



Justice **With** Children

Policy and Practice Brief

Accelerate Release of Children from Detention; Protect Children from COVID-19

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On 11 March 2020, the outbreak of a novel coronavirus was declared a pandemic by the World Health Organization. Two months later, with 5.5 million confirmed cases and over 350,000 deaths recorded, the COVID-19 pandemic has created a global emergency that poses profound social, economic, and political challenges for all countries and across all sectors. In the justice sector, places where individuals are deprived of liberty in potentially crowded and unsanitary conditions were immediately flagged as high-risk settings where the virus could spread easily, with potentially disastrous results for inmates. Health experts have alerted that individuals who are in poor health are going to be hit harder by COVID-19, and research suggests that children who are deprived of liberty are likely to carry a higher burden of ill-health. Accordingly, rapid actions have been taken, and continue to be taken, to encourage authorities to accelerate the release of children from custodial settings as a means of protecting them from the virus.

As observed by the United Nations in the Global Study on Children Deprived of Liberty published in July of 2019, children are deprived of liberty under at least six types of circumstances: (1) detention of children in the administration of justice, (2) children living in prisons with their primary caregivers, (3) migration-related detention, (4) deprivation of liberty in institutions, (5) detention in the context of armed conflict, and (6) detention on national security grounds¹. The special needs and sensitivities of children place those held in detention at increased risk of physical and emotional harm, even in the best of circumstances. But the outbreak of the COVID-19 pandemic presents extreme risks both to children who are detained and to the institutions responsible for ensuring their safety and well-being.

This document captures the initial phases of how justice systems have reacted to the COVID-19 pandemic, with a specific focus on children in conflict with the law. It synthesises research, media reports, international guidance, and operational perspectives in order to provide a snapshot of policies adopted and undertaken to respond to the needs of children deprived of liberty in the initial months of the pandemic. In doing so, it contributes valuable new perspectives and insights to the growing field of work spearheaded by civil society organisations, academics, United Nations agencies, and pro bono law firms in response to the ongoing COVID-19 crisis.

- Section One of this briefing paper presents a summary of research on the impact of COVID 19 on children's health and an overview of how justice systems around the world have reacted.
- Section Two presents international legal instruments and regional mechanisms relevant to children's rights that should be considered when devising responses to protect children deprived of liberty during the pandemic.

¹ Manfred Nowak, "The United Nations Global Study on Children Deprived of Liberty," 11 July 2019, available at <https://undocs.org/A/74/136>.

- Section Three presents regional lessons learned from different specific actions that have been taken by governmental authorities around the world to mitigate the risk posed by COVID-19 for individuals deprived of liberty.
- Section Four presents a set of policy recommendations, illustrated by practical examples of rapid response actions taken by Tdh in coordination with national authorities following the lockdown and confinement measures enacted in a number of countries around the world.

COVID-19 remains a rapidly unfolding emergency that continues to yield significant challenges to upholding the rights of children in justice systems in the short term and for achieving child-friendly justice systems in the longer term. It is, therefore, crucial for policymakers and practitioners to continue to monitor the quickly evolving situation in different countries and critically assess the outcomes of different policies and practices.

To that end, the information presented in the document will continue to be updated on the following website: <https://justicewithchildren.org/advocacy>. This will include the issuance of operational guidelines to support front-line justice and social professionals in protecting children deprived of liberty and accelerating their release.

I. Risks Posed by COVID-19.

A. COVID-19 poses significant risks to the health of children in detention.

1. Children, like adults, face health risks from COVID-19.

While the known health risks associated with COVID-19 are less severe among children than other demographic groups, children can still experience serious illness as a result of COVID-19, including death². For example, in a recent study of data from China, information regarding 2,143 children with COVID-19 infections was analysed. That study indicated that children of all ages appeared susceptible to COVID-19³. In particular, the study produced the following statistics regarding children, who were defined as patients under the age of 18:

- Of all children included in the study (2,143), 731 (34.1%) were confirmed as positive for COVID 19 by laboratory testing.
- From those confirmed as COVID-19 cases, 56% (409 children) had asymptomatic or mild illnesses. A mild illness was defined as symptoms of acute upper respiratory tract infection, including fever, fatigue, myalgia, cough, sore throat, runny nose, and sneezing. Some cases had no fever or only digestive symptoms such as nausea, vomiting, abdominal pain, and diarrhea.
- From those confirmed as COVID-19 cases, 41% (300 children) had moderate illnesses. A moderate illness was defined to include pneumonia, frequent fever and cough, mostly dry cough, followed by productive cough, and wheezing in some cases, but no shortness of breath.
- From those confirmed as COVID-19 cases, 2.8% (21 children) had severe or critical illness. A severe illness included cases with the symptoms above, but child had difficulty breathing and required medical intervention to help with breathing. In critical cases, illness progressed to critical condition, including acute respiratory

² Yuanyuan Dong et al., "Epidemiological Characteristics of 2143 Pediatric Patients with 2019 Coronavirus Disease in China," *Pediatrics* (Pre-Publication version), 16 March 2020, available at <https://pediatrics.aappublications.org/content/pediatrics/early/2020/03/16/peds.2020-0702.full.pdf>.

³ *Id.*



distress syndrome ("ARDS") or respiratory failure, shock, encephalopathy, myocardial injury or heart failure, coagulation dysfunction, or acute kidney injury.

- One patient, a 14-year-old boy, died⁴.

Thus, even among populations 18 years old and younger, a significant number of patients will require elevated levels of care, and a material portion of patients will require hospitalisation, including intensive care.

The study hypothesised that children may have less severe cases than adults, in part, because they are well cared for at home and may be less likely to be exposed to pathogens and/or sick patients. These favourable conditions, however, are not applicable among children in detention.⁵

2. Children in detention are at a greater risk from COVID-19 than children in the general population.

Once COVID-19 enters a detention centre in which children are held, the disease is likely to pass rapidly among the children in that centre, exposing most if not all of them to the disease at a high rate. It is well known that communicable diseases such as COVID-19 spread rapidly in congregate settings, such as prisons and detention centres. This spread is exacerbated by the poor levels of hygiene-related resources, such as the lack of access to hand sanitiser or soap and running water, particularly when prisons and detention centres are overcrowded.⁶

Further, children in detention suffer from higher rates of physical and mental health conditions than the general population⁷. Moreover, there is evidence that individuals with medical conditions are at a higher risk of serious complications from COVID-19⁸. Thus, children in detention are at a higher risk than the general population of presenting serious complications from COVID-19, once contracted. For example, the US Centers for Disease Control (the "CDC") has identified the following conditions as giving rise to an elevated risk from the disease:

- Chronic lung disease or moderate to severe asthma;
- Serious heart conditions;
- Conditions that otherwise compromise the immune system, such as smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids;
- Severe obesity (body mass index [BMI] >40); or

⁴ *Id.*

⁵ *Id.*

⁶ Judy Stone, "Immigrant Detainees Are Sitting On A COVID-19 Time Bomb – First Infection Reported," *Forbes*, 24 March 2020, available at <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#4c02c2443af2>; Letter to Congress by Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, dated 19 March 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>.

⁷ The Global Study on Children Deprived of Liberty, CHAPTER 6, section 3, available at <https://omnibook.com/view/f44475b6-fbd7-4282-b54c-214138199f50/8615e0.xml>.

⁸ Centers for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19); People Who Are at Higher Risk," 26 March 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>.

- Underlying medical conditions, particularly if not well controlled, such as diabetes, renal failure, or liver disease.⁹

Children in detention are more likely to suffer from these conditions than children in the general population, which puts them at a higher risk of serious complications from COVID-19.¹⁰ According to The Global Study on Children Deprived of Liberty, "there is growing evidence that many children in justice-related detention experience complex, co-occurring health conditions."¹¹ Common health concerns include chronic conditions such as asthma, substance dependence, cognitive dysfunction, sexually-transmitted and blood-borne viral infections, self-harm and suicidal behaviour, oral disease, and mental disorder.¹² Further, available evidence suggests that adolescents who experience any period of detention suffer from poorer general health than populations not subject to such detention, including hypertension and a higher prevalence of obesity during adulthood.¹³ There is also evidence that mental health and immune systems are linked.¹⁴ Thus, children who are suffering from mental health issues may experience increased risks of complications from COVID-19 as a result of such mental health issues and the related impact on the child's immune system.

The greater risks associated with communicable diseases within immigration detention facilities is evidenced by the recent deaths of children in US detention facilities. The fatalities included seven deaths from communicable disease, three of which were from influenza.¹⁵ This underscores the high risk that illness, including specifically those illnesses classified as communicable diseases, can lead to the death of children in detention even in developed countries.

3. COVID-19 poses significant health risks to children and adults who are detained together.

The presence of children in detention facilities can accelerate the spread of COVID 19 because children may not display symptoms but nevertheless pass the disease to others in the facility. For example, family detention centres in the US continue to struggle with managing outbreaks of influenza and varicella.¹⁶

Similar considerations apply to children who live with their parents in other detention facilities, such as prisons. The presence of children in these settings is likely to increase the spread of COVID 19 to both adults and children detained under these circumstances. In addition, children who live with their parents in detention facilities are generally younger and, thus, are the most vulnerable to serious complications from COVID-19. Therefore, extra care must be taken to protect their health and well-being.¹⁷

⁹ *Id.*

¹⁰ The Global Study on Children Deprived of Liberty, CHAPTER 6, section 3, available at <https://omnibook.com/view/f44475b6-fbd7-4282-b54c-214138199f50/8615e0.xcml>

¹¹ *Id.* at Section 3.1.

¹² *Id.*

¹³ *Id.* at Section 3.1.g.

¹⁴ Steinar Brandslet, "Immune System and Mental Health Are Connected," 15 August 2019, available at <https://medicalxpress.com/news/2019-08-immune-mental-health.html>.

¹⁵ Nicole Acevedo, "Why Are Children Dying in U.S. Custody?" *NBC News*, 29 May 2019, available at <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>.

¹⁶ Letter to Congress by Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, dated 19 March 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-CongressRe.html#document/p4/a557238>.

¹⁷ The Global Study on Children Deprived of Liberty, CHAPTER 6, available at <https://omnibook.com/view/f44475b6-fbd7-4282-b54c-214138199f50/8615e0.xcml>.

