

Covid-19 and the Rights of Children of Parents who are Incarcerated:

Impacts and Recommendations



child rights connect



PLATAFORMA REGIONAL POR LA DEFENSA DE LOS DERECHOS DE NIÑAS, NIÑOS Y ADOLESCENTES CON REFERENTES ADULTOS PRIVADOS DE LIBERTAD



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Introduction

The ongoing Covid-19 pandemic is impacting all elements of society. As governments respond to this urgent crisis, it is imperative that all actions taken to tackle the virus and its spread be human rights based. While it is true that the virus does not discriminate, it is accentuating and exacerbating longstanding inequalities in our societies, leaving particular groups exposed to heightened vulnerability. Groups who were already vulnerable or on the margins of society require particular attention to ensure the promotion and protection of their rights.

Among these groups requiring targeted attention and action are children of incarcerated parents, including both children residing in prisons with their parents or caregivers, or under house arrest and those separated from their parents or caregivers by incarceration. The Covid-19 pandemic and State responses to it pose specific challenges for the full enjoyment of the rights of these children and their families.

States must remember that the children of those held in detention are rights holders, and that their rights must be considered in all Covid-19 responses which impact upon them.¹ The best interests of these children should be a primary consideration at all times in decisions which affect them: this is especially pertinent during the pandemic.

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¹ Inter-Agency Standing Committee, [‘Interim Guidance: COVID-19: Focus on Persons Deprived of their Liberty’](#), OHCHR and WHO, March 2020, page 5

Pandemic-related criminalisation

New legislation and policies which excessively criminalise people for contravening virus containment measures are extremely concerning. Any criminal justice intervention with a parent or caregiver including those that are directly or indirectly related to coronavirus must be in the best interests of the child. In cases involving an alleged crime under COVID-19 related legislation, any detention of a parent or caregiver should be a measure of last resort given the impact on children and wider public health concerns. This includes situations of pre-trial detention. ‘Public health’ must not be taken to automatically equate to ‘criminalisation’: any measures taken which increase the detained population are inherently contrary to public health motivations.²

Measures to reduce prison populations

We echo calls for the controlled release of people in prison, wherever possible, in order to reduce prison populations, facilitate physical distancing, and reduce the risk of mass contagion, morbidity and mortality. As UN High Commissioner for Human Rights Michelle Bachelet has said, ‘Imprisonment should be a measure of last resort, particularly during this crisis.’³

We urge, in particular, the release of pregnant people in prison⁴ and parents living in prison with their children.⁵ Parents of children under the age of 18 should be considered for release as a priority where this would be in the best interests of the child. The balance of considerations in a best interests assessment to determine whether a child should reside in prison with their parent is significantly different during a pandemic: in this unprecedented circumstance, we believe that no child should be detained with their parent given the increased risk of infection in places of detention and therefore both they and their parent should be released.

Children and parents should have immediate access to appropriate accommodation, support and healthcare. Families of those released early are likely to require immediate, additional support during this period.

We support the Advice from the United Nations Subcommittee on Prevention of Torture, which includes considering reducing prison populations ‘wherever possible by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of non-custodial measures indicated as provided for in the Tokyo Rules.’⁶

The right to health and hygiene⁷

Those in places of detention, including children residing with their parents in prison, are at heightened risk from the spread of the virus due to cramped living conditions and lack of choice regarding proximity to others, as well as frequently poor conditions of accommodation, including a lack of access to water and required cleaning products.⁸

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² The Alliance for Child Protection in Humanitarian Action and UNICEF, [‘Technical Note: Covid-19 and Children Deprived of their Liberty’](#), page 7

³ Michelle Bachelet, [‘Urgent action needed to prevent COVID-19 “rampaging through places of detention”](#)’, 25 March 2020

⁴ World Health Organization, [‘Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance’](#) (15 March 2020) page 4

⁵ The Alliance for Child Protection in Humanitarian Action, UNICEF, [‘Technical Note: Covid-19 and Children Deprived of their Liberty’](#)

⁶ UN 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 \(adopted on 25th March 2020\) para 9.2](#)

⁷ Convention on the Rights of the Child, Article 24.

⁸ Michelle Bachelet, [‘Urgent action needed to prevent COVID-19 “rampaging through places of detention”](#)’, 25 March 2020, UN Subcommittee on the Prevention of Torture, COVID-19: [Measures needed to protect people deprived of liberty](#), UN torture prevention body says, 30 March 2020

The International Covenant on Economic, Social and Cultural Rights ensures the right of everyone to the ‘highest attainable standard of physical and mental health’,⁹ which requires governments to take steps to ensure the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’. This right includes all those in custody, meaning that States must ensure that children in detention have access to prevention measures and medical care which is at least equivalent to that available to the rest of the population.

