



CHALLENGING DETENTION AND TORTURE IN TIMES OF COVID-19

**PROMISING PRACTICES
FROM HUMAN RIGHTS LITIGATORS
AND ADVOCATES FROM
AROUND THE WORLD**

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The SOS-Torture Network Litigators' Groups are an initiative created by *OMCT* in 2019, bringing together its network members and partners in Asia, Africa and Latin America, with the aim of multiplying anti-torture litigation to challenge impunity through an innovative, holistic and collective methodology.

The information and views expressed in this publication reflect those of the participants' workshop interventions without claiming to be exhaustive or necessarily reflecting the comprehensive views of each participant. As the Litigation Labs took place under Chatham House rules, examples cited in the report are based either on publicly available information or were included with the permission from the relevant participant.

INTRODUCTION

In November and December 2020, almost one year into the global Covid-19 pandemic, the *World Organisation Against Torture (OMCT)*, the *Open Society Justice Initiative (OSJI)*, with the *Collectif des Associations Contre l'Impunité au Togo (CACIT)*, the *Philippine Alliance of Human Rights Advocates (PAHRA)*, and the *Centro de Derechos Humanos Fray Bartolomé de las Casas (Frayba)*, convened a series of regional and global *Litigation Labs* with human rights litigators and advocates to exchange experiences and discuss strategies and promising practices to effectively **protect** people from the Covid-19 virus in detention, challenge ongoing and pandemic related human rights violations occurring in detention settings, and **seek accountability** for abusive law enforcement measures. This briefing report shares selected examples of creative legal and advocacy interventions across the world and offers practical insights for activists who continue to confront pandemic challenges and who are likely to face other crises in the future.

The pandemic poses great risks to both persons deprived of liberty and prison and detention staff around the world. People in detention are among those most vulnerable given the conditions of poor hygiene and sanitation, dramatic overcrowding, and poor healthcare infrastructure within these facilities. In addition, in response to the pandemic, many governments introduced state of emergency regulations and exceptional measures that did not comply with international human rights law and standards. Human rights violations, including torture and other cruel, inhuman or degrading treatment or punishment, towards those breaching quarantine and lockdown directives, have been commonplace. Pandemic-related emergency measures have also been used by some governments to further restrict the work of civil society and human rights defenders.

Lawyers and civil society organisations have adapted to these challenges and employed a diverse and creative range of legal and advocacy interventions at the domestic, regional and international levels. Some of these interventions aimed to reduce overcrowding and improve conditions and access to health in places of detention. Some served to denounce human rights violations committed by law enforcement agencies during Covid-19 lockdowns and states of emergencies, while others sought to uphold the right to defend and protect human rights defenders.

Various factors have impacted the success of these litigation and advocacy efforts during the pandemic. The effectiveness of litigation, for example, was frequently linked to public opinion. In some countries lower courts were more progressive, while the higher courts were reluctant to take immediate and comprehensive measures. In other settings, constitutional appeals to the highest courts were effective. The reduction or temporary suspension of court operations and related justice services in many countries due to Covid-19 has compounded and exacerbated already existing delays in court proceedings.

Examples of success include the release of thousands of persons deprived of liberty from overcrowded detention facilities as a result of individual and collective *habeas corpus* petitions. Coordinated international advocacy efforts have forced some States – albeit to a limited extent – to stop using pandemic-related public health restrictions as a pretext to crack down on human rights defenders. In some countries, the courts have taken measures to prevent abusive practices

of law enforcement agencies during lockdowns. Many of these efforts were collaborative and litigators, including those belonging to the *OMCT SOS-Torture Litigators' Groups* in Latin America, Africa and Asia, used each other's petition templates and organised peer-learning webinars, drawing on the learnings from other countries and regions.

Many of the legal and advocacy strategies mentioned in this report are proactive, i.e., asking for precautionary measures and other actions to prevent violations, while some approaches seek redress for victims and civil society activists whose rights have been violated in the context of pandemic measures. In this rare moment when most countries face similar pandemic challenges, learning from other practitioners served to generate new creative possibilities for activists globally.

1. PROTECTING PEOPLE IN DETENTION DURING THE COVID-19 PANDEMIC

The legal in-court and advocacy actions took place in the context of the general curtailment of access to justice when the Covid-19 pandemic hit. Court operations and related criminal justice services have been reduced or temporarily suspended in many countries. These measures have generally led to reduced judicial and external oversight of prisons and other places of detention, increasing case backlogs, and lengthy delays in judicial proceedings. These reduced operations also constitute a serious threat to the right to a fair trial, to the ability of victims of torture and ill-treatment to seek protection and justice, and for persons deprived of liberty to access detention and court services and remedies.

The systemic problems endemic to detention facilities in many countries, such as overcrowding, inadequate health services, and poor living and sanitary conditions, including poor cell ventilation, have been exacerbated by the Covid-19 pandemic. This has heightened the risk of Covid-19 outbreaks, and endangered the lives of persons deprived of liberty, staff and the surrounding community.¹ Thus, compared to the wider population, persons deprived of liberty have been at higher risk of contracting Covid-19, which can spread rapidly in detention, due in part to the high concentration of persons in confined spaces and to the restricted access to hygiene and health care.² Further, as the pandemic has deepened pre-existing inequalities and exposed vulnerabilities,³ some groups in detention have been even more at risk or more adversely affected by the pandemic, such as women, children, LGBTI people, migrants, older persons, persons with disabilities, and those with underlying health problems.⁴

The protection of persons deprived of liberty has required, first and foremost, the reduction of the prison population to allow physical distancing in overcrowded detention facilities. In turn, some governments took proactive legislative, administrative, and judicial measures to reduce the number of people in detention through the use of non-custodial and early release measures.⁵ Countries

1. Penal Reform International, “[Coronavirus: Healthcare and human rights of people in prison](#)”, 16 March 2020, p. 2.; World Health Organisation, Regional Office for Europe, “[Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention, Interim Guidance](#)”, 15 March 2020, pp. 1-2.

2. Amnesty International, “[Forgotten Behind Bars: Covid-19 and Prisons](#)”, 18 March 2021, p. 12.; Inter-Agency Standing Committee, “[Interim Guidance, COVID-19: Focus on Persons Deprived of Their Liberty](#)”, developed by OHCHR and WHO, 27 March 2020, p. 2.

3. UN Secretary-General, “[Policy Brief: The Impact of COVID-19 on Women](#)”, 9 April 2020, p. 2.

4. In particular the gender implications of COVID-19 in prisons are yet to be fully analysed but the initial evidence shows that the impact of COVID-19 on women and LGBTI prisoners have been different than cis male prisoners and they have faced specific challenges during the COVID-19 pandemic. Yet, women and LGBTI prisoners have been the less visible victims of COVID-19 behind bars and the policies adopted by the authorities have been very often gender blind putting them at greater risk. See: Vicki Prais, “[The Impact Of COVID-19 On Women Prisoners](#)”, Human Rights Pulse, 1 June 2020; Olivia Rope, “[Coronavirus and women in detention: A gender-specific approach missing](#)”, Penal Reform International, 4 June 2020.; Astrid Valencia & Josefina Salomón, “[Abuse and fear: Trans women speak out about life in Nicaragua’s prisons during COVID-19](#)”, Amnesty International, 9 September 2020.

5. “Governments around the globe have reduced prison populations in response to the COVID-19 pandemic, with an estimated one million, mostly non-violent offenders, being granted early release... The global study of prisoner release schemes in 53 jurisdictions found that many governments took swift action to protect the health and safety of corrections staff, prisoners and the wider community, with over 475.000 people released from prisons and other places of detention between March and July 2020 alone.” See: DLA Piper, “[A global analysis of prisoner releases in response to COVID-19](#)”, 2021.

including Congo-Brazzaville, El Salvador, Guatemala, India, Nigeria, Philippines, and many others, announced unprecedented mass releases of detainees, mostly non-violent offenders.⁶ The most commonly implemented measures have been: amnesties; bails; electronic monitoring; fines; house arrest; parole; suspended sentence orders; temporary or early releases.

Overall, efforts have focused on releasing certain categories of persons deprived of liberty, such as women, including those who are pregnant, children, the elderly, individuals with underlying health conditions, and those detained for minor or nonviolent offences. In some countries, those release mechanisms were extended to places of detention outside the criminal justice system.

In addition, States have a responsibility to take measures to protect the lives and health of those who remain in detention, including ensuring physical distancing within the facilities, providing medical treatment, access to medicines, and adequate sanitary conditions. However, while some authorities were too slow to take action, the measures taken by others were inadequate or raised other human rights concerns. For example, family and lawyer visits were suspended or restricted and not replaced by increased access to alternative means of communication. In other cases, solitary confinement was widely used to create physical distancing.

The measures imposed by prison authorities in many countries have prevented monitoring bodies from carrying out their duties, as their access to places of detention has been limited or temporarily suspended. Consequently, they have not been able to directly assess the treatment of people in prisons and how their health is being protected against Covid-19.⁷ This has raised other concerns since monitoring visits play a key role in the prevention of torture and other ill-treatment in places of detention.⁸

There are also remarkable similarities across regions regarding the lack of transparency surrounding Covid-19 data within criminal justice systems, such as tangible, reliable, and disaggregated data about the impact of the virus on prisons and other places of detention, including the number of Covid-19 infections and related deaths, as well as the mitigation measures adopted by authorities. Some lawyers and activists are challenging these restrictions.⁹

Lawyers and activists stepped up their legal and advocacy strategies to denounce and prevent further deterioration of detention conditions and have employed a diverse range of interventions, including in-court actions and legal advocacy at the domestic and international levels aiming to reduce overcrowding, improve conditions and access to health in detention, protect the right of persons deprived of liberty to maintain contact with the outside world, and ensure transparency and access to information on detention facilities.

