



THE INTERNATIONAL
LEGAL FOUNDATION

Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees

This tool is intended to empower legal aid providers with a framework for actions they can take to address the COVID-19 pandemic and limit the severity of the impact on people in detention.

As the threat of the COVID-19 pandemic rises around the world, so too does the threat to the world's most vulnerable populations, including the millions of people held in detention centers, jails, and prisons around the world. In times like these, our communities are most in need of strong legal aid advocates.

Given the state of the pandemic, many governments are issuing stay-at-home orders, courts have ceased operations, and the rights of the criminally accused are being suspended. Conditions in prisons are deteriorating; detainees are being deprived of medical care, sanitary conditions, and even food. Already overburdened and overpopulated, detention facilities are becoming even more susceptible to outbreaks of COVID-19. And court closures and administrative adjournments of cases will only add to this problem.

Unless legal aid advocates act now to avert this crisis, the lives of many detainees may be lost. Here's what you and your legal aid organization can do:

Call on the judiciary to set up emergency courts to reduce detention and prison populations.

Alarming, many courts around the world are shutting their doors or postponing proceedings, leaving detainees—many of whom are awaiting trial and have not been convicted of any crime—languishing behind bars. The judiciary has a responsibility to ensure the protection of fundamental rights and equal protection of the law—even during times of crisis. Emergency courts must be up and running to address all matters that will reduce detention center and prison populations and ensure the health and safety of detainees. Courts must continue to hold all critical hearings, including remand hearings and habeas corpus petition hearings. They must also provide a mechanism for lawyers to advance cases that are not scheduled for hearing to expedite pretrial release and criminal case dispositions.

Use all legal avenues to substantially reduce or eliminate pretrial detention.

Legal aid advocates must make applications for the immediate pretrial release of all people suspected of or charged with minor or non-violent criminal offenses who pose no grave threat to public safety. Particularly during this health crisis, legal aid advocates must file for the pretrial release of all of their clients, and make every effort to ensure that their clients are not being held in pretrial detention because they cannot afford to make bail. For every detainee who is currently being held in pretrial detention because they cannot afford to pay bail, legal aid advocates must request the court or other appropriate authority to release them on their own recognizance, or on an alternative measure (e.g., by registering an address with authorities). Furthermore, legal aid advocates should call for the immediate pretrial

release of people who face heightened risk of illness or death due to COVID-19 due to age or underlying medical conditions. Legal aid advocates should request anyone over 50 years of age be released pretrial. They should also demand that justice systems undertake health screenings of all other detainees to properly understand which individuals are most at risk of harm and should immediately be released.

Call for a moratorium on new arrests and prosecutions of all non-violent offenses.

Legal aid advocates should call on governments, law enforcement and prosecutors to immediately halt all new arrests and prosecution of minor criminal offenses. They should advocate for prosecutors to drop pending prosecutions of minor, non-violent offenses, and all cases in which the evidence against the accused is not strong. In addition, legal aid advocates must ensure that governments do not criminalize the poor and homeless for violating stay-at-home or quarantine orders intended to stop the spread of COVID-19. Exposing non-violent offenders, low-level offenders, and others to grave danger contravenes public health guidance and violates notions of due process and the prohibition against cruel and unusual punishment.

Advocate for an expansive use of diversion for children and their immediate release from detention centers or other juvenile facilities, so they can return to their families.

Legal aid advocates should call for an expansive use of existing diversion laws in order to reduce the arrest, detention and prosecution of children from the earliest point of contact with the criminal justice system. Further, legal aid advocates should make applications for the immediate release of children from overburdened juvenile detention centers or similar custodial facilities and advocate that they be returned home to their families and communities in order to ensure their health and safety. As part of this advocacy, it will be critical for advocates to contact the family members of children in detention to educate them about their rights, and facilitate reunion with their children. Recognizing that many households are struggling at this time, legal aid providers should also strive to connect clients and their families with appropriate social services and support systems to the greatest extent available.

Advocate for the disposition of pending cases to alternatives to incarceration.

