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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Human rights in the administration of justice, including juvenile justice

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

In the present report, the High Commissioner examines how the coronavirus disease (COVID-19) pandemic has converged with emerging challenges in detention centres to undermine the human rights of persons deprived of liberty. The High Commissioner considers how overcrowding has substantially exacerbated risks for the human rights of detainees, notably their rights to health and judicial oversight. After taking note of innovative measures implemented by States, she concludes with a number of recommendations for safeguarding the human rights of persons deprived of liberty during a pandemic.

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## I. Introduction

1. In its resolution 42/11, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare an analytical report on human rights in the administration of justice, in particular on current and emerging challenges in the protection of persons deprived of liberty, including judicial oversight.<sup>1</sup>
2. To prepare the report, OHCHR sought input from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.<sup>2</sup> The report also draws on a diverse range of public sources, including international and regional instruments, the practice of United Nations human rights mechanisms and reports of regional and humanitarian organizations, civil society, scholars and practitioners.
3. The report builds on prior reports submitted in response to resolutions of the Human Rights Council on human rights in the administration of justice, including juvenile justice.<sup>3</sup>
4. In the report, the High Commissioner examines how the COVID-19 pandemic has converged with emerging challenges in detention centres to undermine the human rights of detainees. She considers how overcrowding has substantially exacerbated risks for their human rights, notably their rights to health and judicial oversight. After taking note of innovative measures implemented by States, the High Commissioner concludes with a number of recommendations for safeguarding the human rights of detainees during a pandemic.

## II. Human rights impact of the COVID-19 pandemic on persons deprived of liberty

5. The human rights situation for detainees during the COVID-19 pandemic reflects the convergence of two global crises. The pandemic is a global public health crisis on a scale not seen for a century<sup>4</sup> that has unfolded against the backdrop of a worldwide prison crisis characterized by record numbers of people imprisoned globally (over 11 million) and 102 countries reporting prison occupation levels that exceed 110 per cent.<sup>5</sup>
6. The convergence of these crises has exacerbated emerging challenges in most detention centres, severely undermining the human rights of persons deprived of liberty. Prior to the pandemic, record numbers of detainees were living in increasingly overcrowded conditions, which progressively restricted their access to hygiene and health care. The pandemic has further degraded the physical and mental health of most detainees because overcrowding and inadequate health care have left them exponentially more vulnerable to the virus.<sup>6</sup> Before the pandemic, lack of judicial oversight was threatening the human rights of many detainees by obstructing judicial decisions on detention, sentencing and release.<sup>7</sup> The

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<sup>1</sup> In the present report, the term “person deprived of liberty” is used interchangeably with the term “detainee” and covers all individuals deprived of liberty in all places of detention, including but not limited to prisons, pretrial detention facilities, administrative detention facilities (including immigration detention facilities), police stations, mental health facilities, drug treatment facilities, institutions for juvenile offenders and mandatory quarantine facilities.

<sup>2</sup> All contributions are available for consultation on the OHCHR website at [www.ohchr.org/EN/pages/home.aspx](http://www.ohchr.org/EN/pages/home.aspx), with the exception of the confidential submission made by an independent human rights non-governmental organization based in Asia.

<sup>3</sup> See A/HRC/21/26, A/HRC/28/29, A/HRC/30/19, A/HRC/36/28, A/HRC/42/20 and A/HRC/43/35.

<sup>4</sup> United Nations, “COVID-19 and human rights: we are all in this together” (April 2020), p. 2.

<sup>5</sup> Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 4.

<sup>6</sup> Inter-Agency Standing Committee, “Interim guidance. COVID-19: focus on persons deprived of their liberty” (March 2020), p. 2. See also the contributions of Penal Reform International and the International Drug Policy Consortium, and E/C.12/2020/1, para. 5.

<sup>7</sup> A/HRC/30/19, para. 43.

pandemic has lessened judicial oversight even further by slowing or suspending judicial procedures for detainees.<sup>8</sup>

## A. Overcrowding

7. Crisis levels of overcrowding is widely recognized as one of the most serious problems in places of detention today.<sup>9</sup> Numerous United Nations bodies and mechanisms, including the Security Council, the Human Rights Committee, the Committee against Torture, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention, and regional human rights bodies have all expressed serious concerns about overcrowding in places of deprivation of liberty and its negative impact on the human rights of detainees.<sup>10</sup>

8. Overreliance on pretrial detention is a major contributing factor for overcrowding in detention facilities,<sup>11</sup> even though it should always be the exception and never the rule.<sup>12</sup> Excessive reliance on pretrial detention can also result in stigmatization and loss of income leading to the breakdown of family structures. According to one non-governmental organization, the consequences of these secondary effects can be devastating in societies where many live in poverty and depend on familial ties to survive. Indeed, one of the indicators for measuring progress against Sustainable Development Goal 16 is the proportion of pretrial detainees in prison populations.<sup>13</sup> Nonetheless, around 3 million people are held in pretrial detention globally and they outnumber convicted detainees in at least 46 countries.<sup>14</sup> States should opt for non-custodial measures whenever possible, particularly during public health emergencies.<sup>15</sup>

9. Overcrowding in detention centres is also made worse by the criminalization and issuance of custodial sentences for behaviour that is protected by international human rights law.<sup>16</sup> In the context of reducing incarceration, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted that several United Nations entities and human rights mechanisms have called for the immediate closure of compulsory drug detention centres and the decriminalization of non-violent drug offences, same-sex sexual activity and sex work and affording legal recognition to transgender persons.<sup>17</sup>

10. Overcrowding has a devastating impact on the right to health for detainees during a pandemic because it dramatically increases the risk of infection.<sup>18</sup> That affects the health of other detainees and detention centre staff and may even have an impact on the general

<sup>8</sup> Contributions of Guatemala, Portugal, the United Kingdom, Penal Reform International and the International Drug Policy Consortium.

<sup>9</sup> Amnesty International, *Forgotten Behind Bars: COVID-19 and Prisons* (March 2021), p. 12.

<sup>10</sup> A/HRC/30/19, para. 4. See also, for example, Working Group on Arbitrary Detention, deliberation No. 11 (A/HRC/45/16, annex II), paras. 12 and 13.

