UGANDA HUMAN RIGHTS COMMISSION

HUMAN RIGHTS ADVISORY ON PLACES OF DETENTION IN THE CONTEXT OF COVID-19

SEPTEMBER 2020

1.0 INTRODUCTION

The Uganda Human Rights Commission (UHRC) is a National Human Rights Institution established under Article 51 of the 1995 Constitution with a general mandate of promoting and protecting human rights in Uganda. One of its core functions as provided for in Article 52 (1) is to monitor government's compliance with international human rights instruments ratified by Uganda. The Commission in fulfillment of its mandate, has been monitoring and continues to monitor the impact of COVID 19 on the rights of inmates and the staff in places of detention. One of the strategies that the Commission employs towards infusing human rights principles and standards in private and public institutions is through the issuance of advisories. This advisory is therefore aimed at giving an assessment of the human rights situation in regard to the effects of COVID-19 on places of detention and making human rights-based recommendations on the pertinent issues.

1.1 BACKGROUND

The world is currently facing an unprecedented public health emergency due to the COVID-19 pandemic. The pandemic has come at a time when the global prison population is record high with 11 million prisoners worldwide and with over 124 states reporting prison overcrowding. By 28th August 2020, the Commission noted that Uganda had a prison population of 61,770 inmates housed in 259 prison facilities. Out of the 61,770 inmates in custody, 29,445 were convicts, 32,289 were on remand while 36 inmates were civil debtors. The Commission further notes that globally, the pandemic has exposed and accelerated the detrimental consequences of chronic overcrowding in places of detention. In Uganda, 163 inmates have so far been diagnosed with COVID-19, with 153 inmates found in Amuru Prison, 04 inmates in Pece Prison and 6 inmates in Kitgum Prison.

The Commission recognizes the particular risks which COVID-19 and the virus that causes it pose to confined populations for which physical distancing is not an option or is difficult to achieve. Overcrowded prison settings offer limited space, often with unsanitary facilities and poor access to health care. Physical distancing, regular hand washing and disinfection are extremely difficult to practice, if not impossible. The risk of mass infection is therefore high for detainees and custodial staff alike. Prisons are also known to be potential epicenters of infectious diseases as well as for hatching and spreading viruses, and this is even more so in overcrowded prisons. In the COVID-19 context, overcrowding impedes the effective implementation of the measures that are intended to prevent and manage the outbreak and spread of the virus in detention facilities. As prisoners generally have a poorer health condition than the rest of the population, they are at greater risk of being infected and even killed by COVID-19.

2.0 LEGAL FRAMEWORK

There is no doubt that the people who are deprived of their personal liberty or who are cut-off from the outside world inevitably become vulnerable. They become solely dependent on the detaining authorities for accessing most basic needs and enjoyment of their rights. This reality among others, formed the basis for the adoption and implementation of a number of international, regional and national legal instruments that are intended for protecting the rights of the people who are deprived of their liberty. At the international level, Uganda is a party to a number of international instruments that do not only provide for the treatment of detainees in line with the established international human rights standards but also, those that advance and promote the other rights of persons in detention. These include the International Covenant on Civil and Political Rights (ICCPR)[1], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[2], the Convention on the Rights of the Child (CRC)[3], the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of People with Disabilities (CRPD)[4]. The other relevant international instruments in this respect include the United Nations Standard Minimum Rules for Treatment of Prisoners[5] and the Declaration on the Elimination of Violence against Women.

At the African regional level, the guarantees on the rights of detainees are provided for in the African Charter on Human and Peoples Rights (ACHPR)[6] and its protocol on the rights of women, as well as the African Charter on the Rights and Welfare of the Child. Equally important are The Robben Island Guidelines[7] which provide for the prohibition and prevention of torture, cruel, inhuman or degrading treatment in Africa.

At the national level, the Constitution of Uganda guarantees to all the Ugandan citizens including people in places of detention, respect for human dignity; protection from inhuman treatment; protection from illegal deprivation of personal liberty and the circumstances under which personal liberty may be limited[8]. The aforementioned

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[1] Article 7 and Articles 9-11 of the International Covenant on Civil and Political Rights.

