



association for
the prevention
of torture



Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic

**Report on the regional meeting of National Preventive Mechanisms (NPMs)
and civil society organizations (CSOs) of the OSCE region,
16-17 June 2021**

Table of Contents

Background	2
Introduction	3
I. Monitoring older persons deprived of liberty: key challenges during the COVID-19 pandemic and beyond.....	5
II. Monitoring criminal justice detention	7
A. Challenges.....	8
B. Promising practices	9
III. Alternatives to detention.....	10
A. Challenges.....	11
B. Promising practices	12
IV. Monitoring other places of deprivation of liberty	13
A. Challenges.....	13
B. Promising practices	15
Recommendations for the way forward	16
Annex I: Background document	18
Annex II: Agenda	23
Annex III. Sources	27

Background

This report summarizes the deliberations at the fourth regional meeting of NPMs and CSOs from the OSCE region, jointly organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Association for the Prevention of Torture (APT).¹

The regional meeting aimed at providing a platform for exchange to contribute to mutual knowledge and understanding between NPMs and CSOs in their complementary efforts to protect older persons deprived of their liberty in the OSCE region, particularly in the context of the COVID-19 pandemic.

Following the methodology of previous editions of the ODIHR/APT regional meeting for NPMs, the event aimed at a) exchanging practices on the monitoring of the situation of older persons deprived of liberty in the OSCE region; and b) strengthening the community of practice in the OSCE region and creating bridges and connections between NPMs and relevant CSOs. Due to challenges associated with international travel during the COVID-19 pandemic, this meeting was organized online.

This report should not be interpreted as the official position of the OSCE/ODIHR and APT nor of any particular NPM or CSO from the OSCE region. This report may be freely quoted or reprinted, provided credit is given to the source. Requests for permission to reproduce or translate the report should be addressed to the APT and ODIHR.

The strengthening of the independent monitoring of all places of deprivation of liberty has been identified as one of the priority areas of ODIHR's anti-torture work. ODIHR closely works with international and non-governmental organizations active in the field of torture prevention, including the Civic Solidarity Platform representing over 90 non-governmental organizations (NGOs) from the OSCE region, OSCE field operations, NPMs, UN agencies, the Council of Europe and European Union institutions, research foundations and academia. In Ministerial Council Decision No. 7/20 adopted on 4 December 2020, OSCE participating States pledged to support the efforts of relevant national actors, such as national preventive mechanisms, national human rights institutions or other national bodies or mechanisms, active in preventing torture and other cruel, inhuman or degrading treatment or punishment, and, for those who have ratified the OPCAT, to fulfil their obligation to designate or establish national preventive mechanisms that are independent, adequately resourced and effective.

The APT is a Swiss NGO working since 1977 to prevent torture and ill-treatment worldwide, for societies free of torture that protect the dignity of persons deprived of liberty. The APT is at the origin of the 1987 European Convention for the Prevention of Torture and the 2002 Optional Protocol to the UN Convention against Torture (OPCAT).

¹ OSCE Office for Democratic Institutions and Human Rights (ODIHR) Human Rights Department
Ul. Miodowa 10, 00–251 Warsaw, Poland, <http://www.osce.org/odihr>; Association for the Prevention of Torture (APT) Centre Jean-Jacques Gautier, 10, route de Ferney, P.O. Box 137, CH-1211 Geneva 19, Switzerland, <https://www.apr.ch/>.

Introduction

As the population of the OSCE region is ageing, the absolute number of older persons deprived of liberty is increasing.² Often facing discrimination, forced to navigate systems and infrastructures that are not made for them or at least adapted to their needs, older persons deprived of liberty are in a situation of vulnerability. This past year, the COVID-19 pandemic has accentuated this reality and given rise to new risks and challenges for older persons deprived of liberty. Both more vulnerable to the virus, and disproportionately affected by some of the restrictive measures implemented to curb the spread of the pandemic, older persons have paid a heavy price.

However, the situation of older persons deprived of liberty has attracted relatively little attention. In fact, sparse data on these populations is the first of many challenges for effective public policies to reduce the risks faced by older persons deprived of liberty and respond to their specific needs. Further, with no internationally agreed-upon definition, it is not always clear who is considered an older person. To that, one has to add the detrimental effect that deprivation of liberty has on both physical and mental health, which often leads to accelerated deterioration of the body and mind.

NPMs established under the OPCAT, which numbered 40 in the OSCE region as of June 2021, play a crucial role in monitoring places where older persons are deprived of liberty, including private custodial settings, and ultimately in preventing risks of torture and ill-treatment.³

Besides NPMs, CSOs play a critical role in improving the treatment and conditions of older persons deprived of their liberty and preventing abuses they may be subjected to. CSOs have diverse and complementary mandates to do so, including: service-providing to older persons deprived of their liberty; detention monitoring; investigating allegations of torture and bringing perpetrators to justice; obtaining redress, including guarantees of non-repetition; and providing rehabilitation for victims of torture and other forms of ill-treatment. CSOs' interactions with NPMs are varied and range from playing a watchdog role towards NPMs and the implementation of the OPCAT system, to full-fledged collaboration on joint initiatives and projects, including by being an integral element of the NPM system.

The fourth regional meeting took place in a virtual format and brought together NPMs and CSOs from 34 OSCE participating States. In addition, participants included the United Nations (UN) Independent Expert on the enjoyment of all rights by older persons, as well as representatives from the European Committee for the Prevention of Torture (CPT) and Penal Reform International.

² Across Europe, the average proportion of the prison population who are over the age of 50 increased from 11.7 per cent in 2013 to 15.3 per cent in 2019, and ranges from 7 per cent in Russia and Moldova, to over 30 per cent in Liechtenstein and Bulgaria. See Council of Europe, Annual Penal Statistics SPACE I reports, available at <https://wp.unil.ch/space/space-i/annual-reports> (last access 3 February 2022).

³ See for e.g. University of Bristol, Human Rights Implementation Centre, 'Deprivation of liberty' as per Article 4 of the OPCAT: the scope, October 2011, p. 1; APT and Prison Reform International, *Older persons in detention: A framework for preventive monitoring*, June 2021, available at <https://www.apr.ch/en/resources/publications/older-persons-detention-framework-preventive-monitoring> (last access 3 February 2022).

The regional meeting opened on 15 June 2021, World Elder Abuse Awareness Day, with a public webinar focusing on the challenges for monitoring the human rights of older persons deprived of liberty, particularly in the context of the COVID-19 pandemic.⁴ Following the opening webinar, on 16 and 17 June 2021, NPMs and CSOs shared their experiences in monitoring older persons deprived of liberty during the pandemic and discussed promising practices with a view to strengthening the protection of older persons in detention.

This report does not intend to provide a comprehensive analysis of the situation of older persons deprived of liberty, nor of the legal framework applicable to older persons in detention or practices in the OSCE region.⁵ It only reflects key issues highlighted during both the public webinar and the following two-day discussions which were held under the Chatham House rules.

