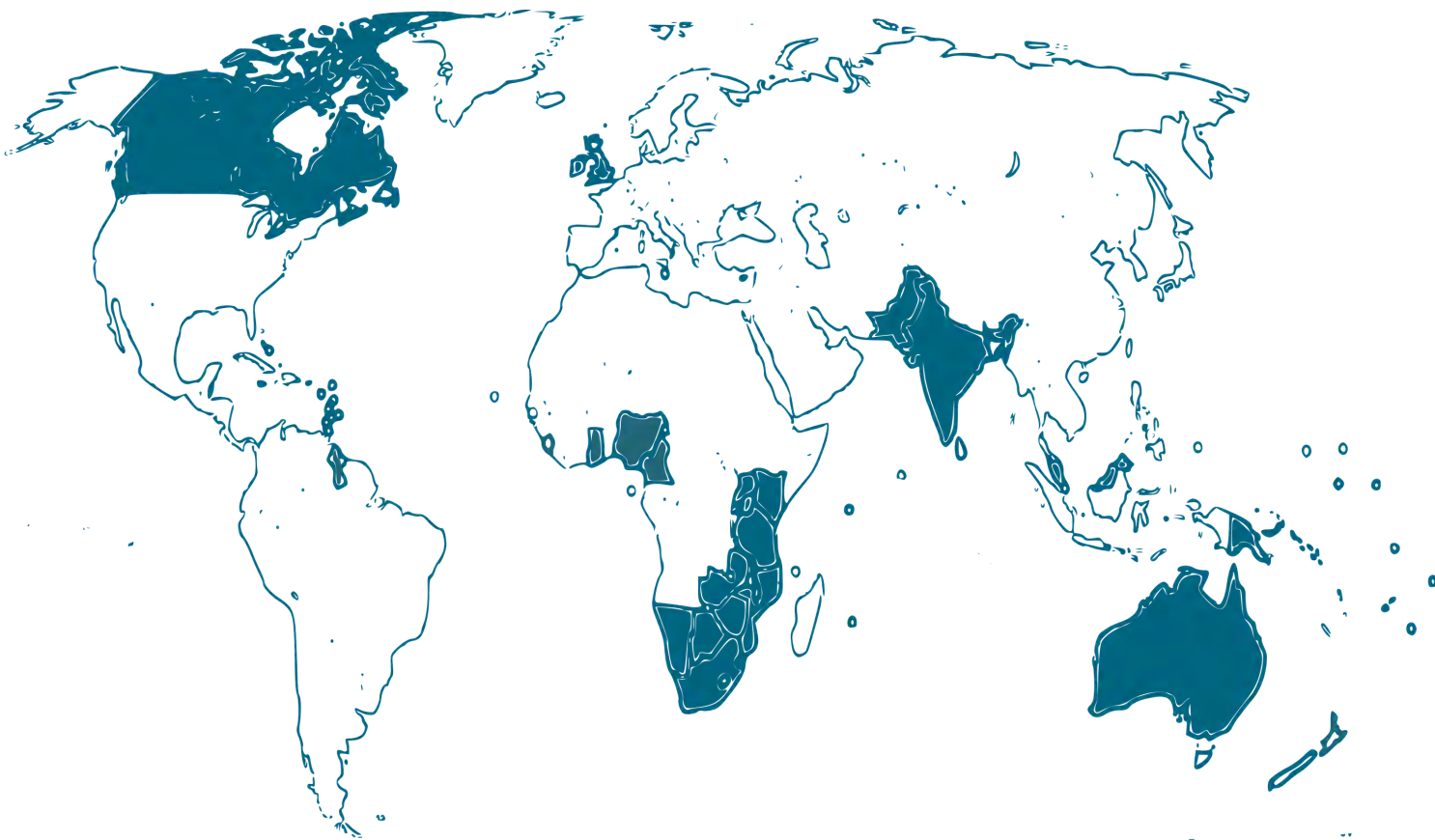


COVID - 19 and Prisons in the Commonwealth

ENSURING AN EFFECTIVE RESPONSE



With the rising spread of the pandemic COVID-19 across the Commonwealth and globally, this document has been prepared by the Commonwealth Human Rights Initiative to assist all governments, prison departments, judiciary, legal services institutions and other stakeholders to undertake effective measures to ensure protection of all prisoners, prison administrators and staff, prison visitors and all persons associated with prisons.

I. INTRODUCTION

The World Health Organization (WHO) has declared the COVID-19 or Coronavirus, as a pandemic. The virus has created havoc, and as on 6th April 2020, it has affected more than 1 million persons in 208 countries. The virus is already on the spread in 45 of the 54 countries in the Commonwealth, with the infection having spread vastly in UK and Northern Ireland. Not far behind are Canada, Australia, Pakistan and India, and rest of the Commonwealth countries.

Though every single person is vulnerable, prisoners detained in prisons¹ are at the most risk owing to the closed prison setting and proximity in common living spaces. The United Nations High Commissioner for Human Rights, Michelle Bachelet, has urged Governments “not to forget those behind bars” and to protect those working in closed facilities in their overall efforts to contain the pandemic.² She emphasised that detention facilities in many countries are overcrowded, making physical distancing and self-isolation practically impossible. She asked governments to act quickly to reduce the number of people in detention, noting the positive steps taken by many countries already. While emphasising the use of imprisonment as the last resort, she expressed a deep concern that ‘some countries are threatening to impose prison sentences for those who fail to obey – an action that is likely to exacerbate the grave situation in prisons and do little to halt the disease’s spread’.

People in detention often live in poor hygiene conditions, have inadequate access to health facilities and are completely dependent on the authorities to exercise their right to health as compared to a free person outside. In ordinary times, prisons have always been low priority for state governments, let alone in emergency situations, which has become apparent after the outbreak. Overcrowded prisons with high turnover and intolerable living conditions have the potential of becoming epicentres for outbreak of the deadly virus. Therefore, governments must take steps to proactively reduce the risk of the contagion within prisons and correctional facilities to protect the prisoners, prison administration and staff as well as visitors associated with these facilities.

According to numerous media reports, prisoners and prisons staff across at least eight countries, namely, UK, Canada, USA, Iran, Israel, China, Italy and France have tested positive for COVID-19. Moreover, on 25th March 2020, the media reported the death of the first UK inmate due to coronavirus.³ Generally speaking, the number of positive cases is increasing exponentially inside and outside prisons by the day.