[2] Article 4, Article 10 and Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[3] Article 20 and Article 37 of the United Nations Convention on the Rights of a Child.

[4] Articles 14 and 15 of the Convention on the Rights of People with Disabilities.

[5] United Nations Standard Minimum Rules for Treatment of Prisoners, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of Liberty (JDL Rules), United Nations Guidelines for Prevention of Juvenile Delinquency (Riyadh Rules), United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

[6] Articles 3 to -7 of the African Charter on Human and Peoples' Rights.

[7] The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

[8] Articles 23, 24 and 28 of the Constitution of the Republic of Uganda (1995).

constitutional provisions have been operationalised by other pieces of national legislation, including the Uganda Police Force Act (Cap 303), the Uganda People's Defence Forces Act, 2005 (Cap307), the Uganda Prisons Act, 2006, the Penal Code Act (Cap 121), the Trial on Indictments Act (Cap 23), and the Children Act (Cap 59), among others, which among other things guarantee the rights of detainees and also provide for the management of places of detention.

3.0 HUMAN RIGHTS CONCERNS ON PRISONS AND RELEVANT ADVISORY

3.1 REGULAR TESTING AND SCREENING OF INMATES AND STAFF

All congregate living facilities, jails, prisons and detention facilities provide a conducive environment for rapid and widespread transmission of COVID-19. Generally, prisoners' health condition tend to be poorer than the health of the wider population, because of the poor and crowded facilities in which they are detained and which are communally shared, including toilets, bathrooms, sinks and the hard floors on which they sleep crammed together moreover without proper materials for sleeping on and covering themselves. Additionally, the environment of widespread community transmission and movement of prison staff and inmates between the various prison facilities can result into ever looming risks of introduction of infection into the prisons. The Commission is therefore concerned that despite this threat, mass testing of inmates for COVID-19 in all places of detention is still limited. Testing of inmates and prison staff in this respect should be a priority in order to determine the scope and magnitude of COVID-19 outbreaks in such facilities, and to inform the outbreak response interventions that should be designed to prevent or limit transmission of corona virus.

However, the Commission notes that at least four prisons have done mass testing for COVID-19 and these are Pece, Kitgum, Amuru and Bubulo, the latter whose results were yet to be released by the time this Advisory was written. The results that have so far been released indicate that 163 inmates were found positive with COVID-19. The Commission is concerned that due the high cost of the RT-PCR (*Reverse transcription polymerase chain reaction)* testing regime which is used for detecting SARS-CoV-2, the virus that causes COVID-19, the prison authority and police have not been in position to test inmates and the new admissions to their detention facilities. The Commission notes that testing is one component in a broad-based response plan that includes implementing various mitigation strategies, infection prevention and control measures, plans for isolation and quarantining of inmates, screening of the health of inmate and staff, exclusion of staff and inmates who have fallen ill, and

planning for staff capacity increases in case of staff shortages. All these response plans and measures must be in place in order to achieve effective testing to prevent or reduce transmission of corona virus.

The Commission therefore recommends that: -

a) All inmates and prison staff should be subjected to medical examination as soon as they are admitted to any detention facility, so as to safeguard them and the other inmates and staff in case of the presence of infection.

b) Authorities in all places of detention should take steps to ensure that there is continuous appropriate coordination with public health departments and open communication with the prison staff and inmates in order to ensure effective monitoring all the time of the conditions in prisons so as to avoid the spread of COVID-19. They should also screen and test for COVID-19 according to the most recent recommendations and guidelines issued by the appropriate health authorities.

c) Government should endeavor to fund adequately all prison and police institutions in order to enable them conduct mass testing for detainees, inmates and staff before admission and throughout their stay in those institutions, so as to stop the transmission of the corona virus.

d) All asymptomatic inmates and detainees should be isolated and all asymptomatic staff should also be promptly excluded from work; and in each case all of them should be tested for SARS-CoV-2 by RT-PCR. Testing of asymptomatic inmates and staff is recommended in specific circumstances.