⁴ APT/ODIHR webinar on “Older People Deprived of Liberty: Monitoring the Risks”, 15 June 2021, available at <https://vimeo.com/563281970> (last access 3 February 2022).

⁵ For an overview of the rights of older persons deprived of liberty see: UN Principles for Older Persons, Adopted by General Assembly resolution 46/91 of 16 December 1991; UN Committee on Economic Social and Cultural Rights, General Comment 6, on the Economic, social and cultural rights of older persons, UN Doc. E/1996/22, 1995, available at <https://www.refworld.org/pdfid/4538838f11.pdf> (last access 3 February 2022); Further information on practice in the OSCE region may be found in European Network of National Human Rights Institutions (ENNHRI), ‘We have the same rights’ – *The Human Rights of Older Persons in Long-term care in Europe*, 2017, available at <http://ennhri.org/wp-content/uploads/2019/09/Report-%E2%80%9CWe-Have-the-Same-Rights%E2%80%9D-%E2%80%93-Human-Rights-of-Older-Persons-in-Long-term-Care-in-Europe.pdf> (last access 3 February 2022).

I. Monitoring older persons deprived of liberty: key challenges during the COVID-19 pandemic and beyond

The regional meeting opened with a public webinar in which international, regional and national experts shared experience and knowledge on the theme at hand. The discussion focused in particular on issues relating to the definition/threshold as to when a person is considered an “older person” when deprived of liberty as well as some of the key challenges relating to the monitoring and collection of data on the situation of older persons in detention, especially in the context of the COVID-19 pandemic.

To start with, it was noted that the **concept of older age** is complex to define and carries different meanings and significance depending on the context and the purpose for which one seeks to define it. Moreover, “older persons” are the most heterogeneous of age groups. At the international level, most studies use chronological age related to retirement and pension eligibility (60 or 65 years) as a threshold for old or geriatric age. However, this may not necessarily fit the context of deprivation of liberty where the biological process of ageing may start earlier and in an accelerated way.⁶ Moreover, it can also differ according to the life expectancy in a given country. Accordingly, participants underlined that prisoners over 50 years are sometimes considered older due to the concept of “accelerated ageing” in prison.

Second, participants noted that older persons often remain **invisible and marginalised** in legislative and policy agendas as well as in data collection. For example, the COVID-19 pandemic made it evident that social care homes were not sufficiently prioritised in safety and preventive strategies to contain the spread of the virus in some countries, despite older persons being at higher risk of complications and death. The lack of attention to specific concerns and needs of older persons also applies to the context of deprivation of liberty. For instance, existing international standards and guidelines on detention conditions do not specifically address the treatment of older persons and monitoring and reporting mechanisms do not systematically raise this issue. That said, it was recalled that international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),⁷ emphasize that the individual needs of prisoners, in particular the most vulnerable categories, should be taken into account. Accordingly, prison authorities are required to take specific measures to ensure age-sensitive and adapted detention conditions, including the provision of adequate and specialised healthcare services. Rule 5(2) clearly states that prison authorities should “make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.”

⁶ This is often due to the medical and social complexity associated with detention. See e.g. International Committee of the Red Cross (ICRC), Ageing and Imprisonment – Workshop on ageing and imprisonment: identifying and meeting the needs of older prisoners. Summary Report, June 2018 at <http://hdtse.fr/detention/ageing-and-imprisonment-summary-report.pdf> (last access 3 February 2022).

⁷ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by General Assembly resolution 70/175, annex, 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf (last access 3 February 2022).

Third, it was mentioned that the general lack of visibility of older persons is also linked to the **lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons**. In practice, this means that there is limited guidance for public action and policies; it is difficult to clarify the obligations of States with respect to older persons; and procedures for monitoring human rights treaties generally ignore older persons. Older persons enjoy the same right as everyone else not to be subjected to torture or other ill-treatment or to arbitrary deprivation of liberty. However, translating these general obligations to the specific situation of older persons deprived of liberty has been a challenge. For example, a recent study of the Office of the High Commissioner for Human Rights (OHCHR) found that the situation of older persons deprived of liberty has been generally invisible in the practice of the Committee Against Torture and the Sub-Committee on the Prevention of Torture, especially when it comes to aged care institutions.⁸

Moving forward, it was stressed that the **COVID-19 pandemic magnified pre-existing human rights concerns and challenges faced by older persons**.⁹ Indeed, the impact on older persons has been particularly wide-ranging and worrying as they have been denied health services, experienced physical and social isolation and died alone. The pandemic exacerbated experiences of a lack of autonomy and participation in decision-making and exposed entrenched ageism on many fronts.

Importantly, **lockdown and isolation measures sometimes prevented NPMs and CSOs from effectively exercising their mandate and adequately monitoring whether the conditions of older persons deprived of liberty comply with human rights standards**. While social care homes have been particularly affected, NPM's visits to places of deprivation of liberty were generally interrupted for prolonged periods of time to ensure respect for the principle of "do no harm" and accordingly prevent the spread of the pandemic among older persons.

The **COVID-19 pandemic also disproportionately impacted prisons worldwide**. People in prisons faced a higher risk of infection as well as those working in prisons. Overcrowding and poor conditions in terms of sanitation, hygiene, health services, and limited access to personal protective equipment and to testing capacities particularly exacerbated the risk of infection and the feasibility of prevention and control measures. This makes prison settings particularly vulnerable to COVID-19 and that is why a number of stakeholders, including the UN Secretary General in his COVID-19 policy brief on older persons, called on States to consider options for

⁸ See e.g., *Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons*, Working paper prepared by the Office of the High Commissioner for Human Rights, March 2021, available at <https://social.un.org/ageing-working-group/documents/eleveth/OHCHR%20HROP%20working%20paper%2022%20Mar%202021.pdf> (last access 3 February 2022).

⁹ See e.g., Report of the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler, *Impact of the coronavirus disease (COVID-19) on the enjoyment of all human rights by older persons*, UN Doc. A/75/205, 2020, available at <https://undocs.org/A/75/205> (last access 3 February 2022); UN Department of Economic and Social Affairs (UNDESA), Issue Brief: *Older Persons and COVID-19 A Defining Moment for Informed, Inclusive and Targeted Response*, 2020, available at <https://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/04/POLICY-BRIEF-ON-COVID19-AND-OLDER-PERSONS.pdf> (last access 3 February 2022).

release and alternatives to detention to mitigate such risks, particularly for older persons and people with underlying health conditions.

Despite all these considerable challenges, it was suggested by participants that COVID-19 has led to an **increased awareness of the human rights concerns faced by older persons**, including those deprived of liberty. Accordingly, it is important to use this as an opportunity to learn lessons, strengthen protection mechanisms and ultimately bring more attention to the situation and the monitoring of the rights of older persons deprived of their liberty.

