

## Technical Note: COVID-19 and Children Deprived of their Liberty<sup>i</sup>



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### Introduction

Experience from previous infectious disease outbreaks indicates that new child protection risks are likely to emerge from the direct effects of COVID-19 as well as from measures to prevent and control its spread. Moreover, existing child protection risks are likely to be exacerbated. Some groups of people are more vulnerable in these circumstances, including, as discussed in this note, children deprived of their liberty, who often have compromised psychosocial, physical and mental health issues, live in crowded or unhygienic conditions and are more vulnerable to abuse and neglect.

Lessons learned from previous outbreaks emphasize the need for States to accommodate increased child protection needs when devising and implementing their response plans. Failure to address such needs or delayed implementation of coordinated responses can increase suffering, cause irreparable harm to children and can delay the recovery of whole communities.

In responding to the COVID-19 pandemic, States must ensure that the human rights of every child who is deprived of her or his liberty are fully respected, protected and fulfilled. This includes providing adequate care and protection from harm, including by taking concrete steps to reduce overcrowding in all facilities in which they are detained and ensuring safe placement in non-custodial, family or community-based settings. It also means that all decisions and actions concerning children must be guided by the principle of the best interests of the child, and children's rights to life, survival, and development, and to be heard.

This note aims to provide detaining authorities with key information and steps to respond to COVID-19 including by:

1. Instituting a moratorium on new children entering detention facilities;
2. Releasing all children who can be safely released; and
3. Protecting the health and well-being of any children who must remain in detention.

## 1. Understanding How to Protect the Rights of Children Deprived of their Liberty and Avoid Increased Detention of Children During the COVID-19 Outbreak

The *Convention on the Rights of the Child* (CRC) applies to all children in all contexts, including in emergency situations. On any given day, [hundreds of thousands of children](#) are deprived of their liberty in detention facilities globally. While anyone can contract the coronavirus disease (COVID-19), children deprived of liberty in locked facilities, including those detained with their parents or caregivers, those in immigration detention<sup>i</sup> and those detained on national security grounds,<sup>iii</sup> are at greater risk of contracting and spreading the disease.<sup>iv</sup> Measures imposed to control the spread of the virus and its societal impacts are also likely to negatively affect their well-being and healthy development, including adequate care while detained, and family and community support.

According to Article 24 of the CRC, children have the right to the highest attainable standard of health. Children deprived of their liberty are more vulnerable to contracting COVID-19 because of the confined conditions in which they live. Deprivation of liberty makes it more difficult to self-isolate or practice physical distancing, especially in facilities that are overcrowded and unclean, and where security or infrastructure reduce access to water, sanitation and basic hygiene. Children deprived of their liberty have common demographic characteristics with generally poorer health than the rest of the population, are more likely to have or experience underlying psychosocial, physical and mental health issues that are

exacerbated by their placement in custody and face the absence of quality health services even before an emergency arises. They often receive poor nutrition and lack adequate access to quality services including mental health and psychosocial support, social and educational services. Under these conditions, detention facilities may act as a source of infection, amplification and spread of COVID-19 inside and outside the facilities.

Detention facilities not only place children at severe risk of contracting the virus, they also place staff working in these facilities (police officers, correction officers, care givers, social workers, and health workers etc.), their families and communities at risk. Staff may not be equipped with adequate protective gear. Staff may also experience fear and face stigma, especially where outbreaks occur within facilities. In numerous countries COVID-19 has [begun to strike prisons](#), jails and immigration detention centers, as well as other places where children are deprived of their liberty,<sup>v</sup> and in response, many countries are now taking pre-emptive steps to reduce the number of children deprived of their liberty.<sup>vi</sup>

In addition, public health prevention and control measures within detention facilities may increase children's vulnerability to an already heightened risk of violence, including gender-based violence. Moreover, in many instances, detention facilities are far removed from children's families, homes and communities and regular communication is often limited. This contributes to greater fear and uncertainty, further affecting the health and well-being (including mental and [psycho-social well-being](#)) of these children and their families. Children may also face stigma if outbreaks occur within detention facilities, potentially leaving them even further behind. In addition, staff illness can lead to staff reduction below acceptable levels for care and protection of children deprived of their liberty, potentially exacerbating children's vulnerability due to lack of supervision and care, including their vulnerability to violence, abuse, and neglect, and a greater likelihood that they will be confined in smaller spaces that are easier to control or supervise.<sup>vii</sup>

