

WHY SHOULD WE CARE ABOUT INCARCERATED PEOPLE

DURING THE TIME OF COVID-19?

We are currently facing a global public health crisis. It is at a time like this when the protection of vulnerable populations becomes especially important. Incarcerated persons are at a particularly high risk for contracting COVID-19 and are uniquely affected by numerous by-products of the current situation, including the issues below.

COVID-19 is not going to respect the borders of prison walls; an outbreak in our prisons could seriously harm those incarcerated, the staff, and the surrounding community. Therefore the government needs to take extraordinary measures to ensure that the rights and health of all detained persons are protected.

Challenges facing incarcerated persons:

1 DIFFICULTY IN IMPLEMENTING COVID-19 PRECAUTIONARY MEASURES

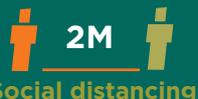
Once the State deprives a person of their liberty, it is obliged to provide a duty of care, equivalent to that available to the general community. The current health care instructions given to the community with regards to Covid-19 include:

- wash your hands regularly, with soap or hand sanitizer;
- practice social distancing and isolation, especially if you are at risk of transmission/infection; and
- stay informed.

These are practically impossible to follow if you are in prison. Not only are almost all of South Africa's prisons overcrowded, many of them also lack sufficient running water and hygiene materials. This places the persons incarcerated and working within the prisons at a high risk of contracting the virus.



Wash hands



Social distancing



Stay informed

2 INCARCERATED PERSONS AT A HIGH RISK

In addition to the negative impact of their physical environment, incarcerated persons are inherently at a higher risk for contracting the virus. This is due to the fact that a large portion of the prison population come from poorer communities, where access to healthcare is limited. Furthermore, many people's immune systems may already be compromised due to the high rates of HIV and TB in prison, which makes them vulnerable to severe forms of COVID-19.



Regular screening and testing

Recommendation: Preventative measures should be implemented immediately, including: regular screening and testing; rigorous cleaning and sanitizing of all surfaces; provision of hygienic materials and masks to all detained persons and staff; separating at risk persons; and ensuring updated information is shared regularly. Furthermore, government should decrease the number of people in prisons – prioritise the early, provisional or temporary release of elderly detainees, especially those with underlying health conditions, as well as people serving short sentences for non-violent crimes who test negative for COVID-19 and exhibit no symptoms.

3 LIMITED ACCESS TO LEGAL REPRESENTATION

Due to the current moratorium placed on prison visits, detained persons' access to their legal representatives – a constitutional right – will inevitably be limited.



Limited legal representation

4 RESTRICTED FAMILY VISITS



Communicate telephonically

Visits by family members and friends are vital for the mental health of detained persons and can prevent violence inside prison. Visits are also a source of food and other essential resources that are not sufficiently provided by the prison (such as bedding, sanitary items, and medication). Furthermore, a lack of visits may also have a seriously negative impact on the family members themselves.

Recommendation: Government needs to ensure that incarcerated persons' means of contacting their legal representatives and family (e.g. phone, email, post, video calls) are more accessible, frequent, and free of charge.

5 DELAYED ACCESS TO JUSTICE

The courts will only be hearing urgent matters during this time, which will undoubtedly place an enormous burden on the court roll after the lockdown. This means that people awaiting trial will have to be detained for prolonged periods of time. This is especially concerning for people who have not yet been convicted.



Recommendation: Courts should urgently review all cases of pre-trial detention (through the use of audio-visual facilities where in-person appearances are not feasible) in order to determine whether it is strictly necessary in the light of the prevailing public health emergency.

6 RESTRICTED PRISON OVERSIGHT



Mandatory reporting obligations

The operational capacity of the Judicial Inspectorate for Correctional Services – South Africa's national body that monitors, reports on and inspects conditions of detention and the treatment of detained persons – is hindered by the current moratorium on prison visits. This may have serious implications for the safety of detained persons and the accountability of prison officials.

Recommendation: It is important to ensure that the existing complaints and oversight mechanisms remain functioning, effective, and accessible. Incarcerated persons must be able to report any ill-treatment (including the use of medical isolation taking the form of disciplinary solitary confinement), and prisons must continue their mandatory reporting obligations to ensure accountability.



A global crisis is a time of introspection, empathy and solidarity. This is the time to rethink the prison system and punitive approach to justice in this country. Prisons need to be places of rehabilitation, to facilitate restoration and reintegration into society, rather than institutions of punishment and revenge. Let's be a society that cares and employs evidence-based measures to reduce crime and ensure the safety of all.