II. Monitoring criminal justice detention

Older persons face a multitude of risks in criminal justice detention. To start with, older persons often face chronic medical conditions and ongoing health issues which require enhanced medical attention, including external specialist care services and possibly transport to hospital for emergency or specialised treatment. Geriatric syndromes in prison settings include, for instance, serious injuries and sometimes even death due to falls, cognitive impairment, urinary incontinence, and sensory impairment (i.e. hearing loss, visual disturbance). Reasonable accommodations must be in place to ensure that the rights and human dignity of older persons deprived of liberty are protected. At the same time, older prisoners frequently suffer from mental health issues and mental illnesses, including anxiety related to impending release, fear of death in detention settings, depression, suicidal thoughts and isolation.

Older persons in prison also face a higher risk of torture and ill-treatment due to their deteriorating health and mobility, high prevalence of psycho-social disabilities and cognitive impairment including dementia-related conditions. Likewise, individual risk factors associated with inadequate medical treatment and poor prison conditions may exacerbate their vulnerabilities and result in multiple and intersecting forms of discrimination. Older persons in prison may also be at risk of abuse from other detainees.

Monitoring bodies play a crucial role in mitigating these risks. Recent practice shows increasing attention to older persons in NPMs' consideration of groups in situations of vulnerability when they visit places of detention. In some cases, this has resulted in more targeted and practical recommendations to authorities which have subsequently been accepted and adopted by governments.¹⁰

The COVID-19 pandemic adversely affected the situation of older persons in detention within the criminal justice system. While some risk factors were accentuated because of the particular impact of the pandemic on older persons, new challenges emerged as a result of the restrictions imposed by the authorities.

¹⁰ See, e.g., Ombudsman of Luxembourg, *La privation de liberté de détenus particulièrement vulnérables*, 2014; General Controller of Places of Deprivation of Liberty, France, *Avis du 17 septembre 2018 relatif à la prise en compte des situations de perte d'autonomie dues à l'âge et aux handicaps physiques dans les établissements pénitentiaires*, 2018.

Against this background, this section describes the main risks and challenges that participants at the regional meeting identified with respect to older persons in the context of criminal justice systems across the OSCE region, especially in times of COVID-19. The section also illustrates a number of promising practices that were shared by participants.

A. Challenges

Accommodation of older persons - Prisons and other correctional facilities in the OSCE region are often ill-equipped to meet the needs of older persons, particularly those with complex medical conditions and disabilities, including long-term physical, mental, intellectual or sensory impairments. Several participants expressed concern at the continued presence of architectural barriers and other challenging environmental features in prisons and other detention centres, such as poor lighting, overcrowding, excessive heat or cold, extreme exposure to noises, steep staircases, lack of elevators, upper bunk beds and low toilets. It was also highlighted that despite, in some cases, special units for older persons were arranged, their number is not yet sufficient considering the progressive ageing of the prison population. In a similar vein, it was noted that criminal justice detention facilities often fail to provide for reasonable accommodations and do not provide for access to courtyards, outdoor spaces, as well as recreation areas specifically tailored for older persons, which in turn result in increasing isolation of older detainees, lack of physical activity and deterioration of their health conditions.

Access to healthcare - Participants noted with concern that access to geriatric and other specialized healthcare for older persons (i.e. physiotherapy, treatments for arthritis, osteoporosis, hypertension, diabetes, Parkinson's disease, Alzheimer's, etc.) in prison is still limited in numerous OSCE countries, thereby depriving older persons from appropriate and timely medical care. Participants also stressed that, in general, the principle of equivalence of care in prison is often not respected fully. Further, access to healthcare is particularly challenging for older persons suffering from mental illnesses and multiple forms of diseases.

Older women – Participants noted that, in reality in the OSCE region, older women's needs are often overlooked and seldom considered in policy formulation and prison programmes. Recent studies highlight that women who are admitted to prison are more likely than men to have sexually transmitted diseases (STD's) as well as existing mental healthcare needs, often as a result of domestic or gender-based violence. Further, older women in prison may have particular needs due to gynaecological issues, drug and alcohol dependence, as well as mental health issues related to victimization as a result of domestic or gender-based violence. Importantly, it was noted that older women may have specific healthcare needs given biological changes in later life. For example, women who are going through the menopause will need to have more regular access to water and may suffer from low mood, anxiety, and feelings of depression. However, the menopause is often not recognized as an issue that requires specific medical attention in prison.

Older persons with disabilities – Participants observed that criminal justice systems often lack strategies or policies to meet the needs of older persons with disabilities. It was also noted that accommodation in detention is often inadequate for persons with disabilities, thereby

reducing personal mobility and access to outdoor facilities, and in general contacts with the outside world. Other concerns raised included the lack of sufficient resources that are allocated to specialized staff and caregivers, which frequently result in inadequate treatment of persons with disabilities in prison, particularly those with sensory or intellectual disabilities.

Human and financial resources – Participants noted that in several OSCE countries there is a shortage of prison staff, particularly specialized caregivers, assigned to prisons, which in turn has a disproportionate impact on older persons in detention given their specific needs. In this regard, it was noted that governments allocate insufficient resources to both the recruiting of medical staff assigned to prisons, along with the acquisition of specific medical equipment.

Impact of COVID-19 pandemic - Participants observed that specific needs of older persons in criminal justice detention were only acknowledged by authorities with significant delay during the pandemic, if at all. For instance, many participants stressed that prisons' health care services were not adapted, considering the evolution of the pandemic. Moreover, COVID-19 restrictions often prevented access to prisons for prolonged periods of time thereby preventing NPMs from conducting visits, as well as isolating older detainees from their families and communities. With regard to vaccination programmes, it was noted that in some cases older prisoners were not included among priority groups and rather considered as part of the general population, with important consequences on both the likelihood of infection and health conditions. Seeing that older persons were considered to be a priority group in the general population, this was not in line with the principle of equivalence of care in prison. Furthermore, some participants noted that prison facilities for detainees subject to quarantine measures were not adapted to older persons, particularly those with disabilities.

B. Promising practices

Thematic visits – Over the past years, monitoring bodies have progressively undertaken thematic visits focusing on the situation of older persons in criminal justice detention. These visits have specifically been looking at the impact on older persons of a wide array of detention conditions, such as ventilation, beds, access to toilets, canteen, and outside courtyards, and contact with the outside world. NPMs have also been looking at whether older persons are subject to any form of discrimination with respect to access to out-patient care and geriatric care. Thematic visits also allowed monitoring bodies to look specifically at the availability of designed measures for older persons, including the use of vehicles and other means of transport for persons with reduced mobility and disabilities. In some cases, NPMs were also able to assess early release schemes targeting older persons, and in particular whether these plans provide for adequate health and social support with a view to assisting older persons to reintegrate in their communities.

Special monitoring methodologies – A number of NPMs reported to have started implementing special monitoring methodologies to better address the needs of older persons in detention. These included for instance the use of special equipment to measure the temperature and the level humidity in prison facilities with a view to ensuring optimal detention conditions and better protect the health of older detainees. Other promising practices included the identification of older persons from prisons registers starting from the

first day of a visit to a prison and the inclusion in NPMs plan of visits, as well as specific interviews with older detainees to assess whether there are any issues that require attention.

