



Prison Decongestion Measures

Information for National Criminal Justice Authorities to Combat the Spread of COVID-19 for Use in Mission and other Fragile Settings

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COVID-19 presents particular risks for prisons due to the vulnerability of prison populations and the difficulties in containing large outbreaks. In many United Nations mission settings, prisons are especially vulnerable due to overcrowded, cramped conditions with malnutrition, poor hygiene, inadequate sanitation and limited access to health care. In addition to human rights and humanitarian concerns, such situations present the risk of riots and mass escapes with resultant public health implications.

While improved hygiene and other measures to prevent or mitigate the outbreak of COVID-19 in prisons must be a priority, in many contexts, reducing the prison population early on through immediate executive and criminal justice measures – including before a wide-scale outbreak has occurred in the particular country – constitute a pre-condition for introducing effective prevention and control measures. Such measures can include, for example, releasing certain categories of prisoners, moratoriums on arrests for particular categories of offences, the use of alternatives to pre-trial detention, the reduced use of custodial sentences and the remote conduct of court hearings.

In considering the most appropriate decongestion measures, national authorities may have to take difficult decisions regarding the rights and safety of those detained and the risks of endangering the community. Care will need to be taken to mitigate the public health risks of the potential spread of the virus into the wider community as a result of the release of prisoners who may have contracted COVID-19 inside a place of detention.

To help further inform the measures that could be taken in mission and other fragile contexts, the Justice and Corrections Service (JCS), within the Department of Peace Operations, has, through this paper, collated and synthesized the range of specific measures being taken or considered in different settings in response to COVID-19 to decongest criminal justice institutions. The paper also outlines the factors, criteria and risks that should be taken into account in determining the categories of detainees to be considered for release or non-custodial measures. This paper has been developed in parallel to a detailed [operational toolbox](#) issued by JCS and UNITAR on health and safety measures required within prisons in response to the crisis.



Focus on low risk, vulnerable detainees

Careful consideration should be given to the risks associated to releasing detainees especially in complex crisis areas. In mission settings, in particular, it will be important to focus, first and foremost, on the categories of detainees which do not present associated risks, those who are particularly vulnerable and other specified categories. This will include vulnerable or low-level offender groups, whether convicted or in pre-trial detention, to be considered for immediate, early or temporary release such as:

Low risk prisoners/detainees...

- convicted or accused of minor non-violent /low level crimes and/or who do not pose a serious risk to the public
- serving short-term sentences
- who are first-time offenders convicted or accused of minor non-violent /low level crimes
- who have displayed good behavior and good prospects of rehabilitating back into the community
- serving custodial replacement sentences e.g., imprisonment for the non-payment of fines

Other categories of prisoners/detainees...

- who are pre-trial detainees arbitrarily detained without legal basis or beyond legal deadlines
- who have served a substantial amount of their sentence (starting, in some countries, at 33% or 50%), or who only have a few (specified) months remaining of their sentences (e.g., those who only have 6 months remaining of their sentences)
- who are pre-trial detainees and have been in custody for periods close to the sentence that would be imposed if convicted

Vulnerable groups of prisoners/detainees who are....

- above a certain age group, e.g., starting at 55
 - at greater health risk of contracting the disease and suffering the severest of symptoms
 - minors
 - women prisoners/detainees, including those with accompanying minors and pregnant inmates
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The **situation of women and girls in places of detention raises added concerns in the context of COVID-19**. In addition to the risk of contracting the virus, female detainees may also be vulnerable to the increased risk of sexual violence resulting from heightened insecurity in places of detention during the pandemic. In a number of mission settings, the growing shortage of female prison guards has been highlighted as a concern.

Those who fit the criteria and who do not pose a serious risk to the public, including to the victims and witnesses of the crimes, should be considered for immediate release. This step is recommended well before the wide-scale arrival of the SARS-COV-2 virus in the particular country setting. The authorities should also identify those cases or circumstances where the risk to public safety outweighs any justification for release, such as crimes of sexual violence, serious crimes under international law or terrorism-related cases. In the case of convicted prisoners, release should take place where it is safe to do so, taking full account of potential non-custodial measures, as provided for in the Tokyo Rules.

Immediate decongestion measures

Executive or high judicial bodies, such as Supreme Judicial Councils and Prosecutors General, have issued executive or judicial orders, decrees and guidance and/or undertaken fast track reviews of individual cases in an effort to prevent the COVID-19 outbreak in many settings around the world. These include:

- a) **Limitations on arrests**; focusing on the most serious cases and alleged offenders that pose a risk to peace and security in or danger to the community
- b) **Temporary or final release** of certain low-risk, vulnerable and other categories of detainees and prisoners (as elaborated above)
- c) **Fast track judicial reviews** of individual cases and the issuance of release orders
- d) **Postponement of detention**, either temporarily or final
- e) The increased **use of non-custodial sentences**. Imprisonment should only be imposed for the most serious of cases and sentences suspended.
- f) The **conversion to non-custodial sentences** of sentences of imprisonment already imposed on convicted persons for certain categories of offences
- g) The use of **amnesties or pardons**

Limiting arrests

Relevant ministries and judicial authorities should consider temporarily limiting arrests and/or detentions to those offences which pose an immediate threat to the community in order to reduce pressure on places of detention and prisons during this period. This is important when considering the precautionary measures recommended by the World Health Organization (WHO), and given that national police and other law enforcement agencies will need to continue to address not only matters of public safety, but also those related to public health concerns before, during and after the COVID-19 pandemic. Rule of law components, in close cooperation with UNPOL, are encouraged to

liaise with national judicial and law enforcement authorities to develop a strategy for arrests and prosecution. Moreover, rule of law components and UNPOL should encourage host countries to avoid imposing prison sentences as sanctions for breaking curfews or social distancing measures during the COVID-19 outbreak (See "Interim Guidance: Police Planning during a COVID-19 Pandemic").

