

Oranga Tamariki Residence Visit

(OPCAT monitoring under COVID-19 Alert Level 4)

Te Oranga Care and Protection Residence

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

Report date: 18 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 first 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 and 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 level¹. 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)². The role of OCC is to visit youth justice and care and protection residences, which are places of detention. The purpose of each visit is 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 lock down 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, although it is our usual practice to do so.

Our visit to Te Oranga was undertaken during alert level four lockdown on s 9(2)(a) OIA 2020.

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

² 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 monitoring³. 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 organisations⁴. 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 Oranga care and protection residence, the number of children and young people living there and the circumstances surrounding our visit.

The next section lists our areas of enquiry then describes what we heard from various sources – the Residence Manager, a member of the health team and children and young people. To provide context, each area of enquiry begins with the information provided by the Residence Manager 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 children and young people. To preserve the confidentiality of the small number of children and young people interviewed we have not provided direct quotes.

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

⁴ 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).

The final section describes issues what came up during our monitoring visit along with our actions in response.

About Te Oranga Care and Protection Residence

Te Oranga care and protection residence is a 10 bed secure residence in Christchurch.

At the time of our visit, there were 10 children and young people, aged between 10 and 16 placed in the residence.

We were able to speak to the young people via video conferencing software, Zoom. Prior to these interviews, residence staff shared a video and a letter, from our monitoring team, with the children and young people. We introduced ourselves, explained what we do and what we were interested in hearing about. A copy of our letter to children and young people is attached as Appendix Three.

A total of six young people participated in the interviews. Te Oranga staff approached the other four young people, however they confirmed they did not want to be interviewed.

When we spoke with each young person, we sought their verbal consent and checked they understood the purpose and the confidential nature of the interview before proceeding.

Areas of inquiry

Our interviews with children and 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

The Residence Manager told us she has appreciated the clear guidance received from Oranga Tamariki National Office regarding how residences should respond during COVID-19. The Residence Manager also told us that during this time, there has been increased communication with Oranga Tamariki National Office, regional youth justice and care and protection offices and internally at the residence between leadership and health teams. This increased communication has been helpful to ensure that both youth justice and care and protection residences in Christchurch are responding adequately and are sharing information and advice.

The Residence Manager told us she has appreciated the human resources advice she has received from Oranga Tamariki National Office to ensure the residence can be staffed accordingly during this time, and that staff receive the support they need.

There is a block of flats situated outside of the secure gates, but on the grounds of Te Oranga. The flats are usually used for transitioning older young people out of residence and as accommodation for whānau of the young people in the residence. We understand

from the Residence Manager and health team that these flats will be used for isolation purposes if any children and young people are suspected of having covid-19.

Te Oranga has implemented infection control practices designed to minimise the risk of COVID-19 entering and spreading within the residence. These practices are described in more detail in section c) below.

The Residence Manager told us that staff, including herself, update the children and young people daily regarding any relevant COVID-19 and lockdown information.

Children and young people spend their time during the day, either in the common areas or in recreation spaces outside. In the evenings they spend time in their bedrooms.

What we heard from children and young people

Most children and young people understood the response to COVID-19 and Alert Level 4. However, they strongly associated COVID-19 with death. They told us they had heard that a lot of people are dying because of COVID-19 and shared fears of this happening in their own communities and whānau.

Most children and young people understood that Alert Level 3 would be very similar to Alert Level 4. They understood that once it came time to move to Alert Level 2, they would be able to transition to their placement, if they had one.

Children and young people told us they were getting regular updates from staff and their whānau about COVID-19. A few young people felt there was a bit of information overload about COVID-19 and they were tired of talking about it so often.

b) Voices of children and young people

The Residence Manager said that VOYCE Whakarongomai, the independent advocacy service for children and young people, is phoning in each day, between 1pm and 3pm, to make contact with any children and young people interested in talking with them.

The Residence Manager said the children and young people have a good relationship with VOYCE Whakarongomai and use them when needed.

c) Personal hygiene, cleaning and health

The Residence Manager told us there had been a number of changes to personal hygiene, cleaning and health procedures in response to the pandemic. These included:

- Increased cleaning routines to take place daily, with surfaces such as door handles thoroughly and regularly cleaned
- Children, young people and staff talking about importance of cleanliness and washing their hands regularly

The health team told us that if needed, they are able to carry out testing for COVID-19 and have results available promptly. At the time of our virtual monitoring visit no one at the residence had needed to have a test carried out.