B. COVID-19 places significant stresses on children in detention, who are already at risk of psychosocial and developmental problems and suffer from high rates of mental health issues.

The COVID-19 pandemic places significant stress on all children, whether or not in detention. Compared to adults, children are more easily frightened by emergencies. They rely on their support networks to provide them with the security and confidence to cope, as they are still developing the cognitive skills necessary to internalise their surroundings. Also, during times of stress and crisis, it is common for children to seek even more attachment and emotional support. Going through a crisis like a pandemic can plant stressors even in children who are not detained that can be triggered later in life.

This stress is felt even more acutely by children in detention, who are already removed from their support networks. This is true for children in immigration detention centres¹⁸ and in incarceration.¹⁹ For these vulnerable children, being confronted with this pandemic in a detention setting can cause extreme distress and can create relapses or the worsening of already existing mental health conditions. This is exacerbated by the additional limitations placed on parental and guardian visits and other pre-existing psychological support.²⁰

1. COVID-19 has likely resulted in, or will result in, restrictions on visitors to the facilities, which further exacerbates children's feelings of powerlessness and isolation.

Feelings of powerlessness, loneliness, fear, and uncertainty plague detained and incarcerated children on a daily basis. Layering a public health crisis on top of these conditions would only exponentiate these issues further. Not only will the children and staff experience the panic that naturally accompanies a viral outbreak, but they will also face additional distress because of further disruptions to whatever routine and support system the children have left (if any). Youth detention centres across the globe are already limiting or refusing visitors (including lawyers), suspending physical family visitation, and cancelling educational activities and other appointments that provide the children with regular support (i.e., social workers and health staff, including mental health specialists).²¹ Unfortunately, the reality is that several of these sites are already understaffed to

¹⁸ For example, a recent study found that over 30% of children in a US immigration detention centres suffered emotional problems, including conduct issues, temper tantrums, voluntary isolation, and even PTSD (Sarah A MacLean et al. "Mental Health of Children Held at a United States Immigration Detention Center," *Social Science & Medicine*, Vol 230, June 2019, available at <https://www.sciencedirect.com/science/article/abs/pii/S0277953619302138?via%3Dihub>); A national inquiry by the Australian Human Rights Commission demonstrated similar results in Australian immigration detention centres. (Australian Human Rights Commission, "The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)," *Humanrights.gov*, November 2014, available at <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>); see also Initiative for Children in Migration, "Child Immigration Detention in the EU," March 2019, available at <https://europe.ohchr.org/Documents/Publications/Paper-ChildImmigrationDetentionintheEU-EN.pdf>.

¹⁹ Incarcerated children and young adults suffer from similarly damaging mental health outcomes; research out of a large US youth correctional agency found that over 80% of inmates met the criteria for at least one mental health disorder (Niranjan S. Karnik et al. "Prevalence of and Gender Differences in Psychiatric Disorders Among Juvenile Delinquents Incarcerated for Nine Months," *Psychiatric Services*, June 2009, available at <https://ps.psychiatryonline.org/doi/10.1176/ps.2009.60.6.838>).

²⁰ Hao Yao, Jian-Hua Chen, Yi-Feng Xu, "Patients with Mental Health Disorders in the COVID-19 Epidemic," *the Lancet Psychiatry*, Volume 7, ISSUE 4, Pe21, 1 April 2020, available at [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(20\)30090-0/fulltext#%20](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(20)30090-0/fulltext#%20).

²¹ Eli Hager, "I Want to See my Child. Juvenile Lockups Cut Visits Over COVID-19 Fears," *The Marshall Project*, 23 March 2020, available at <https://www.themarshallproject.org/2020/03/23/i-want-to-see-my-child-juvenile-lockups-cut-visits-over-covid-19-fears>; Tyler Kingkade, "Coronavirus in Juvenile Detention is a 'Nightmare Scenario,' Doctors and Advocates Say," *NBC News*, 27 March 2020, available at <https://www.nbcnews.com/news/us-news/coronavirus-juvenile-detention-nightmare-scenario-doctors-advocates-say-n1170256>; Human Rights Watch, "Latin America: Cut Prison Crowding to Fight COVID-19: Unsanitary Cells Prime Condition For Spreading Virus Outside Walls" *HRW.org*, 2 April 2020, available at <https://www.hrw.org/news/2020/04/02/latin-america-cut-prison-crowding-fight-covid-19>; Press

begin with, and this development only increases the unavailability of adequate social and health services in detention.

A public health emergency is nothing short of a traumatic disruption for any child – let alone one who is in detention. Some recognised trauma-induced traits (both short term and long term) in children include depression, aggressive behavior, attention difficulties, sleeping and eating disorders, and issues maintaining relationships.²² Unfortunately, these issues will likely be exacerbated in children who are already living in stressful conditions such as in detention or incarceration, especially for those already suffering from pre-existing conditions.

2. Mental health issues created by a child's detention will have a lasting effect.

Importantly, trauma and distress can impact metabolic and immune systems in developing children, thereby placing them at even greater risk of contracting a disease during the pandemic and later in life.²³ Indeed, childhood stress has a lasting effect, and even generational effect, on both mental and physical health outcomes.²⁴ These effects are likely to be mitigated with a lasting, responsive support network, both during detention and after release, as part of the child's reintegration into their family and community. It is therefore imperative to fully appreciate the consequences of pandemic response measures as they pertain to children because they will likely cause rippling effects throughout the child's life in ways that will impact society as a whole.

C. COVID-19 will place extreme strains on existing detention centres and poses risks of system failure and inadequate levels of care for detained children.

COVID-19 imposes significant barriers to the operation of detention centres. The often claustrophobic environment of detention centres presents a significant risk to the health of employees. Not only have self-isolation policies required that employees deemed "non-essential workers" stay home, but the growing number of confirmed positive and presumptive positive cases of COVID-19 has resulted in "essential" employees being forced to stay home or to go to hospitals until they recover.²⁵ COVID-19 simultaneously impacts both detention

Room, "Alert COVID-19: Additional Measures in Guatemala Due to State of Public Calamity," *Arias*, March 2020, available at <http://www.ariaslaw.com/en/press/alert-covid-19-additional-measures-in-guatemala-du>; European Prison Observatory, "COVID-19: What is Happening in European Prisons?" *PrisonObservatory.org*, March 2020, available at http://www.prisonobservatory.org/upload/25032020European_prisons_during_covid19.pdf.

²² Substance Abuse and Mental Health Services Administration, "Chapter 3: Trauma-informed Care in Behavioral Health Services," *Treatment Improvement Protocol Series*, No. 57, 2014, available at <https://www.ncbi.nlm.nih.gov/books/NBK207191>.

²³ Bruce S McEwan, "Effects of Stress in the Developing Brain," *Cerebrum*, Vol 14, September 2011, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3574783>.

²⁴ *Ibid.* See also: Rhitu Chatterjee, "Lengthy Detention of Migrant Children May Create Lasting Trauma, Say Researchers," NPR, August 2019, available at <https://www.npr.org/sections/health-shots/2019/08/23/753757475/lengthy-detention-of-migrant-children-may-create-lasting-trauma-say-researchers>.

²⁵ Judy Stone, "Immigrant Detainees Are Sitting On A COVID-19 Time Bomb – First Infection Reported," *Forbes*, 24 March 2020, available at <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#4c02c2443af2>; Letter to Congress by Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, dated 19 March 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>; World Health Organization, "Preparedness, Prevention, and Control of COVID-19 in Prisons," 23 March 2020, available at http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1.

centre employees and the children, furthering the strain on any remaining staff to maintain operations while increasing the standard of care required in attending to unwell children.²⁶

Facilities may struggle to provide proper nutrition to children as supply chains are impacted by COVID 19;²⁷ they may also have issues in procuring sufficient protective equipment and medication to effectively treat sick patients. In addition, facilities generally do not have proper medical isolation spaces for suspected cases or quarantine spaces for new entrants into the facilities. The compounded effect of these factors is that many detention facilities – particularly those operating at or near their maximum capacity – are likely to face significant issues in averting a system collapse.²⁸ Even if continued operation is possible, it is likely to come at a significant cost to detained children, ranging from preventable deaths to severe mental and emotional trauma.²⁹

D. Detention facilities, including those that detain children, increase the overall risk to the community of spreading COVID-19.

Detention facilities present formidable challenges to the successful implementation of safe physical distancing practices. Because of the poor health conditions and low air circulation commonly found in these facilities, transmission of infectious diseases, such as tuberculosis and the flu, is already common in these environments.³⁰ Imposing additional physical distancing is often infeasible because of capacity and operational requirements.³¹ Further, imposing additional physical distancing in a detention setting can be inhumane because of restraints on virtual forms of socialization, which can lead to feeling isolated, which threatens and hinders the child's mental health and basic human rights.³² Given these challenges, doctors have specifically warned that COVID 19 could spread like "wildfire" in youth detention facilities.³³

Not only do detention facilities present significant risks to the individuals subject to detention, but the transfer of individuals throughout the detention system increases the already severe health risks to the broader community.³⁴ This risk is especially high because of the transmission of the virus through asymptomatic carriers

²⁶ Stuart A Kinner et al. "Prisons and Custodial Settings Are Part of a Comprehensive Response to COVID-19," *The Lancet*, 17 March 2020, available at [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30058-X/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30058-X/fulltext).

²⁷ Katy Askew, "Coronavirus Supply Chain Management: Lessons from China," *Food Navigator*, 24 March 2020, available at <https://www.foodnavigator.com/Article/2020/03/24/Coronavirus-supply-chain-management-Lessons-from-China>.

²⁸ World Health Organization, *ibid*.

²⁹ Tyler Kingkade, "Coronavirus in Juvenile Detention is a 'Nightmare Scenario,' Doctors and Advocates Say," *NBC News*, 27 March 2020, available at <https://www.nbcnews.com/news/us-news/coronavirus-juvenile-detention-nightmare-scenario-doctors-advocates-say-n1170256>.

³⁰ Physicians for Criminal Justice Reform, "COVID-19 Risks for Detained and Incarcerated Youth," 22 March 2020, available at <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>; Tyler Kingkade, "Coronavirus in Juvenile Detention is a 'Nightmare Scenario,' Doctors and Advocates Say," *NBC News*, 27 March 2020, available at <https://www.nbcnews.com/news/us-news/coronavirus-juvenile-detention-nightmare-scenario-doctors-advocates-say-n1170256>.