Special health care schemes for older persons – Special health care schemes are progressively adopted to address older persons' needs in prison. For instance, it was reported that, at least in one OSCE country, prisoners were given the possibility to get paid for work as "personal assistants" for older persons to help them carry out daily activities. Furthermore, over the past years, an increasing number of OSCE countries have established dedicated units designed to meet the specific health care and programmatic needs of older persons. In that regard, it was noted that such units allow a more 'age-friendly' way to meet the specific health care and programmatic needs of older persons, despite the fact that in some cases their creation was not specifically based on health considerations, and, more importantly, due consideration ought to be given to the risk of heightened isolation of older persons that such measures may result in.

Emergency procedures – Participants reported that, in some cases, the use of emergency procedures by NPMs was particularly useful to call upon authorities to respond in a timely and adequate manner to particularly concerning detention conditions, especially in the context of the COVID-19 pandemic. For instance, in some cases, such measures resulted in authorities adopting specific measures for older persons, thereby increasing the time allocated to daily care and the number of geriatric medical staff assigned to prisons. It should also be noted that, in certain cases, this also prompted authorities to undertake a broader reflection on the situation of the elderly in the context of the prison population and, as a result, authorities announced new action plans specifically targeting older prisoners.

Legal reforms – Participants underlined that, in some cases, the inclusion of thematic recommendations focusing on older persons in NPMs' reports resulted in successful legislative reforms and reviews of policies and other relevant prison regulations. Recent recommendations, for instance, prompted authorities to review and adapt prison regulations concerning freedom of movement and access to outdoor facilities to bring them more in line with the needs of older prisoners. Other successful reforms included the amendment of lists of statutory diseases and related eligibility criteria on early release for older persons, as well as the introduction of a case-by-case approach in the judicial assessment of early release cases targeting older persons.

III. Alternatives to detention

The human rights and social benefits of alternatives to detention are significant. It is well documented that imprisonment, particularly when it is prolonged, can cause severe psychological and physical health problems, especially for older persons, which have long-term costs – both for individuals and for communities. Moreover, older persons in prison in general represent less of a threat to public safety.

A number of OSCE countries have begun to implement alternative measures to detention for older persons, including early release for health reasons and other forms of compassionate

release. Practice across OSCE countries is however limited and the implementation of alternative measures to detention still remains challenging, particularly in the context of the COVID-19 pandemic.

This section looks at the challenges and promising practices that participants identified with respect to the implementation of alternative measures for older persons deprived of liberty, especially in times of COVID-19.

A. Challenges

Access to suspension of sentence due to health reasons /compassionate release – It was noted that older prisoners often do not get access to suspensions of sentence due to health reasons and these measures are rarely implemented outside end-of-life related circumstances. Participants reported on the existence of a number of obstacles in this regard. To start with, it was noted that older persons often lack knowledge of their right to request the suspension of their sentence due to health reasons. Additionally, certain prison laws provide for suspension of prison sentences due to health reasons only on the basis of an assessment of the physical conditions of the prisoners, thereby excluding the possibility to suspend sentences because of psychosocial conditions. Accordingly, psychological conditions are taken into consideration only when they result in psychiatric illnesses that cannot be cared for in a prison environment.

Furthermore, participants noted that judges' decisions on suspension of sentences are often not informed by a comprehensive analysis of the physical and mental condition of detainees by an expert on this matter. Similar concerns were raised in relation to the rare application of other forms of compassionate release for older persons, particularly those with a specific criminal history and profiles (i.e. sexual offenders).

Support system for older persons benefitting from early release – Many participants noted with concern that early release schemes for prisoners serving long sentences are often not complemented by adequate legislation and programmes that provide older persons with access to financial means, pension schemes, medical insurance and other benefits once they are released. Participants also underlined that, in general, there is an ongoing lack of sufficient resources allocated to social and health services to support early release programmes across the OSCE region.

Impact of COVID-19 pandemic - Although many governments adopted early release schemes for specific groups of people in detention during the pandemic, it was noted that very few governments applied the same logic to older persons, and in general there has been a tendency to withdraw this practice after the first wave of the pandemic. It also was noted that, in the context of the pandemic, other alternative measures, such as home detention, were applied to older persons only in a few circumstances. In that regard, several participants noted that the application of home detention during the pandemic raised further challenges given that places of residence of detainees are often far away from the designated detention facilities, and detainees could not benefit from such programs given that the freedom of movement was severely restricted during lockdowns.

B. Promising practices

Promoting suitable alternatives to detention for elderly people – Participants noted that there is an increasing understanding that incarceration as a penalty should be a measure of last resort for certain types of offences, and when offenders are older persons. Accordingly, NPMs have begun to encourage the use of alternative measures. In some countries these included penalties that replace the sentence with reinforced social control at home or other private settings, as well as the use of electronic surveillance.

Promoting comprehensive eligibility criteria to apply in the context of alternative measures – To ensure a fair application of suspension of sentences due to health reasons, NPMs have been promoting the inclusion of a comprehensive set of eligibility criteria, and to accordingly give due consideration to the psychological conditions of the prisoner, independently of whether they have been diagnosed with a psychological disease.

Advocating for the prohibition of detention on the basis of disability¹¹ - While discussing alternatives to detention, participants noted that the detention of persons unfit to plead in criminal justice systems is hugely problematic, and, declarations of unfitness to stand trial and the detention of persons based on that declaration is contrary to article 14 of the UN Convention on the Rights of Persons with Disabilities (CRPD) "since it deprives the person of his or her right to due process and safeguards that are applicable to every defendant." It was also underlined that there is a need to shift practice to ensure that "actual or perceived" mental illness *alone* shall in no case provide grounds for deprivation of liberty.¹²

Furthermore, it is important to consider whether authorities can ensure that reasonable accommodation is made in prisons in order not to aggravate incarceration conditions based on disability. The ECtHR has ruled that conditions of detention and a lack of appropriate medical care for mentally ill people could lead to violations of the prohibition of inhuman or degrading treatment (Article 3).¹³ This only further justifies why exploring alternatives to detention is crucial.

¹¹ See Article 14, CRPD and statement here:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183> (last access 3 February 2022).

¹² "The involuntary detention of persons with disabilities based on presumptions of risk or dangerousness tied to disability labels is contrary to the right to liberty. For example, it is wrong to detain someone just because they are diagnosed with paranoid schizophrenia."

¹³See ECtHR, Factsheet On Detention and Mental Health, at https://www.echr.coe.int/Documents/FS_Detention_mental_health_ENG.pdf (last access 3 February 2022), noting that "The [European] Court [of Human Rights] has held on many occasions that the detention of a person who is ill may raise issues under Article 3 of the [European] Convention [on Human Rights, which prohibits inhuman or degrading treatment] ... and that the lack of appropriate medical care may amount to treatment contrary to that provision ... **In particular, the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment ...** ... [T]here are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant ..." (Sławomir Musiał v. Poland, judgment of 20 January 2009, §§ 87-88).

