



Coronavirus

Preventing harm and **human rights** violations in criminal justice systems

Recommendations for urgent and systemic reform to prevent and address human rights violations of people in detention and serving sentences in the community, in the context of COVID-19.

Briefing note | 14 July 2020

Foreword

William Garrison is one of the many people who passed away from COVID-19 in 2020 while in detention. He died aged 60 on 13 April 2020 in a prison in Wayne County, Michigan, in the United States of America. He had been watching the Black Lives Matter protests unfolding on the prison's television, having spent 44 years in detention for involvement in a crime when he was 16 years old. After initially refusing parole, preferring to wait for unconditional release in September, Garrison took up the offer given the outbreaks of coronavirus. However, his liberation came too late – five days after he accepted the parole offer but before the mandatory 28-day waiting period for his release, he died. His name will be remembered, not least because of his namesake, the abolitionist and suffragist, William Lloyd Garrison, founder of *The Liberator* and the American Anti-Slavery Society.

The fate of people deprived of their liberty during the COVID-19 pandemic attracted increased attention from mid-March 2020. As we wrote in PRI's initial briefing, *Coronavirus: Healthcare and human rights of people in prison*, 'people detained are vulnerable for several reasons, but especially due to the proximity of living (or working) so closely to others – in many cases in overcrowded, cramped conditions with little fresh air'.¹

Media attention was high at a time when some countries announced massive releases from prisons and images of prison riots were being shown on television. In March, the United Nations High Commissioner for Human Rights called for swift action to protect persons in detention, including through releases, alongside similar calls from the World Health Organization. Since then, at least 102,537 people deprived of their liberty were infected in 88 countries, and at least 1,569 prisoners died in 36 countries due to COVID-19 – that we know of.²

We publish this new briefing, *Coronavirus: Preventing harm and human rights violations in criminal justice systems*, to ensure that people who too often remain invisible to society at the hands of the state, and at risk of infection or in need of medical care, are not forgotten. We reaffirm the duty of care that states have for people in detention, and we document the responsibility of states to provide healthcare and take proactive measures to prevent harm of people deprived of liberty.

An infectious disease can be a disaster for a closed facility. Risks of infections are obviously much higher where people in poorer health than the general population are held, where women, men and children are kept in poor or even filthy unsanitary conditions, where individuals are cramped together in overcrowded facilities and where authorities lack resources and training to use protective equipment. Even in countries with high standards for places of detention, people in prisons, including staff, have been infected and died of COVID-19.

Measures intended to prevent, or address outbreaks of coronavirus have violated rights and, at the very least, made time in prison much harsher and burdensome. Lack of contingency plans, poor coordination among criminal justice actors, overincarceration and a focus on punishment rather than rehabilitation and health are causes of infection and deaths in places of detention. Systemic and long-term reform is needed to prevent a situation like this from happening again. People under penal supervision in the community are also facing new and unique situations of vulnerability. We document some of the challenges faced by probation agencies and concerns for those under non-custodial conditions.

¹ Coronavirus: Healthcare and human rights of people in prison, available at www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/.

² Justice Project Pakistan, www.jpp.org.pk/covid19-prisoners/.

We are also aware that criminal justice actors, law enforcement agents and prison staff, prosecutors and judges, have gone through stressful and exhausting months, and themselves face risks of being exposed to coronavirus. These are challenging times, and many prison and probation staff are working in dangerous settings with threats to their health and safety. They are frontline workers, although not always recognised as such.

As we publish this briefing, the COVID-19 pandemic is far from over, and it would be ill-advised to, at this stage, focus solely on long-term answers. Every preventable disease or death, like the passing of William Garrison, must provide the impetus for criminal justice systems to continue – and enhance – their efforts to respond to COVID-19.

We must continue to undertake efforts to implement guidance by the World Health Organization and the Office of the UN High Commissioner for Human Rights. We call on actors to implement the urgent recommendations detailed in this briefing, and we will continue to engage with criminal justice authorities in the countries where we are present. The international community must equip itself to hold states accountable to international human rights standards and support efforts to reform criminal justice systems nationally in the aftermath of coronavirus.

Criminal justice systems all over the globe do too much harm to people in contact with them. Preventable infections, illnesses, and deaths due to COVID-19 sadly demonstrate where the lack of an international, systematic, and continued response can lead.

Florian Irminger
Executive Director, Penal Reform International

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An official from the Tacumbu Prison is seen at the entrance to the prison in Asuncion, Paraguay, 31 May 2020. The overcrowded prison in Tacumbu returned, like the rest of Paraguay's prisons, to the regime of visiting prisoners end of May after almost three months of lockdown.

EFE News Agency / Alamy Stock Photo, May 2020

Right to health for people in detention

A heightened duty of care

People in detention face a high risk of contracting COVID-19, not least due to the cramped and overcrowded conditions found in many detention facilities, lack of healthcare provision and the disproportionately poorer health status among prison populations compared to the general population.

Hundreds of people in prison have been infected with coronavirus in a number of countries from the **UK** and **France** to **Azerbaijan**, **Morocco** and **South Africa**. The highest number of cases are in the **USA**, where by 7 July at least 57,019 positive tests had been reported and there were at least 651 deaths among people in prison due to COVID-19.³

States bear the responsibility for people deprived of liberty and are required to take proactive action to protect their rights to life and health. This includes the duty to provide medical treatment and to protect and promote their physical and mental health and wellbeing. The UN Nelson Mandela Rules detail the obligations for protecting the health of people in prison which include: provision of healthcare services free of charge, without discrimination on the grounds of their legal status; healthcare staff working in prisons are to have clinical independence; continuity of care; prompt access to healthcare in an emergency; informed consent for treatment; and up-to-date and confidential medical records should be maintained and should accompany each individual on their journey through the prison system. The World Health Organization laid out

what actions states effectively must take to meet their duty to protect people deprived of their liberty in the context of COVID-19.⁴

During the COVID-19 pandemic specifically, the right to health requires authorities to ensure the same standard of healthcare as provided in the community – both in terms of diagnosing and treating persons deprived of liberty who are infected with coronavirus, and proactive action to prevent and contain any outbreak. Special measures will be required to protect at-risk groups, such as those with pre-existing health conditions, older people and pregnant women. There is also a dire need to protect and promote the mental health and wellbeing of people detained, particularly during a global pandemic.

In many prison settings across the world, the provision of healthcare is underfunded, understaffed and of a lower standard than in the wider community. Funding for prisons generally remains low, and during the COVID-19 pandemic this has resulted in a complete lack of action (and resources) to protect people from the risks of COVID-19 in some countries. It has been reported that in a number of Latin America countries, including **Argentina** and **Bolivia**, as well as in **Pakistan** and **Indonesia**, for instance, no additional cleaning or disinfectant measures (such as hand sanitiser or soap) were put in place. In several African countries like **Kenya**, **Sierra Leone** and **the Gambia** authorities have only provided soap and water, failing to provide further hygiene equipment. Water supplies have also been

³ The Marshall Project, 'A State-by-State Look at Coronavirus in Prisons', www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.

⁴ World Health Organization, 'Preparedness, prevention and control of COVID-19 in places of detention', 15

March 2020, www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020.

inadequate in some countries' prisons, such as **Colombia** and **Brazil**.

The supply of Personal Protective Equipment (PPE) for staff working in detention facilities and/or the people detained has been in short supply in a number of states. For instance, in **Malawi** and **Sierra Leone** it is reported there have been no changes to search protocols, with prison staff in Sierra Leone carrying out searches (and thus have skin-to-skin contact and be in close proximity to people they pat down, etc.) with no protective equipment. Inadequate dissemination of information and a general lack of awareness-raising in prison settings have also been highlighted in many countries.

An integral part of ensuring the highest standard of prison health is coordination with public health. Where there has been close coordination with health authorities, PPE and other necessary equipment have been made readily available to prison facilities, like in

Kazakhstan, where stable supplies of protective equipment, disinfectant and other necessities are provided to staff and people in prison free of charge. In **Georgia**, 'disinfecting corridors' have been installed in prisons, where everyone entering or visiting the prison is sprayed with disinfectants.

Furthermore, in **Italy**, the benefits of the health ministry being responsible for healthcare in prisons have been evident during the pandemic. Healthcare staff in prisons were able to freely exchange information about outbreaks with specialists from hospitals in the city of Milan and 'really benefited from their expertise.'⁵ In San Vittore Prison in Milan, before the first cases of COVID-19 emerged, different isolation facilities were set up for suspected cases and new arrivals, screening and temperature checking equipment was set up at the prison entrance and masks and gloves were distributed to all the staff working in the facility.