In some countries measures to halt the spread of COVID 19 are actually increasing the number of children deprived of their liberty and curtailing release in spite of amnesties or general release orders aimed at decongestion of detention facilities. Such measures include closures of courts, suspension of criminal trials or administrative hearings, restrictions on freedom of movement, limiting access to lawyers or families by children deprived of their liberty, border closures, or expanding the use of pre-removal detention rather than halting deportations and releasing children to non-custodial alternatives to detention.

## 2. Recommendations related to the use of deprivation of liberty and emergency measures during the COVID-19 outbreak

### 2.1 Key Considerations for Implementing Emergency Response Measures

*State responses to combat the COVID-19 pandemic for children deprived of their liberty, [including emergency measures based on public health goals](#), must strictly adhere to international human rights law and standards. Any response should be proportionate, necessary, time-bound, subject to review, non-discriminatory to the evaluated risk and based on the best interests of children.*

- States must not use emergency measures in a manner to unlawfully restrict or [suppress children's rights](#), including deprivation of their liberty, recognizing that certain rights are non-derogable<sup>viii</sup>;
- States must take particular care to address the unique vulnerabilities of [girls](#) and [boys](#), those who are discriminated against on the basis of [sexual orientation or gender identity](#), [children with disabilities](#), migrant/asylum seeker/refugee/stateless children, indigenous children, children from ethnic minority communities, children in street situations, children associated with armed groups and armed forces and any other vulnerable or marginalized groups;
- States should ensure that emergency measures taken to prevent, contain or respond to the virus do not result in continued detention of children who should otherwise be released or an increase in the number of children deprived of their liberty.

### 2.2 Compliance with International Human Rights Law and Standards on Justice for Children

*States remain legally obliged to comply with international human rights law and standards<sup>ix</sup> on justice for children, including to:*

- As a general rule, use arrest, detention and imprisonment only as a measure of last resort and for the shortest appropriate period of time;
- Expeditiously and completely end the deprivation of liberty of children on the basis of their or their parents' migration status, as it is never in the child's best interests, and prohibit immigration detention of children in law, policy and practice;
- Treat every child deprived of liberty with humanity and respect for the inherent dignity of the human person and strictly safeguard their due process rights and procedural guarantees. Public authorities, including prosecutors and judges, should exercise their detention powers cautiously, considering the extreme nature of the detention measure, the heightened vulnerability of the child, and upholding the best interests of the child as a primary consideration, particularly in the current

context of COVID-19. Alternative measures should be prioritized and promoted with all the due safeguards for the children and their families at this time;

- Implement measures so that every child can maintain regular contact with her or his family through correspondence and visits;
- Provide every child deprived of his or her liberty with prompt access to specialized legal and other appropriate assistance, and the method and means to challenge the legality of the deprivation of liberty before a court or other competent, independent and impartial authority, and with a prompt decision on any such action;
- Where children cannot be released or where alternative measures are not possible, take concrete steps to improve and maintain conditions in facilities where children are deprived of their liberty so that they meet the relevant minimum international standards,<sup>x</sup> including with respect to child/staff ratios, and to provide children with necessary services.

## 2.3 Safeguarding Against Discrimination

*States should implement safeguards against discrimination:*

- States should provide children deprived of their liberty with access to the same level of health care and other services available to children in the community, without discrimination;
- States should put in place adequate measures to ensure gender-responsive approaches in addressing the COVID-19 emergency in locations where children are deprived of their liberty, including providing for the special needs of babies and infants deprived of liberty with their mothers, in particular breastfeeding mothers;
- States should provide children who are deprived of their liberty with the same information provided to children in the community about the pandemic, as well as how to protect themselves, ensuring accessible and child-friendly information;<sup>xi</sup>
- States should not detain children living on the streets, recognizing their unique situation may make it impossible to comply with some measures to halt the spread of COVID-19. In such case children should be connected to national child protection authorities or non-government services.