¹ The term prisons is used to denote places of confinement for unsentenced and sentenced prisoners.

² <https://news.un.org/en/story/2020/03/1060252>.

³ <https://www.bbc.com/news/uk-england-cambridgeshire-52047003>.

Several countries in the Commonwealth, including India, Singapore, the Maldives, South Africa, Jamaica, Australia, New Zealand, UK etc. have taken precautionary measures to contain the spread of the COVID-19. The WHO has also published an interim guidance document on “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”, in which it emphasises the need for authorities to make appropriate contingency plans in prisons to prepare for responding to COVID-19 crisis.⁴

It is the duty of the State and its duty-holders to ensure the physical and mental well-being of the person who is deprived of liberty. This document has been prepared to provide guidance on precautionary measures that may be undertaken by governments, prison administrators, courts, legal services authorities, human rights institutions, prison monitors, etc. to prevent and contain the spread of the COVID-19 in prisons.

It is vital to remember that while one must take all adequate steps to limit infections, it is important to uphold human rights principles and ensure that no undue hardships are cast upon prisoners in the garb of precautionary measures. All precautionary measures undertaken should, thus, aim at protecting the life of prisoners and ensuring fair and equal access to safety and health care facilities, equivalent to that available in the community. Therefore, CHRI urges that the following basic principles, as laid down under Nelson Mandela Rules 2015, must be adhered to by States in implementing the precautionary measures: -

- ❖ The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.⁵
- ❖ There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.⁶
- ❖ All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.⁷
- ❖ Prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories, in prison settings.⁸

⁴ http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 – page 12.

⁵ Rule 1, Nelson Mandela Rules 2015.

⁶ Rule 2, Nelson Mandela Rules 2015.

⁷ Rule 1, Nelson Mandela Rules 2015.

⁸ Rule 2, Nelson Mandela Rules 2015.

II. PRECAUTIONARY MEASURES FOR ALL PRISONS

This section provides guidance on possible precautions that may be undertaken by prison authorities/governments. These may be considered, with due to reference to applicable laws/rules/prison manuals.

1. Hygiene and Cleanliness: Cleanliness both of self and surroundings is an effective means to check the spread of contagious diseases within prisons. In particular, the Minister of Justice and Correctional Services of South Africa has affirmed the implementation of measures and tools across prisons in order to protect and prevent offenders, officials and stakeholders from infections. These essentials include gloves, masks, liquid hand wash and soap dispensers at all washing points.⁹ Moreover, surgical gloves have been provided to all officials handling registers, cash, letters and parcels. Offenders, officials and stakeholders have been advised that “after sneezing, coughing, touching one's face and using the bathroom, hands should be washed for at least 20 seconds to combat the spread of the virus”.¹⁰ However, in many countries, prisoners often do not even have access to water, are required to purchase their own soap and are responsible for cleaning their own barracks/sleeping spaces etc. As such, it is suggested that:-

1.1. Adequate provision of essentials for prisoners: Prison authorities must provide (free of cost):

- 1.1.1 soaps/hand wash in toilets inside the barracks to encourage inmates to wash their hands frequently, especially before eating anything.¹¹
- 1.1.2 cloth masks/ handkerchief to all prisoners to encourage them to cover their nose and mouth as far as possible.
- 1.1.3 floor and toilet disinfectants for maintaining sanitation inside and outside barracks as well as in toilets and bath spaces.
- 1.1.4 Sanitisers (ideally containing at least 60% alcohol) to prisoners and prison staff, where access to water is inadequate and work involves close interaction with prisoners/staff/office files etc. - such as in factory areas, administrative areas, hospitals, legal aid clinics etc.

1.2. Maintaining self-hygiene: Prisoners must be advised to:

- 1.2.1 Take bath every day and maintain personal hygiene such as cutting nails, regularly washing clothes, etc;
- 1.2.2 Cover their mouth with a handkerchief/cloth as far as possible;

⁹ Speaker notes by Minister Of Police, and Minister Of Justice And Correctional Services on the occasion of the implementation of the COVID-19 Disaster Management Regulations, 20/03/2020. <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=25327>.

¹⁰ *Ibid.*

¹¹ Nagpur Prison authority has provided soaps to the prisoners and masks to prison staff. <https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-outbreak-nagpur-jail-prisoners-supply-masks-to-govt-depts/articleshow/74723620.cms?from=mdr>.

- 1.2.3 Frequently wash their hands;
- 1.2.4 Avoid touching their faces – particularly the mouth, nose and eyes;
- 1.2.5 Clean their respective living space with water and disinfectants.

1.3. Monitoring Hygiene in wards, barracks and common areas: Prison authorities must ensure that all wards, barracks and all common areas are cleaned with water and disinfectants once everyday and sanitised every alternate day. The Government of Maldives, while observing the escalation of the virus across the world, has ensured that the Maafushi Prison, including prison cells, bathrooms, corridors and the main areas, is cleaned and disinfected.¹² The prison administration should direct warders and convict warders/ officers in-charge of a particular barrack to:

- 1.3.1 ensure that every prisoner staying in the cell/ward/barrack takes a bath every day and maintains personal hygiene such as cutting ofnails, frequent washing of clothes, etc.;
- 1.3.2 keep a constant watch on the health of prisoners. Anyone sneezing, coughing, having a fever or breathlessness must be immediately segregated from the rest and the same should be reported to the medical officer/ prison doctor at the earliest;
- 1.3.3 ensure that toilets inside the barracks have soaps all the time and encourage prisoners to keep washing their hands frequently, especially before eating anything;
- 1.3.4 encourage inmates in the barrack to cover their mouth with a handkerchief/cloth as far as possible;
- 1.3.5 ensure that the living space inside barracks is cleaned once with water every day;
- 1.3.6 ensure that footwear of prisoners is kept outside the barrack;
- 1.3.7 ensure that inmates do not sleep facing one another;
- 1.3.8 ensure that all movables in the barracks are sun dried daily;
- 1.3.9 ensure that the main gate, all doors of every barrack and toilet, windows and other spaces that are usually touched by prisoners are cleaned with disinfectants daily.