6. Ibid.

7. Open Society Justice Initiative, *"The Right to Health Care in Prison during the COVID-19 Pandemic"*, Legal Brief, July 2020.

8. Ibid.

9. See for example: Instituto de Defesa do Direito de Defesa (IDDD), *"Primeiro ano da pandemia nas prisões brasileiras foi de negligência, falta de itens de prevenção e água"*, 15 April 2021; KELIN, KATIBA Institute, the International Commission of Jurists-Kenyan Section, Transparency International-Kenya and Women's Link Worldwide, *"Five organisations filed an urgente case at the High Court in Nairobi (Kenya) on the right of access to information"*, 8 July 2020.

Differences among domestic legal systems and available remedies, the variety of detention realities, social and economic factors, as well as legal traditions and frameworks, have an influence on the types of legal actions and advocacy strategies in the various countries.

1.1. LEGAL STRATEGIES TO SEEK RELEASE AND PROTECT PEOPLE IN DETENTION

Civil society organisations and lawyers have developed and conducted a wide array of legal strategies, actions, and resources to protect and to provide urgent assistance to persons deprived of liberty in the context of the Covid-19 pandemic.

Litigation practices have involved various constitutional, criminal, habeas corpus, and public interest litigation, ranging from individual to collective cases, and including judicial or quasi-judicial bodies. Cases around the world have alleged violations of a number of rights, including the right to life, the right to health, the right to be free from torture and other forms of ill-treatment, the right to information, the right to food, and the right to claim benefits while serving a sentence. Litigators used *habeas corpus* petitions for early or compassionate release, and public interest litigation as the main tools to reduce overcrowding, improve detention conditions, and protect groups in situations of vulnerability. *Amicus curiae* briefs drew judicial attention to international human rights and health standards, thereby creating added pressure on authorities to adopt concrete measures or reforms.

In addition, many civil society organisations deployed legal aid services to assist those in detention particularly affected by the health crisis or with chances to benefit from early release or non-custodial measures. For example, in **Colombia**, the *Comité de Solidaridad con Presos Políticos (CSPP)* produced and circulated *habeas corpus* templates for persons deprived of liberty to file petitions on their own to claim urgent access to medical treatment, virtual communication with their relatives or lawyers, and the application of non-custodial measures, notably house arrest. *CSPP* also published a manual, called “Manual de Derecho Penitenciario”, which includes a section focused on Covid-19 in prisons, compiling resources and legal actions to undertake.¹⁰

10. Comité de Solidaridad con Presos Políticos (CSPP), “Manual de derecho penitenciario”, 2021.

1.1.1. SEEKING RELEASES THROUGH *HABEAS CORPUS* PETITIONS

During the pandemic, the first urgency has been to reduce the number of persons deprived of liberty to avoid overcrowding in detention facilities, and so, one of the most commonly used types of litigation, where it exists, was habeas corpus petitions, filed either individually or collectively. A *habeas corpus* petition, common to many national judicial systems and incorporated in international law, is used to bring a detainee before a court to determine if the person's detention is lawful.¹¹

Habeas corpus claims for the release of children, women, and LGBTI people have proven effective in some countries. In certain contexts, older people deprived of liberty and those with pre-existing chronic diseases who belong to a risk group were allowed to serve their sentences at home. **Collective** *habeas corpus* petitions seem to be more effective than other types of legal action, as they have a potentially larger impact due to the release of large numbers of people in a shorter period of time.

In **Argentina**, collective *habeas corpus* petitions requesting release were filed in the state of Mendoza by the lawyers of the Association XUMEK, resulting in a court order requiring the government to review all cases of at-risk prisoners who could be placed under house arrest, and urging authorities to secure the periodic supply of personal protective equipment (PPE) and hygiene items to detainees, as well as authorising the temporary use of mobile telephones while family visits were suspended.¹² The judicial decision allowed many individuals to serve their sentences at home. XUMEK also filed a collective *habeas corpus* petition to release children deprived of liberty and detainees in psychiatric institutions.¹³ In May 2021, the Supreme Court of Argentina ordered the Supreme Court of the Buenos Aires province to monitor human rights violations committed against persons deprived of liberty, following a petition filed by *Centro de Estudios Legales y Sociales (CELS)* in 2020, in light of the lack of implementation of the "Verbitsky" collective habeas corpus ruling (2005) and increasing overcrowding levels.¹⁴

In **Brazil**, *habeas corpus* petitions brought by Public Defender's Offices have been seen as a valuable strategy to reduce prison overcrowding. For instance, in the state of Espírito Santo, a collective *habeas corpus* petition released persons deprived of liberty who were detained because they could not pay their bail.¹⁵ Similarly, a collective *habeas corpus* petition filed in the state of Ceará resulted in the release of individuals who were detained for alimony debts. Both decisions have subsequently been extended at the national level.¹⁶

11. Masha Lisitsyna, Natasha Arnpriester, "Insight: Five Ways Attorneys Are Protecting Human Rights of the Incarcerated", Bloomberg Law, 15 April 2020.

12. Xumek, "Comunicado de prensa: habeas corpus colectivo y correctivo ante la situación de emergencia por el COVID-19", 1 April 2020.

13. See: Xumek, "Habeas corpus correctivo y colectivo servicio penitenciario de Mendoza sistema de responsabilidad penal juvenil sistema de salud mental de Mendoza", <https://xumek.org.ar/wp/wp-content/uploads/2020/04/Habeas-Corpus-Colectivo-Correctivo-COVID-19.pdf>.

14. CELS, "La CSJN le ordenó a la Suprema Corte Bonaerense que tome medidas de fondo contra el hacinamiento en el sistema carcelario", 13 May 2021.

15. Agência Brasil, "Covid-19: Espírito Santo prisoners Gain Freedom by Injunction", 28 March 2020.

16. See for more details: Natalia Pires de Vasconcelos, Maíra Rocha Machado, Daniel Wei Liang Wang, "COVID-19 in prisons: a study of habeas corpus decisions by the São Paulo Court of Justice", Forum Practical Perspectives: Special Section COVID-19, Brazilian Journal of Public Administration, Rio de Janeiro 54(5), September – October 2020, p. 1480-1481.

In **Democratic Republic of Congo**, *Alliance pour l'Universalité des Droits Fondamentaux (AUDF)* filed, in April 2020, a collective habeas corpus petition to the prosecutors of the city of Kinshasa on behalf of detainees in pre-trial detention whose detention had exceeded the length allowed by law. The petition provided a list of 20 persons for release given the risk of further human rights violations in case they would contract Covid-19 in detention.¹⁷ The collective habeas corpus petition prompted their release.

In **Honduras**, the National Committee to Prevent Torture and Cruel, Inhuman or Degrading Treatment submitted a collective *habeas corpus* petition to the Supreme Court of Justice to protect at-risk incarcerated people from exposure to Covid-19¹⁸, requesting the Court determine whether the imprisonment of certain categories of persons was lawful, and to consider early release for those who were particularly vulnerable. This category included detainees suffering from chronic diseases (such as diabetes, hypertension and cardiovascular illnesses), those over the age of 60, and people living with HIV/AIDS. The request was filed in March 2020 and accepted by the Constitutional Chamber of the Supreme Court in April 2020.¹⁹ Although the *habeas corpus* petition was not granted in this case, recommendations were issued despite reluctance of the military authorities who oversee the prison administration.

In some countries *individual habeas corpus* petitions have been effective in leading to broader impacts. For example, in **Nepal**, when the Supreme Court suspended remand and jail/bail hearings due to Covid-19, the *Public Defender Society of Nepal (PDS-Nepal)* filed an individual *habeas corpus* petition for a client who remained illegally detained, emphasising the right to be heard on the essential issue of detention. The Supreme Court freed their client and shortly thereafter announced they would renew remand and jail/bail hearings and allow interlocutory appeals of these decisions.²⁰

Again, in **Nepal**, *PDS-Nepal* filed an individual *habeas corpus* petition to the Supreme Court on behalf of a convicted juvenile for resentencing to home confinement, arguing that the child's rights to life, liberty, and special protection under the law were being violated. The Supreme Court granted the writ and released the child in parental custody, considering the best interests of the child. This successful case paved the way for more children being released from detention during the pandemic, though individual *habeas corpus* petitions are still required to be filed. *PDS-Nepal* has shared this decision widely among lawyer networks and with juvenile correction centres across the country so that other legal practitioners can cite the case to build stronger arguments for the release of children.²¹

17. AUDF, "[Demande de la libération des Détenus en Détention préventive, cas irréguliers de Détention et cas éligible à la libération con Cas de dépassement des délais à Makala](#)", 21 April 2020.

18. In contravention of the recommendations of international human rights bodies, including the United Nations Committee against Torture.