³¹ Physicians for Criminal Justice Reform, "COVID-19 Risks for Detained and Incarcerated Youth," 22 March 2020, available at <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>.

³² Physicians for Criminal Justice Reform, "COVID-19 Risks for Detained and Incarcerated Youth," 22 March 2020, available at <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>; World Health Organization, 20 March 2020 Press Conference, available at https://www.who.int/docs/default-source/coronaviruse/transcripts/who-audio-emergencies-coronavirus-press-conference-full-20mar2020.pdf?sfvrsn=1eafbf_0.

³³ Tyler Kingkade, "Coronavirus in Juvenile Detention is a 'Nightmare Scenario,' Doctors and Advocates Say," *NBC News*, 27 March 2020, available at <https://www.nbcnews.com/news/us-news/coronavirus-juvenile-detention-nightmare-scenario-doctors-advocates-say-n1170256>.

³⁴ Letter to Congress by Scott A. Allen, MD, FACP and Josiah Rich, MD, MPH, dated 19 March 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>.

and presents a particular concern in the immigration context, where transfers of individuals through the system are frequent.³⁵

Even to the extent that children are detained within a single facility, employees working at the facility go home to their families after work, which poses high risks of disease transmission to their broader social networks. Staff and children at some youth detention facilities have already tested positive for the virus.³⁶ As community spread becomes more rampant, both the community at large and vulnerable children in youth detention facilities will be increasingly impacted by the transmission of COVID-19.

II. Rights of detained children.

A. International Law.

Under international law, the best interests of children are a primary consideration in all actions concerning children.³⁷ By not taking decisive affirmative action in the face of COVID-19 to release detained children, ensure safe reintegration of these children into their families and communities, and avoid detaining more children, governments are failing to uphold their binding obligations under international law.³⁸

According to Article 24(2)(c) of the Convention on the Rights of the Child (the "CRC"), state parties shall take appropriate measures to "combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution."³⁹ The vast majority of governments around the world have implemented some sort of physical distancing or shelter in place policy. There is no practical way for such policies to be implemented in detention facilities. Therefore, retaining any children in detention facilities, which exposes them to a high risk of contracting COVID-19, violates Article 24(2)(c) of the CRC.

Further, Article 3(3) of the CRC indicates that state parties "shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." The standards recommended by competent authorities include physical distancing, diligent hand washing, and other cleanliness measures that are nearly impossible to maintain in a detention facility.

In addition to the CRC, several other international laws require governments to take steps to prevent the spread of epidemics among detained children. For example, the Article 12(2)(c) of the International Covenant on Economic, Social, and Cultural Rights states that parties shall take the steps necessary "for the prevention,

³⁵ *Ibid.*

³⁶ Physicians for Criminal Justice Reform, "COVID-19 Risks for Detained and Incarcerated Youth," 22 March 2020, available at <https://njdc.info/wp-content/uploads/PFCJR-Statement.pdf>; Nicole Narea, "Trump Faces Pressure From a Federal Judge to Release Detained Migrant Kids as Coronavirus Spreads," *Vox*, 30 March 2020, available at <https://www.vox.com/2020/3/30/21199652/judge-dolly-gee-migrant-kids-immigration-detention-coronavirus-trump>.

³⁷ See generally Convention on the Rights of the Child, 1577 U.N.T.S. 3 (1989).

³⁸ In its General Comment No. 3, 2003, CRC/GC/2003/3, para. 10 on "HIV/AIDS and the Rights of the Child" the Committee on the Rights of the Child noted that "[t]he child should be paced at the centre of the response to the pandemic, and strategies should be adapted to children's rights and needs."

³⁹ Convention on the Rights of the Child, Article 24(2)(c) 1577 U.N.T.S. 3 (1989).

treatment and control of epidemic, endemic, occupational and other diseases." As discussed above, the risk of spreading COVID-19 is particularly acute in places of detention, where the virus can spread rapidly, especially if access to health care is already poor. States have an obligation to ensure that medical care for those in their custody is at least equivalent to that available to the general population. The UNICEF Executive Director, Henrietta Fore, indicated that many children "are being held in confined and overcrowded spaces with inadequate access to nutrition, healthcare and hygiene services," which are "conditions that are highly conducive to the spread of diseases like COVID-19" and that [a]n outbreak in one of these facilities could happen at any moment."⁴⁰ As previously discussed, there is no way to ensure detained children will be able to maintain such recommended physical distancing and have the recommended hygiene-related resources short of releasing them and stopping the intake of additional children.

In addition, Article 25(1) of the Universal Declaration of Human Rights provides that "[e]veryone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing and medical care and necessary social services." According to UN human rights experts, "[s]tates must take additional social protection measures so that their support reaches those who are most at risk of being disproportionately affected by the crises."⁴¹ Detention facilities cannot meet this obligation under the current circumstances.

Rule 13 of The Standard Minimum Rules for the Protection of Prisoners (the "SMR") further provides that "[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation." Current accommodations in youth detention facilities and other facilities in which children are housed do not meet many, if any, of the recommendations of health professionals for staying safe during this global pandemic. There is no ability for youth to physically distance. Also, there are insufficient resources for youth to wash their hands and sanitise their belongings.

The consensus of the international community, as reflected in the provisions discussed above, is that governments should focus on what is in the best interest of the child, especially during a pandemic. There is no scenario in which detention is in the best interest of the child given the global recommendations on how to slow the spread of COVID-19. Thus, by not releasing children and continuing to detain more children, governments are failing to uphold their obligations under international law.

B. Regional Law.

Regional law further supports the focus of international law on protecting children and ensuring the best interests of the child are at the forefront of all government policies. Around the world, regional laws relating to children make clear that governments should protect children's health and well-being at all costs.

According to Article 14(b) of the African Charter on the Rights and Welfare of the Child, state parties to the present Charter shall "take measures to ensure the provision of necessary medical assistance and health care to all children."⁴² Similarly, Article 15(9) of the Covenant on the Rights of the Child in Islam guarantees "the right

⁴⁰ UNICEF Statement "Children in detention are at heightened risk of contracting COVID-19 and should be released," Henrietta Fore - UNICEF Executive Director, 13 April 2020.

⁴¹ Human Rights, "Human Rights Must be Maintained in Beating Back the COVID-19 Pandemic, 'Without Exception' – UN Experts," 26 March 2020, available at <https://news.un.org/en/story/2020/03/1060372>.

⁴² United Nations, "African Charter on the Rights and Welfare of the Child," available at https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf.

of the child to be protected from [...] infectious and endemic diseases."⁴³ The World Health Organization urges people to wash their hands frequently, maintain physical distance, and seek medical care early if having a fever, a cough, or difficulty breathing. These basic measures cannot be implemented in facilities where children are detained. Children in detention are unable to wash their hands and maintain the suggested physical distance because of the lack of basic hygiene resources and cramped conditions. Further, children needing medical care are at the mercy of the people overseeing the detention facility, as their parents and other loved ones have no opportunity to advocate for them to receive medical treatment. The policy of continuing to detain children during a pandemic and not releasing all children currently detained is in stark contrast to the principles outlined under the African Charter on the Rights and Welfare of the Child and the Covenant on the Rights of the Child in Islam.

Article 35 of the EU Charter of Fundamental Rights provides that "[e]veryone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices" and that a "high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities."⁴⁴ National laws and practices have suggested numerous hygienic practices that people should take to avoid exposing themselves to COVID 19. Children in detention facilities do not have access to the gloves, masks, hand soaps, sanitisers, and other basic supplies that others have in order to protect themselves. Children are being put at risk by being kept in confined conditions with inadequate supplies and have no opportunity to avoid the risk of exposure.

There is agreement, on both a global and regional level, that children need special protection during times of crisis, like a pandemic. The only way for governments to meet the required level of protection is to release all currently detained children, ensure safe reintegration of these children into their families and communities, and stop the intake of additional children into detention.

III. Justice system reactions.

Lessons can be learned from certain actions that have been taken by governmental authorities around the world to mitigate the risk posed by COVID-19 for adults in detention. These actions may inform possible next steps for youth detention facilities going forward. Jurisdictions have resorted to (i) limiting or completely suspending physical visitation and implementing virtual visitation instead; (ii) providing better in-prison sanitisation and healthcare facilities to try and keep the pandemic from spreading rapidly through the prison population; and (iii) releasing "low-risk" prisoners where possible. While some steps have already been taken by various jurisdictions (as discussed below), clearly more needs to be done in order to effectively deal with the potentially devastating effects of this pandemic on the prison population. The UN High Commissioner for Human Rights, Michelle Bachelet, is urging authorities to look at releasing detainees who are particularly vulnerable to COVID-19, including older detainees and those who are sick. Separately, she is also urging countries to release low-risk offenders.⁴⁵

⁴³ Covenant on the Rights of the Child in Islam, Art. 15, no. 9, available at <https://www.refworld.org/pdfid/44eaf0e4a.pdf>.

⁴⁴ Charter of Fundamental Rights of the European Union, 18 December 2020, available at https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁴⁵ "UN Urges Prisoner Releases to Stem Spread of Coronavirus," *France 24*, 25 March 2020, available at <https://www.france24.com/en/20200325-un-urges-prisoner-releases-to-stem-spread-of-coronavirus>.

A. North America.

In the criminal justice context, several jurisdictions are currently taking steps that balance the risks to vulnerable prison inmates from a rapid spread of COVID-19 against the public safety risks associated with the premature release of potentially dangerous individuals into society. The CDC has prepared a checklist that provides steps for planning for pandemic influenza and states that it can also be used for other types of disaster preparedness.⁴⁶ In many prison systems, physical visitation rights have been suspended, and physical contact with the outside world is being minimized to try and prevent spreading the virus. Prison authorities have also attempted to limit the spread of the virus by providing personal protective equipment to inmates, staff, and visitors and by improving sanitisation procedures. Some jurisdictions have proceeded to release "low-risk" prisoners to reduce crowding in prisons in an attempt to stop person-to-person spread of COVID-19, including authorities in California, Colorado, Texas, Florida, New Jersey, South Carolina.⁴⁷

Apart from those incarcerated within the criminal justice system, tens of thousands of individuals are incarcerated in the US for immigration-related offenses. While the public safety risks related to releasing immigration detainees is arguably low, little has been done by authorities to reduce the risk for such detainees. In the US, ICE has been criticized for transferring detainees, including via airlines. This not only puts the detainees at risk but also puts the communities the detainees are traveling between at risk.⁴⁸ No current policies have been implemented though. While a small number of detained migrant children have been released, this process has been extremely slow at least in part because of current travel restrictions and the need to make sure that the children are released to suitable homes.⁴⁹

B. Latin America.

In Latin America, in general, decisions have been taken at three different but interlinked levels.

