

FORGOTTEN BEHIND BARS

COVID-19 AND PRISONS

AMNESTY
INTERNATIONAL



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CONTENTS

| | |
|---|-----------|
| 1. EXECUTIVE SUMMARY | 5 |
| RESPONSE TO INFECTIONS | 5 |
| CONTROL MEASURES | 7 |
| STATE OBLIGATIONS AND CALL TO ACTION | 7 |
| 2. METHODOLOGY | 9 |
| 3. BACKGROUND | 11 |
| 3.1 PRISON POPULATION | 11 |
| 3.2 SYSTEMIC THREATS TO HEALTH | 12 |
| OVERCROWDING | 12 |
| POOR SANITATION | 14 |
| 3.3 INFECTIONS IN PRISONS | 14 |
| 4. RESPONSE TO INFECTIONS | 16 |
| 4.1 INFORMATION ON INFECTIONS AND DEATHS | 16 |
| INADEQUATE DATA | 16 |
| PERSECUTION OF INDIVIDUALS PUBLISHING INFORMATION | 18 |
| INTERNATIONAL STANDARDS | 18 |
| RECOMMENDATIONS TO GOVERNMENTS | 18 |
| 4.2 PREVENTION | 19 |
| INADEQUATE PREVENTIVE AND PROTECTIVE MEASURES | 19 |
| INTERNATIONAL STANDARDS | 21 |
| RECOMMENDATIONS TO GOVERNMENTS | 22 |
| 4.3 TESTING, SCREENING AND TREATMENT | 22 |
| INADEQUATE TESTING AND TREATMENT | 22 |
| INNOVATIVE TESTING AND SCREENING | 25 |
| INTERNATIONAL STANDARDS | 26 |
| RECOMMENDATIONS TO GOVERNMENTS | 27 |
| 4.4 TACKLING OVERCROWDING | 27 |
| INADEQUATE MEASURES | 27 |

| | |
|---|-----------|
| INTERNATIONAL STANDARDS AND CALLS FOR REDUCTION IN OVERCROWDING | 32 |
| RECOMMENDATIONS TO GOVERNMENTS | 33 |
| 4.5 ACCESS TO VACCINES | 35 |
| VACCINATION POLICIES | 35 |
| INTERNATIONAL STANDARDS | 38 |
| RECOMMENDATIONS TO GOVERNMENTS | 39 |
| 5. CONTROL MEASURES | 40 |
| 5.1 ISOLATION MEASURES | 40 |
| CONFINEMENT AND QUARANTINING | 40 |
| INTERNATIONAL STANDARDS | 42 |
| RECOMMENDATIONS TO GOVERNMENTS | 43 |
| 5.2 RESTRICTIONS ON VISITS | 43 |
| REDUCED ACCESS TO FAMILIES | 43 |
| INTERNATIONAL STANDARDS | 46 |
| RECOMMENDATIONS TO GOVERNMENTS | 46 |
| 5.3 RESPONSE TO PROTESTS AND UNREST | 47 |
| EXCESSIVE USE OF FORCE | 47 |
| INTERNATIONAL STANDARDS | 48 |
| RECOMMENDATIONS TO GOVERNMENTS | 49 |
| 6. STATE OBLIGATIONS | 50 |
| 6.1 RIGHT TO HEALTH | 50 |
| 6.2 HEALTH OF DETAINEES | 51 |
| 6.3 THE RIGHT TO WATER AND SANITATION | 52 |
| 7. CONCLUSION AND CALL FOR ACTION | 53 |
| 7.1 CONCLUSION | 53 |
| 7.2 CALL FOR ACTION | 53 |
| 7.3 RECOMMENDATIONS TO UN AGENCIES | 54 |
| WHO | 54 |
| UNODC | 54 |
| OHCHR | 54 |
| UN TREATY BODIES AND SPECIAL PROCEDURES | 55 |

1. EXECUTIVE SUMMARY

“Each year, millions of people cycle in and out of prisons. It stands to reason that the barbed wire and walls that surround prisons are not an N95-style barrier against disease and inequality.”

Editorial in *The Lancet* medical journal, 13 February 2021.

The spread of COVID-19 in prisons and other detention facilities has thrown into stark relief systemic threats to health in detention such as overcrowding and poor sanitary conditions.

Over 11 million people worldwide are estimated to be held in prisons, serving prison sentences or awaiting trial. People in detention are at heightened risk from COVID-19 due to a number of interlinked systemic factors. Firstly, prisoners often have a greater underlying burden of disease and worse health conditions than the general population. Secondly, prisons and other places of detention tend to have a high prevalence of diseases, infections and pathogens due to poor living conditions. Thirdly, physical distancing is often difficult to achieve in prisons. Finally, only limited health care may be available to those in detention.

The numbers of older people in detention are on the rise in many countries and members of minority communities are often over-represented in prisons; these groups are recognized as among those facing particular risks from COVID-19.

Against this backdrop, Amnesty International has conducted a review of 69 governments' response to soaring infection rates in detention facilities. It has concluded that the measures governments have introduced to prevent the spread of COVID-19 have often been inadequate and, in some cases, have themselves led to human rights violations.

The 69 countries, spread across different regions of the world, were chosen as a convenience sample, mainly based on available information. Between May 2020 and February 2021, Amnesty International conducted extensive desk research, interviews (some conducted face-to-face but most remotely) and collected data through the use of questionnaires. It spoke to officials, prison managers and doctors and former detainees. It reviewed publications issued by UN agencies, regional bodies and national governments, as well as national human rights institutions and NGOs. It sent communications to governments to present findings and seek information, receiving several responses.

RESPONSE TO INFECTIONS

Available data indicates worrying patterns of COVID-19 infections in prisons across all regions. In the USA alone, as of mid-February 2021, there had been more than 612,000 reported infections in prisons, jails and detention centres and at least 2,700 deaths among inmates and guards. The mortality rate in prisons across

the USA was twice as high as that for the general public in August 2020, according to a report by the National Commission on COVID-19 and Criminal Justice.

The full scale of infections and deaths in prisons is hard to assess as governments have failed to **collate** and publicly provide up to date and reliable information. As of September 2020, few of the countries monitored by Amnesty International had publicly available official data on rates of testing, positive cases and deaths among detainees and an even smaller group of states provided data disaggregated by age, gender, ethnicity and pre-existing medical conditions. There have even been a few reports of authorities persecuting individuals publishing information related to the situation of COVID-19 in prisons.

Reliable data is critical for informed policy making in responding to COVID-19. Accurately collating and analysing data on infections and deaths of individuals deprived of liberty and making it promptly available is central to any effort of infection prevention and control. It is also important that any data collected on incarcerated populations is disaggregated to ensure that at-risk subpopulations are identified and adequate protective measures are taken.

COVID-19 has laid bare years of underinvestment and neglect of health services in prisons. Irrespective of the economic status of the state, prison authorities have generally been unable to cope with the increased demand for preventive health measures and medical treatment of prisoners. Against this background, Amnesty International looked at the adequacy of health protocols and practices introduced to prevent and control COVID-19 in prisons.

Available information showed acute shortages of testing capacity, practices inconsistent with public health guidance and concerning examples of discriminatory and punitive measures, especially in the early phases of the spread of COVID-19. Amnesty International's research also found instances where COVID-19 tests were not readily accessible to prison staff either.

Frequent lack of preventive and protective measures in detention centres is another key finding of Amnesty International's research, which identified examples in countries including Cambodia, France, Iran, Pakistan, Sri Lanka, Togo, Turkey and the USA.

The UN Human Rights Committee has emphasized that "treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule", which "cannot be dependent on the material resources available in the state party". As the risk of contagion endangers the health and life of the persons deprived of their liberty, it is states' responsibility to protect those who are in their care from falling sick to COVID-19, including through the provision of adequate personal protective equipment (PPE).