<sup>11</sup> Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 17, and A/HRC/30/19, para. 11.

<sup>12</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>13</sup> Sustainable Development Goal 16, target 16.3, indicator 16.3.2.

<sup>14</sup> Penal Reform International and Thailand Institute of Justice, *Global Prison Trends 2020*, p. 4.

<sup>15</sup> Working Group on Arbitrary Detention, deliberation No. 11 (A/HRC/45/16, annex II), para. 14.

<sup>16</sup> Such behaviour includes acts such as sex work, homosexuality, adultery, apostasy, possession of drugs for personal use and “status” crimes. See, for example, A/75/163, paras. 72 and 98.

<sup>17</sup> *Ibid.*, para. 98. See also Inter-Agency Standing Committee “Interim guidance. COVID-19: focus on persons deprived of their liberty”, p. 3.

<sup>18</sup> See the statement by Special Rapporteurs urging the Government of the United States of America to do more to prevent major outbreaks of COVID-19 in detention centres (29 May 2020). See also African Commission on Human and Peoples’ Rights, resolution 466 (LXVII) on prisons and conditions of detention in Africa; Organization of American States, “IACHR concerned about specific risks faced by persons deprived of liberty in the Americas during the COVID-19 pandemic” (9 September 2020); United Nations Office for Drugs and Crime, World Health Organization, Joint United Nations Programme on HIV/AIDS and OHCHR, joint statement on COVID-19 in prisons and other closed settings (13 May 2020).

population once prisoners are released.<sup>19</sup> Ultimately, such infringements on the right to health may adversely affect the right to life of detainees.<sup>20</sup>

11. It has also been established that prison overcrowding, including its adverse effects on the right to health, constitutes a severe form of ill-treatment and even torture.<sup>21</sup> International and regional human rights mechanisms have established breaches of the prohibition of torture due to overcrowding, as detainees are forced to live for prolonged periods in deplorable material conditions, unsuitable for a humane and dignified existence, with very poor hygiene and lacking out-of-cell activities, adequate nutrition and access to health services.<sup>22</sup>

12. The United Nations anti-torture mechanisms<sup>23</sup> have unanimously warned that the pandemic is leading to an escalation of torture and ill-treatment worldwide.<sup>24</sup> For the Subcommittee on Prevention of Torture, the risk of ill-treatment faced by those in places of detention may be heightened because of public health measures taken to combat COVID-19. It has urged national preventive mechanisms to ensure that States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment take effective measures to reduce the risk that detainees will suffer forms of inhuman and degrading treatment because of the pressures that detention systems and those responsible for them face during the pandemic.<sup>25</sup>

13. Overcrowding may hinder the efforts of prison staff to monitor densely populated cells and common spaces and impede the effective separation of detainees, thereby increasing the risk of violence between prisoners and riots. Lack of work and educational activities, exacerbated by overcrowding, is also conducive to violence between prisoners.<sup>26</sup>

14. The pandemic has increased tension in prisons, particularly in overcrowded settings. In many countries, fear of contagion and lack of basic services, such as the regular provision of food, owing to the prohibition of family visits, have triggered protests and riots, causing serious injury and death.<sup>27</sup> The Council of Europe has warned that tension in prisons has increased since the beginning of the pandemic, leading to sometimes violent protests in reaction to restrictions on visits or other activities.<sup>28</sup> In the Americas, 79 detainees were reported killed in three prison riots during the first months of the pandemic.

15. Noting the devastating impact that prison overcrowding and the pandemic have on human rights, OHCHR and the World Health Organization (WHO) have urged public authorities to take immediate steps to reduce prison overcrowding, as a measure against COVID-19. The primary recommendation is to immediately release all those arbitrarily detained and prioritize the release of low-risk individuals, including children, persons with underlying health conditions, non-violent persons who have committed minor offences, persons with imminent release dates and those detained for committing acts that are protected by international law.<sup>29</sup> OHCHR and WHO have also advised States to limit the number of persons in pretrial detention and increase the implementation of non-custodial measures in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures

<sup>19</sup> A/HRC/30/19, para. 17.

<sup>20</sup> A/HRC/30/19, para. 19. See also Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 4.

<sup>21</sup> A/HRC/30/19, para. 15.

<sup>22</sup> Ibid., para. 16.

<sup>23</sup> The Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture.

<sup>24</sup> Statement by Special Rapporteurs warning that Covid-19 exacerbates the risk of ill-treatment and torture worldwide (26 June 2020).

<sup>25</sup> See CAT/OP/10.

<sup>26</sup> A/HRC/42/20, para. 21.

<sup>27</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25864&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25864&LangID=E).

<sup>28</sup> See statement by the Council of Europe Commissioner for Human Rights on the urgent steps needed to protect the rights of prisoners in Europe during the COVID-10 pandemic (4 April 2020).

<sup>29</sup> Inter-Agency Standing Committee, "Interim guidance. COVID-19: focus on persons deprived of their liberty", p. 3.

and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.<sup>30</sup>

16. Although many national authorities, including judiciaries, have acknowledged the urgent need to reduce overcrowding and announced the release of or committed to releasing large numbers of detainees, less than 6 per cent of the global prison population had been released by June 2020.<sup>31</sup> Some States approved laws that would allow for the release of persons in low-risk categories but did not implement them owing to lack of infrastructure or bureaucratic barriers.<sup>32</sup> In other cases, the laws relating to the release of prisoners contained exceptions excluding large numbers of otherwise eligible detainees, notably women, individuals in pretrial detention<sup>33</sup> and people detained for drug-related offences or theft.<sup>34</sup> In one State, release measures had a negative, gendered impact on women because they excluded individuals imprisoned for drug offences.<sup>35</sup>

17. Many States have engaged in, or are considering, the counterproductive practice of imprisoning people who violate emergency COVID-19 measures, offsetting the benefits gained through releases, making worse the overcrowding in detention centres and increasing the risk of infection. Early in the pandemic, the Philippines imprisoned approximately 120,000 people for violating curfew<sup>36</sup> and the Dominican Republic and El Salvador<sup>37</sup> detained thousands for violating COVID-19 emergency measures. Cambodia is considering a draft law that would allow for 20-year prison sentences and other penalties for violations of COVID-19 related measures.<sup>38</sup> Travellers to the United Kingdom of Great Britain and Northern Ireland caught violating newly imposed quarantine restrictions could face up to 10 years in prison.<sup>39</sup>