1. Measures for the functioning of the justice system.

Because of COVID-19 and the related physical distancing and travel restrictions, the justice systems have taken measures to adapt how system functions. For example, judicial processes have been suspended in countries such as **Brazil**⁵⁰ and **Ecuador** except in urgent cases.⁵¹ The use of telematic means and holding virtual hearings have also been encouraged in **Brazil**,⁵² **Chile**,⁵³ and **El Salvador**. Similarly, semi-open measures have

⁴⁶ Centers for Disease Control and Prevention, "Correctional Facilities Pandemic Influenza Planning Checklist," last visited 17 April 2020, available at <https://www.cdc.gov/flu/pandemic-resources/pdf/correctionchecklist.pdf>.

⁴⁷ Prison Policy Initiative, "Responses to the COVID-19 pandemic," last updated 20 May 2020, available at <https://www.prisonpolicy.org/virus/virusresponse.html>.

⁴⁸ Yeganeh Torbati, et. al, "In a 10-Day Span, ICE Flew This Detainee Across the Country — Nine Times," *Propublica*, 27 March 2020, available at <https://www.propublica.org/article/coronavirus-ice-flights-detainee-sirous-asgari>.

⁴⁹ Miriam Jordan, "Judge Urges Release of Migrant Children After 4 Test Positive for Coronavirus in Detention," *The New York Times*, 29 March 2020, available at <https://www.nytimes.com/2020/03/29/us/coronavirus-migrant-children-detention-flores.html>; Aura Bogado, "Families are standing by to take in migrant kids, but the government won't let them out," *Reveal*, 14 May 2020, available at <https://www.revealnews.org/article/families-are-standing-by-to-take-in-migrant-kids-but-the-government-wont-let-them-out/>.

⁵⁰ Resolution n. 314/2020, issued on 20 April 2020.

⁵¹ Resolution n. 04-2020, Corte Nacional de Justicia, Ecuador, 16 March 2020.

⁵² Recommendation n. 71, issued on 18 March 2020, available at <https://www.cncmp.mp.br/portal/images/Recomendacoes/Recomendao-n-71.2020.pdf>.

⁵³ Chile Ministry of Communications, "COVID-19," 20 May 2020, available at <https://www.gendarmeria.gob.cl/corona2020.html>.

been suspended in countries such as **Ecuador**,⁵⁴ with the aim of avoiding the displacement of inmates that could put them at risk.

2. Measures to improve hygiene conditions in detention centres.

On the other hand, and more specifically in the case of adolescents in conflict with the criminal law and deprived of liberty, measures have been taken to improve hygiene and protection conditions in detention centres. Physical visits have been limited or completely restricted in detention centres in **Ecuador, Chile, Colombia, El Salvador, Mexico, Argentina and Brazil**,⁵⁵ among others. In Colombia, these measures have gone hand in hand with plans to strengthen telematic means so that adolescents and young people deprived of liberty can continue to be in social contact with their families.⁵⁶

Countries such as **Chile**⁵⁷ and **El Salvador** have implemented measures that include designing infection prevention protocols for new inmates, designing protocols for possible COVID-19 cases within detention centres, and providing hygiene and cleaning resources to the centres. In **El Salvador** and **Honduras**, the same adolescents have supported manufacturing cleaning materials such as alcohol and disinfecting soap.

3. Measures to review files and provide psychological support.

Finally, steps have been taken to review the files of adolescents and young people deprived of their liberty in a way that allows the analysis of whether it is appropriate to modify a custodial sentence based on certain established criteria. In late March, the National Council of Justice, the organisation that oversees the prison system in **Brazil**, issued a recommendation to release inmates convicted of non-violent crimes such as theft, fraud, and child support violations and allow them to serve the rest of their sentences under house-arrest.⁵⁸ Acting on this recommendation, the Superior Court of Justice in Brazil has ruled on two separate occasions that people convicted of such "low-risk" offenses should not be incarcerated while the COVID 19 pandemic is prevalent in Brazil.⁵⁹ Lower courts in Brazil, however, have been slow to comply with this ruling and hundreds of inmates are still waiting for courts to process their requests to be released to house-arrest. Similarly, in **Argentina**, the government has indicated the possibility of house arrest for especially vulnerable pre-trial

⁵⁴ Resolution n. 04-2020, Corte Nacional de Justicia, Ecuador, 16 March 2020.

⁵⁵ Samuel Lovett, "Coronavirus: Hundreds of Inmates Escape Brazil Prisons Ahead of Lockdown," *The New York Times*, 17 March 2020, available at <https://www.independent.co.uk/news/world/americas/coronavirus-brazil-prison-lockdown-inmates-escape-latest-a9405651.html>; Aila Slisco, "Hundreds of Brazilian Prisoners Escape After Prison Riot Over Cancelled Easter Exits Due to Coronavirus"; *Newsweek*, 17 March 2020, available at <https://www.newsweek.com/hundreds-brazilian-prisoners-escape-after-prison-riot-over-cancelled-easter-exits-due-coronavirus-1492649>; Agence France Presse, "A Massive Flight of Prisoners Leaves 10 Dead in Venezuela," *el Neuvo Herald*, 18 March 2020, available at <https://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article241323656.html>.

⁵⁶ Due to COVID-19, on 30 March 2020, the Colombian Institute of Family Welfare issued an annex to the Operational Manual of Modalities that Address Measures and Sanctions of the SRPA Judicial Process (Adolescent Criminal Responsibility System) (the "Annex").

⁵⁷ Chile Ministry of Communications, "Coronavirus Action Plan," updated 21 April 2020, available at <https://www.gob.cl/coronavirus/plandeaccion/>.

⁵⁸ CNJ News Agency, "COVID-19: CNJ Emite Recomendação Sobre Sistema Penal e Socioeducativo," *CNJ News Agency*, 17 March 2020, available at <https://www.cnj.jus.br/covid-19-cnj-emite-recomendacao-sobre-sistema-penal-e-socioeducativo/>.

⁵⁹ *Id.*

detainees.⁶⁰ Such vulnerable detainees include older individuals over the age of 65 as well as pregnant women and individuals with pre-existing health conditions. All such requests for conversion to house detentions will need to be approved by judges, who will consider the offense committed by such inmates and the risks associated with releasing them back into society. Chile has permitted low-risk and older inmates (above the age of 74) to serve out their remaining sentences in house arrest. This bill excludes those convicted of serious crimes, human rights violations, and violations against humanity from the possibility of being released to house arrest.⁶¹

An additional element that should be highlighted is that some countries have strengthened psychological follow-up for adolescents and young people in order to reduce the impacts of certain more isolating measures needed in the detention centres.

C. Middle East.

In recent months, **Iran** has "temporarily" released approximately 100,000 prisoners, including political prisoners and non-violent offenders, to control the rapid spread of COVID-19 in its prisons.⁶² The State Security Court in **Jordan** decided on 18 March 2020 to release 1,500 defendants arrested for national security offences (mainly political prisoners) to counter the spread of COVID-19. Authorities in the **Gaza Strip** ordered the release of 40 children from the Juvenile Detention Center and mandated that judges take urgent steps to conclude investigations and trials for children held in pre-trial detention, as a result of which 37 cases were closed with no deprivation of liberty sentence. The **Iraqi** Supreme Judicial Council recently announced that more than 20,000 detainees were released as part of the measures to curb the COVID-19 outbreak.⁶³ **Lebanon** announced that it would release approximately 3,000 prisoners, including children. A crisis cell with Lebanese judges from the Ministry of Justice was set up to assess the cases for detainees to be released.⁶⁴ Further, in **Lebanon**, 42 children who were in pre-trial detention charged with misdemeanours have been released. In **Egypt**, the Supreme State Security Prosecution (the "SSSP"), a branch of the Public Prosecution, decided to release 15 opposition activists who had been held on remand for several months, while several human rights and child protection organisations called for the Egyptian government to increase this number and to consider focusing on children and youth.⁶⁵ **Turkey's** government has passed a bill that set the conditions to temporarily release

⁶⁰ Paz Niell, "Coronavirus: Promueven Arrestos Domiciliarios para los Presos con Enfermedades, de Más de 65 Años y Embarazadas," *La Nación*, 16 March 2020, available at <https://www.lanacion.com.ar/politica/coronavirus-promueven-arrestos-domiciliarios-presos-enfermedades-mas-nid2343879>.

⁶¹ Chile Ministry of Communications, "Coronavirus Action Plan," updated 21 April 2020, available at <https://www.gob.cl/coronavirus/plandeaccion>; Emily Greg, "COVID-19 in Latin America - 22 May Updates," *Latin America Bureau*, 22 May 2020, available at <https://lab.org.uk/covid-19-in-latin-america-22-may-update>.

⁶² "Hard-hit Iran Frees More Prisoners Amid Coronavirus Outbreak," *Al Jazeera*, 17 March 2020, available at <https://www.aljazeera.com/news/2020/03/hard-hit-iran-frees-prisoners-coronavirus-outbreak-200317110516495.html>; "Iran Says 1,000 Foreign Prisoners Released Temporarily Due To Virus Outbreak," *RadioFreeEurope RadioLiberty*, 21 April 2020, available at <https://www.rferl.org/a/iran-says-1000-foreign-prisoners-released-temporarily-due-to-virus-outbreak/30568248.html>.

⁶³ "Iraq releases 20,000 detainees amid COVID-19 pandemic," *Anadolu Agency*, last visited 27 April 2020, available at <https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/iraq-releases-20-000-detainees-amid-covid-19-pandemic/1815994>.