e) Detention facilities should respond quickly to all positive laboratory results and immediately initiate appropriate response actions whenever inmates or staff members receive a SARSCoV2-positive RT-PCR results, including isolation of the infected inmates and quarantining their close contacts, as well as work exclusion of the infected staff members and quarantining their close contacts.

f) Since a single negative SARS-CoV-2 RT-PCR-result may indicate that an individual did not have detectable virus material present at the time of testing, repeat testing should as much as possible be carried out whenever the tested individuals develop symptoms compatible with COVID-19 or they develop persistent symptoms compatible with COVID-19 without another identified etiology.

g) Repeat testing over time involving the use of different strategies such as symptomatic testing alone, symptomatic and targeted asymptomatic testing, or facility-wide testing should be encouraged in order to facilitate monitoring of the spread of infection and also to inform the response strategies that are preferred and applied.

h) Facility-wide inmate and staff testing should not be used as an isolated strategy, and the necessary preparations should be made in this respect in order to minimize the potential negative impact on staffing levels and to enhance mitigation strategies.

3.2 OVERCROWDING IN PRISONS

Overcrowding in prisons has remained an intractable challenge, with some prisons housing twice as much or up to three times their designated capacities. In this respect, the male inmates are most affected. It is an international operational requirement that detention accommodation should provide adequate cubic content of air, floor space, lighting, heating and ventilation for the detainee population.[9] However, this is not always attained. States are also required to take decisive and urgent action to put in place measures to reduce the prison population and alleviate overcrowding, in order to effectively prevent and manage COVID-19 in the custodial context.[10] Currently, there is no available vaccine for COVID-19 yet, Uganda has already registered 155 cases of covid-19 in prisons.

The Commission further notes that prison inmates live, work, eat and sleep in close proximity of each other within very restricted and congested areas. This therefore puts them at risk of getting infections due to overcrowding. As prison health is also public health, an outbreak of infection like COVID-19 in prison could also pose a serious health risk to the general population particularly around the respective prison premises. Therefore, in order not to compromise prisoners' health and public safety generally, COVID-19 preparedness in prisons should include among other measures, putting in place arrangements for limiting the number of new admissions and accelerating the release of selected categories of prisoners. What aggravates the risk and potential impact of coronavirus entering prisons even further is the health profile of the prison populations, which tends to be significantly lower when compared to the community at large. This includes a higher prevalence of communicable diseases, such as tuberculosis, hepatitis C and HIV, as well as non-communicable diseases such as mental health and drug use disorders. Due to their close interaction with prisoners on

[9] Prisons Act 2006 and Rule 13, UN Standard Minimum Rules on Treatment of Prisoners.
[10] The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), U.N. Doc A/45/110, 14 December 1990. Available at: https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf

a daily basis, prison warders, officers and health-care professionals working in prisons are equally exposed to an enhanced risk of infection.

The Commission has however noted with appreciation and commendation that in an effort to curb the spread of COVID-19, all new admissions to prisons are currently being held in selected facilities. According to the Uganda Prisons Services in this respect, the new admissions are currently being held in: Kigo Prison, Gulu Main Prison, Tororo Women's Prison, Lira Main Prison, Mitooma Prison and New-Kyejonjo Prison among others. Details of the prison facilities that have been selected to accommodate new admissions and the regions they cover are as follows: **KAMPALA EXTRA REGION** - Kigo Women Prison; **CENTRAL REGION** - Kitalya Mini Maximum Prison, Kasangati Prison and Sentema Prison; **MID-CENTRAL REGION** – Kibaale Prison and Mityana Prison; **SOUTH-EASTERN REGION** – Bugembe Prison, Busesa Prison and Kiyunga Prison; **MID-EASTERN REGION** – Nakatunya Prison, Kumi Prison and Ngora Prison; **EASTERN REGION** – Bubulo Prison, Tororo Main Prison, Tororo Women Prison and Bukwo Prison; **NORTH-EASTERN REGION** – Moroto Prison; **NORTH-WESTERN REGION** – Koboko Prison and Giligili Prison; **NORTHERN REGION** – Pece Prison, Amuru Prison, Kitgum Prison, Gulu Main Prison and Gulu Women Prison; **MID-NORTHERN REGION** - Amolatar, Alebtong, Kwania and Lira Main Prisons; **SOUTHERN REGION** – Ssaza Prison, Rakai Prison, Mugoye Prison and Ntuusi Prison; **KIGEZI REGION** – Mparo Prison and Rubanda Prison; **WESTERN REGION** - New-Kyenjojo Prision, Mubuku Prison; **SOUTH WESTERN REGION** – Sheema Prison, Kakiika Prison, Isingiro Prison, Sanga Prison and Mitooma Prison; **EAST CENTRAL REGION** – Kauga Prision and Lugazi Prison; **MID-WESTERN REGION** - Masindi Main Prison and Kiryandongo Prison.