## B. Right to health

18. The pandemic has had a profoundly negative effect on the enjoyment of human rights, especially the right to health.<sup>40</sup> States must respect, protect and fulfil the right to health and ensure equal access for all persons, including persons deprived of liberty, to preventive, curative and palliative health services.<sup>41</sup> This obligation requires States to take the measures necessary for preventing, treating and controlling epidemic, endemic, occupational and other diseases, such as COVID-19.<sup>42</sup> Maintaining health in detention centres is also critical for respecting, protecting and fulfilling the human rights of detainees, the staff of detention facilities and the community.<sup>43</sup>

19. The right to health is linked to other human rights relevant to persons deprived of liberty. Failure to provide all detainees with the necessary medical care and appropriate regular monitoring of their health violates their right to life<sup>44</sup> and interferes with fair trial guarantees, the prohibition of arbitrary detention and the prohibition of torture and other

<sup>30</sup> Ibid.

<sup>31</sup> See Harm Reduction International, “Covid-19, prisons and drug policy. Global scan - March–June 2020”.

<sup>32</sup> Contributions of Penal Reform International mentioning Bangladesh and of the International Drug Policy Consortium mentioning Mexico.

<sup>33</sup> See [www.hri.global/files/2020/07/10/HRI\\_-\\_Prison\\_and\\_Covid\\_briefing\\_final.pdf](http://www.hri.global/files/2020/07/10/HRI_-_Prison_and_Covid_briefing_final.pdf).

<sup>34</sup> Contributions of the International Drug Policy Consortium and Penal Reform International.

<sup>35</sup> For instance, decongestion measures in Colombia excluded persons imprisoned for drug offences and women in Colombia suffer disproportionately from being imprisoned for drug offences: see Alexander Söderholm, “Prisons and COVID-19: lessons from an ongoing crisis”, (March 2021), pp. 5–7.

<sup>36</sup> UN News, “‘Toxic lockdown culture’ of repressive coronavirus measures hits most vulnerable”, 27 April 2020.

<sup>37</sup> Aljazeera, “Latin America gov’ts using repression in COVID-19 fight”, 15 May 2020.

<sup>38</sup> Human Rights Watch, “Cambodia: scrap abusive Covid-19 prevention bill”, 5 March 2021.

<sup>39</sup> Aljazeera, “UK quarantine violators face heavy fines, up to 10 years in jail”, 10 February 2021.

<sup>40</sup> See E/C.12/2020/1.

<sup>41</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 34.

<sup>42</sup> International Covenant on Economic, Social and Cultural Rights, art. 12 (c).

<sup>43</sup> Inter-Agency Standing Committee, “Interim guidance. COVID-19: focus on persons deprived of their liberty”, p. 2.

<sup>44</sup> Human Rights Committee, general comment No. 36 (2018), para. 25.

forms of cruel, inhuman or degrading treatment.<sup>45</sup> In the context of the pandemic, violations of the right to health have also made gender inequality worse and exacerbated the failure to respect women's rights, including access to sexual and reproductive health services, and the failure to observe everyone's right not to be discriminated against.<sup>46</sup>

### **Provision of basic health and hygiene needs**

20. Prisoners should enjoy the same standards of health care that are available in the community and should have access to the necessary health-care services free of charge, without discrimination on the grounds of their legal status.<sup>47</sup> When an individual is admitted to a prison, he or she should be offered a medical examination as soon as possible and thereafter as necessary.<sup>48</sup> The purpose of the medical examination and health screening is to protect the health of detainees and staff and avoid the spread of any communicable diseases.<sup>49</sup>

21. Particular care should be taken to provide for the clinical isolation and adequate treatment of prisoners suspected of having contagious diseases such as COVID-19.<sup>50</sup> Medical isolation must be justified by an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards. It should never take the form of disciplinary solitary confinement.<sup>51</sup> Moreover, medical isolation must always respect the right of all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person.<sup>52</sup>

22. Coordination between prison health authorities and public health authorities is key to ensuring the highest standard of health in prisons, particularly during a pandemic.<sup>53</sup> Rule 24 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners indicates that public health administrations should coordinate closely with prison health services to provide detainees with continued treatment and care, including with regard to infectious diseases.<sup>54</sup> Coordination between prison and public health authorities is also important for the health of the community. The High Commissioner has urged States to ensure that people released from prison during the pandemic are medically screened and receive care and proper follow-up, including health monitoring if needed.<sup>55</sup>

23. Many prison settings across the world fall short of the norms and standards related to detention and the right to health because their health-care systems are underfunded, understaffed and of a lower standard than in the wider community.<sup>56</sup> People are often held in overcrowded and unhygienic conditions, where physical distancing and self-isolation are practically impossible.<sup>57</sup> COVID-19 has exposed these deficiencies and the inability of many prison systems to provide the basic necessities needed for detainees to survive, including water, personal hygiene facilities, food and medicine.<sup>58</sup>

24. In one State, women prisoners have stopped receiving gynaecological examinations during the pandemic because they are normally administered by external health professionals

<sup>45</sup> A/HRC/38/36, para. 18.

<sup>46</sup> A/75/163, para. 19.

<sup>47</sup> Rule 24 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

<sup>48</sup> Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>49</sup> Inter-Agency Standing Committee, "Interim guidance. COVID-19: focus on persons deprived of their liberty", p. 4.

<sup>50</sup> Rule 30 (d) of the Nelson Mandela Rules.

<sup>51</sup> CAT/OP/10, para. 9 (n).

<sup>52</sup> Human Rights Committee, general comment No. 29 (2001), para. 13 (a).

<sup>53</sup> Contribution of Penal Reform International.

<sup>54</sup> See also WHO Regional office for Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance", p. 12.

<sup>55</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E). See also WHO Regional Office for Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance".

<sup>56</sup> Contribution of Penal Reform International.