### 3. Recommendations to ensure the urgent release, use of alternative measures, and no new entries of children into detention during the COVID-19 pandemic

In accordance with binding international human rights law obligations on [child justice](#) and children deprived of liberty, and in line with the [WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention](#) (WHO COVID-19 Detention Guidelines), [IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty](#) (IASC Interim Guidance), [Minimum Standards for Child Protection in Humanitarian Action](#)<sup>xii</sup>, States should *prioritize the diversion of children away from formal justice processes and the use of alternatives to detention* at all stages of criminal or administrative proceedings. To this end:

#### 3.1 Prioritizing Children for Immediate Release

*States should immediately release children who can safely return to their families and communities.*

Where it is safe to do so and in consideration of the best interests of the child, including the increased risk of illness in detention, and taking into account the views of the child, States should prioritize release of children deprived of their liberty to their families, extended families, other family-based care, communities, or appropriate health care facilities:

- All children and their caregivers who are deprived of their liberty together as a result of criminal process against the caregiver for nonviolent, minor or petty offences, and those due for release or nearing the end of their sentences;<sup>xiii</sup>
- All children held in pre-trial detention regardless of the type of offence, as they are presumed to be innocent;
- All children who are deprived of their liberty for status offences (offences not considered a crime if committed by adults);
- All children at highest risk of complications due to infection, including those with pre-existing physical and mental health conditions;
- All children sentenced for nonviolent, minor or petty offences, and those due for release or nearing the end of their sentences;
- All children in immigration detention;<sup>xiv</sup>
- All children detained under national security frameworks only for affiliation with an armed group;<sup>xv</sup>
- Any other children for whom it has been determined feasible and safe to be released.

Consideration should be given to orders to effectuate mass release based on the above criteria and on the urgency of the situation.

States should provide support and engage with families and caregivers to enable the safe reintegration of children,<sup>xvi</sup> in line with their best interests, to their families and communities after release using case management processes – including: necessary travel authorizations, connecting families and children to

health care (e.g. for COVID-19), mental health and psychosocial services (e.g. clinical care), services for violence prevention and response (incl. gender-based), educational services and other opportunities.

**Steps that key justice actors can take to prevent deprivation of liberty and ensure release of children from detention during the COVID-19 pandemic**

**Police, Corrections** Immigration, border guards and other law enforcement officials can:

- Eliminate fines, reduce charges, arrests and detention of children, including for containment measures such as breaches of curfews/movement restrictions
- Employ child-friendly and gender-sensitive techniques when interacting with children
- Divert children from the formal justice system as early as possible after first contact, and at various stages throughout the justice process
- Review probation and supervision requirements of children (especially in-person visits) to enable physical distancing where appropriate (for e.g. use of technology for meetings or supervision)
- In immigration enforcement efforts, screen and immediately refer all migrant, asylum and refugee children and families, to the appropriate protection, child protection and care officials

**Prosecutors, defense, and legal aid lawyers** can advocate for:

- Immediate or early release of children from all detention facilities (as per recommendations)
- Diversion of children from the formal justice system as early as possible after first contact, and at various stages throughout the justice process
- Priority use of non-custodial measure, including alternatives to detention and diversion programmes (as appropriate)
- The issuance of broad pardons, amnesties, or general mass release orders

**Courts** can:

- Reduce public/in-person hearings by implementing alternative modalities that do not comprise a child's fundamental human rights to a fair trial
- Consider the health consequences of any custodial sentence
- Limit and minimize the use of all custodial sentences for children (both pre-trial and post-trial)
- Divert children from the justice system
- Increase use of non-custodial measures, including alternatives to detention and diversion programmes (as appropriate)
- Issue broad pardons, amnesties, or general mass release orders

During the process of release, Governments should follow recommendations contained in the WHO COVID-19 Detention Guidelines and the IASC Interim Guidance for proper prevention, containment, management and treatment of the virus.

## 3.2 Preventing Admission of New Children to Detention Facilities

*States should undertake all appropriate measures to prevent new admissions of children to places of detention. States should place an immediate moratorium on arrests, rounding up of children in street*

situations, overnight holds, and other new admissions of children to detention facilities. However, where a competent authority determines, considering the best interests of the child, that admission to a situation of a deprivation of liberty is legal, necessary, and proportionate in the individual circumstances, States must:

- Screen all children (and caregivers when they are detained together) and take all steps consistent with public health protocols issued by the World Health Organization;
- Where physical distancing, isolation or quarantine of a child is warranted for health reasons these measures should be taken at home or in a health care facility, not in a detention facility.