Children in detention, as well as their parents, should be screened for Covid-19 in-line with World Health Organization (WHO) guidance. Detainees, including children, should have access to regular medical check-ups and particular attention should be paid to their specific needs.¹⁰ All health checks and tests must be carried out with full respect for the rights and dignity of the child.¹¹

Authorities should take all possible measures to ensure that WHO guidelines, including on physical distancing, are enabled for those in detention, including children, noting that this burden falls on State authorities, including prison authorities working together with other relevant authorities, rather than individuals in this circumstance. For this purpose, children residing in prison with their parent should be considered as a ‘household unit’: that is to say, a parent and child should be allowed to continue co-habiting, but their physical distance from the rest of the prison population should be respected.

The standard of hygiene in all detention facilities is of the utmost importance during the pandemic: staff and people in prison must be provided with all the necessary materials to ensure that the facilities meet the highest possible standard of cleanliness, in the interests of limiting the spread of the virus.

Those who are pregnant are at particular risk from Covid-19: pregnancy outcomes are already threatened by parental incarceration, with pregnant people in prison more likely to have high-risk pregnancies, give birth prematurely, deliver alone, or deliver en-route to hospital.¹² Keeping these people imprisoned poses a serious risk to their health and that of their child.¹³

Right to information¹⁴

Children residing in prisons, as well as their parents, must have access to timely and accurate information about Covid-19 in formats which are accessible to them. This may include the provision of information in child-friendly formats¹⁵ (including the use of images and video where appropriate), the provision of information in languages other than the States’ official language(s), and the provision of information accessible to those with disabilities.

Parents living in prison who are separated from their children by incarceration must have access to timely and accurate information about pandemic responses both within and outside of the prison, as well as about decisions taken which impact upon them including visiting rights and release.¹⁶

Parents in prison must have access to materials designed to support them in their parenting during the pandemic, such as those produced by UNICEF.¹⁷ Specific materials should be developed and made available

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⁹ International Covenant on Economic, Social and Cultural Rights, Article 12.

¹⁰ Inter-Agency Standing Committee, ‘Interim Guidance: COVID-19: Focus on Persons Deprived of their Liberty’, OHCHR and WHO, March 2020, page 4

¹¹ See Committee on the Rights of the Child General Comment Number on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) (2014), sections II.C, II.E, II. F.

¹² See, for example, European Court of Human Rights, *Korneykova and Korneykov v Ukraine*, application no. 56660/12, 24 June 2016.

¹³ Emily Goddard, ‘Coronavirus: Government must release pregnant women from prison or risk lives, campaigners warn’ (Independent, 22 March 2020)

¹⁴ Convention on the Rights of the Child, Article 13.

¹⁵ For example, [UNICEF information](#)

¹⁶ Penal Reform International, ‘Coronavirus: Healthcare and Human Rights of people in prison’ (16 March 2020)

¹⁷ UNICEF, ‘Coronavirus: what you need to know to protect you and your family’

taking into consideration the situations of children living in prison with their parent, as well as children separated from their parents by incarceration.

Right to family life¹⁸

Many States have removed prison visiting rights in an attempt to prevent spread of the virus. States must respect the crucial importance of visiting for people in prison and their loved ones, especially for the children of incarcerated parents, and ensure that interference with the right to family life is not arbitrary. Acknowledging the importance of minimising face-to-face contact for the sake of virus management, we draw attention to the mental health implications of the removal of visiting rights, at this time of heightened anxiety both for children and for their parents.¹⁹ Where in-person visits are restricted or prohibited as part of contagion prevention efforts, it is essential that other means of maintaining contact be made easily and freely available for all families.²⁰ This should include the provision of or extension of the use of free telephone and video calling, emailing and instant messaging, and free or subsidised postal contact. Contact of this kind should be frequent and flexible, to minimise anxiety and distress for children, and consideration should be given to enabling children to play and take time for themselves in this alternative format. Such facilities should be made accessible to those with disabilities: cost should never be a barrier to a child's contact with their family.

The use of alternative visiting technologies and facilities should in no way expose children or their families to any extra danger of contagion: this is likely to mean in almost all circumstances that children should be able to communicate with their parent or caregiver from their place of habitual residence.

Children residing in prisons who are not released must be allowed to maintain regular and flexible contact with family outside of the prison, via the use of the above described technologies noting the importance of contact with the outside world both for their emotional wellbeing and for their safety.