In spite of the commendable arrangements that have been put in place by the management of Uganda Prisons Services as noted above to address the challenge of congestion in prisons, the challenge still persists and there is still need for making further efforts to address this problem.

The Commission therefore recommends that: -

a) Efforts should be made to reduce new admissions to pretrial detention and other prison facilities through the use of non-custodial measures at the pretrial and sentencing stage.

b) Early unconditional and conditional release schemes as well as the other available non-custodial measures should be triggered or accelerated in order to expedite the release of more remand and sentenced prisoners from detention and prison facilities.

c) All petty offenders and civil debtors should be released from places of detention in line with international and regional human rights standards.[11]

d) Government should provide appropriate hygiene training, increase the provision of the relevant supplies to prison facilities and also ensure that all areas susceptible to harboring corona virus and which are accessible to prisoners and prison staff are disinfected regularly in conformity with the relevant established health standards and best practices.

3.3 FEAR AND PANIC AMONG INMATES

Following circulation of the reports about the 163 inmates who recently tested positive with corona virus in Amuru and the aforementioned other prisons, the Commission has noted that many inmates and staff in various prison facilities have been gripped by fear and panic. The Commission further notes that tension is already high in prisons due to the introduction of additional restrictions, such as the suspension of prison visits. There is therefore need for taking appropriate measures to reduce the fears, tension and panic that have engulfed prison and other detention facilities.

The Commission therefore recommends that: -

a) Prisons and other detention settings should be regarded as an integral part of the relevant national health and emergency planning schemes and frameworks in order to deal with the challenges posed by the COVID-19 pandemic.

b) All the measures taken for preparedness, prevention and mitigation in response to COVID-19 in custodial settings should be designed and implemented in line with the guidelines provided by the Ministry of Health; and the relevant measures should encompass specific risk assessments and contingency plans; enhanced hygiene and infection control; uninterrupted availability of relevant supplies including Personal Protective Equipment (PPE); close linkages with local and national public health authorities; as well as support and capacity-building for prison staff and other relevant health-care professionals.

c) The responses made to counter the threats posed by COVID-19 should be integrated into the overall prison health strategies in order to ensure that continued attention is paid to the broader healthcare needs of the prison population, including the need to deal with the other prevalent diseases; and all the responses should be geared towards the assurance of the health and

[11] International Covenant on Civil and Political Rights

well-being of prisoners, the prison staff and other prison personnel as well as the visitors who come to the prison facilities; and all the responses to take into account the need for respecting the fundamental safeguards outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), with particular attention to the requirements for limiting the confinement of prisoners to no more than 22 hours a day without meaningful human contact, and no more than 15 consecutive days in the case of prolonged solitary confinement; to ensuring continued access of external inspection bodies and legal advisers to prisoners; having all clinical decisions taken only by health-care professionals; and abstaining from suspending family contacts altogether.

d) Uganda Prison Services should ensure that under no circumstances whatsoever should the measures put in place to combat the threat posed by COVID-19 in prisons amount to any form of torture or cruel, inhumane or degrading treatment or punishment.

e) Uganda Prison Services should ensure that all the prison staff and the health-care professionals working in prisons are acknowledged as constituting the workforce whose functions are critical and therefore essential to the response to the COVID-19 pandemic, and who must therefore receive the necessary education, equipment and the other relevant support they deserve to get.

f) Uganda Prison Services working in collaboration with other relevant stakeholders and service providers should carry out tailored awareness-raising among prisoners and prison staff, and also maintain transparent communication channels, in order to prepare the entire prison population living and operating within the prison restrictive settings for accepting readily and willingly the additional measures and procedures that may be implemented for protecting their own health as well as the health of their families and the communities around them.