19. IDLO, "[Honduras Court Admits Petition to Protect Prisoners from COVID-19](#)", 11 May 2020.

20. See: The International Legal Foundation, "Justice in Crisis: COVID-19", <https://www.theilf.org/covid-19>.

21. Holly Hobart, & Ajay Shankar Jha Rupesh, "[In Nepal, Creative Litigation is Protecting Vulnerable Communities Amidst COVID-19](#)", 14 May 2020.

In **Brazil** in 2020, the *Instituto for Defense of the Right to Defense (IDDD)*, mobilised through its network 92 lawyers and 11 law students to be part of the project “Task Force COVID-19: for the right to defend life.”²² The Task Force established a partnership with the Public Defender’s Office of the state of Sao Paulo that referred relevant cases in areas where it does not have a presence.²³ Task Force lawyers requested the release or replacement of pre-trial detention with house arrest in the first instance and through filing of habeas complaints to three levels of courts.²⁴ The Task Force represented 448 individuals under arrest or in pre-trial detention in the state of Sao Paulo and obtained positive decisions for 118 of them.²⁵ 28 of them were released by the judges in the first instance request.²⁶ Less than half of positive decisions actually mentioned the pandemic amongst the reasons for release.²⁷

In **Kenya**, in September 2020, *KELIN* and *Katiba Institute* filed a petition before the Constitutional and Human Rights Division of the High Court in Nairobi challenging the unlawful detention of patients for failure to pay the costs of Covid-19 testing and medical treatment while in isolation.²⁸

1.1.2. IMPROVING CONDITIONS THROUGH CONSTITUTIONAL PUBLIC INTEREST LITIGATION

Civil society organisations and Public Defender Offices have also used constitutional public interest litigation to address lack of access to health and hygiene services in detention facilities as well as the need to reduce overcrowding. These collective petitions were filed in public interest, without specifying plaintiffs, and relied on scientific evidence to argue the violations of rights.

In **Mexico**, a collective *amparo* complaint was filed by *Centro de Derechos Humanos Miguel Agustín Pro Juárez* against the Governor of the state of Morelos, the Ministry of Health and other State authorities. Admitted in November 2020, this lawsuit used a public health rationale to argue, among others: “that the failure of authorities to enact pandemic guidelines and policies runs contrary to their obligation to protect those in the Morelos state prison system from Covid-19.” This case also highlights the use of expert opinions by national and international experts (epidemiology, public health, forensics, and pre-trial justice experts) as part of strategic litigation efforts around the Covid-19 pandemic and human rights violations.²⁹ Unfortunately, the judge dismissed the *amparo* in

22. The Instituto de Defesa do Direito de Defesa (IDDD), “Justice and denial: how the magistrates turned a blind eye to the pandemic in prisons”, August 2021, p. 14-15.

23. Ibid.

24. Ibid.

25. Ibid., p. 21.

26. Ibid. p. 41.

27. Ibid.

28. Katiba Institute, “Petition challenging forceful detention for failure to meet costs of isolation and treatment of covid-19 in public health facilities”, 30 September 2020.

29. Centro Prodh, Open Society Justice Initiative, Amparo: “Centro Prodh vs. the Governor of the state of Morelos et al.”, 29 October 2020, <https://www.justiceinitiative.org/litigation/centro-prodh-vs-the-governor-of-the-state-of-morelos-et-al>. See: Albertina Ortega Palma, “Expert Report on the Management of Dead Bodies in Custody and the Covid-19 Pandemic”, 2 October 2020; Antigone Onlus, “Italian Policies to Prevent Covid-19 and Contain its Spread in Prisons”, 5 June 2020; Luis Fondebrider and Mercedes Doretto and Luis Prieto Carrero, “Argentine Forensic Anthropology Team (EAAF), Technical Report on Measures for Preventing Transmission and Handling the Deceased by Covid-19 in Detention Centers”, June 2020; Irish Penal Reform Trust, “Affidavit of Fiona Ní Chinnéide”, 21 August 2020; Javier Carrasco Solís, Instituto de Justicia Procesal Penal, “Expert Report on the Obligations of Pre-Trial Services (Unidad de Medidas Cautelares) of the State of Morelos During the Covid-19 Pandemic”, 2 October 2020.

December 2021, more than a year after it was filed, based on the presumption that government tells the truth in its responses and no omissions in the acts of government agencies are proven. *Centro Prodh* is appealing the decision to the federal judiciary.

Also, in **Mexico**, *Documenta A.C.* filed and won two landmark collective *amparo* actions. The first one, filed in April 2020, prompted the Second Administrative District Judge of the City of Mexico to order a wide array of measures to protect persons deprived of liberty in 39 psychiatric hospitals.³⁰ The second *amparo*, filed in May 2020, targeted the protection of persons involuntarily deprived of liberty in 350 drug treatment residences. In both cases, the judiciary requested authorities to favour the discharge of the individuals when social and/or family support was available, to guarantee their access with the outside world, and to guarantee the access of those deprived of liberty and their families to information on the measures taken to control the spread of Covid-19 in the respective institutions.

In **Brazil**, a collaboration between the *Defensoria Publica* and *Ministerio Publico* in Rio de Janeiro resulted in the filing of a *collective civil action* against the state of Rio de Janeiro.³¹ This legal action argued that while the first urgency remains to reduce the number of incarcerated persons to avoid overcrowding, under international human rights law, States have a responsibility to take appropriate, immediate measures to protect the lives and health of those in prison. Using law and public health policy, this legal action aims to mitigate the effects of the pandemic in the prison system in Brazil, which has the third largest prison population in the world. It also emphasises the critical role the judiciary can play to protect those under its jurisdiction from imminent and irreparable harm that can arise from contracting Covid-19. The filing included a statement by eminent medical and scientific experts affiliated with *Physicians for Human Rights*, *Yale* and *Stanford Universities* and the *Oswaldo Cruz Foundation (FIOCRUZ)*. While the precautionary measures were denied in this case, a decision on the merits is still pending.

Also, in **Brazil**, in August 2020, *IDDD* filed a *Public Civil Action* to prompt the state of São Paulo to adopt measures to protect the fundamental rights of the prison population, given non-compliance with basic protocols to contain the spread of Covid-19 in the prison system. The requests were: a) screening criteria, exclusively by health professionals, for all people who enter prisons and socio-educational units, to identify possible suspected cases of respiratory diseases, and immediate care of any identified cases; b) carrying out information campaigns on Covid-19, with information on prevention and treatment; c) Uninterrupted supply of water to ensure the maintenance of proper hygiene habits; guaranteed daylight for at least six hours a day; d) supply of medicines and adequate food; e) supply of essential hygiene items, such as soap, hand sanitiser (preferably in dispensers installed in circulation areas) and masks; f) supply of cleaning materials to allow for an increase in the frequency of cleaning of cells and spaces for circulation; g) adoption of measures to avoid delays in receiving the parcels delivered by families ("jumbo"); h) upgrade of medical teams to guarantee access to health for persons deprived of liberty, adults and children. After a favourable decision, the Court of Justice of São Paulo partially ruled on some requests but dismissed several others. The decision determined that the state guaranteed uninterrupted

30. Documenta AC, "[Juez ordena a gobierno de AMLO a garantizar salud en psiquiátricos ante Covid-19](#)", 8 May 2020.

31. Open Society Justice Initiative, Conectas and Elas Existem, Amici Curiae brief: "[Defensoria Publica and Ministerio Publico in Rio de Janeiro vs. State of Rio de Janeiro](#)", 20 June 2020.

access to water in the penitentiaries and that health standards must be observed in the preparation and storage of food supplied to detainees. The state and *IDDD* appealed the decision.

In **Pakistan**, at least 500 persons deprived of liberty were released in the province of Sindh by the Sindh High Courts and similar directives were issued by the Islamabad High Court. According to the report published by *Amnesty International* and *Justice Project Pakistan*, however, “a Supreme Court decision put a halt to this countrywide momentum that could have seen a significant reduction of the inmate population. Leveraging a technicality regarding the authority of the lower courts, the Supreme Court’s strong rebuke to the lower courts had a chilling effect on efforts to decongest prisons and even led to the re-arrest of prisoners who had been released in compliance with the directives of the Islamabad and Sindh High Courts.”³² In its decision, though, the Supreme Court asked prison authorities to prepare lists of at-risk detainees who could be considered for release. These included women and older detainees above the age of 60, juveniles in pre-trial detention, those who had served 75% of their sentence and those suffering from pre-existing conditions. In fact, five months later, in September 2020, Prime Minister Imran Khan ordered officials to implement a Supreme Court decision to release all women deprived of liberty who were under trial, convicted of minor offences, or who had served most of their sentences.³³ As of June 2021, however, no lists had been submitted to the Court and no women detainees had been prepared for release.”³⁴

1.1.3. PROMOTING HEALTH AND SAFETY THROUGH REGIONAL AND UN HUMAN RIGHTS MECHANISMS

Submissions of complaints, often together with requests for precautionary measures to regional and international human rights bodies, were used quite frequently during the first year of the pandemic as a means of ensuring the health, safety, and human dignity of those in detention. Some of the regional and international bodies that were engaged include: the Inter-American Commission on Human Rights (IACHR), the African Court on Human and Peoples’ Rights (ACtHPR), United Nations special procedures and the United Nations human rights treaty bodies.

