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Human rights at the time of COVID-19 – a Guidance Note

“COVID-19 is a test for our societies, and we are all learning and adapting as we respond to the virus. Human dignity and rights need to be front and centre in that effort, not an afterthought.”

Michelle Bachelet
UN High Commissioner for Human Rights

With this note, the UN Human Rights Monitoring Mission in Ukraine highlights key principles that need to be complied with in the design and implementation of measures to respond to the COVID-19 pandemic. Any emergency responses to the COVID-19 pandemic must be proportionate, necessary and non-discriminatory.

General considerations and protection of vulnerable groups

- Quarantines, which restrict the right to freedom of movement, may be justified in the current circumstances. Under international law, measures restricting freedom of movement and other rights should be strictly necessary, proportionate, time bound, undertaken for legitimate aims (e.g. to protect public health), and applied in a non-discriminatory way.
- Quarantines must be imposed in a safe and respectful manner, and when possible, should be voluntary. The rights of those under quarantine must be respected and protected, such as the right to food, the right to be treated humanely, the right to health, the right to information, right to access potable water and freedom of religion or belief, as well as freedom of expression. In particular, people under quarantine should have access to information and communication with the outside world, as feasible; those suffering from underlying health conditions (HIV/AIDS, diabetes, mental illnesses, etc.) or having other specific needs, including opioid substitution therapy and harm reduction services clients, should continue to receive adequate treatment.
- Among the most vulnerable at the time of the COVID-19 pandemic are those on low incomes, isolated rural populations, people with underlying health conditions, persons with disabilities, the homeless, older persons living alone or in institutions, vulnerable migrants with limited access to healthcare, asylum seekers, children, people using drugs, and others.¹ Women and girls may also be disproportionately affected by the disease and/or by State responses to it. This means that additional efforts shall be undertaken to protect the health, well-being and human rights of members of these groups.
- Staying off work in order to “self-isolate” may result in lost pay or a lost job, with far-ranging consequences for people’s livelihoods and live. One should keep in mind and be ready to respond to any unintended consequences of actions put in place to reduce the

¹ UN News: COVID-19: countries, businesses must safeguard human rights as virus spreads: Bachelet, 6 March 2020.

spread of the infection. Businesses will also need to play a role, including responding with flexibility to the adverse impact of the epidemic on their employees.² Women and men may be affected differently by the economic and social consequences of quarantines and “social distancing” measures. While designing response measures, one needs to analyze and address the differential impact of these measures on women and men. Particular attention must be paid to women and others who may victims of or at risk of domestic violence, as quarantines and similar measures can increase their vulnerability.

- Health needs of homeless persons shall be addressed, taking into account that it may be impossible for them to isolate themselves. Any measures to address their needs should not be punitive in nature and should be guided by the principle of protection of their right to health.
- Specific attention should be paid to the needs of older persons, especially those living alone, or in poor health, such as cognitive decline/dementia or other mental health illnesses. Older persons should be provided with accurate and accessible information about the COVID-19 outbreak³ and, as needed, be instructed on how to use protective devices (masks, sanitizers), how to order food on-line, etc.
- Harm reduction services should continue to make sure clients receive critical services. Despite border closures and similar restrictions, adequate supply of opioid substitutes (eg methadone) should be ensured.
- In relation to children, the availability of substitute caregivers where a parent or other primary caregiver is hospitalised should be ensured, as well as the availability of comprehensive psycho-social support for hospitalised children to counter any negative psychological effects experienced; the development of contingency plans for children who face prolonged periods without formal education; and, where appropriate, on the basis of age and availability of technology, the continuation of lessons remotely using IT solutions should be ensured, so that children can continue to learn and benefit from education.

Persons deprived of their liberty

- Preventative measures should be taken to ensure that persons deprived of their liberty are safe from the virus spreading to detention facilities. In this regard, it should be noted that the overcrowding of places of deprivation of liberty constitutes an additional risk factor for the spread of the disease.⁴
- Persons detained should be offered a proper medical examination as soon as possible after admission. Detainees should enjoy the same standards of health care that are available in the community.⁵ Should there be an outbreak within a detention facility, safeguards should be put in place to ensure the rights of staff and detainees are respected and for all prisoners to have access to medical care and treatment without discrimination. This means, in particular, that in suspected or confirmed cases of COVID-19, people in

² OHCHR News Release: Coronavirus: Human rights need to be front and centre in response, says Bachelet, 6 March 2020.

³ Briefing note on addressing mental health and psychosocial aspects of COVID-19 Outbreak-Version 1.0, IASC, February 2020.

⁴ COVID-19 – Focus on detention and people whose mobility have been restricted, OHCHR, March 2020.

⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015, Rule 24.

detention should be able to access urgent, specialized healthcare without undue delays or complications. For older persons or those with medical conditions in detention, early release programmes should be put in place as a priority, given the specific risks they face.⁶ More generally, alternatives to detention should be considered as a way to reduce the health risks associated with the COVID-19 epidemic.

- While restrictions on face-to-face or contact visits for people in detention may be legitimate to prevent COVID-19 outbreaks in facilities, such measures should include a comprehensive and transparent decision-making policy. In case of restrictions, these need to be proportionate to the goal of preventing (or responding to) an outbreak.
- Contact visits should be replaced by increased means and opportunities of contacting the outside world, for example, by phone, emails or video calls. Decisions to limit or restrict visits need to bear in mind that contact is essential to the mental well-being of people in detention and can reduce levels of violence. Furthermore, restricting visits from legal representatives can bring increased levels of anxiety and impact on the right to a fair trial.⁷
- Particular attention should be paid to the health needs and the provision of healthcare of persons in immigration detention, bearing in mind that immigration detention should be used as a last resort and that detention may increase the risk of spreading the infection in a closed facility.

Anti-discrimination

- Special attention must be paid to monitoring, analysis and countering discriminatory incidents related to the COVID-19 pandemic, including people suffering the disease, survivors and their families, doctors working with COVID-19 patients, as well as members of specific racial, ethnic or national groups.⁸

Privacy rights and freedom of information

- The COVID-19 outbreak and response has been accompanied by a massive ‘infodemic’—that makes it hard for people to find trustworthy sources and guidance when they need it.⁹ Therefore, it is crucial that transparent and reliable, evidence-based information (both on-line and off-line) is provided and continuously updated, with the supported of WHO and other UN agencies.
- In gathering data and information, including personal data, with a view to reducing the spread of the infection, measures should be taken to ensure that such data are necessary and proportionate to protect public health. They should also protect the anonymity and confidentiality of personal data, including sensitive information about individuals’ health.

⁶ PRI Briefing note: Coronavirus: Healthcare and human rights of people in prison, 16 March 2020.

⁷ Ibid.

⁸ Guidance note on OHCHR’s contribution to the fight against COVID-19, March 2020.

⁹ OHCHR Operational guidance on the response to the COVID-19 epidemic globally, March 2020.