3.10 LIMITED CONTACT WITH THE OUTSIDE WORLD

Human Rights law stipulates that no one shall be subjected to arbitrary interference with his or her privacy, family or correspondence.[12] Therefore, all prisoners must continue to enjoy the right to communicate with the outside world, especially with their families. However, given the fact that COVID-19 cases are increasing in various places of detention, visits by relatives, friends, well-wishers and such other people to the

[12] UDHR, article 12, ICCPT, Article 17

prison inmates are now totally unadvisable and therefore, rightly prohibited since they potentially undermine the prevention and mitigation efforts being made within the prisons and other correctional facilities as well as the relevant surrounding communities. In addition, lawyers whose services have been engaged by some prisoners are currently permitted to meet their clients under detention but only under necessary limitations and in accordance with the guidelines put in place for the prevention of the spread of COVID-19 in prisons and detention facilities. Although all aforementioned prevention measures are necessary and must be implemented and followed by all the people concerned within and from outside the prison facilities, the Commission still notes that this regime of measures in a way has inevitably resulted into the development of conditions that affect certain people in the communities who have loved ones inside the prisons and other detention facilities due to the anxiety and worries caused among them.

The Commission therefore recommends that: -

a. Uganda Prison Services is strongly urged to maintain the restrictions put in place to prevent all non-essential staff, relatives, visitors, volunteers and other such people from accessing prisons until the necessary effective policies and procedures can be put in place to optimize screening and containment of the spread of COVID-19; and the entire public are urged to appreciate the necessity of the relevant preventive measures that have been put in place to protect prisoners and other people in detention places as well as the rest of the population in this country from the menace posed by COVID-19.

b. Uganda Prison Services should increase and maintain the secure cell phone and pre-programmed tablet services in order to enable the desirous inmates to access approved phone numbers and/or email addresses whose owners have provided affirmative consent to be contacted during the duration of the COVID-19 pandemic.

3.4 LIMITED ACCESS TO HEALTH CARE SERVICES IN PRISONS

International human rights norms and standards require that prisoners be enabled to receive the same standard of health care as the rest of the people in the wider community. However, the reality on the ground is very different as prisoners have no freedom to decide when to seek medical attention, and the occasion when and the facility where to access such attention. Prisoners have to go through the rigorous official prison processes that can sometimes present them with huge obstacles. For the prison authorities, sending prisoners for external medical care means seconding officers and transport for this purpose. Prison administrators also experience a lot of

resource and other constraints which complicate further the process of enabling prisoners to access medical services whenever this becomes necessary. Besides the challenges posed by lack of ability to deal with health issues in-house, for instance due to chronic understaffing, there is the tendency among prison staff of disincentives to seek outside medical attention for the prisoners under their care. Consequently, in situations of this nature prisoners are in many cases taken for treatment outside the prisons when they are already in bad state of health.

In addition, many prisons do not usually have the facilities and necessary capacity for managing patients when their health conditions start deteriorating, or to treat prisoners who experience higher risks. In some cases the prisoners who are taken out of prison and transported long distances to receive treatment are taken out at the stage when their conditions are already advanced because diagnostic and detection abilities in the respective prison facilities are often limited. The challenges posed by resource constraints in many prisons and other places of detention have also resulted into limited linkages to public health systems outside the prisons, cramped accommodation areas, poor hygiene and nutrition as well as insufficient health-care services in those prison systems. All this can also inevitably undermine the effectiveness of any infection control measures that may be put in place with genuine intention of preventing the spread of infection and thus, significantly increase the risk of amplification and spread of COVID-19 under the current circumstances in this country.