2. Awareness of Prisoners: It is important to make prisoners aware of COVID-19, its impact, implications, precautions etc. This would ensure their willingness to adhere with any restrictions imposed and effective implementation of precautionary measures undertaken by the prison authorities. This may be done through:-

- 2.1.1. **Posters:** Appropriate authorities including prisons, legal service providers, non-governmental organisations having access to prisons, may make awareness posters on COVID-19 in local languages and display them

¹² COVID-19: Govt commences work to clean, disinfect Maafushi Prison. <https://avas.mv/en/79630>.

widely across prisons. The WHO has noted that visual material is a good way of conveying key information overcoming any language barriers.¹³

2.1.2. **Awareness sessions:** Prior to application of precautionary measures, particularly those that impose restrictions on regular routines of prisoners, they must be explained by the officer-in-charge of prison, or any person deputed by him, to all prisoners through awareness sessions. The session should include provision for interaction wherein prisoners may raise queries or seek answers or even give suggestions. Prisoners may also be apprised of the benefits of self-reporting where they experience any symptoms of the virus and also of the importance of washing hands and keeping safe distance from other prisoners.

2.1.3. **Use of informative audio or videos:** Where facilities are available, informative videos may be displayed for prisoners several times a day. Pre-recorded audios may be played through public address system/ loud speakers in prisons, to provide relevant information. Also news clips or audio may be shared to apprise prisoners on latest developments on the spread of the virus. This will enable them to gather pertinent information.

3. **Steps to address overcrowding:** As aforementioned, overcrowded spaces pose a greater risk in the event of a contagion, and thus, prison administrators must immediately convene meetings with relevant authorities to address the issue of overcrowding. The WHO's guidance emphasises that "enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages".¹⁴ While transfers to prisons might be difficult given the lock-downs in several countries, some suggested measures that may be undertaken are as follows:-

3.1 **Temporary Accommodation:** Where governments/ prison departments have the authority to declare any place as temporary prisons to deal with emergency situations, they must immediately identify such temporary spaces for accommodation of prisoners where the occupancy rate of prison is nearing 100%. All such temporary spaces should adhere to basic minimum standards of detention.

3.2 **Transfers to alternative accommodation:** Where no temporary accommodation can be arranged, the prison authorities may direct for the transfer of convicts to other prisons, or seek permission of courts for the transfer of undertrials/ detainees to other prisons.

3.3 **Temporary release of convicts:** An effective means to reduce the prison population is to grant parole or any other form of temporary release for at least 60 days to convicts, in accordance with applicable laws/rules.

¹³ http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 – page 15.

¹⁴ http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 – page 4.

However, any such special release may be granted only in view of applicable restrictions on movement/lock down situation in the city/city of residence of the prisoner to ensure his/her safe travel. And where lock-down situations exist, efforts should be made to provide escorts for each released prisoner to ensure safe transit from the prison to their homes. Countries including India¹⁵ and the UK¹⁶ have released inmates in an effort to stop the spread of the virus in prisons.

3.4 **Seek intervention of courts:** Competent courts may be approached by governments/prison authorities for issuance of directions to reduce the number of admissions in prison, and liberal use of bail provisions. (see section III for more details).

4. **Medical facilities:** In general, the provision of healthcare in prison settings across the world is underfunded, understaffed and of a lower standard than in the wider community.¹⁷ This means that in the event of the virus spreading to prisons, they would be inadequately staffed to handle such crisis. This necessitates that prison administrations take proactive measures to address this shortage. These may include temporary, stop-gap arrangements as well. The following measures are suggested:

4.1 **Screening of all prisoners:** Conduct screening of all prisoners, as has been already undertaken in South Africa, Pakistan, India, Trinidad & Tobago, Singapore etc. to rule out the possibility of any infection and isolate those who exhibit symptoms of the virus.

4.2 **Periodic Health Checks:** Conduct periodic health check-up of prisoners for identifying prisoners vulnerable to COVID-19 and also encourage prisoners to self-report if they are experiencing any symptoms.

4.3 **Segregation of vulnerable prisoners:** The following categories of prisoners, who are considered more vulnerable to COVID-19, must be segregated immediately from the rest and special care must be provided:

- above the age of 50;
- diabetic;
- HIV patients;
- with respiratory problems;
- with low immunity and frequently fall ill;
- any other category - as advised by the prison doctor/ health expert/ medical officer.

15 <https://menafn.com/1099936618/Indias-overcrowded-prisons-start-releasing-inmates-amid-coronavirus-scare>.

16 <https://www.itv.com/news/utv/2020-03-30/some-prisoners-to-be-released-in-response-to-covid-19/>.

17 Global Prison Trends 2019, Penal Reform International, pull out section, pg 3. https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI-Global-prison-trends-report-2019_WEB.pdf.

- 4.4 Demarcate quarantine wards** - Prison administrators must demarcate in each prison adequate spaces to be used as quarantine wards. All such places must not usually be frequented by inmates. Where no such space may be available, the nearest hospital/other spaces where such quarantine wards are available or have been notified as such by the administration must be immediately approached.
- 4.4.1 **Quarantine for suspected prisoners:** Ensure that cases of cough, cold and fever are treated separately, and where required, such cases are isolated / segregated from other prisoners till complete recovery. .
- 4.4.2 **Detection equipment:** For prompt and early detection of possible cases, non-contact thermometers must be provided in all prisons and thermal scanners must be set up in all prisons with the population of more than 100.
- 4.4.3 **Availability of Medical Escorts:** Prisons must ensure the presence of two to five medical escorts/ police escorts/ guards to be stationed in prisons at all times to ensure that any suspected patient is immediately taken to the nearest government hospital/authorised place for further testing and isolation.
- 4.4.4 **Use of tele-medicine:** Where required, and facility is available, use of tele-medicine to receive prompt advice and prescriptions in all suspected cases should be made available.
- 4.4.5 **Medical facilities for other patients:** While it is important to ensure adequate facilities are available to respond to the virus, it is equally important to ensure that other existing patients/future patients are not neglected and that adequate medical facilities are available for them. It is also important to effectively shield ill-persons/persons visiting the prison hospitals from any suspected cases/further infections. As such the prison administrators may, in consultation with the medical officers / prison doctors / health experts, take appropriate measures.
- 5. Precautions to be undertaken during various prison processes:** In addition to precautionary steps listed above, it is also important that prison staff takes due care and caution in the conduct of their duties.
- 5.1 At the time of Admission:**
- 5.1.1 **Search procedures:** Searching staff must be provided with masks, additional coats and sanitisers. Staff must be advised to wash hands before and after conducting the search. All items, including contrabands recovered, must be duly cleaned before storage.
- 5.1.2 **Recording of travel history and possible contact with COVID-infected person:** A register may be kept at the admission desk/ or prisoners may be required to complete a 'self-declaration form' - providing information on recent travel history and possible contact with a COVID-19 infected person.