Promoting alternatives to social care/nursing homes – Over the discussion, participants noted that there is also a need for a shift in public policies that institutionalise social care homes as the norm and instead efforts should be placed on the integration of older people back into the community. Notably, in the absence of specific standards related to the human rights of older people, it was suggested that, in developing such policies, countries should draw on the concept formulated in article 19 of the CRPD, namely that effective measures should be taken to facilitate individuals to live independently and be included in the community.

IV. Monitoring other places of deprivation of liberty

Monitoring places of deprivation of liberty other than prisons is also very relevant, especially if conditions involve involuntary confinement.

Along with psychiatric institutions, older persons are often accommodated in social care establishments which, across the OSCE region, vary significantly in terms of legal status, ownership, profile and capacity. Many of these institutions are administered by national or local authorities, while others are owned by religious communities, charity organisations or (non-) profit-oriented private entities.

As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted in 2020,¹⁴ even if under national law residents in social care homes are not formally considered to be deprived of their liberty, their situation may *de facto* amount to a deprivation of liberty, and as such should be of concern for monitoring bodies. This is particularly true for residents who are either not free to leave the institution, or are subjected to involuntary treatment and/or means of restraint without being protected by the legal safeguards applicable to residents who are formally kept in the institution or subjected to treatment involuntarily.

Against this background, this section illustrates the challenges and promising practices that participants identified in relation to the monitoring of social care homes and other places of deprivation of liberty, including nursing homes and psychiatric institutions, particularly in the context of the pandemic.

A. Challenges

Exclusion of social care homes and psychiatric institutions from the scope of NPMs mandate – Participants noted that, in a number of OSCE countries, social care homes are not considered yet as falling within the NPMs mandate, since residents are considered to be placed in these settings as a result of a contract, and not of an administrative decision. With regard

¹⁴ See e.g., European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Factsheet: Persons deprived of their liberty in social care establishments, 21 December 2020, available at <https://rm.coe.int/1680a0cc19> (last access 3 February 2022).

to psychiatric institutions, it was noted that, in some countries, NPMs consider these facilities as falling within their mandate only when mechanical constraints are used towards residents.

Access to activities for residents – Participants noted that often social care institutions and nursing homes do not offer a programme of meaningful activities to older residents. Monitoring activities also show that there is a worrying lack of efforts to enable the residents to maintain their ability to function in their daily life. Accordingly, there are no opportunities for physical exercise tailored to the needs of the residents.

Lack of autonomy and agency granted to older persons in social care homes – Participants expressed concern at the fact that the autonomy of older persons is often impaired through the imposition of restrictions to their private/couple life. For instance, it was noted that often social care homes impose stringent conditions, thereby depriving older persons of overnight visits to their partner and/or not allowing couples to live together.

Human and financial resources – Participants noted that, in the context of nursing homes and social care institutions, there is often a lack of qualified staff, including nursing personnel, psychologists and psychiatrists, as well as a shortage of sanitary products which in turn creates risks that residents do not have their basic needs met. It was also reported that, in some cases, staff shortage exposed the residents to risks of falling or being left without protection against aggression from other residents.

Difficulties in the legal framework regulating the use of coercion in care and treatment and its application – In relation to laws and standards regulating the use of coercion and other forms of limitation of rights with respect to older persons, participants noted that there are a number of shortcomings and gaps in the relevant normative framework and documenting the matter is still challenging. Participants also underlined that often the facilities' management does not provide staff with sufficient training to ensure compliance with the human rights of the residents. For instance, in some cases, NPMs found that many staff members do not understand that preventing residents from leaving the ward by locking the doors, is never permitted without a strict individual risk-assessment and a written decision.

Impact of COVID-19 pandemic - It was observed that because of the pandemic, governments consistently implemented nationwide bans on visits and other restrictive measures targeting nursing homes and other residential settings, including psychiatric hospitals, in order to protect residents from COVID-19. Monitoring activities and surveys highlighted that such measures entailed severe restriction of the rights of residents, which in turn also resulted in several human rights violations. Participants also observed that, through the information they gathered, it became clear that older persons in closed settings, such as nursing homes, as a group were particularly affected by harsh restrictions and were disproportionately affected by the virus. Participants reported that in many countries older persons were denied access to basic health care, including when they were infected by COVID-19, and as a result many people died. Instead of exploring alternatives to deprivation of liberty, authorities rather opted for lockdown measures, which in turn resulted in a high number of infections and deaths inside these institutions. In addition, many older persons suffered from isolation, given the lack of access to technologies and other means to establish contact with relatives, friends and the

outside world in general. Importantly, participants also expressed concern at the fact that many older persons with terminal illnesses could not benefit from any visits from relatives due to COVID-19 related policies and regulations.

B. Promising practices

Progressive inclusion of social care homes as part of NPMs mandate – There is a growing tendency across the OSCE region to include nursing homes and social care institutions as part of the NPMs' mandates, as these places are increasingly being understood in law and practice as places where people may be *de facto* deprived of their liberty. Importantly, some participants noted that, while some NPMs had not visited this type of residential setting before, the COVID-19 pandemic created conditions that made it necessary for them to prioritise visits to these places. In that regard, it was noted that a number of NPMs already changed their programme of visits and decided to visit nursing homes, including wards for residents with dementia. Other NPMs instead decided to include thematic visits focusing on older persons in social care homes in their future planning.

Innovative monitoring methodologies – Over the past year, NPMs adopted a number of innovative methodologies to avoid exposing residents to an increased risk of infection. For instance, many NPMs within the OSCE region have been conducting remote monitoring or adapting visiting methods, based on consultations with infection control experts. Where NPMs foresaw that interviewed persons would face challenges in communicating complete information or other difficulties due to heightened vulnerability because of the pandemic, new methods have been introduced for conducting visits and the collection of information through interviews. In some cases, the adapted visiting methods meant that NPMs reduced the time spent in examining the material conditions and observing interactions between staff and residents; or alternatively arranged pre-announced visits to allow institutions to set up adequate protection measures and anticipate potential challenges in communicating with residents, due to heightened vulnerability to COVID-19. Where face-to-face meetings were not possible, NPMs collected information through new means – i.e. by sending questionnaires and surveys, as well as via previously scheduled phone/video calls – as well as by arranging private interviews with the leadership of the nursing home, doctors, nursing staff, and with the next of kin of all residents, in order to get a more comprehensive picture of the situation at hand.

Use of digital technologies in situations of emergency – Participants highlighted that, particularly in the context of emergencies, such as the COVID-19 pandemic, digital technology greatly assisted with preventing the isolation of older persons in social care homes, thereby helping residents to maintain continued contact with families, friends and the outside world. Digital technologies also facilitated the monitoring by NPMs and CSOs who were able to communicate with older persons either alone or with the aid of next of kin by telephone or video-communication tools.

Opening of investigations in case of alleged human rights violations – Participants noted that in some cases authorities opened formal investigations to inquire about alleged violations

of their rights suffered by older persons in social care homes as a result of restrictive measures that were adopted during the pandemic.