Mental health of people detained during a global pandemic

There is consensus among governments and mental health agencies alike that the COVID-19 pandemic has negatively impacted the mental health of many people, exacerbating existing conditions or triggering new conditions. One study found that 45 per cent of adults in the **USA** reported that their mental health has been negatively impacted due to worry and stress over the virus.⁶

The situation for people in prison will be even worse as evidence shows there are disproportionately high rates of poor mental health among persons detained; research

suggests that around one in seven people in prison has a serious mental health condition.⁷

There are many reasons why the COVID-19 pandemic is affecting the mental health of people detained. Lockdowns, quarantines and isolation measures are known to have a particularly negative impact on mental health and wellbeing in normal times (see 'Medical isolation, quarantine and solitary confinement'). There are also other factors such as decreased or complete lack of contact with the outside world and the usual support programmes and networks being scaled back or suspended.

⁵ World Health Organization, 'Experience of health professionals, police staff and prisoners in Italy informs WHO COVID-19 guidelines for prisons', 28 May 2020, www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2020/5/experience-of-health-professionals-police-staff-and-prisoners-in-italy-informs-who-covid-19-guidelines-for-prisons.

⁶ Nirmita Panchal *et al.*, 'The Implications of COVID-19 for Mental Health and Substance Use', 21 April 2020,

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

⁷ Penal Reform International and Prison Reform Trust, 'Women in prison: mental health and well-being – A guide for prison staff', 2020, www.penalreform.org/resource/women-in-prison-mental-health-and-well-being/.

Many prison facilities have suspended work and vocational programmes, among other rehabilitation activities, which provide both purpose and activity to fill the days of people held in detention. With parole hearings and other justice processes suspended or reduced in many countries, there are also increased anxieties for people waiting for a hearing or judgement affecting the duration or outcome of their imprisonment.

As in the community, fear of infection can cause severe stress and anxiety among prison populations. In **Italy**, when news of transmission of the virus in detention facilities led to riots in numerous prisons, compulsory psychological consultations were set up to help people cope with stress. 'Prisoners committees' in each prison also helped to spread important health information, including infection screening checklists and advice to stop exchanging goods. In **Kenya**, the Non-Governmental Organisation (NGO), Faraja, continued to give mental health support to

people in prison through a remote phone service, and in **England**, support for vulnerable people was reported to be particularly good in one prison where the COVID-19 working group had a list of 162 people in the prison with various types of vulnerability. Each person was risk-assessed for daily, three-day or five-day personal checks, and was seen or phoned on these days, with a spreadsheet keeping track of each contact.⁸

In **Ireland**, the Prison Service Psychology Service provided a remote service giving people in prison a confidential opportunity to talk and receive important information. The national mental health service for people detained with long-term mental health conditions has continued through remote services and urgent patient assessments, and a new model for short-term care during COVID-19 involved transfers of relevant detainees to mental health-focused accommodation for treatment and stabilisation for the short-term.⁹

⁸ Her Majesty's Chief Inspector of Prisons, 'Report on short scrutiny visits to long-term and high security prisons', 26 May 2020
www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/06/Long-term-and-high-security-web-SSV-2020.pdf.

⁹ Irish Penal Reform Trust, 'Civil society response to COVID 19 in prisons and jails', 21 May 2020,
www.iprt.ie/site/assets/files/6721/inclou_iprt_presentati_on_may_2020.pdf.

Recommendations: Right to health for people in detention

Urgent response

- ⇒ Persons detained, and staff in detention facilities, should have full access to testing and treatment for COVID-19 equivalent to that of the community.
- ⇒ Equipment for maintaining the highest levels of hygiene as possible must be provided to all persons detained, alongside information and advice on how to prevent infection.
- ⇒ Prison staff should be adequately trained to understand how coronavirus spreads, including detecting potential symptoms and should be provided with, and instructed on how to use, protective equipment.
- ⇒ Healthcare staff and other personnel should be supported to adhere to the requisite prevention and response measures to COVID-19 as laid out by the World Health Organization, including through provision of required equipment.
- ⇒ Prison administrations should continue to facilitate mental healthcare provision and undertake specific efforts to mitigate negative mental health impacts of COVID-19 measures, including by working with community-based services. Mental health crisis plans, and longer-term mental health provision needs to be prioritised as restrictions ease. Plans should be developed by healthcare staff and developed together with people detained and staff.

Systemic reform

- ⇒ Governments must ensure that all measures are taken to protect the health of people in prison, including in relation to COVID-19. Procedures should be in place to guarantee that healthcare services are provided independently from the penitentiary authorities.
- ⇒ The responsibility for prison health should be that of the Ministry of Health or its equivalent and should be transferred out of the penitentiary administration. The management and coordination of all relevant agencies and resources contributing to the health and wellbeing of people in prison must be a whole-of-government responsibility to ensure better protection of the right to health for people in detention and greater financial investment.
- ⇒ Governments must develop human rights-based pandemic or emergency management and response plans, including the outbreak of transmissible diseases within the community or in places of detention.

Lack of data and testing

Since March 2020, the number of cases of COVID-19 infections in prisons and other places of detention has risen alongside community transmission rates. Justice Project Pakistan has tracked the rates of recorded COVID-19 infection and deaths of people detained based on a survey of publicly available information published by authorities and/or reported in

press reports. As of 13 July 2020, at least 102,537 in prison are reported to have been infected in 88 countries, and at least 1,569 prisoners died in 36 countries due to COVID-19.¹⁰ However, these numbers are only based on what is publicly available. In reality, the number of infections and deaths among people detained – and staff – will be much higher.

Barriers to obtaining accurate data

Barriers to obtaining accurate data for the number of infected persons in places of detention include a general lack of adequate testing (for both persons with symptoms and those that are asymptomatic). This can be the result of a lack of resources or places of detention being a low priority for testing programmes.¹¹ There are only a few countries, including the **USA**, **South Africa** and **Canada**, that publish regularly updated data on testing in their prisons, with the latter's Correctional Service reporting data for each individual institution.¹²

On 22 April 2020, only 0.1 per cent of the prison population was tested in **Brazil** due to a lack of tests more broadly among the general population amid concern at the death rates in prisons are up by 50 per cent compared to in 2019. On 24 April 2020, Public Health England said the number of people in prison in **England and Wales** infected with COVID-19 may be up to six times more than the published figures.¹³

At the New Bilibid prison in Manila, the **Philippines**, where there is an occupancy rate of 335 per cent and a prison population of 28,000, dozens of persons were reported to have died in April 2020 with unclear causes of death and varying labels including 'to consider COVID'. A further dozen people died in May with unclear causes of death. However, the Bureau of Corrections does not include deaths with undetermined causes as suspected COVID-19 cases or test the deceased due a limited number of test kits and resources.¹⁴ As of 11 June 2020, the Bureau of Corrections has reported 15 deaths due to COVID-19 and only recorded cases of the virus (222 plus 48 personnel) in two of its facilities, the Correctional Institute for Women and New Bilibid Prison¹⁵ – but it is unclear whether this is due to a lack of testing.

¹⁰ Justice Project Pakistan, www.jpp.org.pk/covid19-prisoners/.

¹¹ The Marshall Project, 'Tracking the Spread of Coronavirus in Prisons', www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons.

¹² Correctional Service Canada, 'Inmate COVID-19 testing in federal correctional institutions', www.csc-scc.gc.ca/001/006/001006-1014-en.shtml; Correctional Services Republic of South Africa, 'Update on COVID-19 confirmed cases in DCS', www.dcs.gov.za/?page_id=5070.

¹³ 'Coronavirus: More than 2,000 prisoners may have been infected, says PHE', 28 April 2020, www.bbc.co.uk/news/uk-52449920.

¹⁴ 'In Bilibid, dozens die of unclear causes without being tested for coronavirus', 22 May 2020, www.rappler.com/newsbreak/investigative/261509-bilibid-dozens-die-unclear-causes-not-tested-coronavirus.

¹⁵ 'BuCor says kin notified promptly regarding death of COVID-positive inmates', 8 June 2020, www.gmanetwork.com/news/news/nation/741619/bucor-says-kin-notified-promptly-regarding-death-of-covid-positive-inmates/story/.

A deficiency of data due to limited or no testing has been compounded by a lack of transparency on testing and infection or death rates in some countries – both for persons detained by police and in prisons. For example, on 10 May 2020, authorities in **Ghana** reported that people in prison in Accra had been tested for COVID-19 but would not comment on the results. In **Pakistan**, up-to-date numbers of people in prison who have been tested for COVID-19 in the Punjab province have been inaccessible, and the lack of transparency by the authorities makes it difficult to see what proportion of the prison population has been tested. In many countries, including **Brazil** and **Mexico**, civil society organisations have expressed doubts over the accuracy of official figures of people in prison infected with COVID-19.

In some countries data remains effectively a state secret, such as in **Cameroon** where prison authorities refuse to make transparent the

numbers of infected persons in the country's prisons, but a local media outlet has reported that there are 50 people infected and 10 deaths among people in prison. In prisons in Damascus, **Syria**, it has been said that there have been hundreds of deaths from COVID-19 and nearly a thousand suspected to be infected with the virus; however, this cannot be verified.