- 5.1.3 **Health Screening:** All new entrants are usually required to undergo a medical examination on admission to a prison. Each prisoner must be carefully screened by medical officers / prison doctors (who should use gloves, masks, and sanitise before and after screening each patient). Those who show symptoms of coronavirus must be immediately segregated and arrangements must be made to send them to the nearest government health facility, designated to treat such cases, for further testing and treatment. In this vein, the Singapore Prison Service has ruled a “compulsory temperature screening for all staff and visitors at all access points into prison facilities,” as well as a specific treatment for new admitted prisoners: “*to be housed separately from the general population and monitored for 14 days, with their temperatures taken twice daily*”.¹⁸ Bangladesh has similarly imposed a mandatory 14-day quarantine for all new inmates.¹⁹
- 5.1.4 **Admission wards:** New entrants must be kept in separate isolation wards/cells/barracks for a period of 6 to 14 days, depending on the infrastructural availability in the prison.
- 5.1.5 **Foreign Nationals:** Special attention must be paid to cases of foreign national prisoners, and those who have travelled from abroad within the last 30 days, must be kept in compulsory quarantine for 14 days.
- 5.1.6 **Basic information:** All new entrants must be informed of their rights and duties, and in particular, all precautionary measures in place against COVID-19, including precautions that they are supposed to observe once lodged in cells/barracks with other prisoners.
- 5.1.7 **Provision of basic essentials:** In addition to the other basic essentials that are provided to new entrants, they must be provided with at least two soap bars, washing powder/bars and a mask/handkerchief/cloth.

5.2 Visits by family, friends and legal representatives: Many prisons across the globe have completely banned visitation for a specific period of time.²⁰ In the African region, departments of correctional services and prisons have decided to suspend all visits for a specific length of time, in particular, from 21 to 30 days. This measure aims to protect both, prisoners and officials, from infections

¹⁸ Measures taken at Singapore prisons to protect staff, inmates from COVID-19. <https://sg.news.yahoo.com/measures-taken-at-singapore-prisons-to-protect-staff-inmates-from-covid-19-062726203.html>.

¹⁹ <https://en.prothomalo.com/bangladesh/steps-taken-to-prevent-virus-spread-in-jails>.

²⁰ “Prison visits have been banned outright or restricted in some form. In the Philippines, where there are 33 cases reported, prison visits were banned from 11 March for a one-week period and Hungary (which has had 12 cases) brought in a ban on physical contact during visits. Kuwait, with 69 cases, also banned prison visits. The Netherlands also banned prison visits, except for children who are in detention, following the government measures closing most public places and lifting the right to hold assemblies as of 13 March 2020.”, Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’, Page 5-6.

and to contain effects of the virus.²¹ Likewise, the Maldives Government has suspended the family visits of inmates for general safety as well as the possibility of the family to send clothes to an inmate. It has otherwise increased the family phone calls.²² In Trinidad and Tobago, the Prison Service has decided for feasible measures amidst the current constraints, including one visit per week conducted by one person per prisoner, as well as a mandatory screening before the visit is conducted by trained personnel via standard questionnaire and thermal scanner.²³ Similar restrictions have been decided by the Guyana Prison Service. In particular, it has allowed one visit per week for undertrial and appellant prisoners and one visit per month of 10 minutes duration for the convicted prisoners.²⁴ In New Zealand, along with private visits, authorities have temporarily suspended volunteer visits, non-essential temporary removals, release to work activities and visits by researchers and have been considering the use of phone calls, emails or letters as alternatives.²⁵

While a complete ban might be justified as it is not only essential to protect prisoners from contact with the virus from the outside world, but also required to protect their family and friends who will risk encountering the virus during commute or waiting in large groups outside prisons. At the same time, one must be aware that a complete shutdown of all modes of communication for prisoners can impact prisoners both emotionally and mentally.

Given the rising spread of COVID-19 cases, prisoners would naturally be worried about the safety of their families. This is further expounded where mothers are confined in prisons and are unable to meet their children as separation from children can bring a whole host of consequences for both the caregiver and the child(ren). Further, restricting visits from legal representatives can increase the anxiety levels of prisoners and impact on the right to fair trial.²⁶ Thus, a complete lack of communication would not only add to their anxiety, but

- ²¹ State Department for Correctional Services Principal of Kenya (<https://www.nation.co.ke/news/Coronavirus-Kenya-Prisons-suspends-visits/1056-5499588-a3cspxz/index.html>); Rwanda Correctional Service, RCS (https://rcs.gov.rw/index.php?id=51&tx_news_pi1%5Bnews%5D=772&tx_news_pi1%5Bday%5D=16&tx_news_pi1%5Bmonth%5D=3&tx_news_pi1%5Byear%5D=2020&cHash=1057dfd74951ea5ea7a67f524b88427a); and Minister of Justice and Correctional Services of South Africa (<https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=25327>).
- ²² COVID-19: Govt commences work to clean, disinfect Maafushi Prison. <https://avas.mv/en/79630>.
- ²³ Prisons lock down over COVID-19. https://trinidadexpress.com/newsextra/prisons-lock-down-over-covid/article_8ec5c80a-679e-11ea-941d-cfd28e6c7b02.html.
- ²⁴ COVID-19 Advisories. <https://dpi.gov.gy/covid-19-advisories/>.
- ²⁵ COVID 19: Prison visits and community work temporarily suspended, 23/03/2020. https://www.corrections.govt.nz/news/latest_news/covid_19_prison_visits_and_community_work_temporarily_suspended.
- ²⁶ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

might lead to undesirable incidents in prison, including aggressive behaviour, rioting etc.²⁷ Learning from the recent events and to avoid such outcomes as in Sri Lanka,²⁸ officers and the prison departments must be prepared to contain and deal with possible riots, protests and unrests.