<sup>57</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E).

<sup>58</sup> Contributions of Penal Reform International and the International Drug Policy Consortium.

who are no longer allowed to enter the premises.<sup>59</sup> The Committee on the Elimination of Discrimination against Women has warned that gender bias during pandemics makes existing gender inequalities worse, often to the detriment of women's health needs.<sup>60</sup> States parties to the Convention on the Elimination of All Forms of Discrimination against Women must continue to provide gender-responsive sexual and reproductive health services, including maternity care, as part of their response to COVID-19.<sup>61</sup>

25. Although States undertake a duty of care and special responsibility towards those held in detention,<sup>62</sup> detention systems in many countries are severely underresourced, leading detainees to rely on external visits or parcels to receive health and hygiene articles, including water, food and medicine. When Governments restricted or prohibited external visits or parcel delivery, many people went hungry, weakening their immune systems and leaving them more susceptible to the virus.<sup>63</sup> This decline in nutrition poses a particular risk to detainees who are pregnant, breastfeeding mothers, babies or those living with HIV/AIDS.<sup>64</sup> Without the supplies they receive during visits, detainees have been unable to carry out medically recommended hygiene routines, such as regular hand-washing, to protect against COVID-19.<sup>65</sup>

26. States have also faced challenges in educating detainees about COVID-19 and informing them of the health services available in places of detention. In one country, detainees were afraid to access health services in prisons because they feared that something negative would happen to them if they reported symptoms. Some detainees are also unaware of the extent to which health services are available to them in prison.<sup>66</sup>

27. There have been many gaps in the efforts of Governments to gather and provide relevant data on COVID-19 infections and deaths, including disaggregated data on the number of men, women and children who have tested positive for COVID-19, and the race, ethnicity, age, socioeconomic and health profiles of those who have died or are infected.<sup>67</sup> That prevents the authorities from determining the demographics at higher risk so they can compare the impact of different response measures.

28. Data on infections and deaths among prison staff are also lacking, highlighting the fact that they are not considered front-line or essential workers in many countries.<sup>68</sup> Barriers to obtaining accurate data include a general lack of adequate testing, frequently resulting from a lack of resources, and the fact that places of detention are often a low priority for testing kits or programmes. There is also a lack of transparency on testing and infection rates in some countries that leads to mistrust regarding the accuracy of official figures.<sup>69</sup>

### **Mental health**

29. The mental health impact of COVID-19 has been more severe for people deprived of liberty because of their increased social isolation and the fact that they have experienced the highest rates of infection and mortality from COVID-19 worldwide.<sup>70</sup> States should pay special attention to mental health issues among detainees and must immediately provide

<sup>59</sup> Contribution of the International Drug Policy Consortium.

<sup>60</sup> "Guidance note on CEDAW and COVID-19", para. 1.

<sup>61</sup> *Ibid.*, para. 2.

<sup>62</sup> A/HRC/30/19, para. 8.

<sup>63</sup> Contribution of Penal Reform International.

<sup>64</sup> Contributions of Penal Reform International and the International Drug Policy Consortium.

<sup>65</sup> OHCHR, "COVID-19 guidance", p. 8.

<sup>66</sup> Contribution of the International Drug Policy Consortium.

<sup>67</sup> Amnesty International, "Forgotten behind bars: COVID-19 and prisons", p. 17. See also the contribution of Penal Reform International.

<sup>68</sup> Contribution of Penal Reform International.

<sup>69</sup> *Ibid.*

<sup>70</sup> See the statement by the Special Rapporteur on health that COVID-19 has exacerbated the historical neglect of dignified mental health care, especially for those in institutions (23 June 2020). See also the contribution of Penal Reform International.

routine mental health support to them during the pandemic.<sup>71</sup> Every prison should have a health-care service to evaluate, promote, protect and improve the mental health of prisoners, encompassing sufficient expertise in psychology and psychiatry.<sup>72</sup>

30. One of the primary causes for the increase in mental health conditions among detainees is the reduction in or complete lack of contact with the outside world, including families, and the diminution or suspension of support programmes and networks.<sup>73</sup> Some prison facilities around the world have suspended work and vocational programmes that provide an activity and purpose to fill the days of people in detention.<sup>74</sup> Fear of infection and the reduction or suspension of justice processes, such as parole hearings, affecting the duration or outcome of detention have increased anxieties among persons deprived of liberty.<sup>75</sup> In some cases, mental health services have ceased because prison systems rely on external staff who are no longer allowed onto prison premises.<sup>76</sup>

31. Although prison services may legitimately separate a person from the rest of the prison population to prevent transmission of COVID-19, many prison staff lack the resources and guidance for separating sick individuals from the general prison population in a humane manner that minimizes the consequences for their mental health. In many prisons, for example, the only area where medical isolation is possible is in cells or areas used for solitary confinement.<sup>77</sup>

32. Isolation or quarantine measures in places of detention should never result in de facto solitary confinement.<sup>78</sup> The Special Rapporteur on health has asserted that solitary confinement negatively influences mental health and well-being.<sup>79</sup> Common mental health problems associated with solitary confinement include depression, anxiety, difficulty concentrating, substance abuse and dependence, cognitive disturbances, perceptual distortions, paranoia, psychosis and post-traumatic stress disorder. Solitary confinement is also a risk factor for suicide and self-harm.<sup>80</sup> Prolonged solitary confinement should be prohibited as it amounts to torture or other cruel, inhuman or degrading treatment or punishment.<sup>81</sup>

### C. Judicial oversight

33. Judicial oversight is critical for safeguarding the human rights of detainees during the COVID-19 pandemic.<sup>82</sup> The Secretary-General has identified judicial oversight of places of detention as a key element in the protection of the rights of persons deprived of liberty.<sup>83</sup>

34. Judicial oversight through independent documenting of the material and living conditions of persons deprived of liberty is an indispensable tool for safeguarding the non-derogable prohibition against torture and cruel, inhuman or degrading treatment or

<sup>71</sup> Inter-Agency Standing Committee, “Interim guidance. COVID-19: focus on persons deprived of their liberty”, p. 4. See also Stefan Enggist and others, eds., *Prisons and Health* (Copenhagen, WHO Regional Office for Europe, 2014), pp. 87–95.