There have also been examples of obstructing reporting of COVID-19 cases in places of detention. For example, the **Ivory Coast** penitentiary system denied reports that there were two infections at Abidjan prison, and two journalists were fined 5 million CFA francs (approximately USD \$8,500) for 'dissemination of false information' on the subject. The lawyers of a number of people detained in **Iraq** also claim that COVID-19 has infected every prison in the country, but people in prison 'were afraid to say they [were] ill as they knew they [would] be executed'.¹⁶

Data on populations most at-risk and prison staff

Publicly available disaggregated data on the impact of COVID-19 among prison populations is still lacking. There is also a lack of information regarding race, age and health profiles of those who have died or have been infected. This inhibits the ability for authorities to better determine which demographics are at higher risk and compare the impact of different COVID-19 response measures across criminal justice systems. Disaggregation by ethnicity and race is particularly critical given disproportionate numbers of foreign nationals and ethnic minorities in many prison populations and the fact that COVID-19 death rates for Black and Asian people have been at least double that of White people in the **USA** and **England and Wales**.¹⁷

Of major concern is that there is a lack of data on the impact of COVID-19 on prison, police and probation staff, a reflection of the fact that they are not considered frontline or essential workers in many countries. For instance, only seventeen states in the **USA** are releasing information on the number of staff members tested for COVID-19. Much of the data collected is a result of the employee voluntarily reporting a diagnosis, most commonly by calling in sick.¹⁸

Often, the testing of prison staff has only been considered in response to outbreaks of COVID-19 at their place of work, rather than used as a preventive measure. For example, mandatory testing of employees at the California Institution for Men in Chino was only introduced after the number of deaths of

¹⁶ 'Torture dans les prisons irakiennes', 20 April 2020, www.jornaltornado.pt/torture-dans-les-prisons-irakiennes/.

¹⁷ 'Disproportionate impact of COVID-19 on racial and ethnic minorities needs to be urgently addressed – Bachelet', 2 June 2020,

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E.

¹⁸ The Marshall Project, 'A State-by-State Look at Coronavirus in Prisons', www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons.

people in prison from the virus rose to nine, and over 600 people detained tested positive.¹⁹

In **Georgia** medical staff in prisons are among those prioritised for regular testing. Medical staff are tested, screened and undergo temperature checks every time they enter prison facilities. Furthermore, testing was carried out upon people arrested; a person testing positive was transferred to hospitals in the community (with electronic monitoring).

Police officers, whose role and duties entail frequent (and close) contact with members of the public, are likely to have been disproportionately impacted by COVID-19. However, there is a complete lack of data available aside from country-specific reports. In **Brazil**, 43 deaths of police officers were reported as of 11 June.²⁰ The **USA, UK, Peru, France** and **Italy** have also reported deaths among law enforcement.²¹

¹⁹ 'As inmate deaths and infections rise, Chino, Avenal prisons will test all employees for coronavirus', 26 May 2020, www.latimes.com/california/story/2020-05-26/with-nine-inmates-at-chino-prison-dead-after-getting-covid-19-it-and-avenal-prison-require-all-staff-testing.

²⁰ 'Morte de policiais por Covid-19 mais do que triplica em um mês em SP e RJ', 13 June 2020,

<https://ponte.org/morte-de-policiais-por-covid-19-mais-do-que-triplica-em-um-mes-em-sp-e-rj/>.

²¹ 'False claim: No police officers in the world have died of COVID-19', 21 May 2020, www.reuters.com/article/uk-factcheck-police-officers/false-claim-no-police-officers-in-the-world-have-died-of-covid-19-idUSKBN22X2LT.

Recommendations: Lack of data and testing in places of detention

Urgent response

- ⇒ Authorities should collect data (including retrospectively) on the number of COVID-19 infections and deaths among persons arrested, detained and those under supervision in the community, as well as responses including investigation into cause of death. Such data should also be collected in relation to cases among criminal justice agents.
- ⇒ Data should be disaggregated (including by sex, age, ethnicity and other characteristics), and made public. Parliaments and any investigative body should request such data in overseeing the governments' response to COVID-19.
- ⇒ Data should be collected, compiled and analysed to inform policymaking and for decisions on the health and welfare of people detained and staff and law enforcement agents.
- ⇒ All cases of death in custody should be reported and investigated by an independent body, including those where the cause is suspected or reported to be from COVID-19. Accurate and transparent record-keeping should be prioritised for any death in custody.

Systemic reform

- ⇒ Reliable data on numbers of infections, deaths and other factors of persons detained during the COVID-19 pandemic should be reviewed and analysed with a view to informing policy and practice. This includes in relation to measures to reduce prison overcrowding and development or review of preparedness and emergency plans in line with good governance principles. Such results and analysis should be publicly available and transparently communicated.

Lockdowns, practices and impacts

Where measures are being put in place in any detention facility – or have already been in place for weeks or months – in response to COVID-19, the type, duration and conditions of

measures must be compliant with human rights law. Measures need to be legal, necessary and proportionate.

Medical isolation, quarantine and solitary confinement

In many prison systems, prevention measures and responses to COVID-19 have involved some form of extreme restriction of movement within the facility – referred to as ‘lockdowns’, ‘quarantine’, ‘isolation’, etc.

Where there is a cell-style infrastructure, as found in most prisons across Europe, the Americas and Oceania, many systems have effectively enforced a regime of solitary confinement on almost entire prison populations. Where dormitories remain the norm, certain people have been put into ‘isolation’, either together, or in individual spaces. This has included those newly admitted to prison, people displaying or reporting symptoms and high-risk individuals, such as older or ill persons.

Lockdowns have meant, in many cases, that people (either alone or in small groups) face 23 hours or more in their cells a day for weeks and months, and are even denied open-air walks

(as has been the case **Estonia**).²² In **New Zealand**, a report by the Chief Ombudsman found that while prisons did well to prevent a COVID-19 outbreak, this came at the expense of the rights of people detained. People in four prisons did not receive access to the required one hour of fresh air every day. The main reason for the lack of outdoor time was short staffing in prisons.²³

In **England and Wales**, almost everyone across 117 prisons were ‘locked up’ for 23 hours a day for three months or longer since March 2020, and it was reported that 15-18-year-olds in one facility receive only 40 minutes a day out-of-cell.²⁴

In the **USA**, at least 300,000 people in prisons have reportedly been placed in lockdown since the beginning of the pandemic – an increase of close to 500 percent over previous levels.²⁵ Without access to common areas, people cannot make phone calls, take daily showers, collect mail or meals, or hear what is happening

²² European Parliament, ‘Coronavirus and prisons in the EU, Member-State measures to reduce spread of the virus’, June 2020, [www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI\(2020\)651976_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651976/EPRS_BRI(2020)651976_EN.pdf).

²³ Office of the Ombudsman, ‘OPCAT COVID-19 report: Report on inspections of prisons under the Crimes of Torture Act 1989’, 22 June 2020, www.ombudsman.parliament.nz/resources/opcat-covid-19-report-report-inspections-prisons-under-crimes-torture-act-1989.

²⁴ Her Majesty’s Chief Inspector of Prisons, ‘Report on short scrutiny visits to long-term and high security prisons’, 26 May 2020 www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/06/Long-term-and-high-security-web-SSV-2020.pdf.

²⁵ Unlock the Box, ‘Solitary confinement is never the answer’, June 2020, static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf.

in the outside world, leading to increased anxiety and harms to mental wellbeing.²⁶

Many lockdowns, quarantines or isolation practices in effect constitute solitary confinement which is defined the UN Nelson Mandela Rules as: ‘the confinement of prisoners for 22 hours or more a day without meaningful human contact.’ The Rules stipulate that it can be imposed ‘only in exceptional cases as a last resort, for as short a time as possible’.

The rules define ‘prolonged solitary confinement to such a regime in excess of 15 consecutive days’ – a threshold that many of these regimes under COVID-19 measures meet. Prolonged solitary confinement, which amounts to torture or other ill-treatment, is prohibited in Rule 43 of the Nelson Mandela Rules. It is important to note that this applies regardless of the grounds for the *de facto* or explicit use of solitary confinement. Prolonged solitary confinement is prohibited regardless of whether it is imposed in the course of a disciplinary procedure, in the name of safety, security and order in the prison, or health grounds.

There is solid evidence that solitary confinement impacts both the mental and physical health of people subjected to it in the short- and long-term, with the effects increasing the longer it lasts.²⁷ Common psychological symptoms related to solitary confinement include depression, anxiety, difficulty concentrating, substance abuse and dependence, cognitive disturbances, perceptual distortions, paranoia, psychosis and

Post Traumatic Stress Disorder,²⁸ as well as irrational anger and confused thought processes.²⁹ It is an established risk factor for suicide and self-harm in prisons. It is for this reason that the Nelson Mandela Rules prohibit the imposition of solitary confinement on persons ‘with mental or physical disabilities when their conditions would be exacerbated by such measures.’ Other standards prohibit its use for children, pregnant women, women with infants or breastfeeding mothers.