Therefore, it is recommended that any restrictions on visitation should mandatorily be accompanied by availability of alternative options²⁹ for communicating with family, friends and legal representatives, such as access to telephones and video conferencing as well as email. All such restrictions should be immediately communicated to the prisoners, and alternative mechanisms duly explained. In Australia, for instance, to guarantee protection, health and safety of all prisoners, staff and the community, the Correction Facilities have suspended all personal visits to adult prisoners.³⁰ However, considering the importance of those visits and the community connections for rehabilitation and reintegration of prisoners and for friends and family members, they have increased access to phone calls and video calls, encouraging prisoners and visitors to also write letters.³¹ As such, some possible alternatives may include:

- 5.2.1 **Phone calls:** Where phone facilities are available, prisoners must be allowed to call their families for 5-7 minutes each day/every alternate day/as frequently as they are allowed visitation (depending on the prison population and permissible limits). Until the ban on visitation is not lifted, all costs towards making calls must be borne by the prison department.

Prisons without phone facilities may consider setting up temporary phone connections to enable prisoners to speak with their family members, as frequently as they are allowed to meet them in person. Timings for different cells/wards/barracks may be fixed for administrative convenience. To ensure security, a prison officer may be asked to dial the phone number, verify the name and relation with the prisoner before handing over the phone to the prisoner.

However, due care must be taken to sanitise the phone equipment before and after each call is made. Or alternatively disposable, low cost phone covers may be made available, which may be used and replaced for each call.

²⁷ Over fears of Coronavirus, riots in prisons have erupted across the world in countries such as Italy, United States of America, Sri Lanka, Iran, Columbia, Lebanon and recently also in India (Dum Dum Correctional Home in Kolkata, West Bengal). See, for India: <https://bit.ly/3dnyQOA>; Iran: <https://bit.ly/2Wwmo9f>; U.S.: <https://abcn.ws/2wwXdZk>; Lebanon: <https://bit.ly/2UGxyFZ>; Columbia: <https://bit.ly/3blIGPd>; Sri Lanka: <https://abcn.ws/3bjKkAQ>.

²⁸ Two Sri Lankan prisoners killed and six injured amid national coronavirus lockdown. <https://www.wsws.org/en/articles/2020/03/23/slcr-m23.html>.

²⁹ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

³⁰ Our response to Coronavirus (COVID-19). <https://www.corrections.vic.gov.au/covid19>.

³¹ *Ibid.*

5.2.2 **Video conferencing:** Where available, prisoners should be permitted to use video conferencing to interact with their family/friends/legal representatives as frequently, as possible (depending on the prison population and permissible limits).

5.2.3 **Precautions for visits:** It is further suggested, and keeping in consideration the prevalent circumstances, wherein visitations may be restricted, and then re-allowed, certain precautionary measures must be in place for at least 45-60 days. These should be undertaken, especially in prisons where there are no glass partitions between the visitor and the prisoner. These include:

- A new screening protocol for visitors must be adopted which involves a series of questions being asked regarding illness, symptoms and travel outside of the country, including that of any family member, prior to be allowed to visit the prisoner.
- Not more than two visitors per prisoner must be allowed.³²
- Items from family/friends must not be allowed inside except for packed medicines. A notice may be displayed in the visitor's room in regard to the same.
- Restrict the number of prisoners during visits ensuring that there is more than one-metre distance between two prisoners. This would require increasing the timing of visitation to accommodate everyone with precautions.
- Direct all prisoners and visitors to maintain distance from the mesh and not to touch the mesh.
- Direct all prisoners and visitors to cover their mouth with a mask/handkerchief/cloth.
- Make adequate provisions for all prisoners and visitors to wash their hands before and after the visitation.

5.3 **Deferred lock in and lock up timings:** Prisons should prepare and implement separate lock-in and lock-out time-tables for different wards in the prison. This would ensure less crowding of spaces and ensure minimal contact among prisoners.

5.4 **Food and kitchen:** All prisoners are usually served food that is prepared in the kitchen. Thus, it is important to maintain proper kitchen hygiene and take abundant caution in the preparation of food. In order to ensure this, it is suggested that: -

5.4.1 **For staff or prisoners working in kitchen:**

³² Implemented by Irish Prison Service, Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

- Any person who is coughing, sneezing, has fever or exhibits any such symptoms must not be allowed to work in the kitchen.
- All persons must wash their hands frequently during the preparation of food.
- The cells/wards/barrack/s, where prisoners working in the kitchen stay, must also be cleaned with water and disinfectants everyday.
- No footwear or only sanitised footwear must be allowed in the cooking area.

5.4.2 For kitchen hygiene:

- The kitchen and utensils must be cleaned with water thoroughly before preparation of every meal.
- All kitchen cloths used during the preparation of food, for wiping etc. must be thoroughly cleaned and disinfected at least once a day.

5.4.3 For kitchen supplies procured from outside:

- As far as possible, in prisons with their own kitchen gardens, fresh produce must be used to prepare food.
- Where vegetables, milk and other food items are procured from outside, due care must be taken to wash all washable items with water and to maintain cleanliness in use of rest of the items.

5.5. Bail/releases on completion of sentence: Prison authorities must ensure that there are no unnecessary delays in release of persons where either bail has been granted by the court, or a prisoner is to be released on completion of sentence. All such prisoners must be screened before release for any possible symptoms of COVID-19 at the time of release, to prevent any spread in the community. Further, prison administration should speak to the prisoner, apprise him of prevalent lock-down and travel prohibitions and advise him/her on available modes of transport to reach his/her home safely.

5.6. Recreation and education activities: While recreational activities and education are very important, steps must be taken to ensure that during this period, such activities involve minimum physical interaction between inmates. It is recommended to completely suspend any group activities such as theatre plays etc.

5.7. Vocational training: Vocational training usually involves a visit by authorised trainers or representatives from organisations to visit prisons. It also involves close involvement of prisoners and contact with equipment etc. In view of the present risks, it is advisable to stop all vocational training activities, unless it is felt that continuation of such activity poses no perceivable risk.

5.8. Factory work: As factory work within prisons also involves close contact between prisoners, administrators, equipment etc., it is advisable to cease all factory work for the time being. However, if there is an urgent need to continue such work, for instance where prisoners are engaged in producing masks or other essential products,³³ including those required for consumption within prisons, precautions must be undertaken while carrying on such work. These may include:-

- 5.8.1 Any prisoner who is coughing, sneezing, has fever or any such symptoms must not be allowed to work in the factory.
- 5.8.2 The number of workers in the factory area can be restricted, particularly where the distance between prisoners of more than one-metre cannot be maintained.
- 5.8.3 Before commencing work, all prisoners must be asked to clean all equipment/ machines/ tools with a cloth soaked with water and disinfectant, where possible.