### 3.3 Protecting the Health and Well-being of Children in Detention

*States should protect the continued health and well-being of children who remain in detention.* Children who are not subject to immediate release measures and who are deprived of their liberty during the pandemic should be provided with access to services necessary to enable their continued health and wellbeing, including health care to address COVID-19 related needs, without discrimination. Authorities should:

- Monitor children's health for symptoms of the disease and take appropriate treatment and containment steps for any who exhibit such symptoms consistent with WHO guidelines for health monitoring, containment and treatment;
- Make any decisions to place a child in medical isolation based only on medical necessity as a result of a clinical decision and subject to authorization by law or the regulation;
- Inform children placed in isolation for medical reasons of the reason why they are being isolated.<sup>xvii</sup> If physical distancing or isolation is needed to safeguard the health of the child or others, then home-based or health-facility quarantine should be used consistent with WHO guidelines;
- Never place a child in solitary confinement for any reason, as it is forbidden under international law, including for health reasons; health-related isolation should not be used *de facto* as solitary confinement or as a punishment;
- Provide children with access to adequate health, nutrition, education, and legal services, and services to address violence (including gender-based violence) and other services adapted to the need for physical distancing or other disease containment measures;
- Provide enhanced access to water, sanitation, hygiene services and supplies, particularly soap and water, and provide facilities with necessary cleaning supplies to help prevent and manage spread of the infection;
- Provide tailored, gender-sensitive and age-appropriate [Mental Health and Psychosocial Support Services](#) (MHPSS) to children and their caregivers, including those with pre-existing mental health and psychosocial problems and those experiencing distress and fear regarding COVID-19;
- Implement procedures to allow children who are deprived of their liberty to maintain regular access and contact with their guardians and families, including by:



- Instructing facility staff to increase and provide regular updates (including by phone or computer) to families about the location, health and well-being of the child and to children about their families;
  - Supporting ways for children, in line with the WHO COVID-19 Detention Guideline,<sup>xviii</sup> to maintain social connectedness, including in-person visits by family members, for example by extending visitation times and staggering visits to increase physical distancing or use of technology to facilitate interactions;
  - Waiving fees or costs to families that may be associated with mobile or digital resources required to facilitate communication between children and their families;
  - Considering the need for issuing special travel exemptions for parents and families to allow them to conduct visits.
- Monitor and adjust the number of staff and service providers available in facilities where children are deprived of liberty to maintain sufficient staff to provide proper care and protection of children and to prevent children from shouldering excessive responsibilities related to maintenance and upkeep of the facilities, in the event that staff and service providers are exposed, infected, or ill with the disease or otherwise prevented from continuing their duties.

States should be guided by the WHO COVID-19 Detention Guideline in respect of protection and support measures (for e.g. MHPSS including self-care orientation, and staff care support and services for their own mental health and psychosocial wellbeing) for staff of detention facilities.<sup>xix</sup>

### 3.4 Protecting Children from Violence, Abuse and Exploitation

*States should safeguard the rights of children and protect them from violence, abuse and exploitation.* Authorities should take steps to protect the rights of children who are deprived of their liberty and to minimize vulnerabilities to violence, abuse, neglect and exploitation which may be exacerbated by the disease or containment measures, or which may be a secondary consequence. Authorities should:

- Develop a comprehensive coordinated plan to ensure well managed implementation and response across government to the COVID-19 pandemic and children in detention, that includes designation of child justice and social services as essential allowing continuity of such services. Cooperation and collaboration should include justice, security, interior, immigration, finance, health, social welfare and education ministries and any other relevant authorities with authority over social and health measures (including mental health and psychosocial care), resources, legal and other support, and contact with families and communities;
- Involve children in the process of developing the plan so as to effectuate their right to express their views and participate in decisions that affect them;
- Establish and implement child safeguarding policies, procedures, and complaint mechanisms, including for the prevention of violence, abuse and exploitation;
- Allow continued regular access and contact between children and their legal representatives,<sup>xx</sup> for example by extending visitation times and staggering visits to increase physical distancing or using technology to facilitate interactions, while still maintaining confidentiality of the interactions; use of mobile/digital resources to facilitate communication should be free of charge;