<sup>72</sup> Rule 25 of the Nelson Mandela Rules.

<sup>73</sup> Contributions of Mozambique, Poland, the United Kingdom and Penal Reform International.

<sup>74</sup> Contributions of Guatemala and Penal Reform International.

<sup>75</sup> Contributions of Poland, Togo and Penal Reform International.

<sup>76</sup> Contribution of the International Drug Policy Consortium.

<sup>77</sup> Contribution of Penal Reform International. See also rule 44 of the Nelson Mandela Rules.

<sup>78</sup> Inter-Agency Standing Committee, “Interim guidance. COVID-19: focus on persons deprived of their liberty”, p. 5.

<sup>79</sup> See A/HRC/38/36.

<sup>80</sup> Contribution of Penal Reform International.

<sup>81</sup> Rule 43 of the Nelson Mandela Rules.

<sup>82</sup> United Nations Office for Drugs and Crime (UNODC) and United Nations Development Programme (UNDP), “Guidance note. Ensuring access to justice in the context of COVID-19” (May 2020), pp. 7–8.

<sup>83</sup> A/68/261, para. 35.



punishment<sup>84</sup> and must always be part of the overall COVID-19 response.<sup>85</sup> The Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances have emphasized that it is also important that enforced disappearances continue to be prevented during the pandemic.<sup>86</sup> Accordingly, bodies monitoring detention centres, including national human rights institutions and other entities with relevant monitoring mandates, should continue to have access to places of detention. National preventive mechanisms, if already established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, should also be included.<sup>87</sup>

35. Judicial oversight is equally important during a pandemic for safeguarding the procedural rights of persons deprived of liberty that must not be diminished by measures of derogation.<sup>88</sup> Those rights include the right to bring proceedings promptly before a court to challenge the lawfulness of detention, which is essential for protecting other non-derogable principles, such as the right to life and the prohibition of torture.<sup>89</sup> Judicial oversight also safeguards the rights to a fair trial during a pandemic, such as the right to confidential meetings with legal counsel.<sup>90</sup>

36. As long as adequate protective measures are put in place with regard to COVID-19, States should conduct court proceedings in person to safeguard the rights of all parties in criminal matters and the publicity of hearings, which helps to ensure the transparency of proceedings.<sup>91</sup> In-person hearings are especially important at the time of arrest or at the outset of detention on criminal charges, because judicial oversight is essential to ensure respect for the prohibition against torture and other cruel, inhuman or degrading treatment or punishment and the prohibition against enforced disappearances. Restrictive measures preventing in-person attendance at detention hearings and meetings with legal counsel may have an adverse effect for detainees who are in pretrial detention, seeking review of the lawfulness of their detention or seeking to appeal a custodial sentence.<sup>92</sup> Any alternative measures must be exceptional, temporary and accompanied by appropriate safeguards to protect the rights of defendants, witnesses, victims and civil parties.<sup>93</sup>

37. If a public health emergency requires restrictions on physical presence, States must ensure that free alternatives for in-person communication between detainees and legal counsel are available. Those alternatives may include secure online communication or communication by telephone.<sup>94</sup> The assessment of whether videoconferencing is appropriate to a particular hearing should be conducted on a case-by-case basis, taking into account individual circumstances, so that any issues affecting a person's ability to participate effectively in the proceedings can be identified and procedural adjustments put in place.<sup>95</sup>

<sup>84</sup> Convention against Torture, art. 2 (2) and International Covenant on Civil and Political Rights, arts. 4 and 7.

<sup>85</sup> See the statement by Special Rapporteurs urging the Government of the United States to do more to prevent major outbreaks of COVID-19 in detention centres (29 May 2020).

<sup>86</sup> "Key guidelines on COVID-19 and enforced disappearances" (September 2020), para. 14.

<sup>87</sup> Inter-Agency Standing Committee, "Interim guidance. COVID-19: focus on persons deprived of their liberty", p. 2; Working Group on Arbitrary Detention, deliberation No. 11 (A/HRC/45/16, annex II), para. 29; and CAT/OP/10, para. 7.

<sup>88</sup> International Covenant on Civil and Political Rights, art. 9, and Human Rights Committee, general comment No. 35, para. 67.

<sup>89</sup> Human Rights Committee general comment No. 35, para. 67.

<sup>90</sup> International Covenant on Civil and Political Rights, art. 14. See also Inter-Agency Standing Committee, "Interim guidance. COVID-19: focus on persons deprived of their liberty", p. 5; Human Rights Committee, general comment No. 35, paras. 35, 46, 59; and International Commission of Jurists, "Videoconferencing, courts and COVID-19: recommendations based on international standards" (November 2020), p. 14.

<sup>91</sup> UNODC and UNDP, "Guidance note. Ensuring access to justice in the context of COVID-19", p. 23.

<sup>92</sup> Working Group on Arbitrary Detention, deliberation No. 11 (A/HRC/45/16, annex II), para. 20.

<sup>93</sup> Human Rights Committee, general comment No. 35, para. 34, and UNODC and UNDP, "Guidance note. Ensuring access to justice in the context of COVID-19", p. 23.

<sup>94</sup> Working Group on Arbitrary Detention, deliberation No. 11 (A/HRC/45/16, annex II), para. 21.

<sup>95</sup> International Commission of Jurists, "Videoconferencing, courts and COVID-19: recommendations based on international standards", p. 17.

Where it has been concluded that videoconferencing is appropriate for a particular hearing, care must still be taken to ensure full respect for the right of an accused or individual party to representation by and confidential communication with independent legal counsel.<sup>96</sup>

38. Whether held in person or virtually during a pandemic, States should prioritize the processing of cases that concern persons deprived of liberty. Pretrial detention cases are particularly important because those individuals still benefit from the presumption of innocence.<sup>97</sup> When judiciaries are unable to process cases efficiently during a pandemic, that undermines the procedural rights of persons deprived of liberty and obstructs early release mechanisms designed to reduce overcrowding in detention centres.<sup>98</sup>

39. In response to the challenges presented by the COVID-19 outbreak, many judiciaries are making available an option, or imposing a requirement, that individuals and their lawyers appear at court hearings only by videoconference or other acceptable substitutes for physical presence.<sup>99</sup> The Human Rights Council supported this approach in its resolution 44/9 in July 2020.