6. Safety Measures for Prison Staff: As much as it is important to undertake precautions to keep prisoners safe and protected from the spread of the virus, it is equally prudent to ensure adequate safety measures for prison staff are set in place. In a recent statement, Human Rights Watch (HRW) along with several other human rights organizations and human rights defenders have requested a “rapid action to ensure that inmates and staff of Pakistani prisons are provided adequate protection as cases of COVID-19 continue to increase across the country”.³⁴ In order to ensure that adequate protective measures are in place, it is suggested that:-

- 6.1 All prison staff must wash their hands/use sanitizer before entering prison or before their shift.
- 6.2 All prison staff must be instructed to wash hands regularly and frequently.
- 6.3 The officer in-charge of a prison must brief their staff to prioritise efforts to increase health-care and hygiene in prison.
- 6.4 The officer-in-charge of a prison must hold meetings with staff to apprise them of safety measures and ascertain that they are undertaking adequate security measures at their residence.
- 6.5 All prison staff must immediately inform the officer-in-charge if they have come in contact with any person suspected to be infected with the virus, or if

³³ Prison administrations in India have roped in prisoners to make face masks to address the acute demand. Kerala and Tihar Prisons are also planning to make hand sanitizers. Aligarh Prison, Uttar Pradesh:<https://bit.ly/2wvhKgT>; Chandigarh:<https://bit.ly/2xkkfmA>; Himachal Pradesh:<https://bit.ly/2QCYZPM>; Hyderabad:<https://bit.ly/3afhelO>; Bihar:<https://bit.ly/3bfhamn>; Ghaghidih Central Jail, Jharkhand:<https://bit.ly/2xj2vaS>; Maharashtra:<https://bit.ly/2J9WlwK>; Tihar Prisons:<https://bit.ly/2QBcnnt>; Parappana Agrahara, Karnataka:<https://bit.ly/33E1INT>; Kerala:<https://bit.ly/3dIEK2u>; Bihar:<https://bit.ly/2vFB4HV>.

³⁴ HRW, Statement Calling for Protecting Prison Populations of Pakistan from COVID-19. <https://www.hrw.org/news/2020/03/23/statement-calling-protecting-prison-populations-pakistan-covid-19>.

they are showing symptoms of the virus. In all such cases, they must immediately stop coming to work, and self-isolate themselves at home, or visit the nearest notified government health centre for testing and further treatment.

- 6.6 Disposable masks/ gloves/ coats and hand sanitizers must be provided to all prison staff, including security personnel who are in close proximity with prisoners or visitors during their shift. All disposable material must be carefully discarded in special bins after use.
- 6.7 If any prison staff has symptoms of the virus, they must be given paid sick leave, to avoid situations where due to financial need they come to work in the detention facility while they are unwell.³⁵
- 6.8 All necessary medical support must be provided to prison staff and their families.³⁶

7. **Monitoring of Prisons:** While it is accurate that prison visits by persons from the outside should either be stopped or conducted only when absolutely necessary, it is equally important that some form of oversight³⁷ is in place to oversee that all precautions are being taken; respond to queries of prisoners (as often prisoners are not satisfied by responses provided by prison administrators for lack of trust); and ensure arbitrary restrictions have not been enforced.

The WHO has also noted that “the COVID-19 outbreak must not be used as a justification for objecting to external inspection of prisons and other places of detention by independent international or national bodies whose mandate is to prevent torture and other cruel, inhuman or degrading treatment or punishment”.³⁸

As such it is suggested that, monitoring bodies must continue to visit prisons, and during their visit, they must visit all parts of prison, particularly separate cells, high security cells and review (with due caution) all places of quarantine/isolation, if any, to prevent excessive use of quarantine, abuse of power, use of torture or ill-treatment.³⁹

³⁵ Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’, Page 10.

³⁶ Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’, Page 10.

³⁷ “While some protective measures are legitimate, there is no evidence indicating that during the COVID-19 pandemic places of detention should not be accessed by monitoring bodies. Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’.

³⁸ http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1 – page 5.

³⁹ Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’, Page 9.

III. MEASURES IN CASE OF SUSPECTED/POSITIVE CASES OF COVID-19

1. Any prisoner who exhibits symptoms of COVID-19 i.e. fever, cough or problem in breathing or is identified by an appropriate medical staff as vulnerable/suspected must be immediately shifted to quarantine/isolation spaces⁴⁰ created on an ad-hoc basis for this purpose.⁴¹ Such quarantine must be administered by the prison authority in conformity with any prescribed guidelines of the government.
2. The prison staff must be advised to immediately inform the appropriate authorities of any suspected cases..
3. The prison administration must also inform the family members of such prisoners.
4. The medical officer of the prison must conduct a medical examination of quarantined prisoners daily and submit a report to the officer-in-charge of prisons.
5. The officer-in-charge of prisons should ensure that prison staff are regularly made aware of the protocols issued by the government/health department/other appropriate authorities from time to time.

The UK provides a good example of response to COVID-19 cases in prisons. There have been recent reports of two prisoners being diagnosed positive of the COVID-19) at HMP Manchester⁴² and at HMP High Down.⁴³ The facilities have reported that they are following Public Health England (PHE) guidance to minimise the risk of further infections. The guidance assists health-care staff and custodial/detention staff addressing coronavirus (COVID-19) in prescribed places of detention (PPDs).⁴⁴ In particular, patients with symptoms are located in appropriate isolated places, contacting the Public Health England (PHE) and the Health Protection Teams' National Health and Justice Team and Centre Health and Justice to consent immediate responses. Moreover, the guidance affirms that staff should minimise any non-essential contact with suspected coronavirus cases. The staff should also wear disposable gloves, fluid repellent surgical face mask and, if available, a disposable

⁴⁰ All such spaces must adhere to basic minimum standards laid down under various national and international documents.