Petitions and requests for precautionary measures before the IACHR alleging inhumane conditions of detention and overcrowding have contributed to the release of individuals in situations of vulnerability and the improvement of detention conditions in countries such as Brazil, Colombia, Guatemala, Mexico, and Venezuela. In Colombia, for example, a request filed to the IACHR for the adoption of precautionary measures,³⁵ prompted immediate results, including access to specialised health care or medicines following requests for information made by the IACHR to the State authorities.

32. Amnesty International & Justice Project Pakistan, “Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan’s Detention Facilities”, p. 5. For the Supreme Court decision see: https://www.supremecourt.gov.pk/downloads_judgements/crl.p._299_2020_07042020.pdf

33. DAWN, “PM Imran directs authorities to release women prisoners in line with SC order”, 2 September 2020.

34. Amnesty International & Justice Project Pakistan, “Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan’s Detention Facilities”, p. 5.

35. Fundación Comité de Solidaridad con Presos Políticos (FCSPP), “Solicitan medidas cautelares a la CIDH en favor de las personas privadas de libertad”, 21 April 2020; see also, El Tiempo, “Piden a CIDH medidas cautelares para 25.000 presos en Colombia”, 21 April 2020.

In the **Maldives**, a civil society organisation has worked closely with **UN special procedures** and **UN human rights treaty bodies** in order to help migrant workers who were arbitrarily detained for protesting unpaid labour at the start of the pandemic in March 2020 and to address inadequate treatment and conditions within migration detention facilities where they were being held. Despite these efforts, migrant workers were deported by the Maldivian government without informing their lawyers.³⁶

Another creative legal strategy was the submission of an *amicus curiae* to an existing pending case, with the aim of raising Covid-19-related arguments. Following the submission of a case by the *Pan African Lawyers Union* to the African Court of Human and Peoples' Rights (ACtHPR) seeking an Advisory Opinion regarding the need to decriminalise petty offenses in Africa, the *Open Society Justice Initiative* filed an amicus brief in the case citing the urgent need to decriminalize vagrancy laws since they over-incarcerate poor and marginalised groups, putting them at higher risk of contracting Covid-19.³⁷ In December 2020, the court issued its opinion confirming the discriminatory nature of these laws.³⁸

1.2. ADVOCACY AND COMMUNICATION STRATEGIES

Civil society organisations have strengthened and built new partnerships at the national, regional and international level to exchange information and experiences, and have also created networks to monitor human rights violations in custodial settings. In many instances, CSOs successfully worked with authorities in reviewing individual cases of persons deprived of liberty whose legal status or health conditions made them eligible for release. They also supported authorities to compile and systematise data to map and identify detainees who are more vulnerable to Covid-19. Engagement and dialogue with State authorities and information and awareness campaigns have emphasised that Covid-19 transmission among prison populations is a public health issue that goes beyond the criminal justice system.

1.2.1. MEETING WITH STATE AUTHORITIES

Civil society organisations have engaged with relevant authorities to request information and propose and explore possible solutions, leading to some improvements in prison conditions and detainee releases.

In **Pakistan**, emphasizing how the spread of Covid-19 in prisons is a public health concern contributed to addressing overcrowding issues. Providing authorities with short, medium, and long-term recommendations based on guidelines by international bodies supported the effectiveness of some measures.³⁹

36. Human Rights Watch, "[Maldives: Covid-19 Exposes Abuse of Migrants](#)", 25 August 2020.

37. Open Society Justice Initiative, "[Press release: Open Society welcomes African Court's Ruling against 'Arbitrary' Vagrancy Laws](#)", 4 December 2020.

38. See: Open Society Justice Initiative, "[Justice Initiative Welcomes African Court's Ruling against 'Arbitrary' Vagrancy Laws](#)", 4 December 2020.

39. Justice Project Pakistan & Group Development Pakistan, "[Policy Recommendations - Safeguards for Pakistani Prisoners during COVID-19](#)".

In **Colombia**, several approaches contributed to the implementation of Covid-19 mitigation strategies in certain prisons, including the holding of a **virtual public hearing** in Parliament to expose and address the impacts of the pandemic on prisons⁴⁰; and a webinar⁴¹ organised by the Inter-American Commission on Human Rights.

In **Tunisia**, in March 2020, several civil society organisations, including OMCT, met with multiple State institutions, including the *Instance nationale pour la prévention de la torture* (national preventive mechanism) and published a joint statement to request a decrease of the prison population.⁴² Within two months, 5.000 detainees were released, bringing the numbers in line with the available beds.

In **Togo**, meetings between the *Collectif des Associations Contre l'Impunité au Togo (CACIT)*, State authorities, and prison administrators allowed the opening of quarantine cells in the prison of Lomé and the subsequent agreement to relocate affected detainees in a dedicated detention facility with adequate medical support. By providing essential health, sanitation, and relief materials to detainees, the organisation succeeded in maintaining a certain level of prison access and monitoring.

Furthermore, advocacy efforts led by CACIT in Togo and supported by OMCT⁴³ prompted the release of 1.048 detainees from 13 prisons across the country, including the release of 17 children deprived of liberty in the *Brigade pour Mineurs* in Lomé.⁴⁴

In **Congo-Brazzaville**, *Action des chrétiens pour l'abolition de la torture (ACAT)* in Congo publicly demanded from authorities “the overcrowding relief in prisons ... and respect for the judicial pledges of prisoners to fight against the coronavirus.”⁴⁵ Meetings with authorities resulted in some concrete changes in prison conditions, including improvements in hygiene and sanitary measures, installation of quarantine cells, and compulsory Covid-19 testing. Supplying information on promising Covid-19 responses from other countries also helped convince authorities to implement prison decongestion practices in the country.

In **Pakistan**, *Justice Project Pakistan* developed a vulnerability grading index tool, which enabled prison authorities to identify and protect the most vulnerable prisoners from contracting Covid-19, and offered guidance about certain levels and standards of care. Recommended measures included early or temporary release, in particular of pre-trial detainees and individuals convicted for minor or non-violent offences.⁴⁶

40. Fundación Comité de Solidaridad con Presos Políticos, Audiencia Pública Virtual, “[Crisis Carcelaria en el marco de la pandemia por COVID-19](#)”, 6 April 2020.

41. CIDH & OEA, “[La situación de los derechos humanos de las personas privadas de libertad en el contexto de la pandemia del COVID-19](#)”, webinar, 4 June 2020.

42. “[Communiqué: Appel à la réduction de la population carcérale face à la pandémie du COVID-19](#)”, 19 March 2020.

43. See the urgent action call launched by OMCT and members of the SOS-Torture network in Africa: “[COVID-19 and prisons in Africa: the risks of contamination are enormous](#)”, 26 March 2020.

44. OMCT & CACIT, “[La libération de mineurs détenus en relation avec le Covid-19 doit être suivie de nouvelles mesures urgentes](#)”, press release, 6 October 2020.

45. See: Prison Insider, Africa: coronavirus, prison fever, Congo – Brazzaville, <https://www.prison-insider.com/en/articles/afrique-coronavirus-la-fievre-des-prisons>. For the press release see: https://www.prison-insider.com/files/baefd129/communiquede_presse_acat_congo_n_i_001.jpg

46. Justice Project Pakistan, “[Pakistani Prisoners' Vulnerability to COVID-19](#)”, 25 March 2020.

In **Afghanistan**, in 2020, the *International Legal Foundation* launched an urgent call to action resulting in a special amnesty decree in line with their recommendations.⁴⁷ This advocacy strategy, conducted in conjunction with litigation efforts, resulted in the release of 1.880 prisoners, including 137 women and 302 juveniles.

In **Kyrgyzstan**, the *Coalition against Torture* successfully advocated for the adoption of an Amnesty Act aimed at reducing overcrowding by focusing on the release of those detained for minor or non-violent offences.⁴⁸ This act contributed to the release of over 1.000 detainees in the country.

1.2.2. INFORMATION CAMPAIGNS AND AWARENESS RAISING INITIATIVES

Civil society organisations have produced and published reports, guides, legal briefs, briefing papers, public statements, press releases, and other relevant materials to disseminate accurate information regarding the risks and implications of the Covid-19 pandemic in places of detention, in line with guidance and recommendations issued by international bodies, including the World Health Organisation (WHO). Public information campaigns, including through social media, have been launched to draw attention to prison conditions, as well as the special vulnerability of persons deprived of liberty to Covid-19. Awareness raising campaigns have been developed to address stigma-related issues that impact public perceptions towards detainees as well as their prospects of release.

For example, in the **African region**, a regional joint statement entitled *“The spread of Covid-19 requires urgent and immediate measures to be taken to protect the rights of detainees in Africa”* was published by nearly 30 national and international actors, including ACAT⁴⁹ and CACIT, calling for the action of Member States of the African Union.⁵⁰

In **Tunisia**, to address the severe psychological impact for detainees and prison agents from the Covid-19 crisis and ensuing restrictions, the OMCT, in cooperation with the prison administration and its partner organisation *Psychologues du Monde Tunisie*, produced a video (in Arabic)⁵¹ to raise awareness of both prisoners and prison staff to Covid-19. Some 17.000 prisoners, as well as staff in 28 prisons and five juvenile detention centres, saw the 10-minute film featuring a well-known Tunisian actor.

