



CHRI

Commonwealth Human Rights Initiative
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COVID – 19 AND THE ROLE OF UNDERTRIAL REVIEW COMMITTEE

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This note is prepared by the Commonwealth Human Rights Initiative to assist the district-level Undertrial Review Committee (UTRC) to coordinate effectively with the legal service providers, prison and police authorities in ensuring that the directions of the High Powered Committee are implemented efficiently in the prisons falling in their jurisdiction.

The Hon'ble Supreme Court vide order dated 23.03.2020 in *In Re: Contagion of COVID 19 Virus in Prisons*¹ directed that *"The Undertrial Review Committee contemplated by this Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment."*

The following suggestions are recommended in this regard:

- 1) Identification of eligible cases from all prisons in district:** Based on the directions of the High Powered Committee (HPC), UTRC must identify eligible prisoners from all prisons in the district including the central/district prison, sub-jail, special prison, women prison, high security prison, open prison or any other prison.

In addition to the category of cases directed to be released by the HPC, the UTRC must also review the following 14 categories of cases as mandated under several directions of the Hon'ble Supreme Court and as per [NALSA's Standard Operating Procedure on the functioning of UTRCs](#):

- i) Undertrials (UTPs) eligible under covered under Section 436A Cr.P.C.;
- ii) UTPs released on bail by the court, but have not been able to furnish sureties;
- iii) UTPs accused of compoundable offences;
- iv) UTPs eligible under Section 436 of Cr.P.C;
- v) UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Sections 379, 380, 381, 404, 420 IPC or alleged to be an offence not more than 2 years imprisonment;
- vi) UTPs become eligible to be released on bail u/s 167(2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;

¹ Suo Motu Writ Petition (Civil) No. 1/2020



- vii) UTPs who are imprisoned for offences which carry a maximum punishment of 2 years;
- viii) UTPs who are detained under Chapter VIII of the Cr.P.C. i.e. u/s 107, 108, 109 and 151 of Cr.P.C;
- ix) UTPs who are sick or infirm and require specialized medical treatment;
- x) UTPs women offenders;
- xi) UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- xii) UTPs who are of unsound mind and must be dealt with Chapter XXV of the Code;
- xiii) UTPs eligible for release under Section 437(6) of Cr.P.C, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case;
- xiv) Convicts who have undergone their sentence or are entitled to release because of remission granted to them.

Note: We would like to share this opportunity to share CHRI's analytical tool – EPIC – Evaluation of Prisoner Information and Cases, which can assist in the preparation of these lists. CHRI's EPIC is a simple analytical tool which assists in computing the eligibility of under-trial prisoners' u/s 167,436,436A Cr.P.C, evaluating whether cases fall under petty offences, are eligible under plea bargaining or are compoundable/non compoundable cases. Its use is simple, and results are quick and accurate. A copy can be downloaded [here](#).

2) Ensuring presence of Officer in-charge of Prison/s in UTRC weekly meetings:

The prison in-charge of all the prisons (Central/District/Sub-jails/Special/Women/High Security/Open) falling within the jurisdiction of the district must participate in the UTRC meeting², personally or remotely via video conferencing/phone as deemed fit.

3) Seeking assistance of panel lawyers/ Jail Visiting lawyers/ paralegals:

The DLSA Secretary may formulate an Urgent Action Group comprising of some panel lawyers/ Jail Visiting lawyers and paralegals appointed for prisons to assist the UTRC in prompt communication with eligible prisoners and coordination with prison authorities. Their tasks may include –

- i) Communicating with the eligible prisoners and seeking their consent for release. This must include making the prisoners aware about the pandemic and clearly explaining them the conditions of the release. A consent form may be drafted by the SLSA for this purpose or consent may be taken in writing.
- ii) Drafting of bail applications of undertrials to further the process of release.

Note:

² Hon'ble Supreme Court vide [order dated 31.10.2017](#) in *In Re Inhuman Conditions in 1382 Prisons* directed that concerned Jail Superintendent should be included as a member of the committee in all UTRC meetings.

- A copy of the consent and the bail application must be kept in the Jail Legal Aid Clinics for record.
- While communicating with prisoners, lawyers/paralegals must ensure that adequate distance is maintained between them. Masks, gloves, sanitisers, over coats must also be provided to lawyers/paralegals by the DLSA.

4) Constant follow up to ensure release of prisoners: Identification of prisoners, and completion of processes is a time taking process, thus the UTRC may assign a nodal officer to undertake constant follow-up on progress. UTRC must also ensure that the procedure laid down by the HPC must be followed without any discrimination. Eligible prisoners who consent to be released, must be released with immediate effect after following the due process as laid down by the HPC.

5) Ensuring safe transit of released prisoners: The Superintendent of Police (who is the member of the UTRC) must ensure that adequate measures are adopted for safe transit of prisoners to their homes in view of the nation-wide lockdown. These may include:

- i) to utilise police escort guards to escort the prisoner to their homes. This is a one-time exercise and since court productions are not taking place at the moment, the services of the police escorts could be utilised for this one-time travel. Reasonable allowance for food and travel must be provided either by the district administration, prison or other authorities, for the escort as well as the prisoner; or
- ii) police vehicles may transit prisoners to the district headquarters, and from there to their respective police stations with the help of the local policemen, who can escort them to their homes. However, all personnel assigned to escort duties should be provided masks and sanitisers.
- iii) UTRCs must ensure that a woman prisoner is accompanied by a woman police personnel as an escort.

6) Ensuring precautionary measures are implemented in all prisons: The UTRC members during their weekly meetings must review the implementation status of precautionary measures adopted in each prison. They may also seek a report from the officer-in-charge of prison on steps taken in the prison, including reports of any symptomatic prisoners, and any difficulties being faced by the prison department in the implementation of precautionary measures. The committee may also ensure that awareness camps are being held regularly to apprise prisoners about the virus, self-hygiene requirements and recent information regarding its spread.

Note: CHRI's note on 'COVID-19 and Prisons: Ensuring an Effective Response' which provides effective measures to be adopted to ensure protection of all prisoners, prison administrators and staff, prison visitors and all persons associated with prisons. can be accessed [here](#).

7) Post-Release Measures: All released prisoners must be informed about the SLSA/DLSA's helpline number to assist them in case of any difficulty faced by them during transit or later. It may be provided to every released prisoner on a slip of paper.

- 8) **Reporting by UTRC to SLSA:** SLSA may seek weekly report by the UTRCs to track the reduced rate of overcrowding in prisons. It may be sought in the following formats:

Name of the District UTRC _____													
Table A: Identification and Release of Prisoners													
S.No.	Name of the Prison	Prison Population as on 25 th March 2020				No. of Prisoners identified for release				No. of Prisoners released			
		UTPs	CTPs	Detenue	Civil	UTPs	CTPs	Detenue	Civil	UTPs	CTPs	Detenue	Civil
TABLE B: Tracking Occupancy Rate of Prison/s													
S.No.	Name of the Prison	Occupancy Rate of the Prison as on											
		25 th March	5 th April	12 th April	19 th April	26 th April							
TABLE C: Assistance provided to Released Prisoners													
S.No.	Name of the Prison	No. of Prisoners escorted by Police escorts to their homes				No. of Prisoners sought assistance of SLSA/DLSA Helpline							