40. The efficacy of proceedings held by videoconference has varied among States. The advantages to this method include reduced interruption in the fulfilment of procedural guarantees protecting the right to liberty of persons and reduced risk of contracting COVID-19. In the event that the detainee's transit to the conference room is filmed as part of the virtual hearing, this additional step safeguards against torture and cruel, unusual or degrading treatment or punishment.<sup>100</sup>

41. States and others have also identified challenges in holding detention hearings by videoconference during the COVID-19 pandemic. In some cases, difficulties in ensuring Internet connectivity have been a major obstacle.<sup>101</sup> In other instances, staff responsible for managing videoconferencing have lacked proper training in using audiovisual tools. Strategies for ensuring informed consent and security of information have also been lacking during videoconferencing.<sup>102</sup> In one country, the increase in criminal activity that occurred once it lifted COVID-19 confinement measures overwhelmed the capacity for virtual hearings.<sup>103</sup> Remote interviewing can also make it harder to develop a rapport between parties involved in a detention interview.<sup>104</sup>

### **III. Measures taken to safeguard the human rights of persons deprived of liberty during a pandemic**

#### **A. Right to health**

42. Throughout the pandemic, many States have ensured that prison systems develop health-care measures for detainees in close relationship with public health administrations. In some cases, States are ensuring that prison systems collaborate with public health entities to implement emergency COVID-19 measures in detention centres. In the Plurinational State of Bolivia, the prison services have coordinated with public health services to disinfect prisons.<sup>105</sup> In Guatemala, the Ministry of Public Health has worked together with the prison

<sup>96</sup> International Covenant on Civil and Political Rights, art. 14 (3) (b), and International Commission of Jurists, "Videoconferencing, courts and COVID-19: recommendations based on international standards", p. 14.

<sup>97</sup> Contribution of Penal Reform International.

<sup>98</sup> Ibid.

<sup>99</sup> International Commission of Jurists, "Videoconferencing, courts and COVID-19: recommendations based on international standards", p. 4.

<sup>100</sup> Contributions of Guatemala and Portugal.

<sup>101</sup> Contributions of Guatemala, Portugal, the United Kingdom and the International Drug Policy Consortium.

<sup>102</sup> Contribution of the International Drug Policy Consortium.

<sup>103</sup> Contribution of the United Kingdom.

<sup>104</sup> Ibid.

<sup>105</sup> Contribution of the Plurinational State of Bolivia.

services to establish quarantine areas for prisoners who test positive for the virus. Prison services in Denmark and Guatemala have coordinated with the public health services to conduct testing for COVID-19 in prisons.<sup>106</sup> In Argentina, additional health-care facilities were established in prisons to avoid overloading public health services in the community.<sup>107</sup>

43. In other cases, public health institutions have assumed responsibility for the health care of detainees who cannot be treated successfully in detention centres. Prisoners in Croatia and Morocco who test positive for COVID-19 are transferred immediately to public health institutions for treatment.<sup>108</sup> In Poland, public health entities cooperate with the prison health-care services to provide detainees with medical procedures that are unavailable in prison. In cases where there is an imminent danger to life, prisoners in Poland are transported by public emergency medical teams to the nearest specialist public health-care facility. Once the patient has received emergency medical care, he or she is referred back to a prison hospital for further diagnosis or treatment, if necessary.<sup>109</sup>

44. Some prison systems are cooperating with public health services to ensure that released detainees receive continued medical assistance and reintegrate successfully into society. The prison services in Austria are working together with social services to guarantee correct medical care for inmates after release.<sup>110</sup> Homeless persons leaving prisons in Poland are taken to dedicated transitional facilities established in cooperation with local administrations and non-governmental organizations, which serve as voluntary 14-day quarantine zones, before being accommodated in shelters.<sup>111</sup>

45. Several States have pre-empted or countered the damaging effects of disinformation and lack of information by training prison and other relevant staff on COVID-19 and carrying out awareness activities concerning the virus for detainees.

46. In some cases, States have distributed hard copies of COVID-19 educational materials to detainees. In Azerbaijan, an information booklet on COVID-19 was distributed to prisoners with the assistance of the International Committee of the Red Cross (ICRC).<sup>112</sup> Ireland has implemented a comprehensive communications campaign, as part of which it regularly distributes leaflets containing information on COVID-19 developed by Red Cross prisoner volunteers. It also distributes newsletters that update detainees on the particular risks posed by the virus in prison and on the actions taken by the prison services to keep staff, prisoners and their families safe.<sup>113</sup> Argentina has disseminated a document among prisoners that sets forth recommendations for safeguarding physical and mental health. It has also prepared brochures on COVID-19 specifically for prisoners, which it distributed to individuals trained as health focal points and prison population representatives.<sup>114</sup>

47. In other instances, States have prepared audiovisual material on COVID-19 for audiences in detention centres. In the United Kingdom, the prison service in England has developed information resources for children and young people deprived of liberty, including DVDs developed with the voices of children who have experience within the youth custody service.<sup>115</sup> Argentina has also prepared videos on COVID-19 for prisoners.<sup>116</sup>

48. Some States have carried out awareness programmes to educate detainees on COVID-19 and measures designed to counter the spread of the virus in detention centres. The Plurinational State of Bolivia has conducted awareness programmes for prisoners on personal health-care routines for reducing the risk of contagion.<sup>117</sup> In Morocco, the prison service has raised awareness among prisoners of the importance of personal hygiene and clothes washing

<sup>106</sup> Contributions of Denmark and Guatemala.

<sup>107</sup> Contribution of Argentina.

<sup>108</sup> Contributions of Croatia and Morocco.

<sup>109</sup> Contribution of Poland.

<sup>110</sup> Contribution of Austria.

<sup>111</sup> Contribution of Poland.

<sup>112</sup> Contribution of Azerbaijan.

<sup>113</sup> Contribution of Ireland.