Along with the SOS-Torture Litigators’ Group in Africa, the OMCT published a report on the prisons in Central and West Africa,⁵² calling for the adoption of urgent measures at the judicial and institutional levels to mitigate the risk of Covid-19 spreading in overcrowded prisons with inhumane detention conditions.

47. International Legal Foundation Afghanistan, *“The International Legal Foundation Afghanistan’s Urgent Call to Action to Relevant Afghan Authorities on COVID-19 Justice Sector Response”*.

48. Coalition Against Torture in Kyrgyzstan, *“The Coalition Against Torture Urges the Legal Community to Take Immediate Actions on the Situation With COVID 19”*.

49. ACAT / Benin, ACAT / Congo Brazzaville, ACAT / Chad, ACAT / Ivory coast.

50. See: *“The spread of COVID-19 requires urgent and immediate measures to be taken to protect the rights of detainees in Africa”*, Joint statement, 24 March 2020.

51. OMCT Tunisie, *“Vidéo de sensibilisation COVID 19”*, 4 May 2020.

52. OMCT & CACIT, *“Afrique et Covid-19 : Urgence sanitaire et urgence carcérale”*, December 2020.

In a similar effort, the *OMCT*, together with the members of the SOS-Torture Latin America Litigators' Group, published the report "Covid-19 and detention",⁵³ pointing out the need to undertake structural prison reforms to address deeply rooted human rights concerns that have been further exacerbated by the pandemic.

In the **Philippines**, the *Medical Action Group*⁵⁴ used *TeleMedicine* to coordinate with the Bureau of Jail and Management Penology to provide e-consultations with doctors for persons deprived of liberty. The *Medical Action Group* also conducted online seminars for those held in Manila City Jail Male Dorm and its staff on topics such as the nature of Covid-19 and its transmission route, protective measures that should be taken, possible symptoms and related mental health issues. *Balay Rehabilitation Center*⁵⁵ also provided medical kits, protective equipment, and psychosocial support to persons deprived of liberty.

The *International Legal Foundation* published a tool for legal aid providers, which includes various actions to mitigate the severity of the impact of the Covid-19 pandemic on people in detention.⁵⁶

The *OMCT* also prepared a guidance brief that provides good practices⁵⁷ for members of the SOS-Torture Network that is also used by other organisations.

OSJI published a legal brief that details the international legal framework governing the duty of States to protect the health and life of incarcerated persons during the Covid-19 pandemic. The brief aims to support legal practitioners and advocates fighting for and litigating the human rights of those in prison.⁵⁸

Another example comes from **Mexico**, where *Documenta A.C.*, concerned about the lack of official data, created a new section within their online platform *Observatorio de Prisiones* (Prison Observatory) to promote transparency and disseminate information on the situation of the prison system across the country.⁵⁹ The Observatory includes information on the number of Covid-19 infections and related deaths, as well as preventive measures adopted by prison authorities to mitigate the impact of the pandemic.

53. SOS-Torture Latin America Litigators' Group, "Covid-19 y detención en América Latina", May 2020.

54. The Medical Action Group (MAG) is a non-profit organisation of physicians, nurses, dentists, psychologists, health students, and health workers established in 1982, see: <https://magph.org/about>

55. Balay Rehabilitation Center is a Philippine human rights NGO providing psychosocial services and rehabilitation to internally displaced persons and survivors of torture and organised violence, see: <https://balayph.net>

56. International Legal Foundation, "Coronavirus Pandemic: Guidance for Legal Aid Providers to Protect Health and Human Rights of Detainees".

57. OMCT, "Building our Response on COVID-19 and Detention - OMCT Guidance brief", April 2020.

58. Open Society Justice Initiative, "The Right to Health Care in Prison during the COVID-19 Pandemic", July 2020.

59. See: Documenta, "Observatorio de Prisiones".

1.3. MONITORING AND GATHERING DATA ABOUT PLACES OF DETENTION

In addition to litigation and advocacy efforts, the inspection and monitoring of detention facilities can serve as another important safeguarding tool against breaches of human rights. Conducting monitoring during the Covid-19 pandemic has been a major challenge. While regular monitoring visits, including of juvenile detention facilities and mental health institutions, remains crucial, many civil society organisations have revisited their strategy by including virtual monitoring visits and communication via phone calls, e-mails, and videoconferences. In addition, some organisations have interviewed recently released individuals to collect information about detention conditions and measures related to Covid-19.

In **Colombia**, the civil society organisation *Comité de Solidaridad con Presos Políticos* (CSPP) established a practice of conducting online interviews with persons deprived of liberty via phone calls and video conference tools to collect information on detention conditions. Since the outbreak of Covid-19, at least 36 of the 121 existing prisons in the country have been monitored remotely. CSPP and other civil society organisations composing the *Comisión de Seguimiento* (monitoring committee) of the Constitutional Court's T-388 ruling of 2013 also submitted petitions to the Constitutional Court that resulted in orders to grant access and monitoring of independent bodies in detention facilities.

In **Nepal**, human rights lawyers and civil society organisations have jointly monitored all eight juvenile detention facilities of the country through telephone inquiries and field visits. The NGO *Advocacy Forum* published a briefing paper on the human rights situation of those institutions during the pandemic.⁶⁰

In **Armenia**, a monitoring group composed of ten civil society organisations conducted visits to three psychiatric institutions to identify urgent health needs, promote access to alternative means of communication, and call on authorities to release some individuals.

60. Advocacy Forum-Nepal, "Factsheet on COVID-19 and its effect on Juvenile Justice System in Nepal", June 2020.

In **Pakistan**, *Justice Project Pakistan* created a live global map tracking all reported cases of prisoners testing positive across the world.⁶¹ To collect information, *Amnesty International*, in collaboration with *Justice Project Pakistan*, conducted a series of interviews with recently released prisoners who had been detained during the pandemic. They deliberately sought interviews with former prisoners who were able to speak more freely about their experiences. In the analysis of the testimonies and for the presentation of the findings, statements of people currently in prison and released were systematically compared and whenever possible corroborated with other data available to present as accurate a picture as possible.⁶² Subsequently they published a report titled, “*Prisoners of the Pandemic*”, that identified prisons as places where outbreaks were not only more likely but would also require urgent government intervention.⁶³

In some countries, civil society organisations and lawyers have also mobilised National Preventive Mechanisms (NPMs) and National Human Rights Institutions (NHRIs) to collect data on the treatment of prisoners to protect their fundamental rights. For example, in **Mexico**, *Documenta A.C.* called on the intervention of the *National Human Rights Commission (CNDH)* that hosts the NPM to monitor the practice of transferring detainees without due process, following the sudden closure of prisons (e.g., Puente Grande Prison), which enabled the documentation of ill-treatment during the mentioned transfers.⁶⁴ In some countries, family members of persons deprived of liberty have also played a key role in gathering information on the conditions and challenges in places of detention. Civil society organisations have provided support and orientation to families in several countries to be able to effectively check on the well-being of detained relatives and collect information on human rights violations committed in detention settings. Also in **Mexico**, *Documenta A.C.* published the report “*Covid out of the prisons*”⁶⁵, in May 2020, based on data collected via family members of persons deprived of liberty through a questionnaire.

61. See Justice Project Pakistan, Interactive map with the number of prisoners infected by and dead from COVID-19 worldwide: <https://www.jpp.org.pk/covid19-prisoners/>

62. Amnesty International & Justice Project Pakistan, “*Prisoners of the Pandemic the Right to Health and COVID-19 in Pakistan’s Detention Facilities*”, p. 7.

63. Ibid. Hasnaat Malik, “*Prisoners and the pandemic*”, *The Expressed Tribune*, 14 February 2021.

64. Proceso, “*ONG pide intervención de la CNDH en el traslado de internos de Puente Grande*”, 28 September 2020.

65. Documenta A.C., “*Covid fuera de la cárcel*”, May 2020.

2. LAW ENFORCEMENT VIOLATIONS AND HARASSMENT OF CIVIL SOCIETY ENABLED THROUGH COVID RESTRICTIONS AND ENHANCED STATE POWERS

In response to the pandemic, governments worldwide have introduced state of emergency regulations and exceptional measures for public health protection purposes, some of which have not complied with international human rights law and standards. Around the world, human rights violations associated with the arbitrary or disproportionate character in which police and other security forces have enforced lockdowns and curfews are commonplace. Law enforcement operations in multiple regions have resulted in an escalation of violence, including cases of torture and other ill-treatment, arbitrary detention, custodial deaths, extrajudicial executions, and enforced disappearances. When faced with protests, the police in many countries have resorted to excessive use of force, especially targeting ethnic and racial minorities.

Pandemic responses have also posed new obstacles and challenges for those who defend human rights.⁶⁶ Some States have used the pandemic to further silence critical voices and reduce civic space.⁶⁷ Measures restricting the right to defend, including limitations on the rights to freedom of movement, freedom of expression, access to information, and peaceful assembly have emerged worldwide. Human rights defenders have been subjected to smear and defamation campaigns, physical attacks, judicial harassment, and an increased risk of criminalisation and detention.

66. Front Line Defenders, “Defending Rights During a Pandemic: Impact of Covid-19 on the Safety and Work of Human Rights Defenders”, researched and written by Jewel Joseph & Ed O’Donovan, 17 April 2020. See also: “COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts”, Joint Statement made by Mr David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr Harlem Désir, OSCE Representative on Freedom of the Media and Mr Edison Lanza, IACHR Special Rapporteur for Freedom of Expression, 19 March 2020.