⁴¹ In India, several state prison departments have have set up quarantine and isolation wards for this purpose. <https://www.indiatoday.in/india/story/coronavirus-delhi-tihar-jail-1655407-2020-03-14>; <https://www.thekashmirmonitor.net/new-arrivals-in-jk-prisons-screened-suspects-quarantined-dg-prisons-v-k-singh/>.

⁴² Manchester Prison Information. <http://www.justice.gov.uk/contacts/prison-finder/manchester>.

⁴³High Down Prison information. <http://www.justice.gov.uk/contacts/prison-finder/high-down>

⁴⁴COVID-19: prisons and other prescribed places of detention guidance, 19/03/2020. <https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

plastic apron and disposable eye protection (such as face visor or goggles) should also be worn.⁴⁵

IV. MEASURES FOR JUDICIARY

It is imperative that justice systems also join in fighting the COVID-19 pandemic. The International Legal Foundation has called upon the judiciary, emphasising its responsibility to ensure the protection of fundamental rights and equal protection of the law—even during times of crisis. Emergency courts must be up and running to address all matters that will reduce detention and prison populations and ensure the health and safety of detainees. Courts must continue to hold all critical hearings, including remand hearings and *habeas corpus* petition hearings. They must also provide a mechanism for lawyers to advance cases that are not scheduled for hearing to expedite pretrial release and criminal case dispositions.⁴⁶ Similarly, Penal Reform International, has called for an urgent review of the detention of individuals on remand. It has suggested that the cash bail systems should be lifted, to ensure that pre-trial detention is not excessively imposed. It further states that individuals most at risk, in particular older persons and individuals with mental and underlying physical health issues, should be immediately considered for release, to avoid serious consequences in case COVID-19 would spread in prisons and also to free up essential health-care services.⁴⁷

Justice systems in some countries have already taken steps in this direction. In India, this risk was acknowledged by the Supreme Court, where the court on its own motion took notice of the issue and highlighted the imminent need to take steps on an urgent basis to prevent contagion of COVID-19 virus in prisons.⁴⁸ In Pakistan, the Islamabad High Court noted that, “the confined space of a prison makes it virtually impossible to implement the policy of social distancing. The prisoners are vulnerable and exposed to suffer irreparably in case of an outbreak.” The Maldives Government has decided not to take inmates for court hearings, if they are having colds.⁴⁹

It is, thus, suggested that judicial systems across the Commonwealth may undertake proactive steps to:

⁴⁵ Ibid.

⁴⁶ Mythri Jayaraman, ILF International Fellows Advisory Council Member, <https://www.theilf.org/post/coronavirus-prisoners-and-public-defenders>.

⁴⁷ Penal Reform International’s Briefing Note on ‘Coronavirus: Healthcare and human rights of people in prison’.

⁴⁸ Suo motu writ petition civil no.1/2020). In the order dated 23.03.2020, the court has directed the State/UT Governments to constitute a High Powered Committee (HPC) to determine the category of prisoners to be released on parole or interim bail to address the risk of transmission of COVID-19 especially due to overcrowding in prisons.

⁴⁹ COVID-19: Govt commences work to clean, disinfect Maafushi Prison. <https://avas.mv/en/79630>

1. **Reduce the number of persons sent to judicial custody:** An effective measure to reduce risks associated with exposing prison populations is to reduce the number of admissions to prisons. This can be done by taking collective action to sentence less number of persons to judicial custody and liberal grant of bail. The International Legal Foundation (ILF) has called for a moratorium on new arrests and prosecutions of all non-violent offences. It has called upon governments, law enforcement and prosecutors to “immediately halt all new arrests and prosecution of minor criminal offenses... to drop pending prosecutions of minor, non-violent offences, and all cases in which the evidence against the accused is not strong.”⁵⁰ Fair Trials too urged 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”.⁵¹

2. **Reduction in execution of short-term sentences:** Another measure would be to reduce the execution of short-term sentences for the time being. For instance, in France, courts were asked to postpone the execution of short prison terms. This has led to reduction in daily prison admissions from 200 to 30.⁵²

3. **Review and order release of prisoners:** Civil society representatives in Pakistan, Canada⁵³ and Australia⁵⁴ specifically, are calling for prisoners to be released in order to protect them from the risk of the virus. In India,⁵⁵ Kenya,⁵⁶ and Trinidad,⁵⁷ the higher judiciary took the initiative and in Ghana⁵⁸ and

⁵⁰ [‘Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees’](#) by the International Legal Foundation.

⁵¹ [‘The Public Health Need to Keep People out of Detention Practical Guidance’](#) by Fair Trials
⁵² <http://www.justice.gouv.fr/la-garde-des-sceaux-10016/covid-19-mesure-daccompagnement-penitentiaire-33010.html>.

⁵³ ‘Potentially very deadly’: Advocates call for release of vulnerable women from Canada’s prisons amid COVID-19. <https://www.citynews1130.com/2020/03/21/caefs-covid-19-prisons/>

⁵⁴ Calls for some prisoners to be released from Australia’s jails due to coronavirus. <https://www.abc.net.au/news/2020-03-20/calls-for-australian-prisoners-to-be-released-due-to-coronavirus/12074182>.

⁵⁵ Coronavirus: Consider bail for all undertrials facing up to 7 years in jail to decongest prisons, Supreme Court to states - <https://www.barandbench.com/news/litigation/coronavirus-consider-bail-for-all-undertrials-facing-up-to-7-years-in-jail-to-decongest-prisons-supreme-court-to-states>

⁵⁶ Kenya has freed nearly 5000 inmates via Skype court sessions - <https://nbcpalmsprings.com/2020/04/02/kenya-has-freed-nearly-5000-inmates-via-skype-court-sessions/>.

⁵⁷ Trinidad: 388 low-risk prisoners targeted for release - <https://www.stabroeknews.com/2020/04/03/news/regional/trinidad/trinidad-388-low-risk-prisoners-targeted-for-release/>.

⁵⁸ Presidential Measures Extends to Ghana Prisons To Curb Covid-19 - <http://net2tvgh.com/presidential-measures-extends-to-ghana-prisons-to-curb-covid19/>.

Cyprus,⁵⁹ prisoners are being released by executive action. Mechanisms such as Undertrial Review Committees⁶⁰ in India, may assist in the quick identification and release of eligible prisoners on temporary bail.