The Nelson Mandela Rules (Rule 38(2)) are explicit in requiring authorities to take ‘necessary measures to alleviate the potential detrimental effects’ of separation and confinement ‘on them and on their community following their release from prison.’ Following three or more months in lockdowns, many persons detained are expected to have long-term and significant negative mental impacts and will require support.

From a health perspective, it is important to note that enclosed spaces are conducive to the spread of respiratory viruses. For this reason, adequate air flow and exchange are among the environmental and engineering controls recommended to reduce the spread of pathogens and contamination in prisons, along with adequate space between people and routine disinfection of the environment, and people in prison should have at least one hour of access to open air per day.³⁰ Furthermore, while in lockdown, health problems of people in prison may be worsened by the lack of fresh air and natural light.³¹

²⁶ ‘What Happens When More Than 300,000 Prisoners Are Locked Down?’, 15 April 2020, www.themarshallproject.org/2020/04/15/what-happens-when-more-than-300-000-prisoners-are-locked-down.

²⁷ World Medical Association, ‘Statement on Solitary Confinement’, revised October 2019.

²⁸ Danish Institute against Torture – DIGNITY, Fact Sheet Collection, Health #6 Solitary Confinement, www.dignity.dk/wp-content/uploads/fact-sheet-6-solitary-confinement-1.pdf.

²⁹ Sharon Shalev, ‘A sourcebook on solitary confinement’, 2008.

³⁰ WHO Regional Office for Europe, ‘Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance’, 15 March 2020, www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

³¹ WHO Regional Office for Europe, ‘Status report on prison health in the WHO European Region’, 2019, apps.who.int/iris/bitstream/handle/10665/329943/9789289054584-eng.pdf.

In the recently revised European Prison Rules, the Council of Europe clearly set out that all persons who are separated 'shall be offered at least two hours of meaningful human contact a day'.³² Any other regime of separation would qualify as 'solitary confinement' as defined in the UN Nelson Mandela Rules.³³

Medical isolation may legitimately involve separation of a person from the rest of the prison population if they show signs of, or test positive for, COVID-19 (to prevent further transmission). However, there are high risks involved with medical isolation. Many prison staff 'lack guidance on how to humanely and effectively separate sick or contagious individuals from the general population', and often the only areas where medical isolation is possible are in cells or areas which are used for solitary confinement.³⁴

Where persons are separated from the general prison population (typically due to detected or reported symptoms) their placement in a cell that is used or constitutes the same conditions as in solitary confinement is typically seen as a punishment measure, regardless of whether it

is based on health grounds. This has a negative consequence on mental health and, correspondingly, safety, maintaining order and the rehabilitation process. It also discourages reporting of symptoms.

Given the dire shortages of healthcare staff in many prison systems, decisions around medical isolation are often being made solely by prison administrations without medical guidance, leading to risks of abuse, corruption and arbitrary decision making. Decisions around, and implementation of medical isolation, must be overseen by healthcare staff, and strict guidance on medical isolation must be in place and enforced. The regime for someone in medical isolation must be the least restrictive possible and involve out-of-cell time, access to phone calls and reading materials, etc.³⁵

Lockdowns have also affected the working conditions of prison staff. For instance, in **Georgia**, prison staff have been required to stay on the premises for lengthy periods as part of measures to prevent community to prison transmission of COVID-19.

³² European Prison Rules, revised 2020, Rule 53A.

³³ Expert blog for PRI by Professor Dirk van Dyl Smit, 10 July 2020, www.penalreform.org/blog/separation-and-solitary-confinement-in-the-revised-2020/.

³⁴ 'The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in

Correctional Settings', 9 April 2020, amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

³⁵ *Ibid.*

Restrictions on contact with the outside world

Authorities in many, if not the majority, of prison systems globally have implemented restrictions or bans on visitors and external personnel, as well as movement within facilities. The lack of visits during the coronavirus pandemic is of significant concern for several reasons: contact contributes positively to the mental wellbeing of people detained (and their families, especially children); they assist with the rehabilitation and reintegration process; in many settings, visitors bring essential items such as medicine and food; and visits can act as a significant motivator for good behaviour while detained.

Contact with the outside world also contributes to the reduction of violence and prevention of ill-treatment by authorities – ‘as with any crime, torture is a crime of opportunity. Denial of a detained persons’ communication rights increases the perpetrator’s opportunity.’³⁶ Where legal representatives cannot visit their clients, issues arise with the ability for people detained to challenge their detention, obtain an earlier release date, among many others.

Various measures have been put in place to facilitate alternative means of contact. In **Italy**, 3,200 smart phones were distributed. In **Kazakhstan**, video calls have been introduced to supplement phone calls, and the Prison Service has set up a call centre where relatives, lawyers and monitoring representatives can contact people in detention, and the Prison Service has also held online livestreams to keep relatives informed about the situation in prisons and the response to the pandemic. Some promising examples where people detained have been able to exercise their right to meet legal representatives (who are subject to protective measures) have been seen in **Algeria** and

Burkina Faso. In **Nigeria**, access to phones to contact legal representatives is free and in-person visitation is allowed if necessary.

Some countries have now started to implement measures to facilitate physical visits in prisons, including in **Thailand** and **Paraguay**. Most systems involve some form of health check before visitors are allowed entry, either measuring visitors’ temperatures (such as in parts of **Spain, Czech Republic, Georgia, Hungary, Ireland** and **Poland**) or requiring visitors to fill out a form or questionnaire about their health or provide health declarations, like in **Georgia, Romania** and **France**. Changes have also been made to meeting rooms to allow more space between people, and visits have been organised outdoors in **Slovenia** and **Croatia**. Hygiene procedures are also in place in most countries to address handwashing, the use of protective equipment and food consumption. As these measures require more staff time and physical space, there are usually limits to the number and duration of visits, with most giving priority to direct family members and extending more visits to those with children.³⁷

In some places, alternative contact has been more difficult to access. In **England and Wales**, the Prison Inspector found that some women in prison had not seen their children for two months due to slow implementation of a video calling system.³⁸ In **Pakistan**, legal visits can be conducted over the phone, and video conferencing has been implemented in **Kenya**, but both charge a fee which restricts access for many people. In the **USA**, federal prisons suspended legal visits for 30 days (although requests could be made for confidential calls or an exemption for an in-person visit involving the same screening as prison staff).³⁹

³⁶ Danish Institute against Torture – DIGNITY, Fact Sheet Collection, Legal No 10 – Prisoner Contact Rights, www.dignity.dk/wp-content/uploads/legal-fact-sheet-no-10-ny.pdf.

³⁷ EuroPris, ‘Prison visits: COVID-19 pandemic fact sheet’, updated 29 May 2020, www.europris.org/wp-content/uploads/2020/05/Factsheet-prison-visits-May-final.pdf.

³⁸ HM Chief Inspector of Prisons, ‘Report on short scrutiny visits to prisons holding women’, 19 May 2020, www.justiceinspectors.gov.uk/hmiprison/inspection/s/womens-prisons-short-scrutiny-visit/.

³⁹ ‘Federal Bureau of Prisons COVID-19 Action Plan’, 13 March 2020, www.bop.gov/resources/news/20200313_covid-19.jsp.

Support and rehabilitation programmes, including mental health services, have also been affected by prison lockdowns as in many countries these are provided by community-based organisations or external practitioners. Rehabilitation programmes have been affected in **Kenya** as service providers are not allowed to enter prisons, and they were suspended in **Brazil** and for women in prison in **Nigeria**. In **Colombia**, visits from psychologists and social

workers have been prohibited, and limited phone lines and costs make communication challenging.

In some countries, rehabilitation programmes were reported to have continued, like in **Pakistan** (although those in quarantine are not allowed to participate) and **Thailand**, but more screenings and reporting requirements are a condition.

Inspections and monitoring of prisons

Inspections and visits from monitoring bodies are critical in ensuring scrutiny so that human rights violations are prevented, and where they do occur, authorities can be held accountable. During the pandemic, independent oversight is more important than ever to ensure protective measures are in place for staff and those detained, and to ensure restrictions in place are proportionate to the health risks and balanced against the negative impact on the human rights of people in detention.

Following calls by international actors, including PRI, for monitoring bodies to continue to have access to places of detention, albeit with prevention measures in place, various approaches have been adopted.