67. OMCT, “Annual Report 2020”.

2.1. LEGAL STRATEGIES TO CHALLENGE AND HOLD LAW ENFORCEMENT ACCOUNTABLE FOR VIOLATIONS

Confronted with new offences and new police powers, civil society organisations responded with creativity and solidarity, maintaining litigation as well as developing new advocacy strategies.⁶⁸ The use of constitutional control measures, habeas corpus petitions, and precautionary measures have been particularly effective instruments to address repressive state of emergency regulations as well as to remedy human rights violations committed by police authorities. Filing human rights complaints and urgent appeals with regional and international human rights mechanisms has been used to indirectly pressure governments. In some countries, civil society organisations and lawyers have directly engaged with public prosecutors in order to trigger judicial processes as a means to challenge human rights violations, including cases of excessive use of force amounting to torture and other ill-treatment, committed by law enforcement officials.

In **Togo**, *CACIT* documented 19 cases of excessive use of force, including cases of torture and other ill-treatment during the lockdown and provided the Lomé Prosecutor's office with evidence to trigger the opening of investigations. *CACIT* also filed 4 complaints to get the prosecutor to investigate the cases.⁶⁹ Information was also sent to the Ministers of Justice and National Security, who assured that investigations would be conducted to punish the perpetrators.⁷⁰ Although no proceedings have yet started, this helped prompt Togo's President to dissolve the Special Covid-19 security unit composed of 5.000 soldiers.

68. Association for Prevention of Torture, "International Day in Support of Victims of Torture: Combatting torture in times of COVID-19", 1 July 2020.

69. "Togo/Couvre-feu : 19 cas d'allégation de violation de droits de l'homme", 25 May 2020.

70. "Couvre-feu/Bavures : Le CACIT va introduire des « plaintes » devant la justice", Savoir News, 20 April 2020.

In **Brazil**, a coalition of civil society organisations and the Public Defender's Office of the state of Rio de Janeiro filed *amici* briefs before the Supreme Court in a case requesting the suspension of most police operations in *favelas* during the pandemic.⁷¹ In turn, the Court granted an injunction banning police operations in communities of Rio de Janeiro during the pandemic.⁷² According to *Justiça Global*, during July and August 2020, the injunction resulted in a remarkable reduction of the homicide rate in the area compared to the previous year.⁷³ The injunction reinforced the institutional obligations that had existed beforehand, but it provided an unprecedented level of inquiry into accountability mechanisms and police practice, and imposed restrictions on the use of certain practices, such as using helicopters as firing platforms. Furthermore, in 2021, a public hearing was called in which people affected by institutional violence appeared before the Supreme Court directly.⁷⁴ After the hearings, the Supreme Court ordered the publishing of a local plan to curb police killings and lifted secrecy on police protocols and practices.⁷⁵ Police killings have been on the rise again following the dissolution by a new Attorney General of Rio de Janeiro in March 2021 of a specialised unit that investigated killings and other serious crimes allegedly committed by the police.

In **Nepal**, *PDS-Nepal*, *THRD Alliance*, and *Advocacy Forum* jointly filed a *writ petition* to multiple government offices regarding the police brutality against essential workers and people leaving their homes to obtain food and medicine. During the hearing for an interim order at the Supreme Court, it was raised that Nepal's State Human Rights Commission (NHRC) was not effectively monitoring human rights violations during lockdown. The Supreme Court, in their interim order, called on each agency and officials to respect human rights. Following the order, the NHRC circulated letters across the country to establish a watch group which is now actively monitoring and trying to prevent further violations.⁷⁶

71. Exceptions to the suspension would be considered if properly justified in writing by the competent authority and notified immediately to the Public Prosecutor's Office. Conectas, "In Supreme Court, organisations call for suspension of police operations in Rio de Janeiro", 27 May 2020.

72. Conectas, "Supreme Court suspends Military Police operations in Rio de Janeiro's communities during pandemic", 6 June 2020.

73. Defensoria Publica, "Liminar proíbe operações policiais em favelas durante pandemia", 6 June 2020.

74. Supremo Tribunal Federal, "Expositores criticam eficácia das operações policiais nas favelas do Rio de Janeiro", 19 April 2021.

75. CNN Brasil, "Letalidade policial no RJ: Fachin vota por apuração do MPF e suspensão de sigilo", 21 May 2021.

76. Holly Hobart, & Ajay Shankar Jha Rupesh, "In Nepal, Creative Litigation is Protecting Vulnerable Communities Amidst COVID-19", 14 May 2020.

In **El Salvador**, *habeas corpus* petitions and *amparos* were seen as effective instruments to address freedom of movement restrictions imposed by the government's Covid-19 measures, particularly in response to the cases of arbitrary arrest of individuals for alleged violations of the Covid-19 quarantine.⁷⁷ For example, in March 2020, the civil society organisation *Cristosal* filed a *habeas corpus* petition to the Constitutional Chamber of the Supreme Court on behalf of three women, who were arrested and taken into police custody after they went shopping for food and medication. The Court ordered the release of the women and issued a resolution ordering the government to stop illegal and arbitrary arrests and detentions. *Amnesty International* reported that the Supreme Court received at least 330 *habeas corpus* petitions and 61 *amparos* in the two months after the government instituted the nationwide stay-at-home order.⁷⁸ Most of the complaints involved alleged violations of freedom of movement and were brought by individuals who were detained in 'containment centres' for disobeying the stay-at-home order.⁷⁹ In May 2020, security forces stopped sending individuals to containment centres and instead began sending them home.⁸⁰

In **Mexico**, the organisation *Centro de Derechos Humanos Fray Bartolomé de Las Casas (Frayba)* filed and won a collective *amparo* in April 2020 on behalf of the Maya Tsotsil communities in the municipality of Aldama (Mexican state of Chiapas) who were victims of forced displacement and violence by state and non-state actors. The *amparo* highlighted the disproportionate impact of Covid-19 on minorities living in rural areas, due to the limited access to basic services, quoting the Covid-19 guidance⁸¹ issued by the United Nations Office of the High Commissioner for Human Rights.

In the **Philippines**, numerous children were detained for curfew violations and others were subjected to severe abuse.⁸² The *Children's Legal Rights and Development Center (CLRDC)* provided legal assistance that led to the release of many children that were arbitrarily arrested and detained.

In **Colombia**, *Comité de Solidaridad con Presos Políticos (CSPP)* represented numerous victims of torture and arbitrary arrests perpetrated by law enforcement officials while enforcing Covid-19 related travel restrictions.⁸³ A rise in the use of force against protesters was publicly denounced by the Campaign '*Defender La Libertad*' (Defend Liberty), following the adoption of Decree 749 of 2020 and other measures restricting freedom of movement and other rights due to Covid-19.⁸⁴

In **Togo**, *CACIT* submitted urgent appeals to the United Nations and African Commission on Human and Peoples' Rights' special rapporteurs with the aim of protecting individuals subjected to human rights violations committed by law

77. See: Consortium Legal, "El Salvador: Measures taken by the Salvadoran authorities regarding COVID-19", 1 April 2020.

78. Amnesty International, "The State of the World's Human Rights, Report 2020/21", pp. 151-152.

79. U.S. Department of State, "2020 Country Reports on Human Rights Practices: El Salvador", 30 March 2021.

80. Ibid.

81. OHCHR, "COVID-19 Guidance".

82. The Children's Legal Rights and Development Center (CLRDC), "Children's Rights must be respected at all times even in containing the COVID-19 virus", 25 April 2020. OMCT and CLRDC, "Children's rights must be respected while containing the COVID-19 virus", Joint Statement, 9 April 2020.

83. One of the cases was publicly denounced in the context of the Campaña Defender La Libertad, Asunto de Todas (Defend Liberty Campaign): "Grave violación a los derechos humanos por agentes de la Policía en Brisas del Volador (Ciudad Bolívar)", 6 July 2020.

84. Campaña Defender La Libertad, Asunto de Todas, "Violencia policial en el marco de la pandemia", 23 July 2020.

enforcement officials and pressuring authorities to take appropriate measures. For example, an urgent appeal was sent to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions on the situation of two individuals found dead during the curfew period. The submission requested the Special Rapporteur to invite the State to investigate the circumstances of their death.

2.2. DOCUMENTING AND DENOUNCING LAW ENFORCEMENT VIOLATIONS THROUGH ALLIANCES AND ADVOCACY

Monitoring and documenting human rights violations in relation to the enforcement of quarantines and state of emergency regulations have led to some positive results. Forging alliances and performing joint actions has also been vital to collect evidence, document trends, and identify possible litigation cases. Public information, outreach, and digital campaigns were also identified as a relevant tool to map and raise awareness around cases and patterns of arbitrary law enforcement practices.

In **Kenya**, *Katiba Institute* and *KELIN* launched a toll-free hotline and email mechanism to report and document violations related to Covid-19 measures. Victims called to inform lawyers about rights violations and to receive legal consultation. Social media, such as twitter, was effective in promoting the tools.