<sup>114</sup> Contribution of Argentina.

<sup>115</sup> Contribution of the United Kingdom.

<sup>116</sup> Contribution of Argentina.

<sup>117</sup> Contribution of the Plurinational State of Bolivia.

and disseminated an informational video on COVID-19 through the prison television channels.<sup>118</sup> Poland regularly familiarizes prisoners and prison staff with measures that have been enacted to counter the pandemic in prisons.<sup>119</sup>

49. In other cases, States have developed guidance for prison staff or persons charged with conducting judicial oversight through monitoring of detention. In the United Kingdom, England has developed guides for staff on how best to work with children during the pandemic who have attention deficit hyperactivity disorder and anxiety or who are on the autistic spectrum, as these children have special needs that are likely to be exacerbated by their deprivation of liberty during the pandemic.<sup>120</sup> Brazil has provided guidance for magistrates on conducting in-person inspections of prisons during the pandemic and instructions on how to carry out virtual follow-up meetings.<sup>121</sup>

50. Many States have responded to the increased strains on the mental health of their detainee populations by providing additional psychological support services. With assistance from ICRC, Azerbaijan has deployed additional psychologists to discuss mental health issues with prisoners.<sup>122</sup> In Argentina, the Department of Justice has established a protocol for providing psychological assistance to prisoners in the context of the pandemic.<sup>123</sup> In the United Kingdom, Scotland has developed in-cell psychological support material focusing on the effects that social isolation has on mental health during a pandemic.<sup>124</sup> The Moroccan prison service has launched a virtual platform for prisoners that allows them to receive psychological care from dedicated prison psychologists and social workers, in close coordination with external experts.<sup>125</sup> Portugal has extended the call schedule for inmates so they can access two toll-free numbers without limitation, one for assistance with substance abuse and addiction and the other for assistance with mental health issues.<sup>126</sup>

51. Acknowledging the impact that reduced or suspended contact with the outside world has had on detainees during the pandemic, many States have increased the opportunities for detainees to communicate virtually with families and loved ones.

52. Several States have expanded telephone rights for detainees. All prisoners in the province of Buenos Aires have been allowed to use cell phones while visitation rights are suspended.<sup>127</sup> Azerbaijan, Croatia, Denmark, Hungary, Poland, Portugal and Togo have increased the telephone rights of prisoners.<sup>128</sup> Cyprus has distributed more than 6,000 free phone cards to prisoners since the outset of the pandemic.<sup>129</sup> In the United Kingdom, England has provided prisoners with mobile phone headsets and additional phone credit.<sup>130</sup>

53. Other States have increased opportunities for videocalling. Austria has provided its prisoners with free access to videocalls using non-Internet-capable cell phones issued free of charge.<sup>131</sup> Croatia has also expanded videocall privileges to all categories of prisoners with families.<sup>132</sup> Denmark allows all prisoners in open prisons to make videocalls on their private cell phones using FaceTime.<sup>133</sup> Cyprus, England, Hungary and Ireland have given prisoners access to videocalling.<sup>134</sup>

<sup>118</sup> Contribution of Morocco.

<sup>119</sup> Contribution of Poland.

<sup>120</sup> Contribution of the United Kingdom.

<sup>121</sup> Contribution of Brazil.

<sup>122</sup> Contribution of Azerbaijan.

<sup>123</sup> Contribution of Argentina.

<sup>124</sup> Contribution of the United Kingdom.

<sup>125</sup> Contribution of Morocco.

<sup>126</sup> Contribution of Portugal.

<sup>127</sup> Contribution of Argentina.

<sup>128</sup> Contributions of Azerbaijan, Croatia, Denmark, Hungary, Poland, Portugal and Togo.

<sup>129</sup> Contribution of Cyprus.

<sup>130</sup> Contribution of the United Kingdom.

<sup>131</sup> Contribution of Austria.

<sup>132</sup> Contribution of Croatia.

<sup>133</sup> Contribution of Denmark.

<sup>134</sup> Contributions of Cyprus, Hungary, Ireland and the United Kingdom.

54. Some prison systems have added infrastructure to support the heightened demand for virtual visits. Poland has established additional instant messenger stations and increased Internet bandwidth throughout its prison system to support the increase in remote visitation.<sup>135</sup> Portugal has increased the availability of videoconferencing facilities and the number of landlines in its prisons. It has also implemented pilot projects in two of its prisons whereby telephones are installed inside prison cells.<sup>136</sup> In the United Kingdom, Northern Ireland has provided in-cell telephones for a significant number of prisoners.<sup>137</sup>

55. A few States have carried out additional, innovative initiatives to safeguard the health of their prisoners. Austria aims to increase the time that prisoners spend outdoors each day in an attempt to enhance their mental health.<sup>138</sup> Cyprus has increased the opportunities for prisoners' contact with the outside world through additional participation in social and charity events and art exhibitions. It also allowed prisoners to receive visits from their children on International Children's Day.<sup>139</sup> Mindful of the importance that family parcels have for the physical and mental health of its prisoners and realizing that their number would increase during the pandemic, Portugal has established a quarantine procedure for parcels instead of suspending their receipt and distribution.<sup>140</sup>

## B. Overcrowding

56. In accordance with OHCHR and WHO guidance, several States have taken measures to release certain categories of low-risk detainees and implement non-custodial measures during the pandemic.

57. Since March 2020, Azerbaijan has released 1,785 persons on parole and granted early release for 9 persons due to serious illness. It has also released 821 individuals from pretrial detention, opting to implement non-custodial measures instead.<sup>141</sup> Following a study on decongesting prisoners and facilitating early release, Cyprus released 129 prisoners between March and mid-June 2020.<sup>142</sup> On 4 April 2020, Morocco released 5,654 prisoners.<sup>143</sup> Mozambique has released 5,629 prisoners who were given prison sentences of under one year, were chronically ill or were aged over 60.<sup>144</sup> Portugal has released 1,415 prisoners<sup>145</sup> and Togo has released 1,051 prisoners since the start of the pandemic.<sup>146</sup> In the United Kingdom, between 4 May and 1 June 2020 Scotland released 348 short-term prisoners who were nearing the end of their sentences.<sup>147</sup> Twenty per cent of countries worldwide have implemented decongestion measures that explicitly included women, particularly those who were pregnant or detained with dependent children.<sup>148</sup>

58. Electronic monitoring is now an option in Cyprus for inmates who have served at least one third of a sentence of less than 12 months. Mozambique has decided to convert prison sentences issued for failure to pay a fine into non-custodial measures.<sup>149</sup>

<sup>135</sup> Contribution of Poland.

