required.

### What we heard from young people

Most young people told us they could talk to staff when needed. We heard from young people that some of the staff had moved around with the change of units, but this was not a cause of concern.

*"It's alright because I've worked with most of the staff before."*

*"Yeah, most of the staff I worked with in my unit I'm used to them, but some of the others boys aren't."*

## g) Responsiveness to mokopuna Māori

Management told us that most programmes, including cultural programmes, had been cancelled due to the lockdown.

### What we heard from young people

We heard from young people they are still doing karakia before meals, but any cultural programmes were not happening because they were run through school. At the time of our visit it was school holidays. We were also told by some young people that a member of staff was running a te ao Māori programme, however it was unclear whether this was still occurring under lockdown.

*"I was in the other unit. One of the staff members there ran te ao Māori programme."*

*"At the moment they haven't done any, um, Māori or tikanga."*

*"You can suggest a [Māori] programme to the staff and that most likely could happen during that period of time that they're on."*

## h) Transitions in and out of the residence

We were told by the residence management that staff have informed young people their transition home (when their sentence is finished, or they get court bail) might be slower than usual. The residence is working through these situations on a case-by-case basis.

### What we heard from young people

Many young people told us they were worried that due to lockdown they wouldn't be able to leave the residence.

Young people also believed it would be hard to get bail during this time. This was of particular concern for those whose homes were further away, as they understood there were few or no flights. We also heard if young people did get bail but were unable to get home they would be placed in the isolation unit, as long as no one was isolating for COVID-19. Some young people thought this would be fine.

*"Just make sure can get me home on Thursday if I get bailed."*

*"Coz if we were bailed and didn't catch a flight then we go into Waikiri that's the free unit and we'll just be in there by ourselves ... we would act like we were at home. Play PlayStation as long as we want. Go to sleep when we want. Whatever you want."*

## **Follow-up actions**

This section outlines issues identified during our monitoring visit - what we did and what happened in response. We followed up on three key areas:

### **Communication about isolation procedures**

While we heard there was a plan in place to care for young people who were unwell, young people they not seem sure whether this involved going to the free unit, or going into the Secure unit. Residence management assured us this had been clearly communicated to young people.

### **Managing transitions**

Young people had some worries about whether they would be able to leave the residence once their sentence had finished or they were bailed. Residence management told us they had advised young people they are working, on a case-by-case basis, to address these delays. It is important that staff check in with young people, updating them, to ensure they understand what is happening.

### **Continuation of Zoom as a way for young people to communicate with whānau**

The residence has been able to use Zoom for young people and their whānau. This needs to continue once Level 4 lockdown has ended. Residence management advised they could work with Oranga Tamariki social workers to find out what means of communication whānau currently have access to.

### **Follow-up on individual matters for young people**

We also followed up a number of individual matters that were raised by young people that related to their specific circumstances. Our role was to facilitate a satisfactory resolution for the young person. These have all been responded to by the residence management.

### **Monitoring on-going progress**

As soon as possible, we will re-schedule a full OPCAT monitoring visit to Te Puna Wai ō Tuhinapo. Our full OPCAT monitoring visit will include further followup in relation to the issues described above.



## OPCAT 'virtual' monitoring under COVID-19 Alert Level 4 secure residences



### What we did

- Undertook 'virtual' monitoring visits to 4 secure care and protection residences and 4 secure youth justice residences
- Interviewed 63 children and young people
- Interviewed 10 residence managers and team leaders
- Interviewed 8 health staff



### What we asked children and young people about

- Understanding of, and reaction to, pandemic plans
- Access to healthcare and hygiene equipment
- Contact with staff, whānau, and significant others
- Access to activities and programmes
- Understanding of plans for transitions in and out of residence



### After the visits

- Provided oral and written feedback to each residence manager
- Provided brief formal monitoring reports
- Followed up children and young people's concerns and requests



### Pre-visit engagement

- Liaised with national office and residence managers to plan the visits
- Created short videos for children and young people introducing ourselves and explaining our processes
- Provided written information sheets for children and young people



### Interview processes

- Each residence had different technological capabilities
- Some interviews undertaken via video, others via phone
- Sought verbal consent from children and young people
- Made sure children and young people had a private space to talk



### Highlights

- Ability to connect with children and young people despite lockdown
- Ability to advocate for children and young people during this period
- Ability to learn what worked and where to make changes
- Support and advice, from residence managers and national office staff, in the development of these processes