Faced with a lack of protective equipment and high levels of overcrowding, most National Preventive Mechanisms (NPMs) and other external oversight bodies, including Ombud offices, have suspended or postponed visits to prisons based on the 'do no harm' principle and have sought alternative ways to implement their monitoring mandate. In **Portugal**, the NPM can receive complaints, and in **Paraguay**, a direct phone line for complaints was established. Some also monitor social media to gather information on specific conditions in prisons or communicate with released

detainees to check the most recent information. In some cases, the use of technologies has been maximised, such as video conference calls, including with authorities, access to video footage of police detention in the **UK**, and remote access to specific files and registers in **Australia**, where they are also considering conducting 'virtual' visits to prisons.⁴⁰ In the **Philippines**, the Commission on Human Rights, acting as Interim NPM, has conducted webinars with people in detention and prison authorities.⁴¹

NPMs in **Italy**, **Chile** and elsewhere have continued visiting prisons. In **Armenia**, the NPM has been receiving information and calls from people deprived of liberty, their relatives, advocates and prison staff, and has conducted *ad hoc* visits to prisons to observe preventive measures and follow up on issues raised in complaints. In **Georgia**, only visits to interview individuals are conducted, with regular visits postponed and replaced with distance monitoring. In a two-month period, the NPM met with more than 100 people in prison using existing glass barriers in visiting rooms and

⁴⁰ International Corrections and Prisons Association, 'Adapting to COVID-19: Prison Oversight and Monitoring During a Pandemic', 20 April 2020, [icpa.org/wp-content/uploads/2020/04/Expert-Network-Newsletter-Special-Issue-5-1.pdf](https://www.icpa.org/wp-content/uploads/2020/04/Expert-Network-Newsletter-Special-Issue-5-1.pdf).

⁴¹ 'The Philippines National Preventive Mechanism: Monitoring in times of COVID-19', 16 June 2020, www.facebook.com/apt.geneva/videos/the-philippines-national-preventive-mechanism-monitoring-in-times-of-covid-19/3249183051792480/.

other protective measures.⁴² In **Kenya**, independent monitoring authorities are reportedly still allowed to enter prisons, while prisons in the north of **Sierra Leone** remain open to external visitors, so civil society organisations can carry out monitoring. **Kazakhstan** has also not suspended visits made by monitoring bodies, who have supplemented their visits with increased use of online meetings with people in detention for consultations and follow-up discussions after monitoring visits, if requested. NPM monitors are tested for COVID-19 before regular visits free of charge, while other visitors are obliged to pay for tests.

In the **UK**, full inspections have been suspended and replaced with a new system of short scrutiny visits whereby a group of similar establishments (such as immigration removal centres or female prisons) are visited and reported on together in order to give a snapshot of how they are responding to the pandemic and to share any positive practices found.⁴³ In **Kyrgyzstan**, visits by monitoring organisations can only be carried out on a limited basis and require special permits which have recently been granted to facilities in two regions but denied in two others. In **Venezuela**, independent monitoring of prisons by external bodies has been overwhelmingly limited, with the Red Cross granted access to only two men's prisons on two occasions.

⁴² Expert blog for PRI by Giorgi Burjanadze, Deputy Ombudsperson in Georgia and member of the NPM, 1 June 2020, www.penalreform.org/blog/protecting-human-rights-in-covid-19-detention-monitoring/.

⁴³ HM Inspectorate of Prisons, 'COVID-19 update', www.justiceinspectorates.gov.uk/hmiprison/2020/03/covid-19-update/.

Recommendations: Lockdowns, practices and impacts

Urgent response

- ⇒ Any form of lockdown, isolation or quarantine should only be imposed as a last resort and based on independent medical assessments. Their imposition should be assessed against the real and legitimate risks vis-à-vis COVID-19. Alternative means of preventing infections should be put in place first, including lowering prison populations, less restrictive adjustments to the prison regime, the provision of equipment, testing and healthcare, education of people detained and staff training.
- ⇒ Any form of lockdown, isolation or quarantine must adhere to international human rights standards and measures are to be put in place to mitigate negative impacts. Any such restriction should be imposed for the shortest time possible and be reviewed regularly by healthcare staff against evidence-based clinical COVID-19 guidelines.
- ⇒ Any COVID-19 related measure imposed (and the reasons for doing so) should be communicated in a transparent and clear manner to those affected, including families and other contacts of persons detained.
- ⇒ Any lockdown or form of separation must not constitute prolonged solitary confinement as defined and regulated by the UN Nelson Mandela Rules. Any decision to isolate someone based on medical grounds must adhere to medical ethics, the UN Nelson Mandela Rules and other international standards, and specifically adhere to the principles of legality, necessity and proportionality. Any separation, isolation or quarantine should be (i) used only as necessary based on medical grounds, (ii) imposed with conditions that are as close as possible to the regular regime and (iii) clearly distinct from those found in solitary confinement. An infected person must be housed in an appropriate medical facility; confinement in an individual cell is not appropriate healthcare.
- ⇒ Proactive measures should be taken to mitigate and alleviate negative impacts of lockdowns or separation of certain persons due to health grounds, including daily access to mental healthcare staff and the facilitation of meaningful human contact (for two hours minimum a day) in a way which can be safely managed. Persons separated should have free access to communicating with their families, TV, reading material, etc.
- ⇒ Where restrictions on contact with the outside world are in place, these should be time-limited and reviewed regularly. Measures to resume or increase in-person visits should be prioritised. Where visits remain restricted, they should be replaced with alternative forms of contact, free and with the same level of privacy, including video calling.
- ⇒ Access to legal representatives for persons detained must be guaranteed, if not in-person, through other means with no restrictions and with the required level of privacy to meet the principle of attorney-client privilege (confidentiality).
- ⇒ Monitoring bodies should be given full and unimpeded access to places of detention, including people in isolation, with preventive measures in place to ensure the 'do no harm' principle is upheld. Monitors should be supported and facilitated so they can resume or continue their work, including through provision of required protective equipment.

Systemic reform

- ⇒ Prison authorities should aspire to prevent or eliminate the use of isolation or solitary confinement. Any policies and practices of solitary confinement should be reviewed and reformed in light of the UN Nelson Mandela Rules and UN Bangkok Rules, taking account of the prohibition of torture and ill-treatment. Crisis preparedness and response plans should regulate the use of such practices (lockdowns, quarantines, isolation etc.) and be based on international standards.
- ⇒ The expansion of alternative and electronic forms of contact with the outside world should be retained longer-term as a complimentary way of facilitating visits and maintaining connections with the community but should not replace in-person visits.
- ⇒ Visits should be promoted and facilitated as frequently as possible, particularly for caregivers with children.
- ⇒ Access to legal representatives should be guaranteed, and facilitated, by prison administrations and staff. Barriers to legal representation must be addressed.



Penal Reform International in Jordan, providing female prisons with personal protective equipment, hygiene, and sanitising products.

Pictured (middle): Taghreed Jaber, PRI Regional Director for the Middle East and North Africa, April 2020

Women in prison and COVID-19 responses

Analysis has shown that where governments have taken action to prevent or address COVID-19 in prisons, they seem to have men in mind, mostly overlooking the different and unique impacts they may have on women (and their children).⁴⁴ The failures to incorporate a women-specific approach to protect and mitigate the impacts of COVID-19 on women in prison (including the absence of disaggregated data, unique mental health and other needs, etc.) is real evidence of the discriminatory impact of correctional policies and practices on justice-involved women.⁴⁵

The impacts are wide-ranging and significant. Women in prison have complex health needs with disproportionate rates of underlying health conditions compared to women in the community, putting them at great risk of contracting COVID-19, exacerbated by a lack of women-specific healthcare while detained.

Coronavirus-related restrictions in places of detention have in many instances brought greater hardship or different impacts for women compared to men. Visiting limitations have meant women have gone without sanitary pads and other essential items during lockdowns, as these are often provided by external support networks, charities, families etc. who were not able to visit. The social stigma and discrimination against women in prison, which is disproportionately higher than for men in prison, has meant that suspension of visits has cut off financial support, as well as vital emotional support. The Prison Inspector in **England and Wales** reported that the rate of

self-harm among women in prison has increased during the pandemic.⁴⁶

In women's facilities a greater threat of sexual violence during the pandemic is exacerbated by decreased security and lower levels of staff. Some countries' release mechanisms made provisions for pregnant or breastfeeding women or those with children living in prison with them, like in **Mexico**. However, beyond this limited segment, many countries have failed to include women adequately in release schemes. Only 20 per cent of the countries where decongestion measures have been put in place explicitly included women.⁴⁷ This is despite a significant proportion of female prison populations comprising non-violent, first-time offenders – including low-level drug or poverty-related crimes, bringing little danger to society and low risks of recidivism.⁴⁸

People in prison for drug-related offences are disqualified from release mechanisms in 28 countries. Such exclusions typically impact women disproportionately. For instance, in **Colombia**, 45 per cent of women in prison were excluded from releases as they are charged with or convicted of drug-related offences (compared to 12 per cent of men).

⁴⁴ Expert blog by Olivia Rope, PRI's Director of Policy and International Advocacy, 4 June 2020, www.penalreform.org/blog/coronavirus-and-women-in-detention-a-gender-specific/.

⁴⁵ *Ibid.*

⁴⁶ HM Chief Inspector of Prisons, 'Report on short scrutiny visits to prisons holding women', 19 May 2020

www.justiceinspectorates.gov.uk/hmiprison/inspection/s/womens-prisons-short-scrutiny-visit/.

⁴⁷ Harm Reduction International, 'COVID-19, Prisons and Drug Policy: Global Scan March-June 2020'.

⁴⁸ See, for instance, 'Who are women prisoners?', www.penalreform.org/issues/women/work/research/.