<sup>136</sup> Contribution of Portugal.

<sup>137</sup> Contribution of the United Kingdom.

<sup>138</sup> Contribution of Austria.

<sup>139</sup> Contribution of Cyprus.

<sup>140</sup> Contribution of Portugal.

<sup>141</sup> Contribution of Azerbaijan.

<sup>142</sup> Contribution of Cyprus.

<sup>143</sup> Contribution of Morocco.

<sup>144</sup> Contribution of Mozambique.

<sup>145</sup> Contribution of Portugal.

<sup>146</sup> Contribution of Togo.

<sup>147</sup> Contribution of the United Kingdom.

<sup>148</sup> See Harm Reduction International, "COVID-19, prisons and drug policy. Global scan - March–June 2020".

<sup>149</sup> Contribution of Mozambique.

### C. Judicial oversight

59. Many States have taken innovative measures to enhance their use of videoconferencing and other digital technologies to safeguard procedural guarantees protecting the liberty of persons.

60. Azerbaijan has decided to accede to the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, which allows parties to use videoconferencing to apply for mutual legal assistance, including electronic submission of documents and interviewing of witnesses and experts.<sup>150</sup> Brazil has instituted a series of precautions for videoconferencing that facilitate judicial oversight through detention monitoring. They include 360-degree video coverage of the conference room; footage of the detainee on the way to the conference room; the option to request the presence of an official from the Ministry of Public Affairs to receive complaints of ill-treatment; and a physical examination of the detainee prior to entry into the conference room.<sup>151</sup> In the United Kingdom, England has facilitated greater use of remote monitoring for independent custody visitors who make unannounced visits to police holding cells to check on the rights and well-being of detainees, including for signs of torture or cruel, inhuman or degrading treatment or punishment.<sup>152</sup>

61. Detention monitoring bodies in many States, including national preventive mechanisms, national human rights institutions and Ombudsman offices, have demonstrated innovation and resilience in adapting to challenges posed by the pandemic. These changes include having smaller visiting teams, conducting shorter visits and prioritizing places of detention for visits based on an assessment of risks and security considerations.<sup>153</sup> For example, the Norwegian Parliamentary Ombudsman has conducted online interviews with persons in detention, while the National Committee to Prevent Torture in Argentina has used remote technology to assess the mental health of detainees. The national preventive mechanism of Peru has conducted interviews online with female detainees and with the detaining authorities.<sup>154</sup>

## IV. Conclusions and recommendations

62. **The COVID-19 pandemic struck detention centres in the midst of a global prison crisis. The convergence of these crises allowed the virus to rampage through vulnerable detainee populations in many locations and exacerbated the challenges to the human rights of persons deprived of liberty.**

63. **Overcrowding in detention centres has increased the impact of COVID-19 as the virus spreads more rapidly in confined and densely populated spaces, particularly when accompanied by restricted access to hygiene and health care. This has had a profoundly negative effect on the right to health of those detainees affected by severely degrading their physical and mental health. The pandemic has also slowed or suspended judicial oversight procedures in many locations, such as detention monitoring and hearings on the lawfulness of detention, which in turn has negatively affected detainees' due process and rights to a fair trial, the right to be free from torture and cruel, inhuman or degrading treatment or punishment and the right to be treated with humanity and respect for the inherent dignity of the human person.**

64. **To counter the ongoing effects of the COVID-19 pandemic on the human rights of persons deprived of liberty, States should implement the following recommendations to reduce overcrowding in detention centres and safeguard the rights to health and judicial oversight for persons deprived of liberty:**

<sup>150</sup> Contribution of Azerbaijan.

<sup>151</sup> Contribution of Brazil.

<sup>152</sup> Contribution of the United Kingdom.

<sup>153</sup> See Association for the Prevention of Torture, "How have detention monitoring bodies adapted during COVID-19?", 11 February 2021.

<sup>154</sup> Ibid.

- (a) **Immediately release all persons who are arbitrarily or unlawfully detained;**
- (b) **Develop and implement mechanisms for early, provisional or temporary release for low-risk individuals, including children, persons with underlying health conditions, persons who have committed minor offences and do not have a history of violence, persons detained for acts protected by international human rights law, including peaceful assembly and speech that is protected by the right to free expression, and persons with imminent release dates;**
- (c) **Reduce immigration detention populations to the lowest possible level, and immediately release families with children and unaccompanied or separated children from immigration detention facilities to non-custodial and community-based alternatives with full access to rights and services, including health care;**
- (d) **Reduce the number of persons in pretrial detention and increase the implementation of non-custodial measures in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;<sup>155</sup>**
- (e) **Ensure that the judiciary continues to conduct prompt hearings that decide on the lawfulness of detention, especially pretrial detention;**
- (f) **Cease issuing custodial sentences for violations of COVID-19 emergency measures and immediately release all those detained for such violations;**
- (g) **Ensure that public health administrations coordinate closely with prison health services to provide detainees with continued treatment and care, including with regard to infectious diseases upon release;**
- (h) **Enable detention centre monitoring bodies, including national human rights institutions and other entities with relevant monitoring mandates, such as national preventive mechanisms, to have continuous access to places of detention during the pandemic;**
- (i) **Ensure that all detainees are promptly tested for infection, consider vaccinating detainee populations as a priority risk group and in any event vaccinate all detained persons without discrimination;**
- (j) **Collect and publicly share data on infections and deaths in detention, disaggregated by race, ethnicity, age and socioeconomic and health profiles to improve the detection of cases, enhance the effectiveness of health responses and promote transparency and accountability for State responses to outbreaks in detention centres.**

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<sup>155</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Special Rapporteur on the human rights of migrants, “Joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants” (26 May 2020), para. 11.