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.: General

7 April 2020

Original: English

---

**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

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

**I. Introduction**

1. Within the space of a few short weeks, coronavirus disease (COVID-19) has had a profound impact on daily life, with many impositions of severe restrictions upon personal movement and personal freedoms, aimed at enabling the authorities to better combat the pandemic through public health emergency measures.
2. Persons deprived of their liberty comprise a particularly vulnerable group, owing to the nature of the restrictions that are already placed upon them and their limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems.
3. In several countries measures taken to combat the pandemic in places of deprivation of liberty have already led to disturbances both inside and outside of detention facilities and to the loss of life. Against this background, it is essential that State authorities take full account of all the rights of persons deprived of liberty and their families, as well as of all staff and personnel working in detention facilities, including health-care staff, when taking measures to combat the pandemic.
4. Measures taken to help address the risk to detainees and to staff in places of detention should reflect the approaches set out in the present advice, and in particular the principles of “do no harm” and “equivalence of care”. It is also important that there be transparent communication to all persons deprived of liberty, their families and the media concerning the measures being taken and the reasons for them.
5. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies that threaten the life of the nation.<sup>5</sup> The Subcommittee has already issued

---

\* Adopted by the Subcommittee on 25 March 2020, pursuant to article 11 (b) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>5</sup> See article 2 (2) of the Convention against Torture and articles 4 and 7 of the International Covenant on Civil and Political Rights.



guidance confirming that formal places of quarantine fall within the mandate of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/OP/9). It inexorably follows that all other places from which persons are prevented from leaving for similar purposes fall within the scope of the mandate of the Optional Protocol and thus within the sphere of oversight of both the Subcommittee and of the national preventive mechanisms established within the framework of the Optional Protocol.

6. Numerous national preventive mechanisms have asked the Subcommittee for further advice regarding their response to this situation. Naturally, as autonomous bodies, national preventive mechanisms are free to determine how best to respond to the challenges posed by the pandemic within their respective jurisdictions. The Subcommittee remains available to respond to any specific request for guidance that it may be asked to give. The Subcommittee is aware that a number of valuable statements have already been issued by various global and regional organizations, which it commends to the consideration of States parties and national preventive mechanisms.<sup>6</sup> The purpose of the present advice is also to offer general guidance within the framework of the Optional Protocol for all those responsible for, and undertaking preventive visits to, places of deprivation of liberty.

7. The Subcommittee would emphasize that while the manner in which preventive visiting is conducted will almost certainly be affected by necessary measures taken in the interests of public health, this does not mean that preventive visiting should cease. On the contrary, the potential exposure to the risk of ill-treatment faced by those in places of detention may be heightened as a consequence of such public health measures taken. The Subcommittee considers that national preventive mechanisms should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken. It is particularly important at this time that national preventive mechanisms ensure that effective measures are taken to reduce the possibility of detainees suffering forms of inhuman and degrading treatment as a result of the very real pressures that detention systems and those responsible for them now face.

## **II. Measures to be taken by authorities concerning all places of deprivation of liberty, including detention facilities, immigration detention centres, closed refugee camps, psychiatric hospitals and other medical settings**

8. It is axiomatic that the State is responsible for the health care of those whom it holds in custody, and that it has a duty of care to its staff and personnel working in detention facilities, including health-care staff. As set out in rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

9. Given the heightened risk of contagion among those in custodial and other detention settings, the Subcommittee urges all States to:

(a) Conduct urgent assessments to identify those individuals most at risk within the detained populations, taking account of all particular vulnerable groups;

(b) 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 so, taking full account of the non-custodial measures indicated, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(c) Place particular emphasis on places of detention where occupancy exceeds the official capacity, and where the official capacity is based on a calculation of

---

<sup>6</sup> See, for example, World Health Organization, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance", 15 March 2020; and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic", CPT/Inf(2020)13, 20 March 2020. Available at <https://rm.coe.int/16809cfa4b>.



square metreage per person that does not permit social distancing in accordance with the standard guidance given to the general population as a whole;

(d) 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;

(e) Review the use of immigration detention centres and closed refugee camps with a view to reducing their populations to the lowest possible level;

(f) Consider that release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive for COVID-19 virus or are particularly vulnerable to infection;

(g) Ensure that any restrictions on existing regimes are minimized, proportionate to the nature of the health emergency, and in accordance with law;

(h) Ensure that the existing complaints mechanisms remain functioning and effective;

(i) Respect the minimum requirements for daily outdoor exercise, while also taking account of the measures necessary to tackle the current pandemic;