Releasing vulnerable groups and low-level offenders

Vulnerable or low-level convicts listed above should be considered for immediate, early or temporary release, in appropriate settings.

Fast-tracking of judicial reviews and release of pre-trial detainees

Given the high pre-trial detention rates in many settings where the overuse of detention is a common feature, national authorities should undertake immediate reviews of all cases of pre-trial detention to determine whether they are strictly necessary, in light of the prevailing public health emergency. This could include, for example:

- Release of pre-trial detainees arbitrarily detained without legal basis or beyond legal deadlines
- Release of all individuals in pre-trial detention who are suspected of low level or non-violent offences
- Release of pre-trial detainees who have already served the amount of time in pre-trial detention for which they could be sentenced if convicted (or even a substantial proportion of the time of the likely sentence)
- Release of all pre-trial detainees facing charges punishable by less than 12 months in prison (or another limit set by national authorities)
- Review of the bail status of all other individuals in pre-trial detention to see whether their incarceration should be reevaluated
- Where applicable, extend the use of "liberation conditionnelle" or the grant of bail pending trial for all but the most serious of cases and consider alternatives to bail that would enable indigent accused to avoid pre-trial detention. Given that these actions are being adopted in the context of a public health emergency, the use of financial bonds as a condition of release should be used sparingly. Ideally, people who cannot post bail or pay the bond should not be detained merely on the basis of being indigent.



Suspending non-essential criminal first instance trials for those not in pretrial detention

This would lead to the postponement of commencement of detention, either temporarily or final.

Conducting hearings remotely for serious and urgent cases that must proceed

For certain type of cases, the risk to public safety or protection outweighs any justification for release or suspension of proceedings. While the definition of which cases are serious varies in each country, generally cases punishable by life sentence (or capital punishment in certain countries), such as murder, rape, crimes against humanity, fall under this category. Some countries are implementing or exploring the possibility of introducing internet-based virtual courtrooms. In mission settings, some cases may be considered critical based on the impact they may have on the peace and security dynamics, where cases need to proceed in order to deter future violence by an armed group or state security forces. Courts could also conduct remote hearings on certain procedures, particularly to review the detention of individuals in pre-trial detention, or decisions on the revision of sentences. Where conditions and technologies are available for remote work, several measures may be taken to support remote hearings including:

- **implementing work-from-home procedures for judges and public prosecutors** in order to mitigate the risk of infection, including video conference equipment to conduct essential trials.
- **suspending prison transfers and court appearances** in order to mitigate the risk of infection during transportation; resort to videoconference technologies instead, if possible.
- **continuing or instituting measures that ensure access to legal advice and representation** for those accused who remain in detention; where this is not possible due to restrictions on prison visits, prisons should provide for remote free access to confidential telephone lines to contact lawyers.

Where remote hearings cannot be conducted, limitations of public access may be introduced in courts in order to avoid large assemblies either by banning the public completely, as an exceptional measure, or by reducing the number of available seats for spectators in order to maintain a safety distance of two meters. In addition, measures can also be taken to ensure appropriate physical distancing among all participants in hearings, including judges, magistrates, witnesses, lawyers and defendants. Protective equipment and handwashing/sanitizing products could also be made available where they can be sourced. Where restrictions on prison visits have been imposed, arrangements will need to be put in place to ensure that defendants facing trial can access their lawyers.

Considering the use of amnesties or pardons

This may, for example, be used for all prisoners serving sentences of one year or less.

Final remarks

While urgent and immediate responses to COVID-19 are required, **care will need to be taken to ensure that the measures introduced do not undermine compliance with international fair trial standards**, including the rights of the accused, victims and witnesses. This may particularly be a concern with the imposition of restrictions of public access to hearings, opaque hearings taking place in the absence of the accused, and restrictions on legal access to detainees in prisons and where, for example, serious charges of sexually-related violence are withdrawn or dismissed. Likewise, restrictive measures imposed by the authorities may be used inappropriately to quash dissent, with a spike in arrests and detentions for persons accused of COVID-19 related offences, such as disseminating false information, obstructing the State's crisis response or for breaking quarantine rules.

Particular attention should also be given to the **fair implementation of measures adopted so as to avoid discrimination against some prisoners/detainees, including marginalized or vulnerable groups**. The adoption and publication of policies, decisions or guidance defining the criteria leading to special release measures is therefore recommended to ensure transparency and fairness. In many countries, lawyers have filed petitions to request the release of their clients in a critical condition or when confronted with the risks of being contaminated. Support to the provision of legal aid for those who cannot afford being represented by lawyers should also be considered.

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