In **Togo**, prior to the dissolution (as described above) of an “anti-COVID-19” task force comprised of approximately 5.000 security forces, *CACIT Togo* created an early warning mechanism including 88 actors throughout the territory to collect and to document testimonies in relation to cases of excessive use of force and other human rights violations perpetrated by law enforcement officials.⁸⁵ As a result, the Minister of Security confirmed some incidents committed by these special forces, which included cases of death, torture and other ill-treatment during the monitoring of the curfew.

In **Argentina**, human rights lawyers and activists established a network to share information about advocacy strategies and legal practices in the province of Mendoza as a tool to document trends and locate possible litigation cases. The network was instrumental in identifying and following-up with individuals arrested for violating Covid-19 related measures, including victims of torture and other ill-treatment.

85. “Covid-19 : le CACIT au front avec un mécanisme d’alerte précoce”, by Louis Kamako, Togo Breaking News, 21 May 2020.

In **South Korea**, human rights lawyers and activists from 21 civil society organisations created a Covid-19 advocacy network to work collectively to monitor human rights in the context of Covid-19 restrictions and to push for accountability in cases of human rights violations. Some of their efforts included joint complaints to the National Human Rights Committee. In April 2020, 62 CSOs filed a complaint against the city of Seoul and the province of GyeongGi concerning the human rights of migrants who were left out of the financial aid measures to overcome the Covid-19 related economic crisis, leading to a reversal by the city of Seoul and the ability of migrants to receive the financial aid.

In **Colombia**, the successful online effort called *Cuarentena sin abusos* (Quarantine without abuse), launched by groups involved in the campaign *Defender la Libertad* (Defend Liberty), focused on giving visibility to the institutional violence carried out by police forces amidst the pandemic and allowed the documentation of multiple human rights violations, including cases of torture and other ill-treatment. As a result, some individual complaints were filed to remedy such violations. In addition, the *Colombian Coalition against Torture (CCCT)* and *OMCT* published, in June 2020, a report titled “Social protests and excessive use of force in Colombia: an analysis from the lens of the prohibition of torture” with a focus on the increase of police violence in the context of the Covid-19 pandemic.⁸⁶ The report was presented in a webinar held on the margins of the 26 June International Day in Support of Victims of Torture.

In **Indonesia**, *KontraS* and several other civil society organisations have monitored and documented the number of cases of excessive use of force against students and protesters by setting up an online complaints mechanism as a method to receive information regarding arbitrary arrests.⁸⁷

OMCT published, in April 2020, the briefing report “Extra-custodial use of force amounting to torture and other ill-treatment”, outlining trends observed during the Covid-19 pandemic and highlighting the need to apply the international legal anti-torture framework to counter police violence, which outlines trends observed during the Covid-19 pandemic.

86. Coalición Colombiana Contra la Tortura and OMCT, “Protestas sociales y uso excesivo de la fuerza en Colombia: un análisis desde la lente de la prohibición de la tortura”, June 2020.

87. Independent Observer Indonesia, “Hundreds of complaints of violence, KontraS: “The Police have failed to resolve protests peacefully””, 12 October 2019.

2.3. STATE USE OF COVID-19 MEASURES TO FURTHER RESTRICT AND HARASS CIVIL SOCIETY

Some governments have used their pandemic related emergency powers to restrict access to information broadly, by adopting new laws criminalising the spreading of “fake news”⁸⁸ and criminalising social media posts; expanding their anti-terrorism laws⁸⁹; or deploying provisions of regulations already in place, often with the aim of targeting human rights defenders and journalists.⁹⁰ Laws limiting public gatherings which have been passed in many States are “often broad and vague, and little has been done to ensure the timely and widespread dissemination of clear information concerning these new laws, nor to ensure that the penalties imposed are proportionate.”⁹¹ Many of these restrictions have been used to criminalise human rights defenders. Many States have also refused, following calls by multiple actors,⁹² to release human rights defenders from prison, despite the pandemic and the increased risk of Covid-19 transmission in overcrowded jails. Some human rights defenders have even been denied access to healthcare as a form of punishment,⁹³ and in some contexts are held in overcrowded and unsanitary conditions.

Even when defenders have not been targeted, restrictions in areas such as public access to hearings and other proceedings have prevented, or made it very difficult for, lawyers to communicate with and represent their clients and attend hearings. In some States, such as in the **Philippines** and **Kyrgyzstan**, legal practitioners were required to have proof of a negative Covid-19 test before entering judiciary facilities, with high test costs and delays in receiving Covid-19 results seen as obstacles hampering their work.

Journalists, bloggers, and activists who have denounced their government’s response to Covid-19 have also been targeted, for example in **Cambodia**⁹⁴,

88. For example, “[i]n Hungary, Prime Minister Viktor Orbán used his party’s parliamentary majority to secure an indefinite state of emergency that enables him to rule by decree and imprison those who spread what the government deems to be false news which could ‘alarm the public’ for up to five years.” See: Front Line Defenders, “[Defending Rights During a Pandemic: Impact of Covid-19 on the Safety and Work of Human Rights Defenders](#)”, researched and written by Jewel Joseph & Ed O’Donovan, 17 April 2020.

89. For example, in the Philippines, where an anti-terrorism law was adopted in July 2020 with a broad and vague definition of terrorism; under which many human rights defenders and opposition figures have been charged and arrested. See: “[Anti-Terrorism Act of 2020, Implementing Rules and Regulations of Republic Act No. 11479](#)”, 3 July 2020. See: SOS-Torture Network Working Group on Torture and Counter-Terrorism, “[New Anti-Terrorism Law Undermines Safeguards Against Arbitrary Detention and Torture](#)”, Statement, 4 June 2020.

90. For instance, activists and journalists reporting on the management of the pandemic in Indonesia have been prosecuted and detained based on the existing Information and Electronic Transactions law. See: “[Information and Electronic Transactions law: Law No 11 of 2008 concerning Electronic Information and Transactions](#)”, 21 April 2008.

91. “[States responses to Covid 19 threat should not halt freedoms of assembly and association](#)”, Statement made by Mr. Clément Voule, UN special rapporteur on the rights to freedoms of peaceful assembly and of association, 14 April 2020.

92. See for example, on Nelson Mandela Day in 2020, civil society organisations across the globe called on governments to release imprisoned human rights defenders and prisoners of conscience: OMCT, “[An Urgent Call to Release Human Rights Defenders and Prisoners of Conscience in Honour of Nelson Mandela Day](#)”, Press Release, 16 July 2020. See also for example despite repeated calls from various voices and efforts of numerous human rights organisations, a well-known human rights defender from Kyrgyzstan, Azimjan Askarov, was not provided with urgent medical assistance required in prison, not released on humanitarian grounds and died in prison. See: Open Society Foundations, “[Statement on Death of Human Rights Defender Azimjan Askarov in Prison in Kyrgyzstan](#)”, 25 July 2020.

93. E.g. OMCT-FIDH, “[Deteriorating health condition of Mr. Varavara Rao](#)”, 16 July 2020.

94. OMCT-FIDH, “[Cambodia: Down but not out – Repression of human rights defenders in Cambodia](#)”, July 2020.

China⁹⁵, **Egypt**⁹⁶, **India**⁹⁷, **Niger**⁹⁸, **Turkey**⁹⁹ and **Venezuela**¹⁰⁰. They have faced criminal charges for publicly criticizing their government's response to the outbreak, including through social media.¹⁰¹ Some have faced greater security risks and attacks, including cases of death, torture and illegal detentions.¹⁰² There is a strong concern that once this pandemic is over, the increased restrictions and threats to human rights defenders and journalists will remain.

Lawyers and activists have challenged these violations in courts and denounced them using advocacy, media, and public awareness campaigns. Similar legal strategies to those described above, including *Habeas corpus* claims, requests for precautionary measures, and petitions, have been utilised to protect and defend the rights of civil society actors who have been unduly criminalised for their lawful activities. Various types of claims before national, regional, and international human rights bodies have been used to guarantee access to information and seek protection and redress for human rights defenders at risk or whose rights have been violated. Also, judicial review proceedings and petitions before national courts have been filed challenging laws and regulations targeting human rights defenders. Finally, many civil society organisations have provided legal assistance to victims of human rights violations in the preparation of declarations and submissions.

95. See e.g. joint statement, "[Using the pandemic as a pretext to restrain Wang Quanzhang's Personal Freedom](#)", 17 April 2020; OMCT-FIDH, "[China: Sentencing of freelance journalist Zhang Zhan](#)", 4 January 2021.

96. OMCT-FIDH, "[Arbitrary arrest of four WHRDs for demanding the release of prisoners amid Covid-19 crisis](#)", 20 March 2020.

97. See e.g., OMCT-FIDH, "[Police harassment of four human rights defenders for criticizing the management of Covid-19 pandemic in Manipur State](#)", 8 April 2020.

98. OMCT, "[Niger: Civil society organisations call on authorities to end harassment of human rights defenders](#)", 24 March 2020.

99. OMCT-FIDH, Observatory for the Protection of Human Rights Defenders, "[Turkey: Recurrent instances of violence against LGBTIQ+ and women's human rights defenders](#)", 6 July 2021.

100. In Venezuela, civil society organisations reported an increase of 157% in the attacks against human rights defenders. As an example, humanitarian workers of the organisation *Azul Positivo*, who were conducting campaigns to disseminate the importance of health and hygiene measures, were charged with "association to commit crimes". For more information, OMCT and FIDH - Observatory for the Protection of Human Rights Defenders, "[Venezuela: Los ataques contra personas defensoras de derechos humanos aumentan un 157% durante la pandemia del Covid-19](#)", 2 February 2021.