(j) Ensure that sufficient facilities and supplies are provided free of charge to all who remain in detention, in order to allow detainees the same level of personal hygiene as is to be followed by the population as a whole;

(k) Provide sufficient compensatory alternative methods, where visiting regimes are restricted for health-related reasons, for detainees to maintain contact with families and the outside world, including telephone, Internet and email, video communication and other appropriate electronic means. Such methods of contact should be both facilitated and encouraged, as well as frequent and provided free of charge;

(l) 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;

(m) Accommodate those who are a greatest risk within the remaining detained populations in ways that reflect that enhanced risk, while fully respecting their rights within the detention setting;

(n) Prevent the use of medical isolation taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards;

(o) Provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible;

(p) Ensure that fundamental safeguards against ill-treatment, including the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of detention, remain available and operable, restrictions on access notwithstanding;

(q) 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;

(r) 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;

(s) Make available appropriate psychological support to all detainees and staff who are affected by these measures;

(t) Ensure that, if applicable, all the above considerations are taken into account with regard to patients who are involuntarily admitted to psychiatric hospitals.

### **III. Measures to be taken by authorities in respect of those in official places of quarantine**

10. The Subcommittee has already issued advice on the situation of those held in quarantine (CAT/OP/9). To that advice, the Subcommittee would further add that:

(a) Those individuals who are being temporarily held in quarantine are to be treated at all times as free agents, except for the limitations necessarily placed upon them in accordance with the law and on the basis of scientific evidence for quarantine purposes;

(b) Those being temporarily held in quarantine are not to be viewed or treated as if they were detainees;

(c) Quarantine facilities should be of a sufficient size and have sufficient facilities to permit internal freedom of movement and a range of purposive activities;

(d) Communication with families and friends through appropriate means should be encouraged and facilitated;

(e) Since quarantine facilities are a de facto form of deprivation of liberty, all those so held should be able to benefit from the fundamental safeguards against ill-treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of their being in quarantine, in a manner consonant with their status and situation;

(f) All appropriate measures must be taken to 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;

(g) Appropriate psychological support should be available for those who need it, both during and after their period of quarantine.

### **IV. Measures to be taken by national preventive mechanisms**

11. National preventive mechanisms should continue exercising their visiting mandate during the COVID-19 pandemic; however, the manner in which they do so must take into account the legitimate restrictions currently imposed on social contact. National preventive mechanisms cannot be completely denied access to official places of detention, including places of quarantine, even if temporary restrictions are permissible in accordance with article 14 (2) of the Optional Protocol.

12. The objective of the Optional Protocol, as set out in article 1, is to establish a system of regular visits, whereas the purpose, as set out in the preamble, is the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment, this being a non-derogable obligation under international law. In the current context, this suggests that it is incumbent on national preventive mechanisms to devise methods for fulfilling their preventive mandate in relation to places of detention that minimize the need for social contact but that nevertheless offer effective opportunities for preventive engagement.

13. Such measures might include:

(a) Discussing the implementation and operation of the measures outlined in sections II and III above with relevant national authorities;

(b) Increasing the collection and scrutiny of individual and collective data relating to places of detention;

(c) Using electronic forms of communication with those in places of detention;

(d) Establishing national prevention mechanism hotlines within places of detention, and providing secure email access and postal facilities;

(e) Tracking the setting up of new and temporary places of detention;

(f) Enhancing the distribution of information concerning the work of the national preventive mechanism within places of detention, and ensuring there are channels allowing prompt and confidential communication;

(g) 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;

(h) Enhancing cooperation with non-governmental organizations and relief organizations working with those deprived of their liberty.

## V. Conclusion

14. It is not possible to accurately predict how long the current pandemic will last, or what its full effects will be. What is clear is that it is already having a profound effect on all members of society and will continue to do so for a considerable time to come. The Subcommittee and national preventive mechanisms must be conscious of the “do no harm” principle as they undertake their work. This may mean that national preventive mechanisms should adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public; staff and personnel working in detention facilities, including health-care staff; detainees; and themselves. The overriding criterion must be that of effectiveness in securing the prevention of ill-treatment of those subject to detaining measures. The parameters of prevention have been widened by the extraordinary measures that States have had to take. It is the responsibility of the Subcommittee and of national preventive mechanisms to respond in imaginative and creative ways to the novel challenges they face in the exercise of their mandates related to the Optional Protocol.

Released under the Official Information Act 1982