- Uphold due process and procedural guarantees, including allow court or administrative hearings related to children, pre-trial detention periods,<sup>xxi</sup> and release to continue despite the COVID-19 emergency (for example, technology solutions and flexible work arrangements to enable Emergency Courts to sit);<sup>xxii</sup>
- Allow inspection of all places where children are deprived of their liberty by independent international and national human rights bodies,<sup>xxiii</sup> health, and child protection authorities even in facilities and locations where infection may be present and including where individuals may be isolated for health reasons.

## 4. Resources

<b><i>IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty</i></b>	<a href="#">Operational guidance</a> on persons deprived of their liberty and COVID-19
<b><i>WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention</i></b>	<a href="#">WHO COVID-19 Detention Guideline</a>
<b><i>OHCHR COVID-19 and its human rights dimensions</i></b>	OHCHR <a href="#">Covid-19 Guidance</a>
<b><i>United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i></b>	<a href="#">Advice</a> of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (Advance unedited version) (adopted on 25th March 2020)
<b><i>Penal Reform International Briefing on Coronavirus</i></b>	A <a href="#">briefing note</a> that contains Risks and practices from other countries
<b><i>ILF Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees</i></b>	<a href="#">Actions that legal aid providers</a> can take to address the COVID-19 pandemic and limit the severity of the impact on people in detention
<b><i>TDH Accelerate release of children from detention</i></b>	<a href="#">Statement</a> that contains guidance pertaining the release of children as a consequence of the COVID-19
<b><i>Child Protection Area of Responsibility Child Protection Resource Menu for COVID-19</i></b>	A collection of <a href="#">child protection resources</a> related to a COVID-19 response
<b><i>Alliance for Child Protection in Humanitarian Action resources on COVID-19</i></b>	A collection of <a href="#">resources</a> on COVID-19
<b><i>Key messages and actions for coronavirus disease (COVID-19) prevention and control in schools</i></b>	<a href="#">Operational guidance</a> on protecting children and schools from COVID-19
<b><i>INEE Resource Page on Novel Coronavirus (COVID-19)</i></b>	A <a href="#">collection</a> of COVID-19 and education in emergencies resources

<b><i>IASC MHPSS Reference Group’s Briefing Note about MHPSS Aspects of COVID-19</i></b>	A <a href="#">briefing note</a> about MHPSS aspects of the 2019 novel coronavirus (COVID-19) outbreak
<b><i>Integrating GBV risk mitigation and response actions.</i></b>	A collection of GBV risk mitigation/resources can be find <a href="#">here</a> .

## Endnotes:

<sup>i</sup> In this note children “deprived of their liberty” includes children who are in “any form of detention or imprisonment or the placement ... in a public or private custodial setting, from which [*they are*] not permitted to leave at will, by order of any judicial, administrative or other public authority” as per the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), art. 11 (b), Convention on the Rights of the Child, Article 37 and CRC Committee GC No. 24 (2019) on children’s rights in the child justice system (CRC/C/GC/24), para. 8. See also the UN Global Study of Children Deprived of Liberty, UN General Assembly Resolution A/74/136, which references the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 2002 (Art 4).

<sup>ii</sup> “[C]hildren should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.” Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 5. See also [Global Compact for Safe, Orderly and Regular Migration](#); [UNHCR’s position regarding the detention of refugee and migrant children](#) in the migration context; UNICEF, [Alternatives to Immigration Detention of Children](#) (February 2019); and UNHCR, [Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response](#) (16 March 2020)

<sup>iii</sup> This document focuses on children deprived of their liberty in the criminal justice systems, on the basis of national security including within military justice systems, and in immigration detention. Issues related to COVID-19 and children in residential care facilities will be addressed through separate but mutually reinforcing guidance (forthcoming).

<sup>iv</sup> WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention (March 2020), p.1; See also See also Inter-Agency Standing Committee, [Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty](#) (March 2020); and The United Nations Global Study on Children Deprived of Liberty, Manfred Nowak (2019), Chapter 6: Impacts on health of children deprived of liberty.