Legal and institutional reforms – Participants reported that most recently, some OSCE countries introduced new laws imposing a duty to verify the legality of the placement of older persons in social care and nursing homes, especially where such decisions involve incapacitated persons. Recent reforms also provided for a minimum number of staff required in social care homes. Further, some countries introduced the obligation to provide an individual medical assessment if the management of social care homes intends to restrict the freedom of movement of residents and their contacts with the outside world for residents. Finally, in some places where such restrictions are imposed, residents may now also legally challenge such decisions before a judicial body.

Recommendations for the way forward

With regard to the way forward, participants identified the following recommendations:

- **an individualised, and gender sensitive approach** is needed to adequately assess and respond to the needs of older persons in prison and other places of deprivation of liberty;
- **innovative and flexible methodologies** for monitoring may assist NPMs to better identify and address systemic risk factors for older persons, with a focus on preventing torture and other ill-treatment;
- **CSOs expertise and strong community ties** may assist NPMs and other monitoring bodies to better support older persons deprived of liberty; for instance, by facilitating their contact with relatives and the outside world, as well as by providing access to other services; and
- **Building robust cooperation at the institution, municipality, and government level** is vital to ensure adequate protections for older persons in detention.

In order to strengthen the monitoring of older persons in detention, participants also expressed interest in having further discussions in relation to:

- **The notion of deprivation of liberty and its applicability in the context of social care institutions and private accommodation;**
- **The importance of concepts such as dignity and autonomy in the context of the protection of the rights of older persons;**
- **Potential avenues to strengthen compliance with core international human rights instruments, such as the Convention on the Rights of Persons with Disabilities (CRPD), and other relevant standards in the context of NPMs monitoring activities and the situation of older persons in detention;**
- **Potential strategies to increase the use of alternative measures to deprivation of liberty;**
- **Potential strategies to reinforce safeguards for older persons where restraint measures are adopted, particularly in social care homes;**

- **Potential strategies to both raise awareness of and provide for better training on human rights standards related to the protection of older persons and associated legal and procedural safeguards, specifically targeting prison staff and care givers in social care homes; and**
- **The role of families in monitoring the human rights of older persons deprived of liberty.**

Annex I: Background document

I. Introduction

As the population of the OSCE region is ageing, the absolute number of older persons deprived of liberty is increasing. Often facing discriminations, forced to navigate systems and infrastructures that are not made for them or adapted to their needs, older persons deprived of liberty are in a situation of vulnerability. This past year, the COVID-19 pandemic has accentuated this reality and given rise to new risks and challenges for older persons deprived of liberty. Both more vulnerable to the virus, and disproportionately affected by some of the restrictive measures implemented to curb the spread of the pandemic, older persons have paid a heavy price.

However, the situation of older persons deprived of liberty has attracted relatively little attention. In fact, sparse data on these populations is the first of many challenges for effective public policies to reduce the risks faced by older persons in detention and respond to their specific needs. With no internationally agreed-upon definition, it is not always clear who is considered an older person. To that, one has to add the detrimental effect that deprivation of liberty has on both physical and mental health, which often leads to accelerated deterioration of the body and mind.

This year, the Association for the Prevention of Torture (APT) and the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR) are convening their fourth Regional Meeting on Torture Prevention for National Preventive Mechanisms (NPM) and Civil Society Organisations (CSO) on the topic of 'Monitoring the situation of older persons deprived of liberty in the context of the COVID-19 pandemic.' This meeting will be an opportunity for representatives of NPMs and CSOs from the OSCE region to exchange, learn from each other and work together towards the better protection of older persons deprived of liberty.

Considering the impact that the COVID-19 pandemic has had on older persons in different places of deprivation of liberty (prison, immigration detention, psychiatric institutions, social care facilities, etc.), the meeting will not restrict its scope to any particular type of deprivation of liberty. In addition, many challenges faced by older persons deprived of liberty will be transversal in nature, applying to various contexts. During the meeting, the discussions will focus in particular on criminal justice detention (police custody, pre-trial detention, prison) and social care settings. On the basis of Article 4(1) of the Optional Protocol to the Convention against Torture (OPCAT), discussions will also cover the issue of scope, mandate, and challenges for NPMs to monitor certain types of places where older persons are deprived of liberty – including private custodial settings.¹⁵

¹⁵ See for e.g. University of Bristol, Human Rights Implementation Centre, 'Deprivation of liberty' as per Article 4 of the OPCAT: the scope, October 2011, p. 1.

II. Objectives

- Provide NPMs and CSOs with an opportunity to deepen their knowledge and understanding of the situation of older persons deprived of liberty, particularly in the context of COVID-19.
- Exchange practices on the monitoring of the situation of older persons deprived of liberty in the OSCE region.
- Strengthen the community of practice in the OSCE region and create bridges and connections between NPMs and relevant CSOs.

III. Guiding Principles

The year 2021 marks the beginning of the [UN Decade of Healthy Ageing](#) (2021-2030). This initiative promotes a new approach to ageing centred on human rights, one that recognises the agency of older persons. This approach should guide the reflections around the protection of the human rights and dignity of older persons deprived of liberty. The [UN Principles for Older Persons](#) follow this approach when stating that older persons “should have access to social and legal services to enhance their autonomy, protection and care”, and “be able to live in dignity and security and be free of exploitation and physical or mental abuse” (Art. 12 and 17).

Freedom from discrimination is a basic principle of international human rights law, including in the context of deprivation of liberty (see for e.g. Nelson Mandela Rules, rule 2). Discrimination based on age is no exception. In addition, it is crucial to adopt a gender-sensitive, as well as an intersectional understanding of discrimination, by which different types of discrimination intersect and create unique experiences of oppression and violence for the individual. For example, the experience of an older man with a disability, that of an older immigrant, or of an older indigenous trans* woman will all create unique situations of vulnerability and require specific measures.¹⁶

Healthcare is a central element of the wellbeing of older persons deprived of liberty, in particular in the context of the COVID-19 pandemic. The principle of equivalence of care is central to health in detention and should guide officials, and monitors, in their work with older persons deprived of liberty. In practice, it is often the case that overcrowding, inadequate nutrition, insufficient access to clean water or hygiene products, and limited access to healthcare facilities make healthcare in detention fall short of meeting community standards. This can be particularly true for older persons.

Due consideration should be given to social contact when implementing measures to protect older persons’ right to health in detention. Particularly in times of COVID-19, measures to protect older persons against the virus may limit other freedoms, such as their right to meaningful human contact and interactions with the outside world. However, older persons and persons deprived of liberty are two groups who are more likely to suffer from isolation.

Older persons deprived of liberty are therefore in a situation of particular vulnerability. This should be taken into consideration, when implementing restrictive measures, or when monitoring them.

¹⁶ See for e.g. [Submission of the Independent Expert on the enjoyment of all rights by older persons, Submission to the Inter-American Commission](#), November 2020, para. 14.

