



Detention Safeguards during Covid-19

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Overview



- (1) A global response to realising the right to the highest attainable standard of health during a pandemic in a detention context
- (2) UN-level response
- (3) AU-level response
- (4) EU-level response
- (5) Summary

The right to health



We all have the right to the highest attainable standard of health (UDHR Art. 25(1), ICESCR Art. 12)

States have an obligation to protect the physical and mental health of detained persons in terms of the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)

Restrictions to curb the spread of Covid-19 in places of detention must not derogate from the fundamental rights of detained persons, including freedom from torture and other ill-treatment, their right to access a lawyer or doctor, etc.

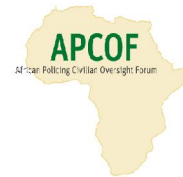
Highest attainable standard of health in a detention context



Detaining authorities have a duty to provide, *inter alia*:

- Safe and healthy living quarters
- Protection from violence and coercion
- Adequate health care services and medicines
- Information and implementation of preventive health measures
- Specific protections for vulnerable prisoners

OHCHR & WHO: Covid 19 Focus on persons deprived of their liberty



- Ongoing assessment of the legality, necessity and proportionality of measures and possible alternatives such as release and non-custodial alternatives
- Immediate and ongoing access to healthcare for suspected or confirmed cases of Covid-19, isolation in dignified conditions away from general population
- Provide adequate housing for former detainees without residence upon release
- Information on measures provided to all detainees in accessible formats and languages
- Protection measures for families, especially women
- Protection measures for staff including training and PPE

OHCHR & WHO: Covid-19 Focus on persons deprived of their liberty



Measures taken to prevent outbreaks in detention centres:

- Respect human rights
- Maintain contact with legal representatives
- Maximum transparency and constant monitoring of preventive measures
- Ensure family visits
- Isolation and quarantine measures must be legal, proportionate and necessary, time-bound, subject to review, and not amount to *de facto* solitary confinement

UNICEF: Technical note on Covid-19 and Children Deprived of their Liberty

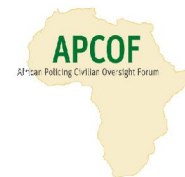


Institute a moratorium on new children entering detention facilities

Release all children who can be safely released

Protect the health and well-being of any children who must remain in detention

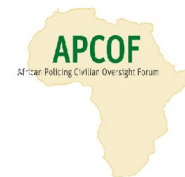
Subcommittee on Prevention of Torture: advice to States and NPMs



Measures to be taken by authorities concerning all places of detention:

- Conduct urgent assessments to identify risk
- Reduce detention populations
- Review pre-trial detention orders
- Review use of immigration detention
- Release screening
- Proportionate restrictions
- Maintain contact with outside world via alternatives
- Proportionate and time limited medical isolation
- Maintain safeguards against torture and other ill-treatment
- Proper training and equipping of staff

Subcommittee on Prevention of Torture: advice to States and NPMs



Measures to be taken by authorities in respect of those in official places of quarantine

- Do not view those held in quarantine as detainees
- Quarantine facilities are *de facto* detention therefore all fundamental safeguards should be in place

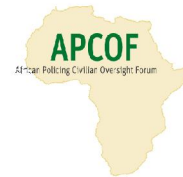
Subcommittee on Prevention of Torture: advice to States and NPMs



Measures to be taken by taken by NPMs: **Continue to exercise visiting mandates**

- Discuss with relevant authorities the safeguards required
- Increase collection and scrutiny of data
- Use electronic communication with those in detention
- Establish NPM 'hotlines'
- Track setting up of new/temporary places of detention
- Provide information about the work of NPM
- Seek to contact third parties who can provide information on situations within detention
- Enhance cooperation with NGOs and relief organisations

African Commission on Human and Peoples' Rights (ACHPR)



Press statement on human rights based effective response

- In prisons and other places of detention: higher risk of contraction requires States to take measures to reduce congestion through provision of temporary judicially supervised places of custody, and release persons held or awaiting trial on minor offences, and those 'rehabilitated and pose limited risk to society'.
- To prevent entry of virus into prisons, provide portable hand washing facilities and information on precautionary measures, including limitation on external visits.
- All measures taken must be legal, proportionate and necessary, time-bound, and compliant with the African Charter on Human and Peoples' Rights

African Commission on Human and Peoples' Rights (ACHPR)



Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)

Principles on the Decriminalisation of Petty Offences in Africa

Ouagadougou Declaration on Prison Reform in Africa

- Arrest and detention as a measure of last resort, especially for minor offences
- Focus on diversion and alternatives to arrest and detention
- Release of detainees as a measure to reduce overcrowding
- Adequate access to health care and treatment of detainees in line with Mandela Rules

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)



Protective measures must never result in inhuman or degrading treatment. Following principles apply:

- Take all possible action to protect health and safety of all persons deprived of their liberty
- Implement WHO guidelines
- Support to staff
- Restrictive measures must be communicated, and be legal, proportionate, respect human dignity, and be time bound
- Reduce overcrowding through alternatives and reviews
- Health care for persons particularly at risk
- No infringements on right to hygiene, open air, contact with outside world via alternative means
- Human contact for persons in quarantine
- Safeguards for access to lawyer, doctor and notification of custody must be maintained
- Detention monitoring must be in place and remains an essential safeguard



In summary

- States have duty to protect the physical and mental health of detainees and staff as per Mandela Rules
- Detention as a measure of last resort
- Restrictions and limitations must be rights-based, legal, proportionate, necessary, time-bound, and subject to transparency and review
- Continue monitoring places of detention
- No limitations on certain rights