The Commission therefore recommends that: -

a) Uganda Prison Services should therefore expedite the process of decongesting the prisons, and also ensure proper hygiene and strict observance of the relevant Standard Operational Procedures (SOPs) in order to avoid COVID-19 spreading further in prisons.

b) Prisoners whose health conditions cannot be handled at the detention facility should be expeditiously referred or transferred to a higher health facility for proper management.

3.5 LIMITED ACCESS TO ADEQUATE AND NUTRICIOUS FOOD

Adequate and nutritious food is necessary for maintaining the health and strength of detainees and especially the sick, the breastfeeding mothers, the juveniles and infants.[13] The Commission commends Uganda Prison Services for the progress that

[13] Rule 22, Nelson Mandela Rules, UN Standard Minimum Rules on Treatment of Prisoners.

has been registered so far regarding the inmates' access to food in somehow sufficient amounts and also generally of reasonable or minimum quality. In most of the detention facilities monitored by the Commission, inmates get at least two meals a day, consisting of porridge for breakfast and lunch or supper comprising of regular food such as cassava or posho or sweet potatoes and beans. However, there is limited variety in terms of the food that is provided over time. The Commission has over a long time now noted that life in prison is predominantly not a healthy condition. The main challenge in this respect is that prisoners spend a lot of time sitting around with limited or no exercises at all and this, in addition to the inadequacies in the kind of diet that is provided to them which moreover, in some places is in short supply.

The Commission therefore recommends that: -

a) Uganda Prison Services should ensure that there is adequate and nutritious food for all inmates in all prisons.

b) The various prison administration regimes should endeavour to put in place various means of obtaining sufficient and nutritious food and also become self-reliant in food production, in order to be able to cater for the special feeding and nutrition needs of the sick inmates, the breastfeeding mothers, and the children incarcerated with their mothers.

3.6 PERSONS AT HIGH-RISK OF CONTRACTING COVID-19

The Commission notes in a special way that there are particular categories of persons in prisons who are generally at risk of contracting COVID-19 due to their age or compromised immune systems. These include: the persons aged 65 years and above, and persons of all ages with underlying medical conditions including chronic lung disease; moderate to severe asthma; serious heart conditions; patients with chronic liver or kidney disease undergoing dialysis; persons in immuno-compromised status (e.g. due to cancer treatment, organ transplantation, immune deficiencies, poorly controlled HIV/AIDS, and prolonged use of immune weakening medications); as well as cases of severe obesity (BMI of 40 or higher) or diabetes. Any prisoners falling under such categories are at great risk of being devastatingly affected by COVID-19 and must therefore be protected and cared for in a special way by prison administration.

The Commission therefore recommends that: -

a) Uganda Prison Services should as a matter of priority include the above listed categories of inmates particularly the individuals at high risk of suffering serious

effects from the virus, such as older people and people with underlying health conditions, among the prisoners who should be considered for noncustodial measures or release.

b) Courts of law are urged to as much as possible consider ordering imprisonment for offenders as a measure of last resort particularly during the current COVID-19 crisis.

3.7 LIMITED USE OF NON-CUSTODIAL MEASURES

The available various alternatives to pretrial detention, the provisions of commutation of sentences and temporary suspension of certain sentences are all valuable instruments that can now be relied upon and applied in order to reduce the numbers of new admissions to prison facilities. However, the Commission notes that these alternative instruments are quite often not used by courts of law in this country. Yet, the use of such alternative instruments is particularly relevant in the cases involving minor offences, including those of a non-violent and non-sexual nature. Finland, for example, has introduced court measures that are applied to postpone the enforcement of sentences up to six months, and of fine-conversion sentences, in order to prevent the spread of COVID-19 in prisons.