⁶⁴ "Coronavirus: Lebanon to free up to one third of prisoners," *The National*, last visited 27 April 2020, available at <https://www.thenational.ae/world/mena/coronavirus-lebanon-to-free-up-to-one-third-of-prisoners-1.1002441>.

⁶⁵ Egypt releases political prisoners amid coronavirus outbreak, *Al Monitor*, last visited 27 April 2020, available at <https://www.al-monitor.com/pulse/originals/2020/03/egypt-release-opposition-activists-coronavirus.html>.

45,000 prisoners, including children and youth, to limit the spread of COVID-19. A similar number will be freed permanently under plans proposed last year to cut chronic overcrowding.⁶⁶

D. Africa.

In **Burkina Faso**, on 24 March 2020, the Supreme Council of the Judiciary (the "CSM") decided to suspend the jurisdictional activities of courts and tribunals. This resolution was adopted to protect the litigants, the magistrates, and all the personnel of the courts of law officers from COVID-19. The jurisdictional activities of the courts and tribunals of Burkina Faso were therefore suspended for a period of two weeks, except for hearings of extreme urgency left to the discretion of the heads of the competent courts and tribunals and involving no more than ten persons. Burkina Faso's President has pardoned 1,207 detainees to stop the spread of the COVID-19, who were selected based on their advanced age, state of health, and completion of half of their sentence. Burkina Faso, which had 7,621 detainees in its various prisons, had already suspended visits to detainees.

In **Mali**, the President granted presidential pardons to a number of detainees in order to relieve congestion in the country's prisons, a measure aimed at better combating COVID-19. The number of amnestied prisoners was 1,200. Mali has responded favourably to the appeal of the UN High Commissioner for Human Rights, Michelle Bachelet, who called for the release of prisoners to prevent the COVID-19 pandemic from "wreaking havoc" in the often overcrowded prisons. The measure concerns prisoners at the end of their sentences and possibly those suffering from chronic diseases.⁶⁷ In terms of in-prison physical distancing efforts, Ethiopia has announced the creation of two new centres for isolation and treatment of infected and at-risk inmates to protect the rest of the prison population.⁶⁸

In **South Africa**, Legal Aid SA called on its clients to stay at home and obey the national lockdown regulations "in the interests of flattening the curve of COVID infections," the organisation said. An Independent Online ("IoL") report notes that although all Legal Aid SA offices will be closed during the lockdown period, since it provides a service linked to the functioning of courts, legal practitioners of the organisation are required to work from home. However, Eastern Cape provincial executive Hope Bambiso has said that such services are limited and that practitioners are communicating with prosecutors telephonically and only going to court to deal with bail applications and cases that are said to be urgent and essential.⁶⁹

In **Morocco**, King Mohammed VI pardoned more than 5,000 inmates to prevent COVID 19 from infecting Moroccan prisons. The pardoned detainees were selected on the basis of "their age, state of health, length of detention and good conduct." Their release will take place "in stages," taking into account "the exceptional circumstances associated with the state of health emergency and the precautions that are necessary." The

⁶⁶ "Turkey to free one-third of its prisoners to curb coronavirus," *Al Jazeera*, last visited 27 April 2020, available at <https://www.aljazeera.com/news/2020/04/turkey-free-prisoners-curb-coronavirus-200414062852220.html>.

⁶⁷ Amadou Sidibé, "To unclog prisons because of the Coronavirus in Mali: Several detainees benefit from the presidential pardon," *Mail24*, 6 April 2020, available at <https://mali24.info/pour-desengorger-les-prisons-a-cause-du-coronavirus-au-mali-plusieurs-detenus-beneficient-de-la-grace-presidentielle/>.

⁶⁸ Addis Abeba, "Prison Commission Blocks Personal, Legal Visits Over Coronavirus Fear," *Ethiopian Monitor*, 20 March 2020, available at <https://ethiopianmonitor.com/2020/03/20/prison-commission-blocks-personal-legal-visits-over-coronavirus-fear/>.

⁶⁹ ANA Reporter, "SA lockdown: Stay at home, Legal Aid SA urges clients," 8 April 2020, available at <https://www.iol.co.za/news/south-africa/eastern-cape/sa-lockdown-stay-at-home-legal-aid-sa-urges-clients-46444087>.

prison administration has taken protective measures for its staff, strengthened health measures, reduced visiting rights, and suspended all activities involving outside contributors.⁷⁰

In **Nigeria**, the president has pardoned 1,540 detainees. Three criteria for clemency were used: the elderly, the chronically ill, and all prisoners with less than nine months to serve.⁷¹

In **Cameroon**, the Department of Justice announced the release of 1,000 people, and a presidential decree allowed the commutation and readjustment of the sentences for all of the prisoners in the country. Measures were also being taken to disinfect the premises. Masks, hand sanitisers, as well as other sanitary and hygienic products were also delivered. Certain outdoor chores were also suspended.⁷²

In **Côte d'Ivoire**, visits by outsiders to prisoners between 18 March 2020 and 16 April 2020 were suspended in order to prevent possible COVID-19 contamination. However, during this time, relatives were still permitted to send parcels and meals. Incoming detainees were required to isolate for 48 hours. Physical distancing has been difficult to implement because of the general amount of overcrowding. The government announced the early release of 1,000 prisoners at the end of their sentence and granted pardons to 1,004 common law prisoners. The International Committee of the Red Cross has delivered hand washing kits, soaps, bleach, and protective equipment for medical staff.⁷³

E. Europe.

1. European Union response.

The European Commission (the "EC") is coordinating a common European response⁷⁴ to the COVID-19 outbreak. On 6 May 2020, the EC Coordinator on the Rights of the Child shared a few of the actions put in place at operational level in response to COVID-19.

In relation to procedural rights of suspects and accused persons, the COVID-19 outbreak has had an impact on the exercise of procedural rights of suspects and accused persons in Europe. Direct communication with lawyers, interpreters, or third-parties (while the suspects or accused persons are deprived of liberty) is more difficult. The use of audio and video conferencing or other remote tools is encouraged. In addition, the EC recommends adopting safety measures, such as glass protections at police stations or in detention facilities, in order to enable exercising the right to a lawyer and the right to an interpreter. Procedural rights of suspects and accused persons need to be respected in order to ensure fair proceedings. Limited derogations, which are

⁷⁰ La Libre, "Coronavirus: Morocco to release more than 5,000 detainees to avoid contamination," 4 April 2020, available at <https://www.lalibre.be/international/afrique/coronavirus-le-maroc-va-liberer-plus-de-5-000-detenus-pour-eviter-une-contamination-5e89c65c9978e2284146b8ba>.

⁷¹ DW, "Prisoners released to fight coronavirus," 30 March 2020, available at <https://www.dw.com/fr/des-prisonniers-lib%C3%A9r%C3%A9s-pour-lutter-contre-le-coronavirus/a-52961429>.

⁷² Prison Insider, "Africa: coronavirus, prison fever," last updated 26 May 2020, available at <https://www.prison-insider.com/en/articles/afrique-coronavirus-la-fievre-des-prisons>.

⁷³ *Id.*

⁷⁴ European Commission, "Overview of the Commission's response," last updated 15 May 2020, available at https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/overview-commissions-response_en.

provided for by the directives, if there are imperative requirements, should be interpreted restrictively by the competent authorities and should not be employed on a large scale.⁷⁵

As a result of the COVID-19 outbreak, national prison administrations are under pressure to limit the impact of the virus on the closed and vulnerable prison environment. Measures to avoid spreading the virus include the temporary suspension of all family visits and activities with outside persons, such as sport, professional, or vocational training. Both staff and prisoners are concerned about their health. Prisoners suffer from the lack of activities and visits, which makes it a challenge to keep staff motivated and prevent riots by prisoners. In particular, Member States, which face high rates of prison overcrowding, are compelled to take difficult decisions on a possible early release.

The European Parliament Intergroup on Children's Rights released a statement on the impact of COVID-19 on children on 15 May 2020 calling the EC and Member States to take a number of actions, including:

- putting in place specific measures to tackle increasing domestic violence against children, as well as the impact of violence that children experience in the household as witnesses, such as campaigns to end violence against children, reinforce cooperation and information sharing through ad hoc funding of EU agencies, including by setting up special emergency numbers; and
- ensuring that children in institutions and detained children are assisted in community-based facilities by the trained professionals and that alternative measures such as hosting families are facilitated during the COVID-19 outbreak with reduced staff.⁷⁶

2. European country responses⁷⁷.

Several jurisdictions in Europe have taken measures to prevent the rapid spread of the pandemic in prisons including the release of low-risk prisoners, with **Germany** releasing hundreds of prisoners who are close to the end of their sentences. German authorities have decided to exclude sex offenders and violent inmates from the list of prisoners who will be released.⁷⁸ **French** prison authorities have issued a detailed list of instructions to increase separation between inmates and reduce contacts with the outside world.⁷⁹ Several prison facilities are balancing the decrease in in-person visitation rights by concurrently making it easier for inmates to contact their families by reducing the costs of phone and video calls, including providing additional free calls, which is similar to the approach taken in other countries and states.⁸⁰

⁷⁵ European Justice, "Impact of the COVID-19 virus on the justice field," last updated 20 May 2020, available at https://e-justice.europa.eu/content_impact_of_the_covid19_virus_on_the_justice_field-37147-en.do.

⁷⁶ Vote For Children, "European Parliament Intergroup on Children's Rights," last visited 27 May 2020, available at <https://www.childrightsmanifesto.eu/european-parliament-intergroup-on-childrens-rights-statement-on-the-impact-of-covid-19-on-children>.

⁷⁷ Council of Europe Portal, "Management of the judiciary – compilation of comments and comments by country," last visited 20 May 2020, available at <https://www.coe.int/en/web/cepej/compilation-comments> (provides a review of national measures in the justice area in view of the COVID-19 pandemic).

⁷⁸ "UN Urges Prisoner Releases to Stem Spread of Coronavirus," *France 24*, 25 March 2020, available at <https://www.france24.com/en/20200325-un-urges-prisoner-releases-to-stem-spread-of-coronavirus>.