Recommendations: Women in prison and COVID-19 responses

Urgent response

- ⇒ Any measures to reduce prison populations, protect people in prison from COVID-19 or mitigate the impacts of responses must be *at least* equally applied or accessible to women.
- ⇒ Women (and particularly those who are pregnant, breastfeeding or have young children) should be considered as a priority for release mechanisms, taking into account the best interests of the child, and the typical nature of women's offending, as well as the unique hardship experienced by measures and regime changes in prison.
- ⇒ Any measure or change to the prison regime should take account of disproportionate impacts on the mental health of women detained, and therefore should be in place only as a last resort, with time-limits as necessary and proportionate to the risk posed.

Systemic reform

- ⇒ Non-custodial measures should be utilised to their fullest extent for women, taking account of histories of victimisation and the typically non-violent, minor nature of offences committed by women, in line with the UN Bangkok Rules.
- ⇒ Efforts to implement the UN Bangkok Rules should be redoubled, in view of the rising number female prison population globally and particular impacts of imprisonment on women and their children.

Conflict, crisis-affected contexts

The impact of the COVID-19 on conflict and crisis-affected contexts cannot be overstated, and for prison settings the pandemic has brought new challenges and exacerbated existing ones. Prisons in such contexts suffer from low resources and poor infrastructure. A lack of security and low levels of adequately trained staff are common. The provision of basic healthcare is often lacking, let alone emergency preparedness and response plans for a health pandemic. In some instances, people in prison have rioted to protest about the lack of protection, among other grievances, such as in Colombia where 23 people died at La Modelo Jail in a riot in March 2020.⁴⁹

Weak judiciaries, unable to process cases, negatively impact the number of people who are released, either at the end of their sentences, on bail or as part of an early release mechanism.

Against this backdrop, international and national agencies have scrambled to assist places of detention in conflict, crisis settings. Such assistance has mainly taken the form of provision of basic equipment, dissemination of information and training for both personnel working in prisons and the persons detained. UN agencies published an operational toolbox, guidance on the immediate measures required to decongest prisons and guidance to help ensure access to justice through remote alternatives and court hearings during and after the outbreak.⁵⁰

In the **Central African Republic**, the prison overcrowding rate is over 200 per cent. Only three of the country's 10 detention facilities have medical prison staff seconded by the

Armed Forces. The vast majority of the prison population in the country is composed of individuals awaiting their trials, who have often been waiting for long periods due to the lack of proper documentation and coordination among judiciary and penitentiary authorities. Although training for prison staff and protective equipment was provided by humanitarian actors, including PRI, the only way to lower risks associated with COVID-19 is to lower the prison population.

In **Yemen**, despite a call for a global ceasefire, the conflict continues. As cases of COVID-19 continued to rise, the Group of Eminent International and Regional Experts on Yemen warned that people in detention were at high risk of death if cases in facilities with 'appalling' conditions arose. The Group noted that the health system in Yemen is collapsing and that people in detention had inadequate food and standards of hygiene.⁵¹ Several hundred people were released in April. The UN Development Programme distributed hand-washing stations, hygiene kits and gloves to places of detention, checkpoints and police stations in the country,⁵² although a great need remains. Similarly, in the **Central African Republic** where the spread of the virus is increasing, although there are no reported cases in prison to date, 676 people were released to reduce the overcrowded prisons. Despite the support of national and international actors, including PRI, there is still a lack of PPE for prison staff.

⁴⁹ 'COVID-19 and Conflict: Seven Trends to Watch', 24 March 2020, www.crisisgroup.org/global/sb4-covid-19-and-conflict-seven-trends-watch.

⁵⁰ 'United Nations Rule of Law support in the context of COVID-19 pandemic', www.un.org/ruleoflaw/blog/2020/05/united-nations-rule-of-law-support-in-the-context-of-covid-19-pandemic/.

⁵¹ 'Release inmates in Yemen to avert nationwide coronavirus outbreak, experts urge', 30 March 2020, news.un.org/en/story/2020/03/1060642.

⁵² 'UNDP Yemen implements COVID-19 emergency response activities in prisons, detention facilities, police stations and checkpoints', 1 April 2020, www.arabstates.undp.org/content/rbas/en/home/press-center/pressreleases/2020/undp-yemen-implements-covid-19-emergency-response-activities-in-.html.

Recommendations: Conflict, crisis-affected contexts

Urgent response

- ⇒ Agencies working in crisis, conflict-affected settings should ensure detention facilities are prioritised in terms of funding and support. At a minimum, required equipment as recommended by the World Health Organization should be provided alongside training and support for prison staff and people detained.
- ⇒ To reduce overcrowding and the related risks of COVID-19, releases of people from facilities should be urgently initiated or accelerated.

Systemic reform

- ⇒ Efforts to promote the rule of law and humanitarian aid in crisis, conflict-affected settings must include criminal justice institutions, and specifically giving greater attention and resources to places of detention.
- ⇒ Countries in conflict, crisis-affected areas should aim at lowering their prison populations, typically through the use of alternatives to imprisonment and the decriminalisation of petty-offences and by amending laws that directly or indirectly target the poorest and most disadvantaged members of society, including 'status offences'.



Training for prison staff in Central African Republic organised by Penal Reform International with the national civil society coalition it established, *Plateforme d'appui aux réformes du système pénitentiaire en République centrafricaine*.

Bangui, May 2020.

Reductions (and growth) of prison populations

Alongside prison lockdowns, many governments have focused on reducing prison populations to prevent the occurrence and consequences of outbreaks of coronavirus in prisons. This has mainly involved exceptional release mechanisms, including amnesties, pardons, early release schemes, including compassionate release, and commutations. Harm Reduction International monitored prison decongestion measures between March and June and found that approximately 639,000 people were released – constituting only 5.8 per cent of the global prison population.⁵³

This includes more than 122,000 people who were released by 20 European prison administrations as a measure to prevent the spread (or transmission) of coronavirus. The highest percentages of prison populations released in the region were the following:⁵⁴

- **Turkey** (35% – 102,944 people);
- **Cyprus** (16% – 121 people);
- **Slovenia** (16% – 230 people);
- **Portugal** (15% – 1,874 people);
- **Norway** (13% – 401 people)
- **Ireland** (12% – 476 people);
- **Italy** (9.4% – 5,739 people);
- **Spain** (7.4% – 4,356 people).

Elsewhere, in **India**, the Supreme Court ordered states to consider forms of early release to reduce overcrowding of both pre-trial detainees and people serving sentences. In May, over 42,000 pre-trial detainees and 16,000 sentenced persons were released from prisons.

Without reducing prison populations, especially in overcrowded systems, the risks remain high for persons detained and staff. A new study on a large urban jail in the **USA** by Stanford University and Yale University showed that before releases (which constituted around 50 persons a day) the basic reproduction ratio (R_0) – a measure of the strength of an outbreak – was higher than 8, and when releases were initiated it dropped to 3. Although any reproduction number greater than 1 signifies that the outbreak is expected to continue to grow in the near-term, this drop constituted a 56 per cent decrease in transmission of the virus.⁵⁵

⁵³ 'Covid-19 Prisoner Releases Too Few, Too Slow', 27 May 2020, www.hrw.org/news/2020/05/27/covid-19-prisoner-releases-too-few-too-slow.

⁵⁴ Sanctions and measures without deprivation of liberty increasingly used in Europe: new survey, Council of Europe, [www.coe.int/en/web/prison/home/-/asset_publisher/ky2o1XXogcx/content/sanctions-and-](http://www.coe.int/en/web/prison/home/-/asset_publisher/ky2o1XXogcx/content/sanctions-and-measures-without-deprivation-of-liberty-increasingly-used-in-europe-new-survey)

[measures-without-deprivation-of-liberty-increasingly-used-in-europe-new-survey](http://www.coe.int/en/web/prison/home/-/asset_publisher/ky2o1XXogcx/content/sanctions-and-measures-without-deprivation-of-liberty-increasingly-used-in-europe-new-survey).

⁵⁵ The effectiveness of interventions to reduce COVID-19 transmission in a large urban jail, Giovanni S.P. Malloy, Lisa Puglisi, Margaret L. Brandeau, Tyler D Harvey, Emily A. Wang, <https://doi.org/10.1101/2020.06.16.20133280>.

Inaction and barriers to the release of people from detention

Action to implement commitments to release people from detention in response to COVID-19 risks has been slow, leaving people deprived of their liberty at risk.