All measures taken which limit visiting or contact must be strictly time-limited and should not exceed the duration of the pandemic: as soon as it is safe for detainees, prison staff and children, normal visiting procedures should be resumed.

Children's anxiety and distress about the wellbeing of their relatives during the pandemic must be sensitively addressed by authorities, both by enabling contact with their relatives and by providing information and reassurance.²¹ Information about detained relatives' wellbeing should be provided on a consistent basis, and not limited to cases in which they become ill. We encourage authorities to follow models of good practice seen in some detention facilities, including Covid-19 Family Support lines, to provide information to concerned family members, as modelled by HMP Altcourse in the United Kingdom.²²

In the case of someone contracting Covid-19, information about their condition should be freely and regularly communicated with their relatives: this applies both for families on the outside in the event that their detained relative contracts the virus, and for imprisoned parents in the event that their child on the outside contracts it.

In many contexts the work of civil society is an essential component in enabling children to visit their parents and supporting their right to family life more broadly. The pandemic has placed severe restrictions on the work of such organizations: wherever possible, authorities should enable them to continue their work remotely, in order to minimise disruption to the lives of the children they work with.

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¹⁸ Convention on the Rights of the Child, Preamble and Article 8.

¹⁹ Inter-Agency Standing Committee, '[Interim Guidance: COVID-19: Focus on Persons Deprived of their Liberty](#)', OHCHR and WHO, March 2020, page 5

²⁰ The Alliance for Child Protection in Humanitarian Action, UNICEF, '[Technical Note: Covid-19 and Children Deprived of their Liberty](#)', page 8-9

²¹ Ibid.

²² [See Tweet](#)

Lock down inside prisons

Though the language of ‘lockdown’ has become widely used for the general population facing restrictions on their day-to-day lives, we draw attention to the meaning of ‘lockdown’ measures for those in prisons and the impact that this has on children of incarcerated parents. Any measures taken within detention facilities which further restrict the liberty of those detained, including the removal of exercise and leisure time, must be strictly lawful, necessary and proportionate.

During any lockdown in a prison, the movement of those detained is likely to be severely limited: to ensure compliance with international human rights obligations, children should wherever possible be allowed access to natural light and fresh air and spend as little time confined to their cell as possible in the circumstances. Children’s right to play must be guaranteed during lockdown, including by enabling their ongoing access to toys and games. Parents and caregivers should still be able to spend the maximum amount of time with their children, fulfilling as many parental responsibilities as possible.

Lockdowns and physical distancing measures taken must never be interpreted to require authorities to use solitary confinement measures for parents, including parents residing with their children in prison. Solitary confinement has been acknowledged to constitute torture in many circumstances, specifically if used upon children, and is not acceptable as part of Covid-19 prevention or treatment. The Bangkok Rules also specifically prohibit the use of solitary confinement for pregnant or breastfeeding people in prison.²³ Where isolation of a detainee is deemed to be required, this must be decided by a medical professional and be strictly time limited and take place in an appropriate location which does not constitute solitary confinement.²⁴

Right to education²⁵

Many schools around the world have temporarily closed during the Covid-19 outbreak. In all cases, States should ensure continued access to learning for all, which is likely to include both ‘high’ and ‘low’ tech solutions. These solutions must take into account the specific needs and situation of children residing in prison with their parents, guaranteeing for them equivalent access to education as their peers who reside outside of prison.

Right to an adequate standard of living²⁶

States should ensure that their pandemic responses do not aggravate the pre-existing economic hardships, often gendered in their impacts, encountered by single-parent households and other families experiencing parental incarceration.²⁷ Economic measures taken by States to try to maintain the right to an adequate standard of living during and following the pandemic must take into account the specific complexities and economic situation of children of incarcerated parents and their families. This should include consideration of the specific situation of families who rely upon income from prison work, which may have been suspended as a result of the current situation. States should supply all support necessary, including material and financial assistance, to these families in order to ensure that the child’s right to an adequate standard of living is protected during and following the Covid-19 pandemic.

We hope that the learning taken from Covid-19 will inform a more just criminal justice system, which is built upon the principles of human rights and values alternatives to detention wherever possible.

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²³ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 22.

²⁴ Penal Reform International, [Coronavirus: Healthcare and Human Rights of people in prison’ \(16 March 2020\) page 7](#)

²⁵ Convention on the Rights of the Child, Article 28.

²⁶ Convention on the Rights of the Child, Article 27.

²⁷ Inter-Agency Standing Committee, [‘Interim Guidance: COVID-19: Focus on Persons Deprived of their Liberty’, OHCHR and WHO, March 2020, page 5](#)