⁷⁹ Julien Mucchielli, "Pandémie et prisons : les Instructions de l'administration Pénitentiaire," *Dalloz Actualite*, 16 March 2020, available at <https://www.dalloz-actualite.fr/flash/pandemie-et-prisons-instructions-de-l-administrationpenitentiaire?fbclid=IwAR2Qp7GV30fiHVV3E-vuspDAkPn2pwT3V-7l-iYAe7sX9fcjAcX5W8CV-a0#.Xn46Fo2Ww6b>.

⁸⁰ See, e.g., Illinois Department of Corrections, "Visitation Rules & Information," last visited 18 April 2020, available at <https://www2.illinois.gov/idoc/facilities/pages/visitationrules.aspx/>; North Carolina Department of Public Safety, Pamlico Correctional

As of 22 April 2020, the four child detention centres in **Romania** announced an early release of 24 children, out of 26 requests made, taking into account their credit for good behaviour.

In **Greece**, closed penitentiary institutions for youth are currently inaccessible and court proceedings are suspended, which impacts both the child victims' and offenders' cases (with all the consequences that follow). In addition, the confinement of a large number of refugee children (many of them unaccompanied) in the closed centres – in both the islands and mainland – is concerning in terms of access to health care, both in terms of adequate support and protection. Reports of increased violent incidents within the centres during the COVID-19 crisis, in combination with the reduced presence of organisations in the field, raises concerns.

In **Bulgaria**, reports of violence against children at home have increased. Forensic interviews are still being conducted, but hearing rooms are occasionally not large enough to maintain physical distancing, so alternate locations are being used.

In the **Netherlands**, the Dutch government imposed restrictions on children in youth justice institutions. There is limited legal access for victims and a lack of responses from judicial authorities for child offenders. These institutions have increased restrictions in an effort to prevent the spread of COVID-19 including, prohibiting family visits; prohibiting access to lawyers and persons of trust; eliminating leave; and reducing or eliminating daily programs and treatment programs because teachers and professionals are not visiting the institutions. Additionally, schools are closed and youth institutions do not have the same resources to facilitate online education.

In **Albania**, as a response to the COVID-19 pandemic, the Ministry of Justice for the Albanian Government approved a proposal on 23 March 2020 titled "On the temporary residence in the house of prisoners." This normative act is intended to take temporary measures to prevent the spread of COVID-19 within the justice system as well as for the protection of order and security in the system by guaranteeing the conditions of protection of life and the health of convicts. This normative act aims at defining the conditions and criteria for the temporary stay of the convicts at home, as a special permit, for the duration of the COVID-19 epidemic. The general prison directory reports that all precautionary measures have been taken at the Juvenile Institution in Kavaja (temperatures measured twice a day, limited daily activities, meetings with family members are held online instead of in person, and hygiene and sanitation measures were increased). Three observation rooms were established for youth who have symptoms of the seasonal flu, so they can be separated from other youth. Based on the normative act of the Albanian government, one youth who was sentenced had an opportunity to get special permission for temporary residence at home, but the individual assessment report did not approve him residing at home because he is a recidivist and is assessed as high risk. The other 18 youth who are under custody measure are not subject to the normative act and are therefore are not eligible for temporary residence at home.

Institution, "Visitation Temporarily Suspended," last visited 18 April 2020, available at <https://www.ncdps.gov/adult-corrections/prisons/prison-facilities/pamlico-correctional-institution/>; Chris Tye, "Amid Coronavirus Pandemic, Plan For At-Risk Kids Remains Unclear," *CBS Chicago*, 18 March 2020, available at <https://chicago.cbslocal.com/2020/03/18/amid-coronavirus-pandemic-plan-for-at-risk-kids-remains-unclear/>; Prison Policy Initiative, "Responses to the COVID-19 Pandemic," last updated 17 April 2020, available at <https://www.prisonpolicy.org/virus/virusresponse.html>.

F. Asia.

Five of the ten countries with the largest prison populations in the world are in Asia, with China taking the spot for the second largest prison population in the world.⁸¹ This has inexorably led to the problem of several Asian countries having extremely overcrowded prisons.⁸² Overcrowded prisons combined with limited testing and healthcare facilities make Asian prisons some of the most dangerous for inmates during the pandemic. Some countries have made this situation worse by arresting thousand for violating coronavirus related quarantine and curfew requirements. Only a handful of Asian countries have resorted to releasing low risk and vulnerable prisoners to alleviate the overcrowding in their prisons.

Indonesia released about 10% of its prison population by early May due to coronavirus concerns, which consisted of approximately 38,000 prisoners convicted of low-risk crimes.⁸³ **Myanmar** announced on 17 April 2020 that its annual yearly amnesty will free 25,000 prisoners, which is the largest number of inmates it has ever released during its yearly amnesties.⁸⁴ **Philippines** released about 18,000 inmates in early May, including some who were serving sentences of six months or less, those being held ahead of trial who could not afford bail, and certain sick and elderly prisoners from extremely overcrowded prisons that hold inmates up to four times their capacity.⁸⁵ The top court in **India**, the Indian Supreme Court, has ordered the formation of a committee to consider the release of prisoners on a case-by-case basis if such prisoners have either been convicted of a single crime and sentenced for less than seven years or such other cases that the committee finds meritorious. Through mid-May, approximately 61,000 prisoners have been released from Indian prisons as a result of this process.⁸⁶ In addition, the Afghan government has approved a decree mandating the released of nearly 10,000 "highly-vulnerable" prisoners who are mostly women, youth, and other sick people⁸⁷.

⁸¹ Human Rights Watch, "Asia: Reduce Prison Populations Facing COVID-19," 6 April 2020, available at <https://www.hrw.org/news/2020/04/06/asia-reduce-prison-populations-facing-covid-19>.

⁸² *Id.* (Indonesia, Cambodia, and Bangladesh each has over 200% prison occupancy while the Philippines has up to 500% of its capacity in some prisons).

⁸³ Kuala Lumpur, "Southeast Asia Speeds Up Prison Releases to Stave Off Coronavirus," *VOA News*, 21 April 2020, available at <https://www.voanews.com/covid-19-pandemic/southeast-asia-speeds-prison-releases-stave-coronavirus>; Human Rights Watch, "Asia: Reduce Prison Populations Facing COVID-19," 6 April 2020, available at <https://www.hrw.org/news/2020/04/06/asia-reduce-prison-populations-facing-covid-19>.

⁸⁴ *Id.*

⁸⁵ Randy Mulyanto, "Coronavirus fears in south east Asia's overcrowded prisons as Covid-19 rapidly spreads among inmates," *The Telegraph*, 5 May 2020, available at <https://www.telegraph.co.uk/global-health/science-and-disease/coronavirus-fears-south-east-asias-overcrowded-prisons-covid/> (according to a statement by Mario Victor Leonen, a Supreme Court Justice in Philippines); Rey Panaligan, "18,355 PDLs released from PNP lockup cells, BJMP jails nationwide," *Manila Bulletin*, 18 May 2020, available at <https://news.mb.com.ph/2020/05/18/18355-pdls-released-from-pnplockup-cells-bjmpl-jails-nationwide/>.

⁸⁶ Commonwealth Human Rights Initiative, "State/UT Wise Prisons Respond to COVID 19 Pandemic in India," last visited 20 May 2020, available at <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>.

⁸⁷ "Afghanistan to release up to 10,000 prisoners to slow coronavirus spread", *The Jakarta Post*, last visited 27 April 2020, available at: <https://www.thejakartapost.com/news/2020/03/26/afghanistan-to-release-up-to-10000-prisoners-to-slow-coronavirus-spread.html>

IV. Recommendations: the way forward.

Below are our recommendations for addressing the issues identified in this paper. These recommendations are aligned with those of the United Nations,⁸⁸ the World Health Organization,⁸⁹ the Council of Europe,⁹⁰ UNICEF, and the Alliance for Child Protection in Humanitarian Action⁹¹ though tailored to address the specific needs of children. Where possible, these are illustrated by practical, operational examples taken by Terre des hommes ("Tdh") teams in response to the pandemic between March 2020 and May 2020. A comprehensive list of activities undertaken by Tdh teams in each geographical region is contained in Annex I.

1. To the extent possible, release children from detention so that they can return to their families and self-isolate.
 - a. At a minimum, a sufficient number of detainees should be released to enable the facility to implement effective physical distancing practices, maintain proper hygiene, and provide adequate care to those infected in the event of an outbreak.
 - b. Even if it is determined that releasing all of the children is not appropriate, at least a portion of the children should be released. The following groups of children should be prioritised for release: those who have underlying health conditions that put them at high risk with respect to COVID-19; those who have committed minor or non-violent offences, or offenses not recognised under international law; those who are nearing their release dates; those in pre-trial detention who are suspected of minor or non-violent offenses; and those who are detained beyond the legally permitted period for pre-trial detention.

Practice examples:

In **Afghanistan**, targeted advocacy work by Tdh with the government led to a national decree mandating the release of children from youth detention centres. As of mid-May, a total of 127 children have been released.

In **Iraq**, Tdh lobbied the government to release children. As of early May, 57 children and youth have been granted emergency release from Iraqi prisons and work with national and local authorities is ongoing to coordinate support for these children and their families.

In **Mali** immediate actions were taken by Tdh teams and national partners to reduce the population of children in remand and detention. This work prioritised children who could be rapidly reunited with their families. As of

⁸⁸ See Inter-Agency Standing Committee, "Interim Guidance: COVID-19: Focus on Persons Deprived of Liberty," March 2020, available at <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>.

⁸⁹ See World Health Organization Regional Office for Europe, "Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance," 15 March 2020, available at http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-inprisons.pdf?ua=1.

⁹⁰ See Council of Europe, "Information Documents: Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States," SG/Inf(2020)11, 7 April 2020, available at <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic," CPT/Inf(2020)13, 20 March 2020, available at <https://rm.coe.int/16809cfa4b>.

⁹¹ The Alliance for Child Protection in Humanitarian Action and UNICEF, "Technical Note: COVID-19 and Children Deprived of their Liberty," available at <https://www.unicef.org/albania/media/2716/file/Technical%20Note.pdf>.

mid-May, 72 children have been released from custodial settings in Bamako and about 65 are about to be released.

In **Romania**, Tdh has been in daily contact by phone with the four child detention across the country. As of 22 April 2020, authorities have agreed to release 24 children from three of these centres, taking into account children's good behaviour.