A lack of infrastructure and bureaucratic barriers are causes for the lack of releases in a number of countries. In the **Netherlands**, electronic monitoring (EM) was one of the prerequisites for many releases, but lack of equipment limited the number of people that could benefit from release measures. There are also concerns that people who would benefit from a non-custodial sanction involving EM may be receiving prison sentences because of the shortage. In **Bangladesh**, prison releases were reliant on coordination between various Ministries, but the Parliament was closed due to COVID-19. Eventually, a Supreme Court Ordinance allowed the courts to hold virtual hearings for urgent bail matters and, with technical support and training provided to judges, court officials and lawyers, over 20,000 people were released in 10 days and a further 343 children were released in 7 days.⁵⁶

Publicised negative public opinion has played a role in limiting releases in some states, including in **Argentina**, where it has been suggested that the mere 1 per cent of the prison population (500 people) released under house arrest from Buenos Aires prisons has not been greater due to large public protests in response to media reports of planned mass releases of people from prison. An announcement in April in **England and Wales** committed to the release of 4,000 people, including pregnant women and women with children living with them in prison, among

others. However, just a month later the early release scheme was suspended and ultimately abandoned after the press revealed that an administrative mistake saw six people released in error. Fewer than 100 people of the 4,000 announced have actually been released.

The requirement to post bail to be released under COVID-19 measures have posed a barrier, for instance in the state of Maharashtra in **India**, 17,000 people in pre-trial detention were authorised for release, but bail prevented many from benefitting from the measure.

In **Mexico**, the Amnesty Commission – the body responsible for defining the application procedure and processing applications for release – was only set up on 18 June 2020, almost two months after the Amnesty Law was approved, following calls from civil society.⁵⁷ The NGO, AsilLegal noted ‘the releases that were raised at the start of the pandemic ... have been forgotten or lethargic by the corresponding authorities’.⁵⁸

Some release mechanisms are conditional. In **Greece**, for instance, a release mechanism for up to 1,500 people imprisoned for minor offences or serving a sentence less than a year will only be triggered if deemed necessary by the authorities.⁵⁹ In the **USA**, three quarters of the 14,860 people who were granted parole in Texas must first finish drug treatment or re-entry classes in prison, despite calls for them to be able to do that at home due to the spread of COVID-19 in prisons.⁶⁰

⁵⁶ Expert blog for PRI by Justice Imman Ali, Supreme Court of Bangladesh, 11 June 2020, www.penalreform.org/blog/releasing-20000-people-from-prison-in-bangladesh-in/.

⁵⁷ ‘Crean comisión para aplicar Ley de Amnistía a casi dos meses de su aprobación’, 18 June 2020, www.animalpolitico.com/2020/06/crean-comision-aplicar-ley-amnistia-aprobacion/.

⁵⁸ ‘¿Qué está sucediendo en los centros penitenciarios ante el COVID-19?’, asilegal.org.mx/mapa-penitenciario-covid-19/.

⁵⁹ ‘Plan for early release of inmates to curb virus risk’, 26 March 2020, www.ekathimerini.com/251010/article/ekathimerini/news/plan-for-early-release-of-inmates-to-curb-virus-risk.

⁶⁰ ‘10,000 TX Inmates Granted Parole, Can’t Leave Prison’, 28 May 2020, thecrimereport.org/2020/05/28/10000-tx-inmates-granted-parole-cant-leave-prison/.

Growing prison populations

Prison populations in some countries have continued to grow, even where releases have taken place. This has occurred due to a concoction of uncoordinated policy and implementation, notably: a limited use of alternatives to imprisonment; a greater number of arrests due to crime associated with greater inequality and poverty alongside new emergency offences; and slower than usual or suspended justice systems creating a backlog of cases. Several countries have included imprisonment as a penalty for people who are arrested for violating COVID-19-related measures, including in **India, China, Spain, New Zealand, South Africa** and the **UK**.⁶¹

Where remand is commonly used, these cases are increasing prison populations. In **Uganda**, for instance, 5,080 people have been remanded to prison during the COVID-19 period, bringing the remand prison population to 34,274 – the highest number seen in recent years – while only 833 people have been released to date. Parallel to the release of people detained in **Sri Lanka**, by 21 April over 34,500 people had been arrested for violating

curfew orders across the country – an arrest rate of 650 people a day with little to no opportunity for release on bail.⁶² Also, in **Angola**, authorities have released almost 1,900 people from pre-trial detention, but police continue to arrest and detain hundreds of people for COVID-related crimes leading to a daily influx, with almost 300 people detained in 24 hours for violating state of emergency rules.⁶³

Many countries have suspended all or some criminal proceedings, delaying and denying access to justice, increasing the backlog of cases and sparking fears of a rise in prison numbers when activities resume at full capacity.

Some countries are holding proceedings online, but with limited availability of facilities. In **Colombia**, hearings have been suspended or delayed due to insufficient rooms for virtual hearings. One prison in Bogotá, for example, can accommodate three hearings at a time, but there are nearly 800 women awaiting hearings in this prison.

⁶¹ Pathfinders, 'Justice for all and the public health emergency', April 2020.

⁶² 'Prisoner Releases Across Asia: A Right Move Gone Wrong?', 26 April 2020, thewire.in/world/prisoner-releases-across-asia-a-right-move-gone-wrong.

⁶³ 'Angola's Prisons Ill-Equipped to Curb Covid-19 Spread', 5 May 2020, www.hrw.org/news/2020/05/05/angolas-prisons-ill-equipped-curb-covid-19-spread.

Recommendations: Reductions (and growth) of prison populations

Urgent response

- ⇒ Any decision on a person's liberty should take account of the current status of prisons, vis-à-vis overcrowding (which may itself amount to inhuman or degrading treatment or punishment), healthcare provision, etc. or any health condition of the individual, with a preference given to non-custodial measures.
- ⇒ Where not existing, release mechanisms should be put in place, giving priority to pre-trial detainees, older persons, ill, pregnant and breastfeeding women, and women with children living with them in prison. Other eligibility criteria should include people convicted for minor or non-violent offences, especially those sentenced for drug-related offences and petty offences.
- ⇒ Where release mechanisms are in place or authorisation has been given for the release of people in detention, efforts should be redoubled to implement them and lift any barriers slowing down releases.
- ⇒ The detention of all children should be considered for urgent review, taking into account the principle that their detention should only be a measure of last resort.
- ⇒ Strategies to reduce prison populations must focus not only on releases, but on curbing admission numbers, including through ceasing to arrest people for minor offences, granting bail and using pre-trial detention and prison sentences as a real measure of last resort, including for COVID-19 related offences.
- ⇒ Any penalties for the breach of COVID-19-related laws should adhere to the principle of proportionality, consist of non-custodial measures to the greatest possible extent and take account of the particular risks posed by a prison sentence or pre-trial detention.

Systemic reform

- ⇒ The measures and initiatives introduced during the pandemic to reduce prison populations should be harnessed to sustain or establish lower prison occupancy levels to reduce overcrowding in the long-term, in line with the UN Tokyo Rules and the UN Bangkok Rules.

Non-custodial alternatives to imprisonment

Millions of people worldwide are subject to criminal justice measures or sanctions in the community – probation, parole or other non-custodial measures. Unlike persons in detention, the impact of COVID-19 on these people (and the personnel who support and supervise them) has received little attention. In Europe there has been some preliminary information shared among probation agencies through the Confederation of European Probation⁶⁴ and at the country level there is some information publicly available, for instance in the United States of America.

The COVID-19 pandemic has brought an increased use of non-custodial sanctions in several countries as part of moves to reduce prison populations. The most common have been suspended prison sentences, expanded use of electronic monitoring, and home arrest – all feasible with social distancing measures in place. The latter two sanctions had ordinarily required ‘lockdown’ at an agreed location for certain hours of the day, but with restrictions on movement due to COVID-19 measures, the sanctions may take a different – and more severe – form.

Like prisons, agencies charged with supervising these non-custodial alternatives and/or making decisions about releases from prison have been required to adapt in light of measures brought in as responses to COVID-19. Many have relied on remote interaction with their clients.

In **Europe**, at least 22 probation systems excluded the possibility of in-person appointments or home visits with people they supervise altogether, save in exceptional circumstances, opting instead for video calls or regular phone calls.⁶⁵ The frequency of phone contact has generally been set at twice the level of previous face-to-face meetings and is sometimes supplemented by ‘drive-by supervision’ where supervisors sit in their cars outside someone’s home and observe them through a window or at the door while also speaking on the phone.⁶⁶

A survey in the **USA** of around 300 personnel working in community corrections found that over 84 per cent of their clients had had their in-person group activities suspended, 67 per cent suspended home or field visits, and almost 88 per cent were working at home.⁶⁷

The quality of support and supervision of persons serving non-custodial sentences through electronic communication brings challenges and reduces opportunities to tackle the root causes of criminal behaviour, particularly when many services and programmes are suspended.

Many people serving a non-custodial sentence rely on social support for a range of needs, including financial and their mental health. With the global pandemic seeing resources diverted into emergency health provision for COVID-19, ‘services, such as hotlines, crisis centres, shelters, legal aid and social services are at risk of being scaled back’,⁶⁸ support for

⁶⁴ Confederation of European Probation, ‘Covid-19: measures and protocols in probation’, www.cep-probation.org/covid-19-measures-and-protocols-in-probation/.

⁶⁵ *Ibid.*

⁶⁶ Fergus McNeill, ‘Penal supervision in a pandemic’, www.cep-probation.org/penal-supervision-in-a-pandemic-by-professor-fergus-mcneill/.