Tackling overcrowding also remains a big challenge. Amnesty International notes that, in their efforts to reduce it, many countries have released prisoners through measures such as pardons, commutations, temporary suspension of sentences, conditional, temporary or supervised releases, transfers into home confinement, and identification and implementation of alternatives for accommodation and monitoring, such as for prisoners towards the end of their sentences. According to the UN Office on Drugs and Crime (UNODC), there was an unprecedented wave of prisoner releases in 2020, with more than 600,000 prisoners in more than 100 countries released as of July 2020. These were mostly individuals with pre-existing health conditions, those whose release would not result in compromising public safety, and those approaching the end of their sentence.

Despite such encouraging steps, Amnesty International's research indicates that the rates of release remained insufficient to address the magnitude of the risk. Many countries with high levels of prison overcrowding, such as Egypt, the Democratic Republic of the Congo and Nepal, failed to address the concern adequately within the context of COVID-19. In some countries, like Iran and Turkey, hundreds of prisoners detained arbitrarily, including prisoners of conscience, were also excluded from COVID-19-related releases.

There have been growing calls from UN and regional human rights bodies and other intergovernmental agencies and public health experts for governments to take urgent measures to reduce overcrowding in prisons as part of their response to COVID-19 and as part of their obligations to protect the rights to health, life and to physical and mental integrity.

Lack of clarity about vaccination plans, policies, and treatment of incarcerated populations is also a pressing, global concern. While, encouragingly, some countries have already adopted policies that put prison populations and staff among the priority groups to receive vaccines, Amnesty International's research found that many others, including high-income countries, either are silent or remain unclear on their plans.

CONTROL MEASURES

While there is limited publicly available information on COVID-19 control and prevention measures introduced by prison authorities in the countries it monitored, Amnesty International has identified several concerning examples of use of isolation and quarantine measures. Although governments have justified such measures on the grounds of preventing the spread of COVID-19 or associated unrest, lack of staff or testing capacity, these considerations alone do not justify practices which may have resulted in solitary confinement.

In some cases, the measures introduced did not meet the tests of necessity and proportionality and appeared arbitrary, excessive and abusive, giving rise to concerns that they could amount to a breach of the prohibition of torture and other, cruel, inhuman or degrading treatment or punishment. In countries including Argentina and the UK, National Preventive Mechanisms, which are mandated to monitor the treatment of and conditions for detainees, found that some detainees were subjected to isolation regimes in individual cells for up to 23 hours per day for periods lasting weeks or months.

Amnesty International recognizes that isolation and quarantining measures may be necessary as a temporary measure to prevent the spread of COVID-19 in prisons, but their form and duration must be strictly necessary in the case and proportionate, including by being time limited and non-discriminatory. The measures should also have a clear legal basis and the decision-making process should be comprehensive and transparent.

COVID-19-related lockdown measures in prisons have often severely impacted family visits. While some prison systems have retained visits by adapting conditions for them, others have resorted to banning visitors, effectively depriving detainees from their lifeline to the outside world and undermining their emotional, as well as physical, wellbeing.

Furthermore, several incidents have been reported where protests and unrest have broken out in prisons in the context of COVID-19 and have often been attributed to the introduction of restrictive measures like the suspension of prison visits or poor health and living conditions. The UNODC reported such events in over 40 countries. Amnesty International has documented excessive and unlawful use of force (such as the use of live ammunition and tear gas) in state responses in Iran, Italy, Madagascar, Mexico, Sierra Leone and Sri Lanka. As a result, scores have been killed and hundreds injured.

STATE OBLIGATIONS AND CALL TO ACTION

The right to health is enshrined in several international human rights treaties, and almost all countries are legally bound to at least one treaty that covers this right. International human rights standards highlight that states should ensure that persons in detention have access to the same standard of health care as is available in the community.

Amnesty International is calling for urgent action from governments across the world to address the concerns in detention facilities that it has highlighted. Preventing COVID-19 transmission within and between prisons and the community is vital to protect everyone against infection and to prevent further spread of the disease.

In particular, Amnesty International is urging governments to step up the timely collection and sharing of disaggregated public health data as it relates to populations in detention or custody. It is calling on them to provide detainees with face masks, adequate quantities of soap, sanitizing items (free of charge) and access to clean running water, and to offer them access to COVID-19 testing and treatment. To address overcrowding, in addition to releases of detainees, governments should explore alternatives to custody.

Amnesty International recognizes that national distribution of vaccines for COVID-19 will necessarily be phased and that governments have complex prioritization decisions to make. At the same time, states should ensure that policies and plans on vaccination do not discriminate against those held in detention. They should make every effort to prioritize prisoners in such plans, particularly since their confined conditions do not allow them to physically distance. Prison staff should also be prioritized in vaccination policies as essential workers.

Amnesty International is urging governments only to impose isolation or quarantine measures if they cannot take any alternative protective measures and to ensure that any restrictions on social visits to prevent the spread of COVID-19 are strictly necessary and proportionate. It is calling on them to initiate independent and impartial investigations into all incidents involving lethal use of force in detention facilities.

At the international level, Amnesty International is calling on a number of UN agencies to step up their efforts. It recommends that the WHO keep under regular review the guidance on fair access to COVID-19 health products, including vaccines, with explicit reference to prison staff and prisoners at particularly high risk of death or severe illness from COVID-19 as being among the at-risk groups who should be prioritized for vaccines.

Amnesty International recommends that the UNODC expand the system of crime data collection across states, allowing for a more detailed disaggregated analysis to assist towards improving states' pandemic prevention and control strategies. It recommends that the OHCHR provide technical advice and support, where necessary, to national human rights bodies and others to perform the critical function of monitoring the situation of prisons during the COVID-19 pandemic.

2. METHODOLOGY

This report presents a global review of the key human rights challenges facing the health of people in detention during the COVID-19 pandemic. Amnesty International initiated work on it in May 2020, aiming to cover the period from the start of the pandemic to the end of February 2021. It draws on the experiences of 69 countries, chosen as a convenience sample mainly based on available information, existing contacts, and responsiveness to inquiries posed. Amnesty International acknowledges that these countries are not representative of situations in others and emphasizes that, where they are explicitly referenced in the report, the main reason is to underline the wider policy calls that form the main focus of this report.

During the research, as the situation in many countries' prisons changed rapidly, Amnesty International issued country-focused reports, urgent appeals and press releases on grave situations needing urgent responses. These included serious threats to the right to health of prisoners; excessive and unlawful use of force by police or prison guards in response to uprisings in prison in the context of the spread of COVID-19; and attacks on human rights defenders speaking out for the rights of prisoners, among others. Such interventions were made in respect of Cambodia, Egypt, India, Iran, Italy, Madagascar, Pakistan, Sierra Leone, Sri Lanka, Turkey and the USA. Key concerns set out in some of the Amnesty International publications on these countries have been referenced briefly in this report.

The organization supplemented this existing research with extended desk research, interviews (some conducted face-to-face but most remotely) and use of questionnaires.

The desk research drew on reports, statements and data published by UN agencies, including the World Health Organization (WHO), the Office of the High Commissioner for Human Rights (OHCHR) and the UN Office on Drugs and Crime (UNODC), as well as regional bodies, such as the African Commission on Human and Peoples' Rights, the Inter-American Human Rights Commission, the European Union and the Council of Europe.

Furthermore, it reviewed key reports, statements and data published by relevant governments, including, for example, justice ministries' official reports and updates on the situation in prisons during the pandemic and information published by health ministries on issues such as national vaccination policies and data on infections, deaths and testing in prisons. The organization also reviewed specialized health agencies' policies, such as the Centers for Disease Control and Prevention (CDC) in the USA.

Amnesty International studied key laws and decrees passed by national parliaments and executive authorities in response to the pandemic, including measures to tackle prison overcrowding. It also looked at decrees and laws previously adopted but relevant in the context of the pandemic. The rulings of regional courts, including the European Court of Human Rights, and individual countries' national courts were also analysed. These were combined with analysis of statements by and information from lawyers regarding the implementation of judgements and reports, statements and data published by national human rights institutions and National Preventive Mechanisms.