The Residence Manager said management have been very clear with staff, that if they are not feeling well they are not to come in. She reiterated that Oranga Tamariki National Office have been very clear about this policy.

The health team is available for children and young people by phone and have continued their regular face-to-face visits. A nurse visits the residence twice a week. The nurse conducts a phone consult first and then a physical examination if required. A member of the health team said that no young people had needed to see the doctor during lockdown, as at the time of our visit, however they have had some medicine prescribed over the phone.

The Residence Manager told us that while the residence had received most of the personal protective equipment (PPE) they required, at the time of our monitoring visit they were still waiting on disposable overalls. Prior to receiving the PPE, staff were anxious about not having it on site. However since it had started to arrive, staff anxiety levels had reduced. We were also told that the residence had a sufficient stock of soap and cleaning equipment.

The usual multi-agency team meetings (MAT) were continuing to happen via phone. We also heard from the health team that they are staying in contact with mental health providers via phone.

What we heard from children and young people

All children and young people understood how to access the nurse. When they needed assistance from the nurse during lockdown, they told us they had received a prompt response.

All young people understood about the need to increase hand washing. One young person suggested the new policies in place for washing your hands should continue post COVID-19.

All young people understood that if someone was to get sick from COVID-19 they would have an isolation period in the flats on site.

One young person spoke of difficulty accessing [REDACTED] mental health support worker during lockdown which was creating some anxiety for them. We discussed this concern with the Residence Manager who told us that one of the Case Managers would discuss this with the young person directly and come up with a plan.

d) Contact with whānau and significant others

The Residence Manager told us young people can contact their whānau once a week via video call. Staff support young people to use Zoom, FaceTime or WhatsApp using their work cellphones. Young people can also contact their whānau daily via phone call.

Most young people we spoke to had not had a video call with their family or caregiver. When we raised this with the residence management team they advised us that every whānau have varying internet and phone capabilities and these determine whether a video call can take place. In our written feedback to the Residence Manager immediately after the visit, we suggested staff check in with all children and young people about their access to video calls

with whānau, and others on their contact lists, to ensure that access to video calls be consistent. Our Director raised this issue with Oranga Tamariki National Office asking that wherever practically possible, site social workers to support and resource whānau to have the required phone and internet capability to connect with their children and young people while they are in residence.

After talking with young people, we were confused about the process for how they access phone calls. Residence management advised us that children and young people get daily phone calls, however the frequency and length of these calls can vary, depending on what is happening in the unit. Residence management said they were looking into changing this process, to ensure there is more consistency with the frequency and length of phone calls.

Case Managers attempt to contact the whānau or caregivers of each child and young person twice per week, to ensure they are kept informed of what is happening in the residence during lockdown. This includes, where appropriate, sending photos of what the young people are doing in the residence.

What we heard from children and young people

Most children and young people were worried about when they would see their whānau or carers next.

They have regular phone calls each week, however, as described above, there appear to be inconsistencies regarding the frequency and length of phone calls.

Most young people we spoke to haven't had a video call and there was confusion about who could have access to these calls.

e) Activities and programmes

At the time of our visit, Kingslea School was operating but teachers were not coming on site. The children and young people were completing assigned school work and educational activities provided by Kingslea School on the classroom computers.

We heard that children and young people were being offered regular walks around the residence grounds and use of the gym. Due to the time of year, the residence pool had recently been closed.

The Residence Manager said the children and young people were noticeably frustrated with not being able to do any off-site activities. She was waiting for guidance from National Office on whether drives and walks off-site could take place in Alert Level 3.

What we heard from children and young people

All children and young people told us the loss of off-site activities has been very frustrating.

Some said it was hard not knowing when they will be able to go on off-sites again.

Most children and young people told us they are bored in the unit and this can lead to fights and bickering.

Some children and young people had suggestions for programmes that they could do.

Some children and young people understood the teachers would return to school during Alert Level 3.

f) Staffing and staff relationships with children and young people

The Residence Manager said the residence had an increase in casual staff during this period, due to staff from the supervised group home being seconded to the residence. This has enabled the residence to have an extra staff member per shift and has provided additional flexibility for staff members to have time off, if they wish to. The residence has staggered the days for administration staff to work at the residence, to ensure social distancing rules are followed. s9(2)(a) OIA

They are accessible online and via phone.