- c. Care must be taken that children have a safe environment to go to once released. An evaluation of the child's home environment should be performed, and if it is not determined to be a safe environment, alternative care arrangements should be implemented.

Practice example:

In **Egypt** and **Lebanon**, Tdh is supporting coordination amongst national authorities, social workers, detention centre staff, and local organisations, in order to assess the safety of the family environments of children whose release is being considered.

- d. Support systems should be developed to assist released children with their reintegration after release, particularly considering that the typical support systems that would assist with such reintegration, such as schools and recreational programs, will likely be closed at the time of release because of the pandemic. Reintegration programs should focus on health, psychosocial, educational, recreational, and legal aspects of each child's circumstances.

Practice examples:

In **Colombia**, Tdh has set up a follow-up call service for children who have gone through the penal system and been released, focusing on all aspects of reintegration. 25 children receive weekly followup calls to monitor and support their reintegration.

In **Jordan and Palestine (Gaza Strip)**, Tdh has lobbied national and local authorities to implement an emergency release process for children incarcerated in several detention centres due to potential risk of exposure to COVID-19. Between 15 March 2020 and 8 April 2020, 131 children were released. Tdh and partners are remotely liaising with these children and their families over the phone to provide direct support and referrals to psychological, recreational, educational services and legal services, with a view of supporting these children to better reintegrate them following their release.

- e. Community-based mechanisms should be mobilised in order to support families and wider communities throughout the reintegration process. It should be ensured that there is proper social follow up with released children to facilitate their reintegration, reduce risk of violence, and reduce the risk of reoffending.

Practice examples:

In **Mali**, Tdh and its local partner are working to identify traditional and community leaders (Imams, Priests, Pastors, Neighbourhood Chiefs, NGO leaders, Cadis, etc.) in the neighbourhoods of children who are eligible for release. These community-based leaders will represent a moral guarantee for the children released and will act as focal points to assist families and accompany them the process of the child's reintegration

- f. Children with **any** symptom should be tested for COVID-19 before being released and, if they test positive, receive adequate support and a treatment plan. All children should observe 14 days of self-isolation in their homes after being released regardless of whether they are tested and get tested (or retested) in the event that they exhibit (or continue to exhibit) any symptoms.
2. Halt or significantly limit the placement of children in detention settings, as well as any procedures that bring children into physical contact with courts or detention facilities.
 - a. Trials or sentencing hearings for children who are not yet in custody should be delayed until risks from COVID-19 have abated, though any delay in judicial proceedings should be avoided to the extent that this would negatively impact children awaiting determinations.
 - b. Mobilise community-based actors and structures in order support diversion of children away from the formal justice system.

Practice example:

In **Myanmar**, Tdh has been working for several years with Ward Authorities and Township Child Rights Committees in Yangon and Mandalay provinces to support community-based dispute resolution processes that uphold children's rights. In response to the COVID-19 pandemic, Tdh's liaison with these actors has been reinforced in order to ensure that children in conflict with the law may remain in their communities instead of being referred to the formal system.

3. For facilities that remain open, enhance procedures and protocols within the facility to reduce the risk of the virus spreading.
 - a. Ensure that detailed procedures are in place for preventing the spread of the virus and for dealing with an outbreak if it occurs in order to limit the potential impact and ensure satisfactory healthcare for all affected individuals. This should include regular sanitising of surfaces, and soap and clean water should be made available for all detained children. Transportation of children between facilities should be minimized to reduce the potential spread of COVID-19 from one facility to another facility. Detention facilities should collaborate with local health care facilities and appropriate government agencies to ensure a swift and adequate response.

Practice examples:

In **Afghanistan and Iraq**, since the outset of the COVID-19 pandemic, Tdh has been working alongside governmental agencies and local organisations to ensure the supply of health and hygiene products to custodial facilities where children remain incarcerated. In **Afghanistan**, over 230 children deprived of liberty in Kabul and Jalalabad have received hygiene products and guidance. Meanwhile, in **Iraq**, some 1,500 children and youth deprived of liberty received health and hygiene products to combat the spread of COVID-19 across 9 juvenile custodial settings in Baghdad, Kirkuk and Tikrit provinces. Of these, 350 children and young people have participated in COVID-19 awareness sessions.

In **Ecuador**, close cooperation and provision of technical support to the Supreme Court of Ecuador led to the decision to temporarily suspend prison rules that required child detainees to periodically present themselves

to authorities, thereby reducing their risk of potential exposure to the contagion. Tdh is working with its partners and public institutions to deliver food and hygiene kits for 650 child detainees.

- b. Staff and children at detention facilities should receive adequate training to ensure that high standards of hygiene are maintained at the facility. All staff should also have access to personal protective equipment ("PPE"), such as face masks, gloves, eye protection, and isolation gowns, as appropriate. Children should also be provided with PPE when circumstances indicate that this will materially reduce disease transmission.

Practice examples:

In **Burkina Faso**, since the first identification of cases of COVID-19, Tdh has been in regular contact with the Ministry of Justice and the Public Prosecutor's Office. Tdh has donated hydro-alcoholic gel, masks, and gloves for the employees of the Public Prosecutor's Office in order to support the work and protection of frontline personnel and the children they are in contact with.

In **Mauritania**, Tdh supported distributing hygiene kits and establishing hand washing stations in police cells and in closed and semi-open juvenile facilities in the capital Nouakchott. In addition, over 45 frontline officials including social workers, juvenile police officers, and Ministry of Justice staff have been specially trained in specialised interventions in the context of COVID-19.

- c. Robust processes for screening, testing, isolation, and quarantine should be implemented, taking into account the special developmental needs of children. In particular, any isolation measures for children with suspected cases of the disease should be done in a respectful way that informs the children of the reasons for the isolation and seeks to mitigate negative impacts of the resulting physical isolation.

Practice example:

In **Guinea**, prison healthcare staff have been trained and protective measures have been put in place to prevent the spread of infection and to ensure the care and quarantine of sick inmates.

- d. Careful monitoring should be done of individuals who might bring the virus into the facility, including both employees and visitors (if allowed at all).

4. Enhance focus on mental and physical health of children⁹².

- a. Ensure that all children have immediate access to high-quality health care, including monitoring of their temperatures to identify fevers quickly after onset, both for suspected COVID-19 cases and for any other ailments that may compromise their health and make them more susceptible to COVID-19.

⁹² See MHPSS COVID-19 Toolkit (Version 1.0), available at <https://app.mhpss.net/resource/mhpss-covid-19-toolkit-version-1-0>.

Practice example:

In **Myanmar**, Tdh is involved in ongoing distribution of essential health-related supplies including masks, non-touch thermometers, chlorine, hygiene kits, knapsack sprayers, soap, and hand sanitiser to 27 closed juvenile facilities. In addition, "quarantine kits" are being provided to support children who are transferred from remand/detention to quarantine facilities in the event they test positive for COVID-19. Approximately 3,500 children and 500 frontline staff have directly benefitted from this intervention.

- b. Ensure that children can stay in contact with legal counsel and family confidentially. If visits are allowed, strict physical distancing measures should be in place. If visits are not allowed, technology should be made available too so that detained children can communicate with their families and lawyers while physically separated from them in a confidential manner.

Practice examples:

In **Burkina Faso**, as family visits to prisons are suspended by the prison administration, telephones will be made available to maintain contact between children and young adults in conflict with the law and their families.

In **Jordan**, Tdh has been supporting detention centre staff to acquire technological devices so that children deprived of liberty can keep contact with family and lawyers and access educational/recreational material.

- c. Provide robust mental and other health resources to staff who are working in the detention centres to ensure that they are well-positioned to address the needs of detained children. This can include tailoring educational and recreational programs towards children's mental health needs.

Practice examples:

In **Ecuador**, Tdh is working in the reinforcement of pedagogical teams from the detention centres that work with children detainees in order to provide them psychological support and to guide them in the organisation of recreational and pedagogical activities for children in detention during this crisis because the use of time for structured activities is also important to reduce stress levels among children.

- d. Ensure that families of detained children (and lawyers, as appropriate) are fully informed regarding any special measures that are taken with respect to each child, including measures taken as a result of COVID-19.
- e. Increase exercise and time spent outdoors while upholding physical distancing to safely enhance the physical and mental health of the children.

V. Acknowledgements.

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Annex I

Examples of Terre des hommes Current Practices

As discussed in prior sections, the COVID-19 pandemic is especially detrimental to the safety and welfare of children in detention facilities around the world. Tdh is at the forefront of worldwide advocacy on behalf of incarcerated children and youth in the midst of this pandemic. Tdh has achieved early success in obtaining the release of children and youth from detention facilities around the world and reuniting them with their families while ensuring and supporting a safe reintegration pathway adapted to the exceptional situation caused by the pandemic in each of the countries where Tdh operates its Access to Justice Program. In instances where reintegration with their families was not possible, Tdh has been able to get the children released to non-custodial facilities.

A. Latin America (Regional, Ecuador, Colombia).

Tdh is participating actively in webinars organised by partners that aim at the provision of guidelines as to what measures should be taken in detention centres.

In **Ecuador**, Tdh has been acting at several different levels. On one hand, Tdh monitors the actions of educators and team members at the detention centres to maintain accountability for such personnel and to provide technical support for planning recreational and educational activities for the detained children. Additionally, Tdh is involved in advocating for policy measures that reduce the detention of children due to minor offenses such as curfew violations. Tdh also works with local activists on providing general legal support for the defence of children facing imminent detention. Specific to the COVID-19 pandemic, Tdh is working with its partners and public institutions in delivering food and hygiene kits for 650 child detainees. Tdh has also provided technical support to the Supreme Court of Ecuador leading to its decision to temporarily suspend prison rules that required child detainees to periodically present themselves to authorities, thereby reducing their risk of potential exposure to the contagion. Finally, Tdh is working to reinforce pedagogical teams from the detention centres that work with children detainees in order to provide them psychological support and to guide them in the organisation of recreational and pedagogical activities for children in detention during this crisis, because using time for structured activities is important to reduce stress levels among children.

In **Colombia**, Tdh has set up a follow-up call service for children who have gone through the penal system and have been released. This follow-up service focuses on physical reintegration of previously incarcerated youth.