Amnesty International obtained information on situations in prisons through meetings and communications with academics and a variety of NGOs and think tanks, including Antigone, an NGO based in Italy that carries out monitoring, research and campaign activities with the aim of promoting human rights and reinforcing prisoners' safeguards in the Italian criminal justice system; the Irish Penal Reform Trust, an NGO based in Ireland; Ceza İnfaz Sisteminde Sivil Toplum Derneği (CISST), an NGO based in Turkey; De Justicia, an NGO based in Colombia; the Howard League for Penal Reform, an NGO based in the UK; and the Nuffield Trust, a health think tank based in the UK. It also consulted the reports, statements and data of many other national and international NGOs.

Due to many restrictions on freedom of movement imposed by authorities in response to COVID-19, Amnesty International did not itself have access to prisons and had to limit the use of face-to-face interviews. Supplementing the interviews it had conducted in the course of its research for documents issued in 2020, it conducted remote interviews via video and telephone calls with several senior prison officials, prison doctors, members or former members of national human rights institutions, former detainees and relatives of detainees.

Some of the research was carried out in close collaboration with Prison Insider, an organization which works towards “raising awareness about detention conditions and upholding the rights and dignity of those deprived of freedom throughout the world”. Prison Insider “provides a tool for comparison and encourages best practice, testimony and solidarity” and “aims to provide a centralized source of factual, detailed and up to date information”.¹

Prison Insider worked with a network of its partners across the world. With their help, it filled out detailed questionnaires covering the situation in the following countries: Argentina, Belgium, Brazil, Chile, France, India, Iran, Italy, Lebanon, Morocco, Nigeria, the Philippines, South Africa, Turkey, the UK and the USA.

Prison Insider’s work as a news aggregator, providing Amnesty International with links to media articles for the questions in the questionnaire, enriched the analysis of media monitoring and analysis of official reports and data already gathered. It also assisted Amnesty International in its research on specific prisoner cases and prison situations.

Amnesty International sent letters and/or right to information requests, whether directly or through partners, to the authorities in Côte d’Ivoire, Guinea, Hungary, Italy, Mali, New Zealand, Senegal, South Korea, Togo, Turkey and the UK, receiving responses in most cases, but with varying degrees of detail. Amnesty International had previously sent communications to the governments on whose countries it had issued reports, such as Egypt, Madagascar and Pakistan.

¹ Prison Insider, “Who we are”, www.prison-insider.com

3. BACKGROUND

3.1 PRISON POPULATION

Based on the most recent available data collected by the UN Office on Drugs and Crime (UNODC), as well as figures from the World Prison Brief, at least 10.7 million people were estimated to be held in pre-trial detention or serving a prison sentence across the world as of 2018.² The true number is likely to be over 11 million, when considering that data for some countries is incomplete or unavailable.³

The largest population of detained and imprisoned people was recorded in the USA. At the beginning of 2020, the population of sentenced prisoners in USA numbered about 1.4 million. Hundreds of thousands more were in detention awaiting trial or in immigrant detention centres,⁴ totalling as many as 2.3 million.⁵ The next most populous prisoner populations are in China, with over 1.65 million, Brazil, with 690,000, and Russia with 583,000.⁶ The number of older people in detention is on the rise in many countries⁷ as is the over-representation of minority communities in prisons.⁸

² World Prison Brief and Institute for Criminal Policy Research, *World Prison Population List*, 12th edition,

www.prisonstudies.org/sites/default/files/resources/downloads/wpp1_12.pdf

UNODC data included 2018 figures for 153 countries and territories, 2017 data for 52, and data for the remainder from 2014-2016.

Countries for which there were no figures held by the UNODC included Syria and Oman. 2018 World Prison Brief estimates of true population size note unavailable data for Eritrea, North Korea and Somalia, and incomplete data for China and Guinea Bissau.

³ World Prison Brief and Institute for Criminal Policy Research, *World Prison Population List*, 12th edition,

www.prisonstudies.org/sites/default/files/resources/downloads/wpp1_12.pdf

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Countries for which there were no figures held by the UNODC included Syria and Oman. 2018 World Prison Brief estimates of true population size note unavailable data for Eritrea, North Korea and Somalia, and incomplete data for China and Guinea Bissau.

⁴ Prior reporting by Amnesty International noted over 15,000 detained by Immigration and Customs Enforcement, and over 8,800 cumulative COVID-19 infections as of January 2021. See Amnesty International, *Free people and all families from ice detention*, www.amnestyusa.org/campaigns/100-days; and Amnesty International, *USA: Update to Amnesty International report on COVID-19 in US immigration detention* (31 August 2020), 31 August 2020, www.amnesty.org/en/documents/amr51/2958/2020/en/

⁵ Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020*, 24 March 2020, www.prisonpolicy.org/reports/pie2020.html

⁶ World Prison Brief and Institute for Criminal Policy Research, *World Prison Population List*, 12th edition,

www.prisonstudies.org/sites/default/files/resources/downloads/wpp1_12.pdf

⁷ See International Committee of the Red Cross, *Ageing and Detention*, 12 June 2020, www.icrc.org/en/publication/4332-ageing-and-detention.

In high-income countries such as Australia, Japan, the UK and the USA, older people are the most rapidly increasing imprisoned age demographic than ageing in the general population (see Zachary Psick et al., "Older and incarcerated: Policy implications of aging prison populations", *International Journal of Prison Health*, 13 March 2017, www.emerald.com/insight/content/doi/10.1108/IJPH-09-2016-0053/full/html); and The International Association for Hospice and Palliative Care, *Worldwide Hospice Palliative Care Alliance*,

International Children's Palliative Care Network and the Palliative Care in Humanitarian Aid Situations and Emergencies, *Briefing Note: Vulnerable Populations in Covid-19: Palliative Care for Detainees in Custodial Settings*, undated, globalpalliativecare.org/covid-19/uploads/briefing-notes/briefing-note-palliative-care-for-detainees-in-custodial-settings.pdf).

Countries such as Australia, Canada, Italy, New Zealand, the UK and the USA have older prison populations which are increasing in absolute terms and as a proportion of the overall prison population (see Bruce A Stevens et al., "Systematic review of aged care interventions for older prisoners", *Australasian Journal on Ageing*, 6 December 2017, onlinelibrary.wiley.com/doi/abs/10.1111/ajag.12484); Independent Advisory Panel on Deaths in Custody, *The Royal College of Nursing, Avoidable natural deaths in prison custody: putting things right*, September 2020,

www.iapondeathsincustody.org/latest/iap-rcn-preventing-natural-deaths-prison). Italy has Europe's second highest rate of inmates over 50

years old (25%). See Liberties, *COVID-19 Emergency in Italian Prisons: Antigone Releases Annual Report*, 9 June 2020,

www.liberties.eu/en/news/covid-19-italian-prisons-antigone-annual-report/19390.

⁸ In the USA, for instance, Black adults are imprisoned across the country at more than five times the rate of white adults (see USA,

Department of Justice, Bureau of Justice Statistics, *Prisoners in 2019*, October 2020, www.bjs.gov/index.cfm?ty=pbdetail&iid=7106); In

India, Muslim people are over-represented in prisons, constituting 18.3% of the total prison population against 14.2% of the general

population (see Commonwealth Human Rights Initiative, *Ten things you should know about Indian prisons – an analysis of prison statistics India 2019*, 4 September 2020, www.humanrightsinitiative.org/publication/ten-things-you-should-know-about-indian-prisons-an-analysis-of-prison-statistics-india-2019).

In Bulgaria, the proportion of the Roma population is roughly five times higher in prisons and detention

centres than in the general population (see Bulgarian Helsinki Committee, *Submission to the UN Committee on the Elimination of Racial*

Discrimination, 92nd Session, March 2017,

tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BGR/INT_CERD_NGO_BGR_27032_E.pdf, pp. 4-5).