IV. Risks and Challenges

These questions relating to the monitoring of the situation of older persons deprived of liberty aim to highlight a number of key issues, and guide some of the discussions during the meeting. While not all questions will be addressed during the meeting, this list of issues can guide the reflection of detention monitors as they consider the situation of older persons deprived of liberty.

1. Scarcity of data, challenges of data collection
 - ✓ Is enough quality data available in your context to draw a complete picture of older persons deprived of liberty? Is such data available for different types of places of deprivation of liberty?
 - ✓ Is there an agreed upon threshold above which someone (in detention) is considered an older person?
 - ✓ Do ageing-related illnesses such as dementia, Alzheimer, etc. create particular challenges in collecting data directly from older persons deprived of liberty (private interviews?)
 - ✓ What measures exist – or can be recommended – to enable better data collection?
2. Alternatives to deprivation of liberty – during COVID-19 and beyond
 - ✓ Is age a criterion in determining eligibility for early release schemes, alternatives to imprisonment, etc.?
 - ✓ Have specific alternative measures to detention been implemented in times of COVID-19? What has become of these measures today?
 - ✓ Are there available alternatives to institutionalisation in the case of psychiatric or social care?
 - ✓ Is involuntary placement an issue that you observe in your context? Has COVID-19 changed anything to the use of such measures?
 - ✓ Are there measures in place post-release to ensure that older persons being released have a support system on which to rely outside detention?
 - ✓ How to monitor the implementation of these measures for older persons? What are the main challenges?
3. Isolation – meaningful human contact, including in the context of COVID-19 restrictions¹⁷
 - ✓ Are older persons deprived of liberty assured daily meaningful human contact inside the place of deprivation of liberty and with the outside world, even in times of COVID-19?
 - ✓ How to monitor the legality, proportionality and non-discriminatory character of COVID-19 restrictive measures affecting older persons deprived of liberty?
 - ✓ What measures are in place to ensure that alternative measures of communication are accessible to older persons and that they receive support to use it?

¹⁷ See for e.g. <https://itccovid.org/2020/05/05/summary-sars-cov-2-related-deaths-in-french-long-term-care-facilities-the-confinement-disease-is-probably-more-deleterious-than-the-covid-19-itself/>

- ✓ Taking into consideration the digital gap, what accommodations are possible to create meaningful human contact for older persons deprived of liberty, including in times of COVID-19?
 - ✓ What is an age-friendly institutional culture (taking into consideration social and psychological aspects), and how to encourage shift towards more communal living/culture to reduce risks of isolation?
4. Accessibility, adaptability and reasonable accommodations of infrastructure, living conditions, and treatment
- ✓ What accessibility challenges do older persons encounter when deprived of liberty? (From format in which safeguards are communicated during first hours of custody, to physical barriers to mobility in detention, accessibility of complaints procedures etc.)
 - ✓ What reasonable accommodations have to be in place to ensure that the rights and human dignity of persons deprived of liberty are protected? Including, for e.g. on the use of restraints.
 - ✓ Are the needs, living conditions and treatment of older persons re-assessed as they age?
 - ✓ Do staff members receive specific training to care for older persons?
 - ✓ What are the policies and practices relating to assisted decision making, to uphold the autonomy and self-determination of older persons deprived of liberty?
 - ✓ Are separate buildings/wings desirable for housing older persons deprived of liberty? Social implications, benefits of intergenerational interactions, etc.
 - ✓ Are activities (including outdoors exercise) available to persons deprived of liberty accessible and adapted to older persons?
5. Healthcare consideration for older persons deprived of liberty and inclusion in COVID-19 response plans, including vaccination campaigns
- ✓ How can detention affect the health of older persons? (Accelerated cognitive decline, physical deterioration, mental health)
 - ✓ Upon admission, do the medical examinations address specific health risks linked to old age?
 - ✓ Are medical treatments always based on the informed consent of older persons? Are any exceptions to this principle envisaged?
 - ✓ What impact has the COVID-19 pandemic had on older persons deprived of liberty? How have authorities addressed the particular vulnerability of older persons to this virus?
 - ✓ What impact have the restrictive measures put in place to prevent the spread of COVID-19 restriction had on the health and well-being of older persons deprived of liberty?
 - ✓ How is the principle of equivalence of care implemented in places of deprivation of liberty in times of COVID-19?
 - ✓ How are older persons deprived of liberty considered within the national COVID-19 vaccination roll-outs?

- ✓ To what type of psychosocial support do older persons deprived of liberty have access to?
- ✓ Do older persons in detention have sufficient access to quality palliative care?
- ✓ Are deaths in detention systematically investigated, including in the case of older persons?

Annex II: Agenda

Day 1 – June 15, 2021, 10AM to 12:15PM (CET) (2hrs)

Guiding questions for the Public webinar:

- ✓ Is enough quality data available in your context to draw a complete picture of older persons deprived of liberty? Is such data available for different types of places of deprivation of liberty?
- ✓ Is there an agreed upon threshold above which someone (in detention) is considered an older person?
- ✓ What measures exist – or can be recommended – to enable better data collection?
- ✓ How can detention affect the health of older persons? (accelerated cognitive decline, physical deterioration, mental health)
- ✓ Are medical treatments always based on the informed consent of older persons? Are any exceptions to this principle envisaged?
- ✓ Do staff members receive specific training to care for older persons?
- ✓ What impact has the COVID-19 pandemic had on older persons deprived of liberty? How have authorities addressed the particular vulnerability of older persons to this virus? How are older persons in detention considered within national vaccination roll-outs?
- ✓ What impact have the restrictive measures put in place to prevent the spread of COVID-19 restriction had on the health and well-being of older persons deprived of liberty?

Speaker	Content	Time	Total	
Laura Jaffrey, Adviser on Torture Prevention, OSCE-ODIHR	Welcome Remarks	3 min	3'	Session 1 -- PUBLIC WEBINAR
Audrey Olivier Muralt, Deputy Secretary General, APT	Welcome Remarks	3 min	6'	
Valentina Cadelo, Legal Adviser, APT (moderator)	Objective and format of the meeting	3 min	10'	
Claudia Mahler, UN Independent Expert on the enjoyment of all rights by older persons	Keynote presentation	15 min	25'	
Djordje Alempijevic MD., Member of the European Committee for the Prevention of Torture	Keynote presentation	15min	40'	
NPM representative (video from Panama)	Experience sharing: monitoring the situation of older persons deprived of liberty (prison)	5 min	45'	
NPM representative from Poland	Experience sharing: monitoring the situation of older persons deprived of liberty (other place of detention)	5 min	50'	
Triona Lenihan, Policy and International Advocacy Manager, Penal Reform International	Presentation of the PRI/APT Monitoring Tool on Older Persons	5 min	55'	
All participants	Questions and Answers	30 min	85'	

Barbara Bernath, Secretary General APT	Wrap-up, themes for further discussion	5 min	90'	
BREAK		15 min	105'	
All participants	Summary of expectations and feedback from the Jamboard / polls (led by APT/ODIHR)	30 min	135'	