When we spoke with children and young people, they raised the issue of bullying in the residence. They said that staff do not always see the bullying that happens between children and young people and are therefore unable to respond appropriately. Some children and young people felt that the bullying programmes which staff have introduced, were not addressing or helping reduce bullying behaviour. Children and young people also told us that due to lockdown and not having access to off-site activities, the bullying and difficult dynamics between them has got worse.

When we raised this concern with the residence management team. They advised us that staff are having 'real time' conversations with young people when bullying takes place and are trying their best to address the bullying. Staff told us the bullying programmes have been targeted at explaining the definition of bullying and the impact it can have on people. Residence staff said there is an 'unusual dynamic' with the current cohort of young people. It seems they have broken into two main groups which is contributing to a rise in bullying behaviour.

What we heard from children and young people

All children and young people were positive about the staff and could identify a staff member(s) they trust and can talk to.

Some children and young people identified that staff have appeared to be anxious at times during Alert Level 4 lockdown.

Some children and young people said they are not hearing from their Case Leaders as much as they used to.

Most children and young people told us that bullying is an issue for them at the residence and that staff responses to bullying aren't always helpful.

Some children and young people said that the bullying programmes aren't working to address the problem.

A few children and young people told us that it is hard to be in a residence with young people who are either much older or younger than them.

g) Responsiveness to mokopuna Māori

The Residence Manager told us that the residence has been exploring ways to ensure that Māori programmes can still take place during Alert Level 4, including the potential to run taiaha and kapa haka programmes via Zoom. The Residence Manager told us that the taiohi programme (an individually tailored programme for tamariki Māori to connect with whakapapa and te ao Māori) is currently not operating. Prior to COVID-19 restrictions, the residence had two kapa haka tutors who visited the residence regularly to deliver programmes to the children and young people.

We were advised the residence did not have any contact with Māori health providers prior to or during the lockdown.

Given the COVID-19 context and the number of tamariki Māori they care for, we encourage Te Oranga to prioritise establishing a relationship with a local Hauora Māori provider.

What we heard from children and young people

Children and young people said there were no Māori programmes during Alert Level 4, as the kapa haka tutors can't come into the residence.

Some children and young people told us that they were missing the programmes that the kapa haka tutors provide.

h) Transitions in and out of the residence

The Residence Manager advised us that none of the children and young people were due to transition to the community during Alert Level 4.

The residence has had no new children and young people transition into the residence during Alert Level 4, as they are already at full capacity.

Of the six children and young people we spoke to, the span of time they had been at the residence ranged from three to eight months. Most of the children and young people are very frustrated at Oranga Tamariki for the time it is taking for suitable placements to be arranged. Many expressed frustrations knowing that their transition into the community would now be further delayed, due to the lockdown.

Many of the children and young people spoke of the negative impact of being in a residence for an extended amount of time, and the effect this has on their mental health.

We heard that during Level 4, a young person who had been in Te Oranga for s9(2)(a) OIA months had been approved for a placement. They are now awaiting more details of when they can begin transitioning to this placement.

In our written feedback to the Residence Manager, immediately after our visit, we suggested staff increase communication with children and young people about their transitions. We suggested this was likely to alleviate their concerns, while being honest about the challenges that Oranga Tamariki face with finding suitable placements.

What we heard from children and young people

Most children and young people are frustrated at a lack of communication and information about their transitions out of the residence:

- Some children and young people were clear they have a placement and they are waiting for Alert Level 2 to be able to transition.
- Others didn't know about their transition plan prior to lockdown, and COVID-19 was now making this more complicated and creating more uncertainty.
- Some children and young people were very worried about being in residence for extended amounts of time.
- Some children and young people didn't feel listened to, when it came to their placement plan and where they wanted to go.
- Some are very frustrated with Oranga Tamariki, the lengthy time it takes for a placement to be arranged and the lack of communication about what is happening.

Follow-up actions

This section outlines issues identified during our monitoring visit - what we did and what happened in response. There were only a few individual matters that we followed up on, which the residence has since responded to. These matters involved; loss of property, contact phone numbers being added to contact lists, and concerns for accessing mental health support, the orthodontist and the optometrist.