3.2 SYSTEMIC THREATS TO HEALTH

People in detention are at heightened risk from COVID-19 due to a number of interlinked systemic factors. Firstly, people deprived of their liberty typically have a greater underlying burden of disease and worse health conditions than the general population. They frequently face greater exposure to risks such as smoking, poor hygiene and weak immune defence due to stress, poor nutrition, or prevalence of coexisting diseases, such as bloodborne viruses, tuberculosis and drug use disorders.⁹ This may increase their risk of developing complications related to COVID-19. Secondly, prisons tend to have a high prevalence of diseases, infections and pathogens due to poor living conditions, which often include overcrowding and difficulties maintaining hygienic practices.¹⁰ This has led them to be described by many as “hotbeds” of disease.¹¹ According to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, detainees often suffer from health conditions such as diabetes, heart conditions, asthma, hypertension, and pulmonary infections such as pneumonia and tuberculosis.¹² Thirdly, physical distancing is often difficult to achieve in prisons and other places of detention.¹³ Finally, only limited health care may be available.

Several UN agencies have called attention to the fact that prisoners also often have a greater incidence of immunosuppression, substance dependence and communicable diseases and conditions, like HIV, tuberculosis and hepatitis, which increase the risk of serious illness and death from COVID-19 infection.¹⁴

OVERCROWDING

Overcrowding in prisons is widely recognized as one of the most serious problems in places of detention today. Around 102 countries have reported prison occupancy levels of over 110%.¹⁵ A significant proportion of prisoners are charged with or convicted of non-violent crimes. Arbitrary and excessive pre-trial detention contributes to the problem; those detained awaiting trial outnumber convicted people in prisons in at least 46 countries.¹⁶

In the Americas region, the IACHR noted in September 2020 that prison systems in the region suffer, among other problems, from: “(i) a lack of space to enable adequate social distancing, provide appropriate medical care, and prevent infection in severely overcrowded contexts; (ii) a lack of sufficient testing to detect the virus; and (iii) a lack of equipment necessary to ensure adequate protection and hygiene.”¹⁷

In Africa, where, according to Penal Reform International, prison conditions are some of the worst in the world, extremely high rates of pre-trial detention and widespread patterns of prison sentences for minor offences have led to severe overcrowding.¹⁸ The African Commission on Human and Peoples’ Rights

⁹ WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim Guidance, 8 February 2021, www.apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y

¹⁰ Kate Dolan et al., “Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees”, *The Lancet*, 14 July 2016, [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30466-4](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30466-4); and Katherine Herbert et al., “Prevalence of risk factors for non-communicable diseases in prison populations worldwide: a systematic review”, *The Lancet*, 26 May 2012, [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(12\)60319-5/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)60319-5/fulltext)

¹¹ *The Hindu*, “Jails turn into hotbeds of disease”, 25 May 2020, www.thehindu.com/news/cities/mumbai/jails-turn-into-hotbeds-of-disease/article31666835.ece; *The Age*, “Prisons a disease ‘hotbed’”, 21 July 2012, www.theage.com.au/national/victoria/prisons-a-disease-hotbed-20120720-22fux.html; and *US News*, “Despite Billions Spent on Inmate Health, Prisons Are COVID Hotbeds in California”, 29 June 2020, www.usnews.com/news/healthiest-communities/articles/2020-06-29/prisons-are-coronavirus-hotbeds-in-california-despite-billions-spent-on-inmate-health

¹² UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *COVID-19 and Protection of right to life in places of detention*, www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf (UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *COVID-19 and Protection of right to life in places of detention*); and UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*, 13 May 2020, www.unodc.org/documents/Advocacy-Section/20200513_PS_covid-prisons_en.pdf (UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*).

¹³ UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*.

¹⁴ UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*.

¹⁵ Penal Reform International and Thailand Institute of Justice, *Global prison trends 2020*, May 2020, cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf (Penal Reform International and Thailand Institute of Justice, *Global prisons trends 2020*).

¹⁶ Penal Reform International and Thailand Institute of Justice, *Global prisons trends 2020*.

¹⁷ Organization of American States (OAS), *IACHR concerned about specific risks faced by Persons Deprived of Liberty in the Americas during the COVID-19 pandemic*, 9 September 2020, www.oas.org/en/iachr/media_center/PReleases/2020/212.asp (OAS, *IACHR concerned about specific risks faced by Persons Deprived of Liberty in the Americas during the COVID-19 pandemic*).

¹⁸ Penal Reform International, “Sub-Saharan Africa”, www.penalreform.org/where-we-work/africa/

(ACHPR) has repeatedly raised alarms about this situation, including in a resolution adopted in December 2020, describing the state of prisons in the region as “characterized by severe inadequacies including, high rates of overcrowding, poor medical, medication and sanitation conditions; inadequate recreational, vocational and rehabilitation programmes, high percentage of persons awaiting trial, among others”.¹⁹ Many countries’ prisons are holding many more prisoners than their official capacity. Twelve countries are recorded as having occupancy levels above 200%, with Burundi, Uganda and Zambia over 300% and the Republic of the Congo over 600%.²⁰

In Europe, while studies indicate an overall decrease of prison populations, especially as a result of measures introduced to control COVID-19, this was not a universal trend; in 12 prison administrations higher prison populations were reported on 15 September 2020 than on 15 June 2020.²¹



Overcrowding © Antonio Colafemmina

¹⁹ ACHPR, Resolution 466 on Prisons and Conditions of Detention in Africa, 3 December 2020, www.achpr.org/sessions/resolutions?id=501

²⁰ World Prison Brief, “Highest to Lowest - Occupancy level (based on official capacity)”, www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=15 (accessed on 28 February 2021).

²¹ Council of Europe, Newsroom, “Mid-term impact of Covid-19 on European prison populations: new study”, November 2020, www.coe.int/en/web/portal/-/mid-term-impact-of-covid-19-on-european-prison-populations-new-study#:~:text=The%20study%20also%20points%20out,prison%20administrations%20which%20provided%20data (Council of Europe, Newsroom, “Mid-term impact of Covid-19 on European prison populations: new study”).

POOR SANITATION

In its work monitoring prison conditions over the years, Amnesty International has identified long-standing issues caused by under-funding and neglect of the prison sector resulting in many violations of the right to the highest attainable standard of health as well as the rights to water and sanitation in prisons.²² In addition to being contrary to international human rights standards in some contexts this can constitute ill-treatment as prohibited under the International Covenant on Civil and Political Rights.²³

3.3 INFECTIONS IN PRISONS

Epidemiologists and other scientists in several countries, have described prisons as “epicenters” for the spread of the virus.²⁴ Studies have shown how the virus can spread quickly in often overcrowded and unsanitary prison settings with poor ventilation, where access to health care is limited and physical distancing impossible.²⁵ Available data in countries monitored for this research indicates worrying patterns of COVID-19 infections in prisons across all regions.

In the USA alone, as of mid-February 2021, there had been more than 612,000 reported infections in prisons, jails and detention centres, and at least 2,700 deaths among inmates and guards.²⁶ This resulted in the closure of many prisons and jails due to staffing shortages and the consequent transfer of inmates, which in itself likely caused COVID-19 to spread further.²⁷ The mortality rate in prisons across the USA was twice as high as that for the general public in August 2020.²⁸ Around the same time, the infection rate reported in state and federal prisons was more than four times the rate of cases in the general population, according to a report by the National Commission on COVID-19 and Criminal Justice.²⁹

The situation has also been grave in other regions. In September 2020 the National Campaign Against Torture (NCAT) in India raised alarm, reporting infections in a quarter (351 of 1,350) of jails across the 25 states and territories in the country as of 31 August 2020.³⁰ In Pakistan, where prisons are notoriously overcrowded, at least 2,313 prisoners had tested positive for COVID-19 as of August 2020.³¹

Elsewhere, in South Korea, 771 inmates and 21 staff were infected within a few days at the Seoul Eastern Detention Centre in late December 2020.³² By 4 January 2021, the total number of infections had reached 1,041, which represented more than a third of the prisoners.³³

In South Africa, one of the countries worst impacted in Africa, prisons saw an alarming rate of infection of inmates and prison officials, forcing at least one maximum security prison to go into full lockdown.³⁴ The

²² The rights to water and the right to sanitation are considered part of the right to an adequate standard of living under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

²³ International Covenant on Civil and Political Rights, Article 7.