101. For example: "In Venezuela, journalist Darvinson Rojas was arrested by special agent forces for his reporting on the pandemic. (...) In El Salvador, President Bukele accused human rights organisations of "being on the side of the virus" after they questioned some of the restrictive measures he was implementing in a country which has been heavily scarred by autocratic rule in its recent past." See: Front Line Defenders, "[Defending Rights During a Pandemic: Impact of Covid-19 on the Safety and Work of Human Rights Defenders](#)", researched and written by Jewel Joseph & Ed O'Donovan, 17 April 2020.

In El Salvador, 39 attacks on press freedom were documented by the *Asociación de Periodistas de El Salvador* (APES) only in the first two months following the declaration of state of emergency, see Joint statement, "[Las medidas del gobierno salvadoreño ante la Covid-19 han propiciado un entorno violento y hostil que dificulta la labor de las defensoras de derechos humanos](#)".

102. See: OMCT, "[Venezuela: Attacks on human rights defenders surge by 157% during Covid-19](#)", Press Release, 2 February 2021; OMCT, "[Internal Enemies: Defending Human Rights in the Context of the Covid-19 Pandemic in Venezuela \(Enemigos internos: defensor derechos humanos en el contexto de la pandemia Covid-19 en Venezuela\)](#)", Report in Spanish, February 2021.

For example, civil society organisations, lawyers, and activists from several countries including **Belarus, Chad, Colombia, Guatemala, India, Indonesia, Mexico, Philippines, Poland, Thailand, Togo, and Venezuela**, have filed petitions for the release and protection of human rights defenders unduly criminalised.

These included compensation claims for victims of wrongful arrests and reparations for victims of torture and other ill-treatment. While some of these legal actions were successful,¹⁰³ in the **Philippines** the Supreme Court denied an urgent petition for the release on humanitarian grounds of 22 political detainees, among them pregnant women, elderly, and individuals with pre-existing health conditions.¹⁰⁴

In **South Korea**, civil society organisations have submitted a joint petition to the National Human Rights Commission arguing that Covid-19 related movement restrictions negatively affect victims' access to justice and adequate legal assistance.

In **Indonesia**, civil society organisations filed a claim for judicial review before the Constitutional Court seeking to revoke the Information and Electronic Transactions law. Similarly, in the Philippines, a coalition against torture has filed a petition for certiorari before the Supreme Court to declare the Anti-terrorism Act of 2020 unconstitutional.

2.4. SUPPORTING THE 'RIGHT TO DEFEND' THROUGH ADVOCACY AND COMMUNICATION STRATEGIES

Civil society organisations have used various types of advocacy and communication strategies to uphold the right to defend and to protect human rights defenders, such as issuing public statements calling on governments to recognize the key role of those who defend human rights during the pandemic, to ensure that they can exercise their work free from reprisals, intimidation, or threats, and to release those imprisoned. They have also closely monitored and documented intimidations or attacks against human rights defenders and protesters as well as conducted trainings on documenting human rights violations for civil society. Most of the civil society organisations have collaborated with judicial authorities, bar associations, and local partners to ensure the right to defend without obstacles. Besides developing an international advocacy strategy, they have submitted advocacy messages on social media to draw public attention to certain incidents related to the arbitrary detention of local leaders, activists, and human rights defenders.

In **Kyrgyzstan**, civil society organisations worked together with the *Kyrgyz Bar Association* and the Prosecutor General's office to successfully exempt lawyers from movement restrictions, providing them with a special authorisation to

103. For example, 125 human rights defenders were released following action by the OMCT and partner organisations. See: OMCT, "Annual report 2020 - Chapter 9 on Human Rights Defenders".

104. Supreme Court of the Philippines, "Dionisio S. Almonte, et al. vs. People of the Philippines, et al.", G.R. No. 252117, 28 July 2020.

exercise their profession.

In several countries including the **Philippines, Colombia, and Kyrgyzstan**, social media has been used as an effective tool to raise community awareness with the aim to promote the dissemination of information on violations committed against human rights defenders.

In the **Democratic Republic of Congo (DRC)**¹⁰⁵ and **Niger**,¹⁰⁶ civil society organisations have called on governments to recognize the important role of human rights defenders during the pandemic as well as to adopt national legislation aimed specifically at promoting and protecting them.

The OMCT launched in May 2020 the global social media campaign #FacesOfHope to call for the release of arbitrarily detained human rights defenders whose lives were at risk in the context of the pandemic.¹⁰⁷ This campaign denounced the situation of 11 human rights defenders from Azerbaijan, Belarus, Cameroon, Egypt, Guatemala, India, Mexico, Peru, the Philippines, and Turkey. OMCT's #FacesOfHope campaign has been met with great success on social networks.¹⁰⁸

The OMCT also published several urgent appeals on behalf of human rights defenders, mobilising for their release and leading to success in various cases.¹⁰⁹ The OMCT and the *International Federation for Human Rights (FIDH)*, through the Observatory for the Protection of Human Rights Defenders, also released reports, i.e. on detailing the Cambodian governments¹¹⁰ use of the Covid-19 pandemic to further restrict dissent and curtail rights and freedoms, and on describing how Brazil's¹¹¹ systemic violations in managing the pandemic had affected human rights defenders and indigenous leaders.

105. <https://audf-rdc.org/wp-content/uploads/2020/04/REPRODEV-DDH-Communiqué-de-presse-COVID-19.pdf>

106. Des organisations de la société civile demandent aux autorités de mettre un terme au harcèlement des défenseurs des droits humains <https://www.omct.org/fr/ressources/appels-urgents/civil-society-organisations-call-on-authorities-to-end-harassment-of-human-rights-defenders>, 20 March 2020

107. OMCT, "Human Rights Defenders Imprisoned Worldwide #FacesofHope", Statement, 7 May 2020.

108. Example of the impact: OMCT, "#FacesOfHope: European Parliamentarians join OMCT's call for the release of imprisoned human rights defenders worldwide", 16 July 2020.

109. Advocacy efforts led to the release, among others, of Safoora Zargar in India and Walter Aduviri Calisaya in Peru.

110. The Observatory for the Protection of Human Rights Defenders, "Cambodia Down, But Not Out - Repression of human rights defenders in Cambodia", July 2020.

111. The Observatory for the Protection of Human Rights Defenders, & Justiça Global, "The Impact of Covid-19 on the Defense of Human Rights in Brazil", February 2021.

CONCLUSION

Given the scale of the problem and the regressive pandemic related measures, litigators and advocates from across the world are facing major obstacles and challenges to carry on with their work in defence of victims. The Litigation Labs on “Detention, Torture and the Right to Defend in Times of Covid-19” provided a valuable opportunity to learn and draw inspiration from successful strategies shared by peers from four continents, with a view to applying them in their own countries.

The multiple and diverse interventions have focused on reducing overcrowding, mitigating greater risk of violence and torture due to the closure of prisons, and improving conditions and access to health in places of detention. Various strategies have challenged human rights violations committed by law enforcement agencies during lockdowns and state of emergency regulations introduced in response to the pandemic, while at the same time redoubling efforts to uphold the right to defend and protect human rights defenders.

Thanks to the efforts of litigators and civil society organisations, thousands of prisoners have been released from overcrowded detention facilities, States have been prevented from cracking down on human rights defenders using pandemic-related public health restrictions as a pretext, and abusive practices of law enforcement agencies during lockdowns have been exposed, challenged, and in some cases reversed.

The often overwhelming nature of the threats and challenges brought about by the Covid-19 pandemic has prompted human rights lawyers and activists to develop and use new or unexplored legal and advocacy tools and strategies, resulting in the establishment of encouraging precedents and novel jurisprudence by the judiciary and other State authorities.

One of the crucial learnings of the Litigation Labs is that taking prompt and proactive steps to prevent rights violations can trigger unexpected positive outcomes, sometimes at greater scale than originally envisioned. Another lesson was the effect of integrating pandemic protection considerations into legal arguments, which sometimes strengthened cases calling for releases of persons deprived of liberty or demanding rights protections.

While the pandemic has exacerbated pre-existing challenges related to detention conditions, excessive use of force in custodial and extra-custodial settings, and the right to defend, it has provided new spaces to spotlight structural and wide-reaching problems and vulnerabilities of groups that have long been neglected.

It is too early to know whether the legal efforts to tackle human rights violations have actually led (or will lead) to structural changes. What is clearer is that the actions described in this report show that the efforts of civil society organisations created a window of opportunity to generate sustained change in the aftermath of the pandemic,¹¹² and provided litigators and activists challenging yet vital experience in developing creative legal and advocacy strategies, which will serve the broader civil society community well during future crises.

112. See for example, according to a report published by DLA Piper and supported by the Association for the Prevention of Torture (APT), governments around the globe have significantly reduced prison populations in response to the COVID-19 pandemic, with more than 475.000 people, mostly non-violent offenders, being granted early release between March and July 2020, DLA Piper, "A global analysis of prisoner releases in response to COVID-19", December 2020, <https://www.dlapiper.com/en/germany/news/2021/03/swift-targeted-action-to-reduce-prison-population-during-covid-19/>.