⁶⁷ American Probation and Parole Association (APPA), www.surveymonkey.com/stories/SM-VYPSVRF9/.

⁶⁸ UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders, ‘Justice for women amidst COVID-19’, May 2020.

persons in vulnerable situations may reoffend or fail to fulfil the conditions of their sentence with various knock-on effects.

In **Scotland**, interviews with probation officers showed that the decentralised system, and the role of supervisors having social work at the core, has meant that many have continued to support their clients through practical assistance, for example delivering medicines and food packages during the height of the lockdown to their clients. However, in **France**, at the start of the pandemic aside from some mental health support through phone calls, remote supervision and support has been thwarted in many instances by the lack of equipment to work remotely (e.g. laptops) and institutional setup preventing officials from accessing records and information which is all held centrally.

Aside from supervision, conditions that form part of a non-custodial sentence, such as community service work, have been suspended in at least 18 European countries. In **Slovenia**, for example, fixed deadlines to complete community service do not apply while probation officers work from home, and all direct contact with people on probation, including in-person training courses, is suspended and communication is maintained over phone and email.⁶⁹ In **Finland**, however, wherever possible the content of ongoing community service sentences has been amended so it can be completed from home. Activities include written or online assignments provided by substance abuse and mental health services, discussions about specific themes, and individual programmes with the supervisor over the telephone or Skype. Community service is scheduled and supervised with telephone calls, and people are not required to attend appointments in-person.⁷⁰

⁶⁹ Republic of Slovenia Probation Administration, www.cep-probation.org/wp-content/uploads/2020/04/Preventive_measures_Slovenia_Probation_Administration.pdf.

⁷⁰ Criminal Sanctions Agency of Finland, www.cep-probation.org/wp-content/uploads/2020/04/RISE-COVID-19-2020.04.23.pdf.

Drug, alcohol or behavioural change programmes have been paused due to lockdowns. In many cases these programmes, alongside practical assistance by probation officers, are essential elements to preventing reoffending. Furthermore, many sanctions require proof of completion or a certain number of hours to be achieved to mark the end of the community-based sanction and, therefore, the question arises as to whether these interruptions in fulfilling court-imposed programmes will prolong the duration of sentences beyond what was initially handed down.

During the coronavirus pandemic increased workload and reduced capacity have been common challenges among probation and parole agencies. In **Canada**, the Parole Board has reported an increased workload during the pandemic, mainly due to their consideration of releases, amounting to an increase of 17 parole reviews per week in the three months since 1 March 2020. In the same period, 40 ‘parole exception cases’ (early release) have been decided upon or are pending, compared to only 7 for all of the previous fiscal year.⁷¹ In **England and Wales**, it was reported that phone-based supervision required twice the frequency of contact of previous face-to-face appointments, and this is sometimes supplemented by visual supervision (‘drive-by’).⁷²

In some countries face-to-face meetings did continue regularly, or exceptionally. While probation officers in **Estonia** required to fit an electronic monitoring device were provided with PPE,⁷³ protective equipment has not been provided for probation officers in **Georgia** undertaking home visits.

⁷¹ ‘COVID-19 and the Parole Board of Canada’, www.canada.ca/en/parole-board/services/coronavirus-covid-19.html.

⁷² Fergus McNeill, ‘Penal supervision in a pandemic’, www.cep-probation.org/penal-supervision-in-a-pandemic-by-professor-fergus-mcneill/.

⁷³ Estonian Probation Service, www.cep-probation.org/wp-content/uploads/2020/04/C19_Probation_Estonia.pdf.

Recommendations: Non-custodial alternatives to imprisonment

Urgent response

- ⇒ Alternatives to imprisonment should be a preferred option with imprisonment used as a last resort during the pandemic (see recommendations for 'Reductions (and growth) of prison populations').
- ⇒ Any non-custodial measure should take account of the extenuating circumstances brought by the pandemic and ensure that, if conditions are necessary, they can be realistically and feasibly met. Any change, due to the pandemic, to the implementation of a non-custodial sanction should lead to a reconsideration of its conditions to ensure proportionality.
- ⇒ Governments should invest in probation systems to ensure they are enabled to handle an increased caseload as a result of COVID-19-related measures.

Systemic reform

- ⇒ Alternatives to imprisonment should adhere to the principle of proportionality to avoid 'mass supervision' of persons who are convicted of a crime.
- ⇒ Probation systems should be established, or where existing, strengthened with increased political attention and resourcing to ensure they are fit for purpose and effective in supporting rehabilitation.

Post-release support for people leaving prison

The COVID-19 pandemic has a particularly serious impact on people coming out of prison who, in regular times, face high rates of homelessness, poverty and health issues and struggle to access basic services in the community. These barriers to resettlement, which drive people towards poverty and reoffending, are exacerbated by the global coronavirus pandemic and could become a matter of life or death. The marginalisation and discrimination faced by people who have been imprisoned is now amplified as there are fears that they may have been infected with COVID-19. Stigma and a lack of financial resources increase the likelihood of reoffending.⁷⁴

Lockdowns and other restrictive measures in the community during the coronavirus pandemic compound the impact of inadequate or no post-release support for people leaving prison. For example, reports suggest that authorities in Maharashtra state in **India** made no arrangements to help people released during lockdown – when no public transport was available – to find their way home, and that people were released with no information about the virus or how to protect themselves.⁷⁵

Many people released from prison have a mental health condition and have experienced

violence, either before and/or during their detention. These factors require careful release plans. In **Kenya**, Clean Start, an NGO which supports women in prison and post-release, reported that releases are taking place abruptly, with little transparency and information provided. This coupled with a lack of a proper system for reintegration, including links to support services, means that people released are unsafe. This situation has been compounded in some cases where releases occur late in the day and, given curfews, it is not possible for the women to get to their homes in time, risking their safety.

In some places, some measures have been put in place acknowledging the increased risk to people leaving prison during the pandemic. In a Bangkok prison in **Thailand**, temporary accommodation has been set up for persons released to stay for one night, so they are not breaching curfews to travel home. In **Kazakhstan**, 322 people released from prisons were escorted to their permanent or temporary residences, or to a resocialisation centre which provides social, medical and other assistance to people in difficult life circumstances and without a fixed place of residence, and were provided with masks, gloves and antiseptic spray.

⁷⁴ Penal Reform International, 'Global Prison Trends 2020', May 2020, www.penalreform.org/resource/global-prison-trends-2020/.

⁷⁵ 'Maharashtra Prisoner Released on Parole Says Jails Unprepared to Handle COVID-19 Pandemic', 30 March 2020, thewire.in/rights/maharashtra-prisons-covid-19-pandemic.

Recommendations: Post-release support for people leaving prison

Urgent response

- ⇒ Release plans should be made for each person released from prison. This should include, *at a minimum*: housing/accommodation, facilitating transport, financial support, measures to ensure personal safety especially for women and children, and links with community-based support organisations.
- ⇒ People leaving prison should be recognised as a vulnerable group for the purposes of COVID-19 planning and be given priority access to any available services including housing support.
- ⇒ Systems should be put in place to ensure access to finances (such as setting social welfare benefits) and accommodation before release and, while physical offices remain closed or travel to them is restricted, information (phone numbers and where possible a mobile phone with pre-loaded information) should be provided for people leaving prison to enable access to vital support services.
- ⇒ Additional information and guidance should be provided to people leaving prison both before and following release to support health, including mental health and wellbeing, and compliance with new laws in the community during the COVID-19 pandemic.

Systemic reform

- ⇒ Reintegration and post-release plans should be put in place at the beginning of a sentence or period of detention. The major practical barriers for persons released from detention must be identified and solutions resourced, particularly around housing/accommodation, transport and medical needs.
- ⇒ Emergency preparedness and response plans should be developed or enhanced to include post-release support for persons released from detention.

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

Registered in The Netherlands (registration no 40025979), PRI operates globally with offices in multiple locations.

**Penal Reform International
Headquarters**

1 Ardleigh Road
London N1 4HS
United Kingdom
+44 (0) 207 923 0946
info@penalreform.org
Twitter: @PenalReformInt
Facebook: @Penalreforminternational

**Penal Reform International
in Central Asia**

Syganak str. 29
Nur-Sultan
Kazakhstan
+7 (7172) 79-88-83

96 Toktogul street, office 7
Bishkek
Kyrgyzstan
+996 312 88 38 76
pricentralasia@penalreform.org

**Penal Reform International
in Middle East and North Africa**

22 Amro Bin Dinar
Amman
Jordan
+962 6 582 6017
priamman@penalreform.org

**Penal Reform International
in South Caucasus**

Chavchavadze Avenue
1st Lane, Block N6, 3rd entrance, apt. N61
Tbilisi 0179
Georgia
+995 32 237 027
prisouthcaucasus@penalreform.org

**Penal Reform International
in Sub-Saharan Africa**

Plot 8, Kisozi Close
Kisozi Complex
Nakasero Kampala
P.O. Box 11455
Uganda
+256 3920 01139
africa@penalreform.org