²⁴ See, for example, Lauren Brinkley-Rubinstein, an assistant professor of social medicine at the University of North Carolina, as quoted in, CNN, “Jails and prisons were hit hard by Covid-19 and experts say they need to be prioritized for the vaccines”, 11 January 2021, edition.cnn.com/2021/01/11/us/jails-prisons-vaccine-priority/index.html

²⁵ *The Lancet*, “Prisons and custodial settings are part of a comprehensive response to COVID-19”, 17 March 2020, www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930058-X

²⁶ *The New York Times*, “Coronavirus in the US: Latest Map and Case Count, Cases in Jails and Prisons”, www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (accessed 18 February 2021).

²⁷ The Marshall Project, “Moving People—and Coronavirus—From Prison to Prison”, 21 December 2020,

www.themarshallproject.org/2020/12/21/moving-people-and-coronavirus-from-prison-to-prison; and *The New York Times*, “States Are Shutting Down Prisons as Guards are Crippled By Covid-19”, 1 January 2021, www.nytimes.com/2021/01/01/us/coronavirus-prisons-jails-closing.html

²⁸ National Commission on COVID-19 and Criminal Justice, *COVID-19 in U.S. State and Federal Prisons*, December 2020, cdn.yaws.com/counciloncj.org/resource/resmgr/covid_commission/COVID-19_in_State_and_Federa.pdf

The mortality rate refers to the number of deaths within a particular society within a particular period of time. It is distinct from the morbidity rate, which refers to the rate of disease in a society at a given time.

²⁹ National Commission on COVID-19 and Criminal Justice, *Impact report: COVID-19 and prisons*, 2 September 2020, covid19.counciloncj.org/2020/09/02/covid-19-and-prisons/

³⁰ National Campaign against Torture, *The status of COVID-19 in Indian prisons*, 15 September 2020, www.uncat.org/by-country/india/the-status-of-covid-19-in-indian-prisons/

³¹ Amnesty International, *Prisoners of the pandemic: The right to health and COVID-19 in Pakistan's detention facilities*. By January 2021, this figure had risen to more than 3,000, according to the Justice Project Pakistan website, www.jpp.org.pk/

³² *The Straits Times*, “South Korea tries to contain coronavirus outbreak in prison”, 30 December 2020, www.straitstimes.com/asia/east-asia/south-korea-tries-to-contain-coronavirus-outbreak-in-prison

³³ Kyunghyang Shinmun, “Sugamja samang’ dongbuguchiso, maseukeudo jedaelo an jwosda”, 29 December 2020, news.khan.co.kr/kh_news/khan_art_view.html?artid=202012292114015&code=940601

³⁴ Independent Online, “Second wave of Covid-19 leaving mark on SA’s inmates, prison officials”, 8 January 2021, www.iol.co.za/pretoria-news/news/second-wave-of-covid-19-leaving-mark-on-sas-inmates-prison-officials-a4ad49b6-f848-448d-bcb7-2ca93a4b1775

country had reported over 10,000 infections in facilities as of 22 February 2021, with a significant proportion – over 65% – being infected prison officials.³⁵

In Europe, despite an overall decrease in prison populations since the outbreak of the pandemic, a study for the Council of Europe found at least 3,300 inmates and 5,100 prison staff were infected with COVID-19 as of 15 September 2020 in the 38 prison administrations which provided data.³⁶ Later in 2020, this increased sharply. As of 31 January 2021, 10,354 prisoners or children had tested positive for COVID-19 across 126 prisons and Youth Custody Service sites in the UK constituent countries of England and Wales.³⁷ 12,184 staff had tested positive for COVID-19 since the start of the pandemic.

Thirty-six staff had died having tested positive for COVID-19 within 28 days of the death or where there was a clinical assessment that COVID-19 was a contributory factor in their deaths regardless of cause of death. Of these, 15 deaths of staff occurred in the three months from November 2020 to January 2021.³⁸ One UK public health expert described prisons as “epidemiological pumps” in March 2020, referring to the way in which the virus was spreading from the community into prison and back out to the community.³⁹

Overcrowding and continued admission of new detainees, as well as movements of prison staff, visitors and service providers, are widely recognized as major contributing factors to COVID-19 infections in prisons. Demographic factors also likely impact the risk prisoners and staff face related to COVID-19, given the situation in the wider community. For instance, in the USA, there is a clear disparity in COVID-19-related hospitalizations and deaths among racial and ethnic groups, with Hispanic, Native American and Black individuals being hospitalized and dying in numbers that far exceed their share of the general population.⁴⁰ Studies conducted in the UK also revealed that individuals from Black and South Asian ethnic groups were more likely to experience severe symptoms and death.⁴¹ The reasons for such disparities mirror social and economic disparities,⁴² as well as the health manifestations of those disparities, including increased prevalence of comorbidities, such as chronic disease, cardiovascular disease and pulmonary problems.

³⁵ South Africa, Department of Correctional Services, “DCS COVID-19 cases”, www.dcs.gov.za/ (accessed 24 February 2021).

³⁶ Council of Europe, Newsroom, “Mid-term impact of Covid-19 on European prison populations: new study”.

³⁷ Ministry of Justice, *HM Prison and Probation Service Official Statistics*, 12 February 2021,

www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960361/HMPPS_COVID19_JAN21_Pub_DOC.pdf (UK, Ministry of Justice, *HM Prison and Probation Service COVID-19 Official Statistics Data to 31 January 2021*).

³⁸ UK, Ministry of Justice, *HMPPS COVID-19 experimental statistics annex: 31 January 2021*, 18 February 2021,

www.gov.uk/government/statistics/her-majestys-prison-and-probation-service-workforce-quarterly-december-2020/hmpps-covid-19-experimental-statistics-annex-31-january-2021.

³⁹ Richard Coker, *Expert Report: Covid-19 and prisons in England and Wales*, 31 March 2020,

prisonreformtrust.org.uk/portals/0/documents/COKER_Report_HL_PRT.pdf, p. 19.

⁴⁰ Based on age-adjusted national-level data. See Centers for Disease Control and Prevention (CDC), “Health Disparities: Race and Hispanic Origin. Provisional Death Counts for Coronavirus Disease 2019 (COVID-19)”, www.cdc.gov/nchs/nvss/vsrr/covid19/health_disparities.htm; and CDC, “Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity”, updated 18 February 2021,

www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html

⁴¹ Public Health England, *Disparities in the risk and outcomes of COVID-19*, August 2020,

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf; Institute for Fiscal Studies, *Are some ethnic groups more vulnerable to COVID-19 than others?*, May 2020,

allcatsrgrey.org.uk/wp/download/public_health/inequalities_in_health/Are-some-ethnic-groups-more-vulnerable-to-COVID-19-than-others-V2-IFS-Briefing-Note.pdf; and Liam Smeeth et al., “OpenSAFELY: factors associated with COVID-19-related hospital death in the linked electronic health records of 17 million adult NHS patients”, 7 May 2020,

www.medrxiv.org/content/10.1101/2020.05.06.20092999v1.full.pdf

Amnesty International is not aware of studies into the risk and outcomes of COVID-19 among different ethnic and racial groups within the UK’s prison population.

⁴² Gareth Iacobucci, “COVID-19: Increased risk among ethnic minorities is largely due to poverty and social disparities, review finds”, *British Medical Journal*, 22 October 2020, www.bmj.com/content/371/bmj.m4099

4. RESPONSE TO INFECTIONS

As infection rates in prisons and other detention facilities have soared, the measures governments have introduced to prevent the spread of COVID-19 have often been inadequate.