Day 2 – June 16, 2021, 10AM to 12:30PM (CET) (2h30)

Speaker	Content	Time	Total	
Session 1: Monitoring Criminal Justice Detention – Moderation: Jennifer Roberts (ODIHR)				
Jennifer Roberts, ODIHR	Welcome – day 2: objectives and agenda	5 min	5'	Session 2
Anne-Sophie Bonnet, France NPM	Thematic presentation	5 min	10'	
Laura Gasparian, Armenia NPM	Thematic presentation	5 min	15'	
All participants	Questions and discussion around guiding questions	50 min	65'	
Guiding questions ✓ What are the main risks you have identified for older persons in criminal justice detention (accessibility, lack reasonable accommodation, ageing in detention, isolation, deaths in custody, etc.) ✓ What are the main monitoring challenges you have faced during COVID-19 in monitoring the situation of older people in detention? ✓ How does institutional culture impact on the situation of older persons in detention? What is an age-friendly institutional culture (taking into consideration social and psychological aspects), and how to encourage shift towards more communal living/culture to reduce risks of isolation?				
BREAK		15 min	80'	
Session 2: Alternatives to Detention – Moderation: Alexis Comninos (APT)				
United Kingdom NPM	Thematic presentation	5 min	10'	Session 3
Luxembourg NPM	Thematic presentation	5 min	15'	
Validity (CSO)	Thematic presentation			
All participants	Questions and discussion around guiding questions	50 min	140'	
Alexis Comninos, APT	Wrap-up and what to expect on Day 3	5 min	145'	
Guiding questions ✓ Is age a criterion in determining eligibility for early release schemes, alternatives to imprisonment, etc.? ✓ Have specific alternative measures to detention been implemented in times of COVID-19? What has become of these measures today? ✓ Are there available alternatives to institutionalisation in the case of psychiatric or social care? ✓ Have you, as an NPM, being advocating for alternatives to detention for elderly people? If so, why? And if not, why? ✓ Are there measures in place post-release to ensure that older persons being released have a support system on which to rely outside detention?				

Day 3* – June 17, 2021, 10AM to 12:30PM (CET) (2h30)

Speaker	Content	Time	Total	
Session 3: Monitoring Other places of Deprivation of Liberty (incl. social care institutions) – Moderation: Audrey Olivier Muralt (APT)				
Audrey Olivier Muralt, Deputy Secretary-General, APT	Welcome – day 3: objectives and agenda	5 min	5'	Session 4
Aigul Taabaldyeva, Kyrgyzstan NPM (TBC)	Thematic presentation	5 min	85'	
Przemysław Kazimirski, Poland NPM (TBC)	Thematic presentation	5 min	90'	
Johannes / Jannicke, Norway NPM (TBC)	Thematic presentation			
All participants	Questions and discussion around guiding questions	50 min	65'	
<p>Guiding Questions:</p> <ul style="list-style-type: none"> ✓ In what other type of place/institutions are older people deprived of liberty in your country? Are you monitoring them? If not, why? What are the obstacles & challenges to monitoring? ✓ Do you encounter particular challenges in conducting interviews with older persons? (E.g. impact of ageing-related illnesses such as dementia, Alzheimer, etc.) ✓ Do older persons in detention have sufficient access to quality health care (including palliative)? ✓ Is involuntary placement an issue that you observe in your context? Has COVID-19 changed anything to the use of such measures? ✓ What are the policies and practices relating to assisted decision making, to uphold the autonomy and self-determination of older persons deprived of liberty? 				
BREAK		15 min	80'	
Session 4 Group Discussions – Way forward – Moderation: Laura Jaffrey (ODIHR)				
Laura Jaffrey, ODIHR	Presentation of Objectives	3 min	83'	Session 5
All participants (in groups)	Break out rooms – three groups, allocated on basis of interest (2 rotations)	40 min	123'	
All participants (in plenary)	Rapporteurs present results	15 min	140'	
Audrey Olivier Muralt, Deputy Secretary-General, APT	Concluding remarks / wrap-up	5 min	145'	
Laura Jaffrey, ODIHR	Concluding remarks / wrap-up	5 min	150' 2h30	

Annex III. Sources

- Latest thematic report of the UN Independent Expert on the enjoyment of all human rights by older persons, to the General Assembly, A/75/205, 2020.
Available here: <https://undocs.org/A/75/205>.
- Submission of the UN Independent Expert on the enjoyment of all human rights by older persons to the Inter-American Commission on Human Rights, on the issue of vulnerabilities in detention.
Available here: http://www.corteidh.or.cr/sitios/observaciones/OC-29/14_Exp_Indepen.pdf.
- Penal Reform International, Global Prison Trends report, 2020 (at page 25)
Available here: <https://cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf>
- UN Department of Economic and Social Affairs (UNDESA), Issue Brief: Older Persons and COVID-19 A Defining Moment for Informed, Inclusive and Targeted Response, 2020.
Accessible here: <https://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/04/POLICY-BRIEF-ON-COVID19-AND-OLDER-PERSONS.pdf>
- UN Committee on Economic Social and Cultural Rights, General Comment 6, on the Economic, social and cultural rights of older persons, E/1996/22, 1995.
Available here: <https://www.refworld.org/pdfid/4538838f11.pdf>
- UN Principles for Older Persons, Adopted by General Assembly resolution 46/91 of 16 December 1991.
Available here: <https://www.ohchr.org/en/professionalinterest/pages/olderpersons.aspx>
- International Committee of the Red Cross (ICRC), Ageing and Imprisonment – Workshop on ageing and imprisonment: identifying and meeting the needs of older prisoners. Summary Report, June 2018.
Available here: <http://hdtse.fr/detention/ageing-and-imprisonment-summary-report.pdf>
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Factsheet: Persons deprived of their liberty in social care establishments, 21 December 2020. Accessible here: <https://rm.coe.int/1680a0cc19>
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Checklist for visits to social care institutions where persons may be deprived of their liberty, CPT/Inf (2015) 23, 22 May 2015. Accessible here: <https://rm.coe.int/16806fc22b>
- European Network of National Human Rights Institutions (ENNHRI), 'We have the same rights' – The Human Rights of Older Persons in Long-term care in Europe, 2017.
Accessible here: <http://ennhri.org/wp-content/uploads/2019/09/Report-%E2%80%9CWe-Have-the-Same-Rights%E2%80%9D-%E2%80%93Human-Rights-of-Older-Persons-in-Long-term-Care-in-Europe.pdf>
- Penal Reform International and Association for the Prevention of Torture, Older persons in detention. A framework for preventive monitoring, 2021
Accessible here: <https://www.apt.ch/en/resources/publications/older-persons-detention-framework-preventive-monitoring>

- Penal Reform international, Elderly life-sentenced prisoners: a forgotten and 'invisible' group, blog post, 23 August 2019
Accessible here: <https://www.penalreform.org/blog/elderly-life-sentenced-prisoners-a-forgotten-and-invisible/>