The Commission therefore notes that such alternative instruments would be particularly relevant for application in the cases of offenders or prisoners for whom COVID-19 poses particular risks, such as the elderly and the prisoners affected by chronic diseases or other health conditions, as well as other selected categories of prisoners including pregnant women, women with dependent children, prisoners approaching the end of their sentences, civil debtors and those who have been sentenced for petty or minor crimes. Release mechanisms should also be considered in the cases involving detained children or juveniles instead of prioritizing only older prisoners in this respect, nonviolent offenders, prisoners who have served the majority of their sentence, as well as women and prisoners in ill health. Compassionate, conditional or early release schemes as well as the provision of pardon or amnesty for carefully selected categories of prisoners whose release would not compromise public safety, should all be considered in this context.

Uganda should therefore adhere to international law and established standards for decreasing the use of detention and imprisonment, and therefore give early and serious consideration to the need for applying non-custodial measures wherever this is found to be appropriate. The Commission therefore strongly believes that the use

of non-custodial measures should be recommended and encourages.[14] However, it is necessary to hastily caution that the non-custodial measures should be applied without any form of discrimination on grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, social status, birth or other status.[15] Application of the same instruments should also not be compromised by corruption. The criminal justice system should therefore provide a wide range of non-custodial measures, starting from pre-trial to post sentencing dispositions, in order to avoid the unnecessary use of imprisonment. [16] Let us elaborate further in this respect.

3.7.1 Pre-trial stage

At the pre-trial stage, police as well as prosecution and judiciary officials should consider resorting to non-custodial alternatives in steady of relying only on pre-trial detention, taking into account the issues related to COVID-19. Pretrial detention should be used as a last resort in criminal proceedings and the aforementioned alternatives to pre-trail detention should therefore be employed as much and as early as possible.[17]

The common non-custodial measures at the pre-trial stage that can be considered for application include: home detention and relevant reporting obligations; restrictions on leaving or entering specific spaces; retention of the travel documents of the offender; court bail or police bond; and electronic monitoring. The persons that could be considered for liberty pending trial, and for non-custodial measures or release may include: pre-trial detainees, unless there is specific reason to believe that they will interfere with the ongoing investigations; first-time offenders; pretrial detainees who do not pose any serious and concrete threat to other people; juveniles and women with good character and records within their respective communities but also taking into account the issues of victimization and/or caretaking responsibilities.

3.7.2 Trial Stage

At the trial stage, the judiciary should consider increasing the use of non-custodial sanctions as an alternative to imprisonment, and suspension of prison sentences in light of COVID-19. The common non-custodial measures that could be considered at the trial and sentencing stage would include: imposition of fines; suspended or deferred sentences; probation or judicial supervision; community service; diversion to non-custodial treatment; restrictions on movement and electronic monitoring. The people that could be considered for liberty during trial include: persons convicted of minor or nonviolent offences; juveniles and women offenders with a history of victimization and/or those with good records of life within their respective communities; pregnant women and women with vulnerable dependent children.

[14] Tokyo Rules, rule 1
[15] Tokyo Rules, rule 2.2
[16] Tokyo Rules, rule 2.3
[17] ICCPR, article 9, para3, Tokyo Rules, rules 5 and 6

3.7.3 Post-trial Stage

At the post-trial stage, prison authorities and the judiciary should consider resorting to the early or temporary release schemes in light of COVID-19. The common non-custodial measures to be considered at the post-trial stage would include: early conditional release; temporary release; compassionate release and pardon or amnesty. The people that could be considered for liberty at this stage may include the prisoners convicted of minor, drug-free or nonviolent offences; low-risk prisoners nearing the end of their sentence; prisoners jailed for technical violations of their probation or parole; persons with severe mental disabilities or health conditions, and for whom staying in prison would mean an exacerbation of their condition; juveniles, pregnant women and women with caretaking responsibilities.

4.0 CONCLUSION

Evidence-based COVID-19 prevention and control measures in prisons are now urgently needed but they should be implemented in full compliance with the relevant United Nations Minimum Standards for the Treatment of Prisoners, in order to protect people in and outside of prison. The COVID-19 pandemic warrants taking resolute action by government in order to reduce the prison population as an imperative for preventing an outbreak and spread of corona virus within the prisons and within the wider society generally. Government should also limit new admissions to prison and accelerate the release of certain categories of prisoners but do so without compromising public safety.