

Interim Guidance

COVID-19: FOCUS ON PERSONS DEPRIVED OF THEIR LIBERTY

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OHCHR and WHO

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COVID-19: Focus on Persons Deprived of Their Liberty

COVID-19 has been declared a global pandemic and as it is spreading, identified vulnerabilities such as the situation of persons deprived of their liberty in prisons, administrative detention centres, migration detention centres and drug rehabilitation centres, require a specific focus.

Persons deprived of their liberty might face higher vulnerabilities as the spread of the virus can expand rapidly due to the usually high concentration of persons deprived of their liberty in confined spaces and to the restricted access to hygiene and health care in some contexts. International standards highlight that states should ensure that persons in detention have access to the same standard of health care as is available in the community, and that this applies to all persons regardless of citizenship, nationality or migration status.

Maintaining health in detention centres is in the interest of the persons deprived of their liberty as well as of the staff of the facility and the community. The state has the obligation, [according to international human rights law](#)¹, to ensure the health care of people in places of detention. If the risks related to the virus in places of detention are not addressed, the outbreak can also spread to the general public.

The series of messages below aim at assisting OHCHR and UNCT/HCT in addressing the specific issues of persons deprived of their liberty with the responsible services and ministries (Ministry of Justice/Ministry of Interior/Ministry of Health/Agencies in charge of migration and rehabilitation centres, etc).

KEY MESSAGES

Engagement & Analysis

- Include in your analysis the situation of detention centres and places where persons are deprived of their liberty taking into consideration the right to non-discrimination and equality in access to healthcare and health services. Since there is a high risk of the disease affecting persons in these closed or restricted settings, initiate a discussion with the stakeholders on the continued legality, necessity and proportionality of such measures given the current risks.
- Engage with several stakeholders:
 - RC/HC and UNCT as well as competent authorities (law enforcement institutions, prison authorities, judiciary) and ministries (Interior, Home, Justice, Health etc) in order to initiate a discussion and provide technical advice on using the key messages document. Discussions with key stakeholders should include the impact of any state of emergency and its specific measures to the situation of detention centres, possible opportunities for release and/or non-custodial alternatives to detention. For those individuals for whom continued detention or restrictions on freedom of movement remain necessary and proportionate, the preparedness measures that can be taken to manage the risks.
 - Human rights networks, NHRIs and civil society organisations accessing detention centers to gather information, activate remote monitoring on situation in places of detention and identify advocacy opportunities.
 - Detention centres monitoring bodies, including National Human Right Institutions should continue to have access to places of detention.
 - If already established in accordance with the Optional Protocol to the [Convention Against Torture](#)², include the [National Preventive mechanisms](#).³

Advocacy to decongest the centres of detention

- Public authorities should also take immediate steps to address prison overcrowding, including measures to respect WHO guidance on social distancing and other health measures. Release of individuals, particularly those detained for offences not recognized under international law, should be prioritized.
- Authorities should also be encouraged to look carefully at the legal basis for detention, and release anyone whose detention is arbitrary or otherwise does not comply with domestic or international standards. Any deprivation of liberty must have legal grounds, must take place in accordance with procedure established by law,

¹ <https://www.ohchr.org/EN/Issues/Health/Pages/InternationalStandards.aspx>

² <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

³ <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

and those detained are entitled to have their detention reviewed by a court of law. Authorities assessing whether detention is arbitrary should consider issues such as inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. Those who are arbitrarily detained should be immediately released as their detention under these circumstances might severely impact their right to life.

- The risk of COVID-19 can be included in ongoing advocacies with authorities to ease conditions in places of detention, including overcrowding, and comply with international standards with regard to treatment of detainees⁴, without discrimination, including those subject to stricter security measures. Based on existing legislation, authorities could apply early and conditional release particularly for older persons, ill people, or others with specific risks related to COVID-19.
- COVID-19 can similarly be an opening for engagement with police, other law enforcement institutions as well as the judiciary about risks and opportunities related to pre-trial detention. Limitation of persons in pre-trial detention and implementation of non-custodial measures ([see Tokyo Rules⁵](#)) can be an effective measure that reduces risks of spreading COVID-19, which is beneficial for both detainees and law enforcement staff. Discharge is the earliest possible non-custodial measure at the pre-trial stage. Other non-custodial measures, such as conditional discharge, monetary fines, community service, probation and referral to attendance centres, may be applied at the sentencing stage. It should however be noted that cash bail systems may have discriminatory impact depending on the concerned persons financial situation.

Health

- Persons deprived of their liberty shall be receive a medical examination upon admission, and thereafter-medical care and treatment shall be provided whenever necessary.⁶ The purpose of health screening is to protect the detainee's health, detention centers staff as well as other detainees and to ensure that any illnesses are dealt with as soon as possible to avoid the spread of the virus.⁷ All detainees should have access to medical care and treatment without discrimination.⁸ Persons deprived of liberty who use drugs and receive harm reduction services should be allowed access to such services. Personal hygiene items such as soap and sanitizer should be available at no cost.
- In suspected or confirmed cases of COVID-19 all persons deprived of their liberty should be able to access healthcare, including urgent, specialised health care, without undue delay. Detention centres' administrations should develop close links with community health services and other health-care providers.
- If people are released, medical screening and measures should be taken to ensure that ill people are taken care of and proper follow up, including health monitoring, is provided.
- Particular attention should be given to specific health needs of older persons and other persons with underlying health conditions, children who are in detention with their mothers, pregnant women and persons with disabilities. Health care services should be provided to gender specific needs at all times.

Housing

- For those who may not have a residence upon release, the state should take measures to provide adequate housing, which may require the implementation of extraordinary measures as appropriate in a state of emergency, including using vacant and abandoned units and available short-term rentals.

Information

- Information on preventive health measures should be provided to persons deprived of their liberty; and efforts should be made to improve the hygiene and the cleanliness of the detention places. Such measures should be gender and age sensitive.

⁴ E.g. article 10 ICCPR provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Human Rights Committee has stated that this expresses a norm of general international law not subject to derogation (General Comment No.29, para 13(a)). Specific provisions apply to juvenile offenders, e.g. article 37(c) of the Convention on the Rights of the Child and the SMRs.

⁵ <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

⁶ Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>. See also Rule 30 of the Nelson Mandela Rules. With regard to suspicion of contagious diseases, Rule 30(d) states that they must provide for the clinical isolation and adequate treatment of the prisoner during the infectious period.

⁷ OHCHR (2005). Human rights and prisons. Manual on Human Rights Training for Prison Officials. Page 63. Available in: <https://www.ohchr.org/Documents/Publications/training11en.pdf>

⁸ Article 12.1. of the International Covenant on Economic, Social and Cultural Rights recognizes everyone's right to health, including prisoners. Principle 9 of the Basic Principles for the Treatment of Prisoners states that "prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation". <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>. Rule 24 of the Nelson Mandela Rules states that "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".

- Information on mitigating measures provided to persons deprived of their liberty as well as their families should be in languages and formats that are understandable and accessible by all, clear, and accurate. They should explain that the detention center is taking measures to protect the health of persons deprived of their liberty and the public at large. Any restrictions on rights and freedoms must be consistent with international human rights norms and principles, including legality, proportionality, necessity and non-discrimination.

Measures taken to prevent outbreaks in detention centres

- While legitimate measures are needed to prevent outbreaks of COVID-19 in prisons, authorities need to ensure human rights are respected. The procedural guarantees protecting liberty of person may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights. In order to protect non-derogable rights, including the right to life and prohibition of torture, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by measures of derogation⁹.
- There should be no restrictions to meet with legal counsel, and prison authorities should at least ensure that lawyers can speak with their client confidentially. Halting hearings may in fact exacerbate the risk of coronavirus in places of detention. In an officially declared state of emergency, States may not deviate from fundamental principles of fair trial, including the presumption of innocence¹⁰.
- Authorities should also guarantee the maximum transparency in the adoption of preventive measures and a constant monitoring of their application. The substitution of family visits by other measures, such as videoconferences, electronic communication and increased telephone communications (pay phones or mobile phones) may require sustained organizational effort from the place of detention administration. Information about the measures should be provided to detainees. Any interference with privacy or family must not be arbitrary or unlawful.¹¹
- Isolation or quarantine measures in places of detention must be legal, proportional and necessary, time-bound, subject to review and must not result in de facto solitary confinement. Quarantines should be time limited and should only be imposed if no alternative protective measure can be taken by authorities to prevent or respond to the spread of the infection.¹²

Staff in charge of detention centres

- Rights of detention centres' staff must be respected. Senior management should be proactive in planning the work of members of staff during the COVID-19 pandemic, share the emergency preparedness plan, and provide support for relatives of members of staff carrying out critical functions. Specific training should be provided to all staff to increase knowledge, skills and behaviours related to necessary healthcare and hygiene provisions.¹³ Prison staff should be provided with soap, hand sanitizer and personnel protective equipment.

⁹ Article 9 of the ICCPR and General Comment No.35.

¹⁰ Human Rights Committee General Comment No.29.

¹¹ Article 17 of the ICCPR.

¹² Coronavirus: Healthcare and human rights of people in prison, p 8, Briefing Note 16 March 2020, Penal Reform International, <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>.

¹³ Coronavirus: Healthcare and human rights of people in prison, p 10, Briefing Note 16 March 2020, Penal Reform International, <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>.