4.1 INFORMATION ON INFECTIONS AND DEATHS

INADEQUATE DATA

Reliable data is critical for informed policy making in responding to COVID-19. The UN Committee for the Coordination of Statistical Activities has stated:

“During any crisis citizens, governments and businesses need ‘the facts’ quickly so that they can make critical decisions. The way that we collectively manage the COVID-19 crisis that now grips the planet is highly dependent on having a steady stream of timely, high quality data that allow governments and citizens to make life-saving and livelihood saving decisions.”⁴³

Public health agencies such as the CDC in the USA have emphasized the need for collecting, as well as promptly and regularly sharing, reliable, disaggregated and timely data on infections and deaths as the key to identifying trends and patterns in terms of time, geographical areas and individuals affected.⁴⁴ This evidence-based approach is essential for fine-tuning any plan for disease control and for providing adequate health care to the population, including those most at risk.⁴⁵

Accurately collating and analysing data on infections and deaths of individuals deprived of their liberty and making it promptly available is central to any effort to prevent and control infection. It is also important that any data collected on incarcerated populations is disaggregated to ensure that at-risk subpopulations are identified and adequate protective measures are taken. Demographically complete data is pivotal to ensure that already marginalized groups, such as older and medically at-risk prisoners, are effectively protected from the virus. Likewise, in order to ensure that prevention, vaccination and treatment policies effectively offset health risks and outcomes that manifest themselves as a function of social and economic disparity, and racial or ethnic discrimination, the authorities must take care to analyse the relationship between measures of these factors and health outcomes in detention facilities. Sex-disaggregated data on tests, positive cases and deaths among persons deprived of liberty is also critical to ensure that optimal treatment

⁴³ Committee for the Coordination of Statistical Activities, *How COVID-19 is changing the world: a statistical perspective*, 2020, unstats.un.org/unsd/ccsa/documents/covid19-report-ccsa.pdf

⁴⁴ CDC, *The CDC Epidemiological Manual*, www.cdc.gov/eis/field-epi-manual/chapters/Describing-Epi-Data.html

⁴⁵ UK, National Health Service, “GPES data for pandemic planning and research (COVID-19)”, digital.nhs.uk/coronavirus/gpes-data-for-pandemic-planning-and-research

is identified for men and women, including those women who – relative to others – are at higher risk of negative outcomes of the disease, such as post-menopausal⁴⁶ and pregnant women.⁴⁷

At the national level, accurate and timely data acts as a surveillance tool, detecting outbreaks of infectious diseases in prisons and making the information public, allows informed debate on the effectiveness and the limits of the measures adopted to contain the spread of the virus. This, in turn, can ensure better preparedness in the face of future outbreaks, contribute to develop pandemic management plans that aim to decrease morbidity and mortality among those more at risk and protect individuals and groups from potential misconduct.⁴⁸ As the UN Secretary-General has said, “This is a time when, more than ever, governments need to be open and transparent, responsive and accountable to the people they are seeking to protect.”⁴⁹

However, there have been many gaps in governments’ efforts to provide relevant data on COVID-19 infections and deaths. In a publication dated 14 May 2020, the WHO lamented the scarcity of age- and gender-disaggregated data on COVID-19 cases.⁵⁰ As of May 2020, only 40% of the total number of cases of infections reported to WHO were disaggregated by age and gender.

Such information gaps on the situation of COVID-19 is prevalent or worse for prisons. As of September 2020, few of the countries monitored by Amnesty International had publicly available official data on rates of testing, positive cases and deaths among detainees and an even smaller group of states provided data disaggregated by age, gender, ethnicity and pre-existing medical conditions. In a response to Amnesty International, the UK government in fact said that it was not able to provide the requested information in disaggregated form, as the costs of gathering the data would exceed a limit (£600, around US\$830) set for central government.⁵¹ This failure of governments to gather and provide reliable data on rate of infections and death related to COVID-19 is part of a wider pattern.

Among those states that have published information is the **USA**. Since March 2020, the Bureau of Prisons has collected and provided numbers of infected, recovered and deceased prisoners and prison staff, broken down by prison facility.⁵² In addition, the CDC has maintained a state-level database of infections and deaths for state and federal detention facilities, updated regularly.⁵³

The Department of Correctional Services in **South Africa** is another authority that has provided daily updates on the total numbers of positive cases, deaths and recoveries, but has largely limited its disaggregation to distinguishing between inmates and prison officials.⁵⁴ There is little disaggregated and regularly updated data on where the infections and deaths are reported or the rate of testing conducted in prisons. Local organizations like Sonke Gender Justice, an NGO that defends women’s and children’s rights, have praised the correctional services’ initiative to gather, share and update online statistics on the number of deaths and infections in South African prisons, but also questioned the lack of disaggregated data and information on testing.⁵⁵

Lack of quality data, under-reporting or misreporting can lead to assumptions that exacerbate existing health inequalities between the incarcerated and the non-incarcerated communities, and undermine efforts to limit the spread of the disease in prisons and protect the most vulnerable detainees. As the UNODC has stated, “We will not overcome this crisis if we don’t stop the pandemic in specific pockets of vulnerability.”⁵⁶

⁴⁶ Ricardo Costeira et al., “Estrogen and COVID-19 symptoms: associations in women from the COVID Symptom Study”, 19 August 2020, www.medrxiv.org/content/10.1101/2020.07.30.20164921v3

⁴⁷ CDC, “Update: Characteristics of Symptomatic Women of Reproductive Age with Laboratory-Confirmed SARS-CoV-2 Infection by Pregnancy Status — United States, January 22–October 3, 2020”, 6 November 2020, www.cdc.gov/mmwr/volumes/69/wr/mm6944e3.htm?s_cid=mm6944e3_w

⁴⁸ Article 19, *Ensuring the Public’s Right to Know in the COVID-19 Pandemic*, May 2020, www.article19.org/wp-content/uploads/2020/05/Ensuring-the-Publics-Right-to-Know-in-the-Covid-19-Pandemic_Final-13.05.20.pdf

⁴⁹ UN Secretary-General António Guterres, *We are all in this Together: Human Rights and COVID-19 Response and Recovery*, 23 April 2020, www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and

⁵⁰ WHO, *Gender and COVID-19*, 14 May 2020, www.who.int/publications/i/item/gender-and-covid-19

⁵¹ The limit represents the cost of one person spending 3.5 working days determining whether the department holds the information, and locating, retrieving and extracting it. UK, HMPPS, letter to Amnesty International, 26 November 2020.

⁵² USA, Federal Bureau of Prisons, “COVID-19 - coronavirus”, www.bop.gov/coronavirus/# (accessed 27 January 2020).

⁵³ CDC, “Confirmed COVID-19 cases and deaths in US correctional and detention facilities by state”, covid.cdc.gov/covid-data-tracker/#correctional-facilities; and UK, Ministry of Justice, *HM Prison and Probation Service COVID-19 Official Statistics Data to 31 December 2020*.

⁵⁴ South Africa, Department of Correctional Services website, www.dcs.gov.za/

⁵⁵ Prison Insider, “L’Afrique du Sud tire la sonnette d’alarme”, 14 October 2020, www.prison-insider.com/en/articles/l-afrique-du-sud-tire-la-sonnette-d-alarme

⁵⁶ UNODC, *COVID-19 policy documents*, www.unodc.org/unodc/en/covid-19.html

PERSECUTION OF INDIVIDUALS PUBLISHING INFORMATION

There have even been a few reports of authorities persecuting individuals publishing information related to the situation of COVID-19 in prisons.