To reduce overcrowding in jails and prisons, legal aid advocates should move for courts to sentence accused persons to alternatives to incarceration whenever possible, and should seek agreements from prosecutors to offer or agree to dispositions that don't involve jail time. In all cases pending trial, legal aid advocates should explore all avenues for alternatives to incarceration, including mediation, therapeutic treatment, drug or alcohol rehabilitation, admonition, restitution, fines, probation and time served. In addition, legal aid advocates should seek to advance all cases in which a disposition can readily be negotiated. Additionally, advocates should explore filing resentencing requests on behalf of clients previously sentenced for non-violent crimes, as well as people with underlying health conditions or who have some compelling mitigating factor that makes immediate release a just resolution.

Call for the early release of convicted persons serving prison sentences.

Legal aid advocates should be proactive in pursuing all potential legal avenues for the release of persons who have been convicted and are currently serving prison sentences, prioritizing people who face heightened risk of illness or death due to COVID-19 due to age or underlying medical conditions, as well as people who have two years or less to serve on their sentences. These requests may take the form of an application to courts to resentence a detainee from a custodial to a non-custodial sentence, e.g., a

fine; an application to prison authorities for early release or sentence reduction; or a request to the appropriate government authority for sentence commutation or general amnesty; among others.

Advocate for re-entry plans that can protect the health and safety of vulnerable clients.

The COVID-19 crisis will dramatically impact vulnerable communities, including people struggling with homelessness, domestic violence or human trafficking, and individuals with mental health issues or drug dependency. During this time, it will be critical that legal aid advocates take a holistic approach and design a re-entry plan that will address the needs of their clients when they are released from detention. This includes considering whether they have a safe place to live, and whether they can get access to necessary treatment or medical services when they are released.

Advocate for expansive use of technology in courts and detention centers.

Legal aid advocates should advocate for an expansive use of technology in courts and detention centers – including telephone and videoconferencing services – to protect the health and safety of legal aid providers and other justice sector personnel, including courts, law enforcement and detention center staff. Videoconferencing services are increasingly being used in courts and detention centers around the world as a means to ensure that legal aid providers can efficiently communicate with their clients and to safeguard detainees’ rights to be present in court (even remotely) and participate in all court hearings. In addition, legal aid advocates should explore the use of technology for emailing emergency petitions and applications when in-person service isn’t possible or safe.

Call for increased measures to protect the health and safety of detainees.

Legal aid advocates should call for police stations, detention centers, jails and prisons to implement increased measures to protect detainees and prevent and contain infection, including: rigorous sanitary procedures and use of appropriate personal protective equipment by all cleaning and maintenance staff; social distancing; health screening processes; and segregation of new detainees and people who fall ill. Unless these measures are implemented, person-to-person transmission back to the broader society will place all of our communities at risk. Further, detention centers, jails and prisons must take urgent action to ensure the mental wellbeing of people in detention by ensuring that they can continue to have contact with their family and communities if access to facilities is restricted--including through increased and free access to phone and mail service. In locations where friends and family typically provide detainees with essential food, medicine, and hygiene products, legal aid providers should note the especially harmful impact ending visits will have on client health and safety.

Advocate for measures to protect the health and safety of legal aid providers.

Governments around the world are taking drastic measures to counter community spread, including broad stay-at-home orders that are intended to keep people from contracting the virus. As an essential part of the administration of justice, however, legal aid providers, as well as judges, prosecutors, police and detention center personnel deliver vital services. Legal aid providers in particular must continue to be on the frontlines to ensure the fair administration of justice and the release of detainees. While their presence in court is necessary to protect the rights of their clients, legal aid providers should take all necessary steps to protect their own personal health and safety, as well as the safety of their clients and others in the justice system. This includes practicing social distancing, following good hygiene practices, and implementing measures that reduce the number of persons necessary in court. Legal aid providers

can also limit their exposure by pushing for the en mass release of pretrial detainees and prisoners, in lieu of a case-by-case approach. Additionally, legal aid providers should advocate for and use technology as available to continue to provide legal services remotely and safely.

About the ILF

Every day, millions of people languish in jails around the world because they cannot afford a defense lawyer. The ILF is a non-profit organization founded to address this global crisis in access to justice. For nearly two decades, the ILF has fought to guarantee high-quality legal representation for everyone arrested or detained. Around the world, we provide quality criminal defense services and build sustainable, effective legal aid institutions. Currently, we provide direct legal services in Afghanistan, Nepal, Myanmar, Palestine and Tunisia and offer technical assistance worldwide. For more information, visit www.theilf.org.