



## **DETENTION JUSTICE FORUM**

**6 APRIL, 2020**

**By email**

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Dear President Ramaphosa, Minister Lamola, Minister Cele, Minister Motsoaledi, Minister Mkhize, Commissioner Majola, Judge Cameron, Ombudsman Masondo, Ombudsman Makgoba, and Director Setshedi

**DETENTION JUSTICE FORUM: RECOMMENDATIONS OF PRECAUTIONARY MEASURES TO BE IMPLEMENTED DURING THE COVID-19 PANDEMIC AND PUBLIC HEALTH CRISIS TO PROTECT THE HEALTH AND SAFETY OF PEOPLE IN DETENTION**

1. We write to you on behalf of the Detention Justice Forum (DJF), a civil society coalition of non-governmental organisations and individuals working to ensure that the rights and well-being of those who are detained are respected and upheld, as enshrined under the South African Constitution, laws, and regional and international human rights norms and standards.
2. The DJF is concerned about the devastating effect the spread of the novel coronavirus (“COVID-19”) may have on people in places of detention.
3. Places of detention are high-risk areas for the COVID-19 to spread due to overcrowding. This is even more concerning in places of detention in countries like ours, where many detainees in our facilities may have compromised immune systems because of tuberculosis (TB), HIV/AIDS or other chronic and non-communicable illnesses.
4. South Africa ratified the UN Optional Protocol to the Convention against Torture (OPCAT) and designated the South African Human Rights Commission (“SAHRC”) as the National Preventive Mechanism. The treaty monitoring body for the OPCAT is the Sub-committee for the Prevention of Torture (SPT) and it recently issued Public Advice for governments which has particular significance to the national strategy for addressing the COVID-19 crisis in places of detention<sup>1</sup>.
5. As such, we submit herein, recommendations of practical strategies selected from the Public Advice to States Parties and NPM for the South African government to urgently adopt and implement so as to protect detained persons and staff by significantly minimizing the potential catastrophic impact of COVID-19 in detention facilities.<sup>2</sup>
6. The member organisations recommend that the Presidency, Department of Justice and Corrections; South African Police Services, Department of Home Affairs, and Department of Health urgently implement the following:
  - 6.1. Conduct urgent and regular **screening and tests**, prioritising those with symptoms, as well as conduct **risk assessments** to identify those most at risk within the detained populations, taking account of all particularly vulnerable groups;

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<sup>1</sup> Article 11 (1) (b). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf>

<sup>2</sup> Available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

6.2. **Reduce prison populations and other detention populations such as police cells**, to improve hygiene and enhance possibility of social distancing particularly in overcrowded centres, by implementing schemes of early, provisional or temporary release for detainees held for minor and non-violent offences, or are left with a year or less of their sentence. Special consideration should be given to:

6.2.1. elderly inmates;

6.2.2. pregnant women or women with young children living with them in detention;

6.2.3. children;

6.2.4. those who test negative for COVID-19 and exhibit no symptoms; and

6.2.5. those with pre-existing health conditions that make them vulnerable to infection.

The abovementioned release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive or are particularly vulnerable to infection;

6.3. **Review all cases of pre-trial detention** in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases. Audio-visual facilities should also be utilised to do more than just postpone hearings but should also be used to process some of these cases and grant bail;

6.4. **Reduce immigration detention** populations to the lowest possible level by placing an immediate moratorium on any further arrests on immigration related charges for the purposes of deportation, for the duration of the Lockdown. The state should also immediately release any foreign national:

6.4.1. currently detained on immigration related charges pending deportation, whose detention has exceeded the maximum period provided for in the Immigration Act;

6.4.2. whose detention period will exceed the maximum allowed period (in terms of the Immigration Act) during the Lockdown; and

6.4.3. who is able to show that they have an asylum or refugee claim, including those who may be a dependent of an asylum seeker or refugee currently in South Africa and documented;

6.5. Ensure that **sufficient facilities and supplies** are provided (free of charge) to all who remain in detention in order to allow detainees the same level of personal hygiene as is to be followed by the population as a whole;

6.6. Provide sufficient compensatory alternative methods for **detainees to maintain contact** with families and the outside world, e.g. by telephone, internet/email, video communication and other appropriate electronic means in place of the in-person visits that are currently restricted. Such contacts should be both

facilitated and encouraged by the Department and they must be frequent and free;

- 6.7. In the absence of visits crucial to the provision of food and other supplies desperately needed by people in detention, facilities must **ensure regular and sufficient provision of these essential supplies** to all the people in detention;
- 6.8. Prevent the use of medical isolation taking the form of disciplinary **solitary confinement** and allow monitoring and reporting functions such as JICS access to and communication with inmates in medical isolation;
- 6.9. Keep all the people in detention and the staff regularly, timeously, and accurately **informed of all measures** being taken by the Department to address COVID-19 infections in detention facilities, the duration of these measures, and the reasons for them; and
- 6.10. Ensure that appropriate measures are taken to **protect the health** of detention and medical staff and that they are properly equipped and supported as they undertake their duties. This includes, ensuring that those staff members who remain in close contact with the detainees strictly observe all safety protocols when they leave and enter the detention facilities.

7. The member organisations also recommend that the SAHRC, as NPM, urgently implements the following:

- 7.1. Discuss with the Ministry of Justice and Corrections, Ministry of Defence, Ministry of Police, Ministry of Health, IPID, JICS, Military Ombudsman, Health Ombudsman and other relevant national authorities concerning the implementation and operation of mitigation measures;
- 7.2. Ensure that people in detention **are still protected against any ill-treatment or violence during this time**. They must still have access to independent medical advice, legal assistance, and they must be able to notify third parties of their detention and report any ill-treatment. It is important to ensure that the existing complaints and oversight mechanisms remain functioning, effective, and accessible;
- 7.3. Use electronic communication with those in places of detention;
- 7.4. Establish NPM 'hotlines' within places of detention and secure email and postal facilities;
- 7.5. Set up and track setting up of new/temporary places of detention;
- 7.6. Enhance the distribution of information concerning the work of the NPM within places of detention and ensure that there are channels allowing prompt and confidential communication;

7.7. Increase Military Ombud, Health Ombud, JICS and IPID staff capacity and access to **collect and scrutinise data** relating to places of detention and police holding;

7.8. Seek to contact third parties (e.g. families and lawyers) who may be able to provide additional information concerning the situation within places of detention; and

7.9. **Collaborate with NGOs and relief organisations** working with those deprived of their liberty to adequately mitigate the negative impact that the virus will have in detention facilities and the nation.

8. In light of the magnitude of the current global public health crisis, we ask that you adhere to the guidance for states provided by the UN SPT in full or, at minimum, you urgently adopt the recommendations above and implement measures to ensure the safety of all those detained, living and working in detention facilities. We urge government to adopt a “do no harm” approach and ensure that the “equivalence of care” principle (as stated in the Nelson Mandela Rules) is upheld.

Yours sincerely,

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