In **Turkey**, for instance, the Chief Public Prosecutor in Ankara opened two investigations in late March 2020 against Ömer Faruk Gergerlioğlu, a member of parliament, accusing him of causing fear and panic among the public, after he reported that a 70-year-old prisoner and a staff member in Ankara's Sincan L-type prison had been diagnosed with COVID-19.⁵⁷

Egyptian authorities have arrested, detained and opened criminal investigations on charges of "terrorism" and "spreading false news" against families and supporters of detainees calling for overcrowding in prisons to be reduced amid the spread of the virus.⁵⁸

In **Côte d'Ivoire**, two journalists working for the Générations Nouvelles newspaper were in March 2020 accused of "dissemination of false information after reporting on the two suspected cases of COVID-19 in the MACA prison located in the capital city Abidjan."⁵⁹ One of them was fined 5 million CFA francs (approximately US\$7,500).⁶⁰

INTERNATIONAL STANDARDS

Article 12(2)(c) of the ICESCR guarantees the right to prevention, treatment and control of diseases. In its General Comment 14 on the right to health, the Committee on Economic, Social and Cultural Rights has clarified that this requires states to make individual and joint efforts to "make available relevant technologies, using and improving epidemiological surveillance and data collection on a disaggregated basis, the implementation or enhancement of immunization programmes and other strategies of infectious disease control."⁶¹

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on states to step up the timely collection and sharing of public health data, especially as it relates to populations in detention or custody. The data should be disaggregated by age, gender, ethnicity and pre-existing medical conditions.

As a minimum, regularly updated data regarding infection, treatment, vaccinations and mortality rates in prisons should be no less freely available than public health and response statistics for any other populations. At the same time, states must ensure at all times the privacy and dignity of individuals.

States should bring to a halt all harassment of human rights defenders, withdraw all cases against them for speaking out about human rights violations in prisons, including in the context of the spread of COVID-19 and ensure they can freely express their views.

⁵⁷ Bianet, "Investigation Against HDP MP over Coronavirus Tweets", 26 March 2020, bianet.org/5/94/221980-investigation-against-hdp-mp-over-coronavirus-tweets

Amnesty International understands that the charges were kept pending while Ömer Faruk Gergerlioğlu remains a member of parliament. Following a Court of Cassation decision to uphold his conviction in another case against him in mid-February 2021, as this report was being finalized, it seemed likely his immunity as a member of parliament would be lifted and the prosecutor's investigation against him in relation to speaking about the rights of prisoners would proceed.

⁵⁸ Amnesty International, *Egypt: Release prisoners of conscience and other prisoners at risk amid coronavirus outbreak*, 20 March 2020, www.amnesty.org/en/latest/news/2020/03/egypt-release-prisoners-of-conscience-and-other-prisoners-at-risk-amid-coronavirus-outbreak/; *Egypt: End relentless attacks on journalists and other media workers*, 3 May 2020, www.amnesty.org/en/latest/news/2020/05/egypt-end-relentless-attacks-on-journalists-and-other-media-workers/; and *Egypt: Health care workers forced to make impossible choice between 'death or jail'*, 18 June 2020, www.amnesty.org/en/latest/news/2020/06/egypt-health-care-workers-forced-to-make-impossible-choice-between-death-or-jail/

⁵⁹ Reporters Without Borders, "Coronavirus en Afrique : la liberté de la presse infectée", 3 April 2020, rsf.org/fr/actualites/coronavirus-en-afrique-la-liberte-de-la-presse-infectee

⁶⁰ Reporters Without Borders, tweet, 25 March 2020, twitter.com/RSF_fr/status/1242896736475123715

⁶¹ CESCR, General Comment 14, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 16

4.2 PREVENTION

INADEQUATE PREVENTIVE AND PROTECTIVE MEASURES

Amnesty International's recent research has revealed the frequent lack of preventive and protective measures in detention centres. Of most concern was the failure to use personal protective equipment (PPE) when it was available or otherwise put in place protective measures.

In the **USA**, sanitary facilities in prisons sometimes did not function and access to free soap was far from uniform.⁶² In many facilities, guards and staff were not required to wear masks.⁶³ There were even notable cases of masks use by staff being prohibited.⁶⁴

In Rikers Island prison in New York, where the infection rate in April 2020 was nine times higher than in the rest of the country, an ex-detainee, Ronald, who had spent four months in the prison, told the media that detainees were provided with "just soap and water", saying, "that's all we were given, no disinfectant. As for masks, we were only given two in 14 days".⁶⁵

In at least one prison in **France**, detainees were not allowed to wear masks as the internal regulations forbade detainees from hiding their faces. In September 2020, the administrative court of Toulouse ordered the administration of Seysses prison to provide masks to all detainees in closed and shared spaces after lawyers filed a complaint on behalf of detainees who did not have access to masks.⁶⁶

In **Turkey**, according to Züleyha Gülüm, a member of parliament and Human Rights Commission member from Istanbul, PPE had either not been provided at all or provided only in limited quantities in prisons as of April 2020. Some detainees had to buy masks at the price of 17 liras per unit (approximately US\$2.32).⁶⁷ For the period between 29 April and 12 May 2020, the CISST also reported insufficient access to free cleaning supplies, including disinfectant, to protective gear such as masks and to running water, as well as inadequate cleaning measures by the prison administration and prison staff not always wearing protective gear or adhering to physical distancing rules.⁶⁸

In **Iran** as well, detainees struggled to access adequate PPE. Amnesty International obtained five leaked official letters in July 2020 which indicate repeated pleas by senior prison officials for PPE and other supplies were ignored by Iranian authorities.⁶⁹ The lack of PPE was particularly alarming as the letters also note the high numbers of people in Iran's prisons who may be more at risk from COVID-19, including "older [people], pregnant women, nursing mothers and their infants who suffer from a weak immune system due to their low socio-economic status and hygiene." Amnesty International had previously urged Iranian authorities not to ignore requests for urgently needed disinfectant products, protective equipment and medical devices.⁷⁰

Given the context of overcrowding, poor ventilation, lack of safe sanitation, and medical equipment, and deliberate neglect of prisoners' health problems, Iranian prisons were a perfect breeding ground for COVID-19. Inmates in multiple prisons across the country said that access to personal hygiene items such as soaps, sanitizers and disinfectant products were often limited.⁷¹ In addition to masks, gloves, hand sanitizers and face shields, the letters also state that there was an urgent need for adequate ventilation systems, de-infestation machines, and other essential medical devices including thermometers and defibrillators.⁷²

⁶² Brennan Center for Justice, *No soap. Broken sinks. We will all pay for coronavirus ravaging prisons*, 10 April 2020, www.brennancenter.org/our-work/analysis-opinion/no-soap-broken-sinks-we-will-all-pay-coronavirus-ravaging-prisons

⁶³ Prison Policy Initiative, *Half of states fail to require mask use by correctional staff*, 14 August 2020, www.prisonpolicy.org/blog/2020/08/14/masks-in-prisons

⁶⁴ See, for example, *Orlando Sentinel*, "Federal prison in Central Florida banned masks for staff as pandemic began, report says", 14 January 2021, www.orlandosentinel.com/coronavirus/os-ne-coronavirus-coleman-prison-inspector-report-20210113-7ap3b34qrbeinkvyncljpp62ke-story.html

⁶⁵ Radio France Internationale, "Coronavirus: la situation dans la prison de Rikers Island à New York inquiète", 19 April 2020, www.rfi.fr/fr/am%C3%A9riques/20200419-coronavirus-etats-unis-prison-rikers-island

⁶⁶ Observatoire International des Prisons, "Le port du masque bientôt autorisé pour les détenus?", 5 October 2020, oip.org/analyse/le-port-du-masque-bientot-autorise-pour-les-detenus/

⁶⁷ Bianet, "A mask is sold for 17 lira in prison", 22 April 2020, bianet.org/english/human-rights/223289-a-mask-is-sold-for-17-lira-in-prison

⁶⁸ CISST, *Hapishanelerden Gelen Koronavirüs (COVID-19) Kaynaklı Şikayetler / 29 Nisan-12 Mayıs*, 12 May 2020, cisst.org.tr/raporlar/hapishanelerden-gelen-koronavirus-covid-19-kaynakli-sikayetler-29-nisan-12-mayis/?fbclid=IwAR1d8sEblFJSnnQiEf-4nfQN_CYmSuGHes6uCUQzTnwwlC8YvEIHkju1k-E

⁶⁹ Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*.