However, there are certain precautions to be undertaken while releasing prisoners. In several countries, cities have gone into lock-downs, where all public transport has been banned, which poses logistical issues for prisoners released to transit to their homes. Some suggested measures are:-

- 3.1 Health Screening prior to release:** Authorities must conduct screening of prisoners for symptoms of COVID-19, i.e. fever (high temperature), cough and problem in breathing, prior to their release. No prisoner with these symptoms should be released without a proper diagnosis of the ailment, so as to prevent any inadvertent spread to their families and communities upon release.
- 3.2 Consent of prisoner:** No prisoner should be released without his/her consent.
- 3.3 Provision for safe-transit:** Authorities should make arrangements for the safe-transit of prisoners from the prison to their residence. Arrangements may include issuance of passes to families, or provision of escorts/vehicles for the journey. Special care must be taken for the transit of vulnerable groups of prisoners, including women, aged, mentally disabled etc.
- 4. Post-release subsistence:** Prior to the release of prisoners, it may be ascertained that the prisoner has a place of residence, where he can be stationed till the duration, particularly in the event of a lock-down situation. Authorities should also make provision for subsistence allowance for all released prisoners, so as to ensure they can sustain themselves post their release.
- 5. Subsequent return to prison:** Authorities must also make provisions to ensure that prisoners, upon expiration of their release terms, are admitted back to prison after proper screening at the time of return. This is to ensure that they do not transmit the virus from the community to the prison.

V. MEASURES FOR LEGAL AID PROVIDERS

The International Legal Foundation (ILF) has recently outlined some urgent, concrete actions that legal aid providers can take to protect those in detention in a bid to avert a looming public health catastrophe in the world's detention facilities

⁵⁹ Coronavirus: Cabinet to approve measures to mitigate prison overcrowding - <https://cyprus-mail.com/2020/03/31/coronavirus-cabinet-to-approve-measures-to-mitigate-prison-overcrowding/>.

⁶⁰ The Undertrial Review Committees - <https://www.humanrightsinitiative.org/download/1523350261Flyer%20-%20Undertiral%20Review%20Committee.pdf>.

and prisons.⁶¹ It has called legal aid advocates to “use all legal avenues to substantially reduce or eliminate pretrial detention”:

- a) To make applications for the immediate pretrial release of all people suspected of or charged with minor or non-violent criminal offences who pose no grave threat to public safety;
- b) To file for the pre-trial release of all of their clients, and make every effort to ensure that their clients are not being held in pre-trial detention because they cannot afford to make bail. They must request the court or other appropriate authority to release them on their own cognizance, or on an alternative measure;
- c) To call for the immediate pre-trial release of people who face heightened risk of illness or death due to COVID-19 due to age or underlying medical conditions anyone over 50 years of age;
- d) To move for courts to sentence accused persons to alternatives to incarceration whenever possible, and should explore all avenues for alternatives to incarceration, including mediation, therapeutic treatment, drug or alcohol rehabilitation, admonition, restitution, fines and probation;
- e) To proactively pursue all potential legal avenues for the release of persons who have been convicted and are currently serving prison sentences, prioritising people who face heightened risk of illness or death due to COVID-19 due to age or underlying medical conditions, as well as people who have two years or less to serve on their sentences. These requests may take the form of an application to courts to resentence a detainee from a custodial to a non-custodial sentence, e.g., a fine; an application to prison authorities for early release or sentence reduction; or a request to the appropriate government authority for sentence commutation or general amnesty; among others.

At the same time, ILF also urged for measures to protect the health and safety of legal aid providers. While their presence in court is necessary to protect the rights of their clients, legal aid providers (as judges, prosecutors, police and detention centre personnel) should take all necessary steps to protect their own personal health and safety, as well as the safety of their clients and others in the justice system. This includes practicing social distancing, following good hygiene practices, and implementing measures that reduce the number of persons necessary in court. Legal aid providers can also limit their exposure by pushing for the en-mass release of pre-trial detainees and prisoners, in lieu of a case-by-case approach. Additionally, legal aid providers should advocate for and use technology as available to continue to provide legal services remotely and safely.

⁶¹ <https://www.theilf.org/post/covid-19-legal-aid-providers-must-lead-efforts-for-immediate-release-of-people-trapped-in-detention>.

ANNEXURE A

Poster developed by Public Health England

Public Health England **Prisons and prescribed places of detention guidance**

If you have a  or  **new and continuous cough** or **high temperature**

stay at home for 7 days, if you live alone
stay at home for 14 days, if you live with others, including all household members

Only use **NHS 111** if your symptoms get worse or are no better after home isolation


Stop the spread of coronavirus

  **Wash your hands more often and for 20 seconds**

Use soap and water or a hand sanitiser when you:

- Get home or into work
- Blow your nose, sneeze or cough
- Eat or handle food

  **Cover your mouth and nose with a tissue or your sleeve (not your hands) when you cough or sneeze and throw the tissue away straight away**

 **Any prisoner or detainee with a new, continuous cough or a high temperature should be placed in protective isolation for 7 days**


Prisoners or detainees who have a new, continuous cough or a high temperature but are clinically well enough to remain in prescribed places of detention (PPDs) do not need to be transferred to hospital

Confirmed cases of coronavirus should be notified by prison or immigration removal centre (IRC) healthcare teams as soon as possible to **local Public Health England Health Protection Teams**

Staff and visitors should be reminded to maintain higher than usual standards of **hand-washing, respiratory hygiene, and cleaning**

People who are severely unwell may be transferred to appropriate healthcare facilities with usual escorts and following advice on safe transfers

1 **If a member of staff or visitor becomes unwell on site with a new, continuous cough or a high temperature, they should go home**

 Frequently clean and disinfect objects and surfaces that are touched regularly, using your standard cleaning products

Staff should wear specified personal protective equipment (PPE) for activities requiring sustained close contact with possible cases

If facing multiple cases of those displaying symptoms, 'cohorting', or the gathering of potentially infected cases into a designated area, may be necessary

PPD leaders should be assessing their estate for suitable isolation and cohorting provision

About CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation working in the area of human rights. In 1987, several Commonwealth professional associations founded CHRI, since there was little focus on human rights within the association of 53 nations although the Commonwealth provided member countries the basis of shared common laws.

Through its reports and periodic investigations, CHRI continually draws attention to the progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, the media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI's seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in the Commonwealth.

CHRI is headquartered in New Delhi, India, with offices in London, UK and Accra, Ghana.

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