<sup>v</sup> See also, WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention (March 2020) “The global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons.” See also ICRC, [COVID-19: Protecting prison populations from infectious coronavirus disease](#) (11 March 2020)

<sup>vi</sup> See for examples CRIN, [Coronavirus and children in detention](#) (26 March 2020); see also Penal Reform International, [Briefing note Coronavirus: Healthcare and human rights of people in prison](#) (16 March 2020)

<sup>vii</sup> See generally WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention (March 2020) and -Agency Standing Committee, Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty (March 2020); and generally Human Rights Watch, [US: COVID-19 Threatens People Behind Bars](#) (March 12 2020) and [Human Rights Dimensions of COVID-19 Response](#) (19 March 2020), pp. 8-10.

<sup>viii</sup> At a minimum, the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, and the right to be free from retroactive application of penal laws, prohibition of arbitrary detention, collective expulsion and refoulement.

<sup>ix</sup> See generally Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24 (18 September 2019); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) GA 40/33 (29 November 1985); United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) GA 45/112 (14 December 1990); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) GA 45/113 (14 December 1990); Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) Economic and Social Council resolution 1997/30 (21 July 1997); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20 (22 July 2005); United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (UN Model Strategies on VAC) GA 69/194 (18 December 2014)).

- x Including United Nations Rules for the Protection of Juveniles Deprived of their Liberty (GA 45/113 of 14 December 1990); United Nations Standard Minimum Rules for Non-custodial Measures (GA 45/110 of 14 December 1990); Basic Principles for the Treatment of Prisoners (GA 45/111 of 14 December 1990).
- xi This includes child-friendly and accessible information about the COVID-19 outbreak, symptoms of the disease, how children can protect themselves from it, treatment options and other health-related information.
- xii In particular [Standard 20: Justice for children](#), and [Standard 11: Children associated with armed forces or armed groups](#).
- xiii Children who live with a detained or imprisoned primary caregiver – usually the mother, but at times also the father or other primary caregiver. See generally, [The United Nations Global Study on Children Deprived of Liberty](#), Manfred Nowak (2019), Chapter 10: Children living in prisons with their primary caregivers.
- xiv This includes children (unaccompanied, separated or those with their families) and families in pre-removal immigration detention where deportations have been suspended due to the COVID-19 situation. See for example Council of Europe, [Statement by Commissioner calls for release of immigration detainees while COVID-19 crisis continues](#) (26 March 2020)
- xv Children who are detained based on an actual or alleged association with armed forces or armed groups, including those designated as terrorist groups, are victims of one of the six grave violations of child rights in situations of armed conflict and should be treated as such. (Geneva Conventions Additional Protocols, Art. 77(2) AP I; art. 4(3) AP II; see also, United Nations Security Council Resolutions, 2427 (2018)).
- xvi This includes children in immigration detention, where the first priority is their immediate release from detention facilities.
- xvii See for example NASP and NSAN, [Talking to Children About COVID-19 \(Coronavirus\): A Parent Resource](#)
- xviii [WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention](#) (March 2020), pp.8, 15, and 21-22; See also Inter-Agency Standing Committee, [Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty](#) (March 2020)
- xix [WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention](#) (March 2020); and Inter-Agency Standing Committee Reference group for Mental Health and Psychosocial Support in Emergency Settings, [Briefing note on addressing mental health and psychosocial aspects of COVID-19 Outbreak Version 1.1](#) (February 2020)
- xx Children seeking asylum or refugees, including in cases of detention, have the right to be in contact with UNHCR, see UNHCR Detention Guidelines 2012 and UNHCR ExCom Conclusion, No. 85 (XLIX), 1998.
- xxi In the case of children, pre-trial detention should not be used except as a last resort in the most serious cases after release, community placement and diversion have been seriously considered, see Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system (2019) CRC/C/GC/24, para 86.
- xxii See for example The International Legal Foundation, [Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees](#) (March 2020)
- xxiii [WHO Interim Guidance on the prevention and control of COVID-19 in prisons and places of detention](#) (March 2020), p. 5; Inter-Agency Standing Committee, [Interim Guidance COVID-19: Focus on Persons Deprived of Their Liberty](#) (March 2020); and United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic \(Advance unedited version\)](#) (adopted on 25th March 2020).

Endorsed by:

