

COVID-19 and its impact on prison monitoring and freedom of expression

- a compilation of useful resources

International Partnership for Human Rights

IPHR International Partnership for Human Rights



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Introduction

COVID 19 has plunged the world into a serious health crisis. According to the World Health Organization, COVID-19 has now been confirmed in more than 195 countries and territories around the world. The number of infected people increases every day, and the death toll is constantly rising. States are adopting far reaching and severe measures to contain the spread of this virus and to protect vulnerable people.

However, there are fears that many governments are also taking advantage of this crisis in order to crack down on human rights. We, as civil society, must remain vigilant and subject all government measures to review from a human rights perspective.

This compilation is intended to provide an overview of some of the key human rights standards and guidelines in relation to states' Covid-19 responses, with a particular focus on prisons and other places of detention and the fundamental freedoms of information and expression.

The compilation is by no means exhaustive, but rather reflects a selection of useful guidelines and tools for use in the middle of the pandemic crisis.

We hope that it will serve as a valuable and practical resource tool for civil society.

Prisons and other places of detention

Human rights based crisis response

World Health Organization (WHO) (Preparedness, Prevention and Control of COVID-19 in Prisons and other Places of Detention Interim *Guidance*, 15 March 2020).



In its introduction to the Interim Guidelines, the WHO outlines the following principles for adequate health responses and maintaining secure, safe and humane detention settings:

- The provision of health care for people in prisons and other places of detention is a state responsibility.
- People in prisons and other places of detention should enjoy the same standards of health care that are available to persons in the outside community, without discrimination on the grounds of their legal status.
- Adequate measures should be in place to ensure a gender-responsive approach in addressing the COVID-19 emergency in prisons and other places of detention.
- Prisons and other detention authorities need to ensure that the human rights of those in their custody are respected, that people are not cut off from the outside world, and – most importantly – that they have access to information and adequate healthcare provision.

Contact with the outside world

WHO (Preparedness, Prevention and Control of COVID-19 in Prisons and other Places of Detention Interim *Guidance*, 15 March 2020).

Pp 21: Consideration of access restriction and movement limitation: An assessment of each case and setting should be undertaken by prison staff in conjunction with the local public health agency. Advice on the management of staff or people in prison or places of detention will be based on this assessment. A temporary suspension of on-site prison visits will need to be carefully considered in line with local risk assessments and in collaboration with public health colleagues, and should include measures to mitigate the negative impact such a measure is likely to have on the prison population. The specific and disproportionate impact on different types of prisoners, as well as on children living with their parent in prison, must be considered. Measures to restrict movement of people in and out of the detention setting, including restricting transfers within the prison/detention system and limiting access to non-essential staff and visitors, need to be considered carefully in line with



appropriate risk assessments, as such restrictions will have a wider impact on the functioning of the detention system. Measures that may be considered include, as appropriate, restriction of family visits, reducing visitor numbers and/or duration and frequency of visits, and introduction of video conferencing (e.g. Skype) for family members and representatives of the judicial system, such as legal advisers. In particular: screening may be considered at entrance with self-reporting questionnaire to exclude those with symptoms; visitors who feel unwell should stay at home and not attend the establishment; staff must stay at home and seek medical attention should they develop any relevant signs and symptoms. A workplace protocol for how to manage such situations, including a suspected or confirmed COVID-19 case or their contacts, should be in place.

Fair Trials, The Public Health Need to Keep People out of Detention - Practical *Guidance*, Statement issued on 21 March 2020.



FAIR TRIALS CALLS ON ALL PRISON ADMINISTRATIONS TO:

- ensure that people who are incarcerated pending trial are able to meet their lawyers in person and, where this is not possible, provide for unfettered, free access to confidential telephone lines and videolinks to enable detainees to exercise their right to access a lawyer.
- ensure that bans on visitation by lawyers and friends and family of prison residents are limited to specific risks and limited in time to enable in-person access whenever possible.
- provide protective gear in lieu of limiting access to lawyers and observers.

On the need to continue prison monitoring during crisis

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25 March 2020)



Key messages: ***“Do no harm”*** and ***“equivalence of care”*** principles,

ON NATIONAL PREVENTATIVE MECHANISMS:

“NPMs should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken”.

- The SPT would emphasise that whilst 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 SPT considers that NPMs 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 NPMs 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 which detention systems and those responsible for them now face.

- That where visiting regimes are restricted for health-related reasons, provide sufficient compensatory alternative methods for detainees to maintain contact with families and the outside world, for example, by telephone, internet/e mail, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free;
- 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;
- 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;
- Provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible;
- The SPT concludes that it is not possible to predict accurately 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 SPT and NPMs must be conscious of the 'do no harm' principle as they undertake their work. This may mean that NPMs should adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public, detention 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 extra-ordinary measures which states have had to take. It is the responsibility of the SPT and of NPMs to respond in imaginative and creative ways to the novel challenges they face in the exercise of their OPCAT mandates.

Other prisoners' rights

OHCHR/WHO, IASC Interim *Guidance* COVID-19: Focus on Persons Deprived of their Liberty, 27 March 2020.



SOME OF THE KEY MESSAGES TO STATE AUTHORITIES URGE THEM TO:

- analyse the situation of detention centers and places where persons are deprived of their liberty, including juvenile detention and rehabilitation centers, taking into consideration the specific context, the right to non-discrimination and equality in access to healthcare and health services, paying particular attention to persons deprived of liberty belonging to vulnerable or high-risk groups, such as the elderly, women, children, and persons with disabilities, amongst others. 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, and possible alternatives;
- engage with key stakeholders: Resident Coordinator/Humanitarian Coordinator and United Nations Country Teams as well as competent authorities, at national and subnational level, (law enforcement and prison authorities, immigration officials, Corrections, Social Welfare, judiciary) and ministries (Interior, Home, Justice, Health etc) in order to initiate discussion and offer 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, National Human Rights Institutions and civil society organizations accessing detention centers should gather information, conduct health assessments, activate available monitoring on situation in places of detention and identify advocacy opportunities. Detention centers monitoring bodies, including National Human Right Institutions and other entities with relevant monitoring mandates, should continue to have access to places of detention. If already established in accordance with the Optional Protocol to the Convention Against Torture, include the National Preventive mechanisms.
- address prison overcrowding, release of individuals, including children, persons with underlying health conditions, persons with low risk profiles and who have committed minor and petty offences, persons with imminent release dates and those detained for offences not recognized under international law, should be prioritized.
- Use non-custodial alternatives to migrant detention;
- examine the legal basis for detention carefully, and release anyone whose

detention is arbitrary or otherwise does not comply with domestic or international standards.

- Follow international standards, which 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.
- Ensure that any detention measures introduced for the purpose of managing risks to public health, including when applied to people arriving from other countries, are necessary, proportionate and subject to regular review; must not be arbitrary or discriminatory, must be based on an individual assessment, must be authorized by law in accordance with applicable due process and procedural safeguards, must be for a limited time period and subject to periodic review, and must otherwise be in line with international standards. Health concerns do not justify the systematic detention of individuals or groups of migrants, including refugees.

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, issued on 20 March 2020



- The basic principle must be to take all possible action to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of staff.
- WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty.
- Staff availability should be reinforced, and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty.
- Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures
- As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants
- As regards the provision of health care, special attention will be required to the specific needs of detained persons with particular regard to vulnerable

groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for COVID-19 and pathways to intensive care as required. Further, detained persons should receive additional psychological support from staff at this time.

- While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).
- In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day
- Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times. Precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances.
- Monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the 'do no harm' principle, in particular when dealing with older persons and persons with pre-existing medical conditions.

Council of Europe, Statement of Commissioner for Human Rights, Dunja Mijatovic, COVID-19 Pandemic: Urgent Steps are Needed to Protect the Rights of Prisoners in Europe, 6 April 2020

THE COMMISSIONER FOR HUMAN RIGHTS URGES MEMBER STATES

- to safeguard the rights and health of all persons in prison during the COVID-19 pandemic
- to make use of all available alternatives to detention whenever possible and without discrimination
- to ensure that the human rights of all those who remain in detention are upheld while taking the specific needs of the most vulnerable detainees, persons with disabilities, pregnant women and juvenile detainees into account



THE COMMISSIONER FOR HUMAN RIGHTS REMINDS STATES THAT

- that any restrictions imposed on detainees should be non-discriminatory, necessary, proportionate, time-limited and transparent. For instance, where restrictions to family visits and other outside contacts appear necessary, they should imperatively be mitigated by alternative arrangements such as extended access to phone or video communications
- that the absolute nature of the prohibition of torture and ill-treatment should never be compromised by measures taken in prisons including in the case of isolation for health reasons
- that all measures should be taken to protect the right to life and to health of prisoners and prison staff in line with WHO Europe's recommendations
- that prisoners should continue to have access to information, legal assistance and independent complaint mechanisms.
- that prison monitoring mechanisms should be able to continue to oversee the situation while taking precautions to avoid exposing people to further risks ("do no harm" principle)
- to urgently adopt and implement a humane and comprehensive crisis plan supported by adequate human and financial resources, and which caters to the needs of those who leave prisons, those who remain in detention and prison staff. This should be done in consultation and co-operation with relevant human rights stakeholders, in particular National Preventive Mechanisms, other independent monitoring bodies, national human rights structures and human rights NGOs.

Penal Reform International, Coronavirus: Healthcare and human rights of people in prison, 16 March 2020;

KEY MESSAGES:

Do no harm, equality, transparency, humanity: values should guide the criminal justice sector's response to coronavirus

- Any limitations on contact with the outside world should be proportionate, including by being time limited and non-discriminatory.
- While restrictions on face-to-face or contact visits for people in detention can be legitimate to prevent COVID-19 outbreaks in facilities, authorities bringing in such measures need a comprehensive and transparent decision-making policy.
- In case of restrictions, these need to be proportionate to the goal of preventing (or responding to) an outbreak.
- Contact visits must be replaced by increased means and opportunities of contacting the outside world, for example, by phone, emails or video calls.



- Decisions to limit or restrict visits need to bear in mind that contact is essential to the mental well-being of people in detention and can reduce levels of violence. In many countries it is common for visitors to bring prisoners supplies of food, drinks, sanitary items and medicine.
- Furthermore, restricting visits from legal representatives can bring increased levels of anxiety and impact on the right to fair trials.
- For caregivers, separation from children can bring a whole host of consequences for both the caregiver and the child(ren) affected.
- Any decision should be communicated promptly to all people affected with clear information on the restrictions and time periods for review or lifting of such policies.

Reduce prisoner numbers

Fair Trials, The Public Health Need to Keep People out of Detention - Practical Guidance, Statement issued on 21 March 2020, <https://www.fairtrials.org/news/public-health-need-keep-people-out-detention-practical-guidance>

Fair Trials urges all judicial authorities and criminal justice actors to take urgent action to reduce the number of people being held in pre-trial detention immediately as a matter of public health and safety, and to place arrested persons in pre-trial detention only as a measure of last resort.



Freedom of expression/access to information

UN/OSCE/IACHR, COVID-19: Governments must promote and protect access to and free flow of information during pandemic, say international media freedom experts (Joint press release of David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Harlem Désir, OSCE Representative on Freedom of the Media and Edison Lanza, IACHR Special Rapporteur for Freedom of Expression)



KEY MESSAGES:

- Governments must provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging.
- Internet access is critical now, and government should refrain from blocking internet access; broad restrictions on access to the internet cannot be justified on public order or national security grounds
- Governments must protect work of journalists; journalism serves a crucial function at a moment of public health emergency, particularly when it

aims to inform the public of critical information and monitors government actions.

- It is essential that governments and internet companies address disinformation in the first instance by themselves providing reliable information. That may come in the form of robust public messaging, support for public service announcements, and emergency support for public broadcasting and local journalism (for instance, through government health advertisements).

Surveillance measures

UN/OSCE/IACHR, COVID-19: Governments must promote and protect access to and free flow of information during pandemic, say international media freedom experts (Joint press release of David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Harlem Désir, OSCE Representative on Freedom of the Media and Edison Lanza, IACHR Special Rapporteur for Freedom of Expression)



KEY RECOMMENDATIONS TO STATES:

- It is essential that governments provide truthful information about the nature of the threat posed by the coronavirus. Governments everywhere are obligated under human rights law to provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging.
- Internet access is critical at a time of crisis. It is essential that governments refrain from blocking internet access; in those situations where internet has been blocked, governments should, as a matter of priority, ensure immediate access to the fastest and broadest possible internet service. Especially at a time of emergency, when access to information is of critical importance, broad restrictions on access to the internet cannot be justified on public order or national security grounds.
- The right of access to information means that governments must be making exceptional efforts to protect the work of journalists. Journalism serves a crucial function at a moment of public health emergency, particularly when it aims to inform the public of critical information and monitors government actions. We urge all governments to robustly implement their freedom of information laws to ensure that all individuals, especially journalists, have access to information.
- We share the concern that false information about the pandemic could lead to health concerns, panic and disorder. In this connection, it is essential that governments and internet companies address disinformation in the first instance by themselves providing reliable information. That may

come in the form of robust public messaging, support for public service announcements, and emergency support for public broadcasting and local journalism (for instance, through government health advertisements). Resorting to other measures, such as content take-downs and censorship, may result in limiting access to important information for public health and should only be undertaken where they meet the standards of necessity and proportionality. Any attempts to criminalise information relating to the pandemic may create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression.

- We are aware of growing use of tools of surveillance technology to track the spread of the coronavirus. While we understand and support the need for active efforts to confront the pandemic, it is also crucial that such tools be limited in use, both in terms of purpose and time, and that individual rights to privacy, non-discrimination, the protection of journalistic sources and other freedoms be rigorously protected. States must also protect the personal information of patients. We strongly urge that any use of such technology abide by the strictest protections and only be available according to domestic law that is consistent with international human rights standards.

Article 19, COVID-19: States use of digital surveillance technologies to fight pandemic must respect human rights, Statement issued on 2 April 2020

KEY RECOMMENDATIONS:

- Surveillance measures adopted to address the pandemic must be lawful, necessary and proportionate. They must be provided for by law and must be justified by legitimate public health objectives, as determined by the appropriate public health authorities, and be proportionate to those needs. Governments must be transparent about the measures they are taking so that they can be scrutinized and if appropriate later modified, retracted, or overturned. We cannot allow the COVID-19 pandemic to serve as an excuse for indiscriminate mass surveillance.
- If governments expand monitoring and surveillance powers then such powers must be time-bound, and only continue for as long as necessary to address the current pandemic. We cannot allow the COVID-19 pandemic to serve as an excuse for indefinite surveillance
- States must ensure that increased collection, retention, and aggregation of personal data, including health data, is only used for the purposes of responding to the COVID-19 pandemic. Data collected, Fed, and aggregated to respond to the pandemic must be limited in scope, time-bound in relation to the pandemic and must not be used for commercial or any other purposes. We cannot allow the COVID-19 pandemic to serve as an excuse to gut individual's right to privacy.
- Governments must take every effort to protect people's data, including ensuring sufficient security of any personal data collected and of any devices,



applications, networks, or services involved in collection, transmission, processing, and storage. Any claims that data is anonymous must be based on evidence and supported with sufficient information regarding how it has been anonymized. We cannot allow attempts to respond to this pandemic to be used as justification for compromising people's digital safety.

- Any use of digital surveillance technologies in responding to COVID-19, including big data and artificial intelligence systems, must address the risk that these tools will facilitate discrimination and other rights abuses against racial minorities, people living in poverty, and other marginalized populations, whose needs and lived realities may be obscured or misrepresented in large datasets. We cannot allow the COVID-19 pandemic to further increase the gap in the enjoyment of human rights between different groups in society.
- If governments enter into data sharing agreements with other public or private sector entities, they must be based on law, and the existence of these agreements and information necessary to assess their impact on privacy and human rights must be publicly disclosed – in writing, with sunset clauses, public oversight and other safeguards by default. Businesses involved in efforts by governments to tackle COVID-19 must undertake due diligence to ensure they respect human rights, and ensure any intervention is firewalled from other business and commercial interests. We cannot allow the COVID-19 pandemic to serve as an excuse for keeping people in the dark about what information their governments are gathering and sharing with third parties.
- Any response must incorporate accountability protections and safeguards against abuse. Increased surveillance efforts related to COVID-19 should not fall under the domain of security or intelligence agencies and must be subject to effective oversight by appropriate independent bodies. Further, individuals must be given the opportunity to know about and challenge any COVID-19 related measures to collect, aggregate, and retain, and use data. Individuals who have been subjected to surveillance must have access to effective remedies.
- COVID-19 related responses that include data collection efforts should include means for free, active, and meaningful participation of relevant stakeholders, in particular experts in the public health sector and the most marginalized population groups.

Emergency measures

UN OHCHR, COVID-19: States should not abuse emergency measures to suppress human rights – UN experts, Statement 16 March 2020

- any emergency response to the coronavirus must be proportionate, necessary and non-discriminatory;



- emergency declarations based on the Covid-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals;
- it should not function as a cover for repressive action under the guise of protecting health nor should it be used to silence the work of human rights defenders;
- human rights-based approach to regulate this pandemic.

Human rights – tools and resources

- **International Service for Human Rights (ISHR)**, Protecting Human in Times of COVID-19. A Brief Overview of Statements and Recommendations by the UN Human Rights Mechanisms
https://www.ishr.ch/sites/default/files/documents/protecting_human_rights_in_times_of_covid-19.pdf
- **Human Rights Watch**, Human Rights Dimensions of COVID-19 Response
https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577
- **Amnesty International**, COVID-19: How human rights can help protect us
<https://www.amnesty.org/en/latest/news/2020/03/coronavirus-how-human-rights-help-protect-us/>
- **UN Office Belarus**, Права человека во время распространения коронавируса
<https://un.by/novosti-oon/prava-cheloveka/4951-prava-cheloveka-vo-vremya-rasprostraneniya-koronavirusa>
- **International Partnership for Human Rights (IPHR)**
IPHR - Tajikistan: transparency key to building public trust on COVID-19
<https://www.iphronline.org/tajikistan-transparency-key-to-building-public-trust-on-covid-19.html>
IPHR - Kyrgyzstan, NGOs urge Kyrgyzstan to release Azimjon Askarov amid COVID-19 crisis
<https://www.iphronline.org/ngos-urge-kyrgyzstan-to-release-azimjon-askarov-amid-covid-19-crisis.html>
- **CIVICUS**, States should put human rights at the centre of all responses to COVID-19, Media release 24 March 2020
<https://www.civicus.org/index.php/media-resources/media-releases/4357-civicus-states-should-put-human-rights-at-the-centre-of-all-responses-to-covid-19>

CIVICUS made the following key recommendations to states:

- Collaborate with the media and civil society to be transparent in responding to threats posed by COVID-19. Address misinformation at all times without relying on censorship and criminal sanctions;
 - Refrain from using responses to COVID-19 as a pretext to impose restrictions of civil society, target human rights defenders and curb online freedoms;
 - Release all human rights defenders and political prisoners who were imprisoned for their human rights activities, or for expressing views contrary to those of the state;
 - Lift emergency laws and relax measures imposed to curb the spread of the virus as soon as the threats diminish;
 - Maintain reliable and unfettered access to the internet and end all deliberate interference with the right to access and share information.
- **OHCHR** COVID-19 Guidance

https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx?fbclid=IwAR3vrFOEkRi0OpBsdwhZ1GYxxMza66U9nvT_MPtRq1kMYVDfoiYfpb0gRts