Below, we have identified some serious concerns that arose during this visit, most of which, we understand, are beyond the direct control of the residence. They are, however, concerns we have raised multiple times in previous OPCAT reports for Te Oranga, in "A Hard Place to Be Happy – Insights Report"⁵ from October 2019 and in our report "State of Care – A focus on Oranga Tamariki's secure residences"⁶ published in May 2017.

It is our understanding that Oranga Tamariki is committed to transitioning from institutional care and protection residences to smaller supervised group homes for tamariki who require this level of specialised care – in line with the Children's Commissioner's priority to advocate for phased closure of these residences. However, until this transition takes place, it is essential that the children and young people living at Te Oranga and the other care and protection residences, have a safe living environment.

Preventing bullying behaviour

Given what we heard from young people, as described in f) above, we suggest the residence revisit the bullying programmes it is providing, to ensure they are more effectively able to engage with the children and young people on preventing bullying behaviour. The children and young people themselves have suggestions to offer about what strategies might work more effectively.

Age range

Children and young people need to feel safe when they are in the care of Oranga Tamariki. We have raised concerns in previous OPCAT reports regarding the varying age range of children and young people in care and protection residences and the risks this can pose in a residence setting. During previous monitoring visits children and young people have feared for their safety and wellbeing when they are living in a secure residence setting with young people who are either much older or much younger than they are. These fears are only heightened when children and young people are being held in residences for extended amounts of time.

Managing transitions

We want to ensure children and young people are not in care and protection residences for extended lengths of time. This has been a common theme with care and protection residences for a number of years. Interconnected, is the on-going challenges that Oranga Tamariki continue to face with arranging suitable placements for children and young people. Addressing these concerns will contribute to reducing the use and need for care and protection residences.

Monitoring on-going progress

⁵ <https://www.occ.org.nz/assets/Uploads/HardPlaceToBeHappy-FINAL.pdf>

⁶ <https://www.occ.org.nz/assets/State-of-Care.pdf>

We will schedule a full face to face OPCAT monitoring visit to Te Oranga care and protection residence in the next § 9(2)(a) OIA. This visit will include further follow up in relation to the issues described above. It will also be an opportunity to follow-up any other outstanding issues that have been identified in our recent OPCAT monitoring visits, including the use of restraints.

We were encouraged by the zoom meeting our § 9(2)(a) OIA had on 20 May, with the Residence Manager and the National Manager Residential Care, regarding the use of restraints at Te Oranga. This meeting resulted in an agreement for 6 weekly zoom or phone check-in meetings between this Office and the Residence Manager, between now and our next visit.

These meetings will keep our Office well-informed about the residence's progress with reducing bullying, strengthening staff de-escalation skills and ensuring safe practice where restraints are required. We understand the residence is in a period of change and development. Our intention is to support the new Residence Manager with regular feedback that assists her to monitor progress with these changes.

Released under the Official Information Act 1982



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.

* 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.

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.⁷ The Subcommittee has already issued 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.⁸ 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

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

⁸ 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>.

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 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

Appendix Three: Letter to children and young people at Te Oranga

Kia ora

The Office of the Children's Commissioner can't come in and visit you in person at the moment. We would really like to talk with you on Zoom.

Who we are

Our names are s 9(2)(a) OIA and s 9(2)(a) OIA. We work at the Office of the Children's Commissioner.

Who the Children's Commissioner is

In Aotearoa we have a person who speaks up for all children and young people. That person is the Children's Commissioner and his name is Judge Andrew Becroft. He is completely independent.

Why we visit

We want to talk with you, the young people who are at Te Oranga, about what is happening for you.

Some of the things we want to find out about are:

- What's it like being at Te Oranga at the moment?
- What has been the effect of Covid-19 for you and other people?
- Do you feel safe in residence both in terms of your health and in other ways?

We also know that people who usually visit you can't visit in person at the moment. We want to know what is happening to help these people stay in contact with you.

What we do

After we talk with you, we talk with the residence manager and then we write a report about what it is like to live at Te Oranga. The report goes to Oranga Tamariki National Office so that they know what is important for you.

We are looking forward to talking with you!

Ngā mihi

s 9(2)(a) OIA