B. Middle East/North Africa (Jordan, Gaza, Egypt, Iraq, and Lebanon).

In **Jordan** and the **Gaza Strip** (Palestine), Tdh has worked (and is continuing to work) with national and local authorities in implementing an emergency release process for children incarcerated in several detention centres and at risk of potential exposure to the COVID-19 pandemic. As a result of this advocacy and accompanying technical support, 131 children have already been released between 15 March 2020 and 8 April 2020. Individual assessments of cases (children and families) have been supported by Tdh and coordination with competent authorities has been successfully managed to provide distance services (psychological, recreational, and



educational) to released children as well as support to their families. Tdh is also supporting previously incarcerated children to better cope with their reintegration into society after their release and to minimize any risks to the reintegration process given the exceptional circumstances caused by COVID-19. Tdh has mobilized funding to provide technological means for detention centres so that children deprived of liberty can access educational and recreational materials and keep contact with their family and lawyers.

In **Egypt**, Tdh is advocating with the pertinent authorities to initiate an emergency release process of children deprived of liberty. Tdh teams, together with public social workers and detention staff, are exhaustively assessing the cases to be proposed for release and considering all the safety concerns for children and their receiving families, including in relation with reintegration plans during the emergency. In addition, Tdh teams are providing mental health and psychosocial and recreational distance services to children deprived of liberty and providing support services to their families while also providing coaching support and monitoring to the staff in detention facilities.

In **Iraq**, Tdh has coordinated with different ministries and local organisations to provide children deprived of liberty health-related products to combat the spread of COVID-19 and improve hygiene practices generally. Tdh is also providing mental health and psychosocial support services for detained children and their families, including fostering contact for children with family members and lawyers. So far, 57 children and youth were granted an emergency release from Iraqi prisons. Tdh is working with the competent authorities to coordinate support for those released and their families.

In **Lebanon**, Tdh is coordinating with authorities and local organisations to support the release of children (so far, 42) from Roumieh prison in conditions that are safe for them and their families as well as advocating for reintegration standards (health, psychosocial, educational, recreational, and legal) for those released and those who will be kept in prison.

C. Africa (Burkina Faso, Mali, Mauritania, Guinea).

In **Burkina Faso**, the Tdh team has been supporting the Ministry of Justice and the Public Prosecutor's Office from the early days of the spread of COVID-19 in the country. Tdh has also donated hydroalcoholic gel, masks, and gloves for the employees of the Public Prosecutor's Office within the Ministry of Justice. Tdh also met with the deputy public prosecutor in charge of children's issues, the social worker of the juvenile court, the head of the social service of the Ouagadougou House of Arrest and Correction, and a secretary of the Public Prosecutor's Office to study the files of detained children and recommend ways to initiate a release process for certain detained children. As a result of these discussions, the public prosecutor issued provisional detention measures allowing some children to be released to their families. In collaboration with the Public Prosecutor's Office and the Sentence Enforcement Commission, Tdh is also planning to promote alternative measures to pre-trial detention and substitution of prison sentences for at least 50 young adults in conflict with the law; this action will involve strengthening the capacities of state partners and developing and financing 50 individual action plans for children and young adults in conflict with the law. Tdh plans to improve detention conditions through food donations and hygiene kits as a protective measure against COVID-19. These kits will also benefit prison staff who will be trained on preventive measures against COVID-19. This improvement in conditions will also include the renovation of latrines and water points in three remand prisons. As family visits to prisons are



suspended by the prison administration, telephones will be made available to maintain contact between children and young adults in conflict with the law and their families, thereby reducing the anxiety they experience in prison.

In **Mali**, with the support and the cooperation of Monaco, Tdh quickly assessed the risks incurred for children in pre-trial detention in the BOLLE detention centres in Bamako. Contact was made with the Children's Court ("TPE") and the National Directorate of Penitentiary Administration and Supervised Education ("DNAPES") in order to advocate for their release. Thus, Tdh and its local partner, the Collectif des Centres d'Ecoute Communautaire du Mali ("COCECM"), carried out social and environmental surveys on the detained minors and their families in order to establish a sociological report for each of them. These reports, which were sent to the judges of the Juvenile Court, made it possible to investigate the cases and to decide on non-custodial measures as a matter of urgency. Against all expectations, provisional release measures were quickly ordered for 72 defendants. To support their reintegration, Tdh began by distributing hygiene and food kits to facilitate their physical reintegration process. A Committee for Monitoring and Reintegration of Children in Contact with the Law ("COSURE") has also been set up under the coordination of Tdh as part of the process of reintegrating minors through individualised monitoring measures. Traditional and community leaders (Imams, Priests, Pastors, Neighbourhood Chiefs, NGO leaders, Cadis, etc.), will be identified by COCECM in the localities where the children live. They will represent a moral guarantee for the rehabilitation of the children released. They will assist the families and accompany them in the follow-up of the children.

In **Mauritania**, in coordination with UNICEF, Tdh is carrying out advocacy with government authorities to reduce the number of children in detention centres. In coordination with the Mauritanian NGOs, NOURA and AFCF, lawyers are providing legal assistance to process the files of children detained in the detention centres in Nouakchott and Nouadhibou. The Ministry of Justice has adopted an intervention protocol for social workers relating to the COVID-19 pandemic in order to ensure minimum support to children in contact with the law. Thirteen social workers have been specially trained in social intervention related to COVID-19. Hygiene kits were distributed and hand washing stations were set up in police stations for minors and in closed and semi-open detention centres in Nouakchott. 29 juvenile police officers and 4 staff of the Ministry of Justice participated in awareness raising sessions.

In **Guinea**, despite the official suspension of hearings, in coordination with UNICEF and the Office of the United Nations High Commissioner for Human Rights (the "OHCHR"), Tdh has been able to advocate to the Minister of Justice and provide detained minors access to provisional and definitive release measures.

All the files of children eligible for these measures were studied by the president of the Children's Court of Conakry in collaboration with Tdh. Training of prison healthcare staff to ensure the care and quarantine of sick inmates as well as protective and hygienic measures for young people still in prison have been put in place. The socio-professional integration of young people leaving prison and the need for a response throughout the country beyond Conakry remain challenges that the Tdh teams are trying to address.

In **Burundi**, in collaboration with the Directorate General of Penitentiary Administration and the ICRC, Tdh organised an awareness-raising campaign on the risks and protection mechanisms against COVID-19 and define the patient's path (place of isolation, referral, response, etc.) in the three centres/neighbourhoods for minors in conflict with the law and in the mother/child supervision area of the Ngozi women's prison (for MCL,



mothers-in-mates, and supervising staff). Tdh contributed to advocacy actions for the release of minors in order to limit the number of children at risk in the incarceration centres.

D. Asia (Myanmar, Afghanistan).

In **Myanmar**, the aim of Tdh's intervention is to reduce the population of children in remand and detention through steps including: (i) influencing judicial officers to deliver non-custodial, pre-trial, and post-trial sentences (bonds, fines, etc.) through Tdh's local partner, the Thamardi Foundation, and its network of 57 lawyers and (ii) maintaining family reintegration services (nuclear and kinship) within Yangon & Mandalay. Tdh has concentrated on prioritising work with children who can be rapidly reunited with their families (e.g., those who have almost completed their sentences), as well as those most at risk of COVID-19 (e.g., those with underlying illnesses). These efforts include providing phone credit to parents and guardians to help them maintain contact with their children as physical visitation has been suspended. In addition, some activities are implemented in order to prevent and mitigate the spread of COVID-19 within the youth remand and detention centres. The supplies provided include ongoing distribution to 27 training schools (approximately 3,500 children and 500 staff) of essential health-related supplies including masks, non-touch thermometers, chlorine, hygiene kits, knapsack sprayers, soap, hand sanitiser, improvements in washing facilities, and "quarantine kits" to support children who are transferred from remand/detention to quarantine facilities in the event they test positive for COVID-19. Tdh also maintains communication with the Ward Authorities & Township Child Rights Committees and encourages them to settle disputes at the community level and not refer them to the formal justice system. There are also ongoing discussions with the Department of Social Welfare & Supreme Court to expedite judicial amendment orders to allow the early release of children from detention and joint lobbying efforts with UNICEF, the National Child Rights Working Group, Child Protection Working Group, and the Alternative Care Technical Working Group to accelerate alternative care services, notably foster care.

In **Afghanistan**, Tdh advocated with the authorities to approve a national decree mandating the release of children from youth detention centres, which is still being executed in country. A total of 127 children have been released. Tdh has also been supporting detention facilities by providing health-related products since the beginning of the COVID-19 outbreak in Kabul and Jalalabad juvenile prisons. Tdh has supported a total of 230 children kept in detention.

E. Europe.

In **Kosovo**, Tdh released on 7 April 2020 a public letter on the protection of juveniles in detention and deprived from liberty during the COVID-19 pandemic.⁹³

In **Albania**, Tdh released on 31 March 2020 a press release asking the Albanian government to take immediate non-custodial measures for the juveniles residing in the penitentiary institution in Kavaja. In addition, Tdh is maintaining phone contact with children beneficiaries of one of Tdh projects, who are in conflict with the law.

⁹³ TERRE DES HOMMES – KOSOVO, "PUBLIC LETTER – Protection of juveniles in detention and juveniles deprived of liberty during COVID pandemic – 19," Facebook, 8 April 2020, available at <https://www.facebook.com/notes/terre-deshommes-kosovo/let%C3%ABr-publike-mbrojtja-e-t%C3%AB-miturve-n%C3%AB-paraburgim-dhe-t%C3%AB-miturvet%C3%AB-privuar-nga-/2878540835595091>.



In **Romania**, Tdh has been in daily phone contact with the four child detention centres. As of 22 April 2020, the directors of three of these centres have announced the early release of 24 children, out of 26 requests made, taking into account their credit for good behaviour. Tdh will continue to closely follow up on their release and monitor the placement of the children within their families. In addition, Tdh has been in touch with two donors who agreed to some flexibility in the budget granted for one of the projects in the detention centres. As a result, approximately 4,000 CHF was spent to provide protective material to prevent COVID-19 infection (gloves, face masks, sanitisers, etc.) for the four centres (1,000 CHF per centre). Tdh Romania continues to request that the detention centres establish phone contact with the children detained, but that request had not been granted as of 22 April 2020.

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