These letters are on file with Amnesty International and the organization has confirmed their authenticity.

⁷⁰ Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*.

⁷¹ Abdorrahman Boroumand Center for Human Rights in Iran, *COVID-19 Fear in Iran's Prisons: Iran Must Do More to Protect Prisoners*, September 2020, www.iranrights.org/library/document/3764

⁷² Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*.

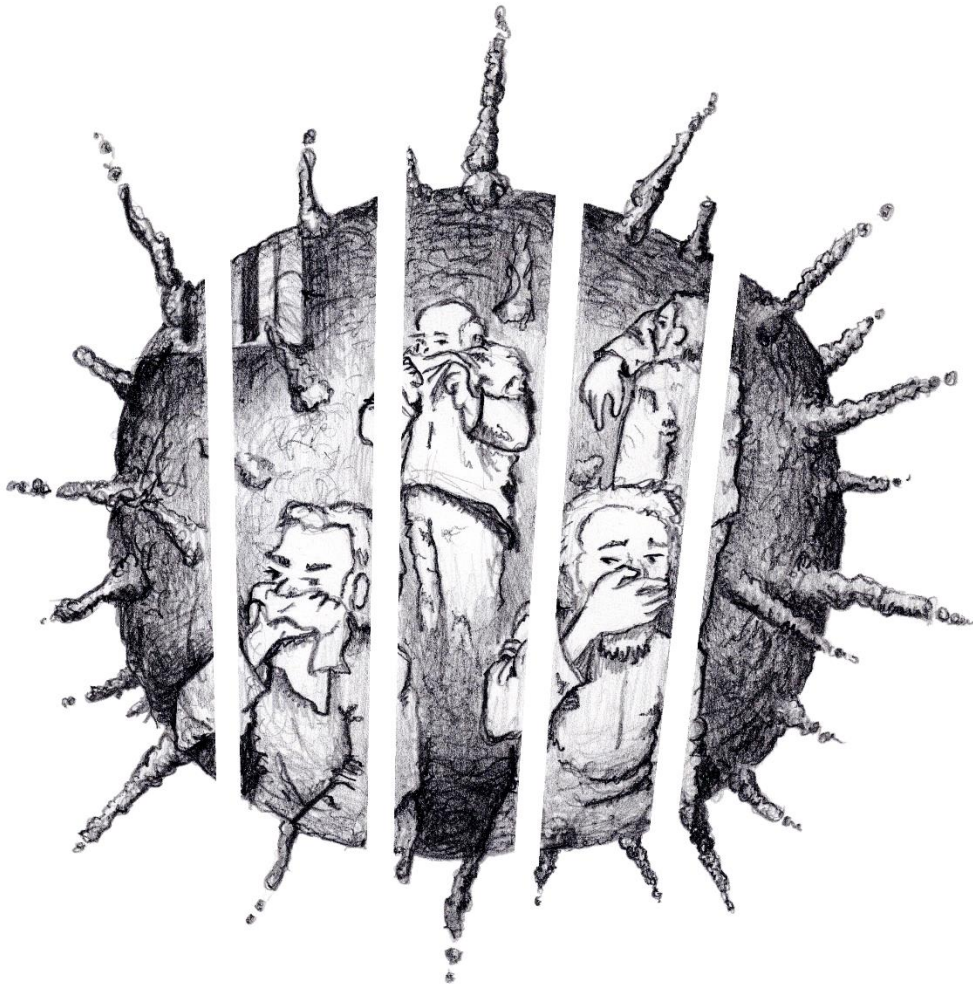
Amnesty International found that, in **Pakistan**, the police did not always provide, or even wear, PPE, including masks, during arrest and initial detention in police stations. Some detainees reported being kept in confined spaces without any protective measures – preventing the possibility of physical distancing – and said they were not told about any precautionary measures.⁷³

In **Cambodia**, a 37-year-old woman told Amnesty International after she was released from Correctional Center 2 (CC2), a prison in the capital, Phnom Penh, in August 2020:

“I was in fear of the spread of COVID-19 in the prison because the [PPE] material that prison authorities gave to us is not enough to protect us. Only the prisoners who are rich could buy alcohol spray to use, and the price was expensive.”⁷⁴

Prison staff have also complained about an acute lack of PPE, especially in the early phases of the spread of COVID-19. In an interview with Amnesty International, a prison staff member from **Togo** said:

“As far as our protection is concerned, it is the grace of God that protects us. We only have a few gloves and masks... What we were given was very insufficient. While we use the materials economically, that is to say one glove instead of two to do the searches, it wears out in a few days [but] we manage as best we can.”⁷⁵



⁷³ Amnesty International, *Prisoners of the pandemic: The right to health and COVID-19 in Pakistan's detention facilities* (Index: ASA 33/3422/2020), December 2020, www.amnesty.org/download/Documents/ASA3334222020ENGLISH.PDF (Amnesty International, *Prisoners of the pandemic: The right to health and COVID-19 in Pakistan's detention facilities*), p. 4.

⁷⁴ Amnesty International, interview with former detainee “Sopheap” (real name withheld for security reasons), Phnom Penh, 16 November 2020

⁷⁵ Amnesty International, telephone interview with prison staff member, 9 September 2020.

INTERNATIONAL STANDARDS

The UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules) set out the following requirements for prisons in terms of sanitation and hygiene:

Rule 15: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”

Rule 16: “Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.”

Rule 17: “All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.”

Rule 18(1): “Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.”

Rule 22(2): “Drinking water shall be available to every prisoner whenever he or she needs it.”⁷⁶

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the Bangkok Rules) are also relevant in this context:

“The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.”⁷⁷

The UN Human Rights Committee has emphasized that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule”, which “as a minimum, cannot be dependent on the material resources available in the state party”.⁷⁸

In the prison context, which often involves confined and congested places, the risk of contagion is even greater than within communities on the outside. As the risk of contagion endangers the health and life of the persons deprived of their liberty, it is states’ responsibility to protect those who are in their care from falling sick to COVID-19, including through the provision of adequate PPE.

Along with physical distancing and good hygiene habits such as washing one’s hands regularly, one of the WHO’s main recommendation has been for people to wear a mask, as they reduce potential exposure risk from an infected person, by reducing the emission of virus-laden droplets.⁷⁹ For older persons in particular, WHO recommends wearing a medical mask because of the increased protection it provides.⁸⁰

As highlighted by the UN High Commissioner for Human Rights, infectious and communicable diseases are often not adequately treated, with potential lethal consequences, and this inadequate access to health care often stems from routine underfunding, understaffing and a lack of prison health policy, as well as organizational and structural lacunae.⁸¹ In turn, this can result in shortages of medicine and medical supplies and a lack of specialists.

“Within wider environments where the virus is spreading, masks should be worn by the general public in settings where it is not possible to maintain at least 1 meter from others. Examples of these settings

⁷⁶ The Nelson Mandela Rules (UN Doc. A/RES/70/175), adopted in 2015, replaced the Standard Minimum Rules for the Treatment of Prisoners that were adopted in 1957.

⁷⁷ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), UN Doc. A/C.3/65/L.5, 6 October 2010, Rule 5.

⁷⁸ UN Human Rights Committee, General Comment 21, para. 4.

⁷⁹ WHO, *Coronavirus disease (COVID-19): Masks*, 1 December 2020, www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-masks (WHO, *Coronavirus disease (COVID-19): Masks*).

⁸⁰ WHO, *Coronavirus disease (COVID-19): Masks*.

⁸¹ UN High Commissioner for Human Rights, *Human rights in the administration of justice*, UN Doc. A/HRC/42/20, 21 August 2019.

include indoor locations that are crowded and have poor ventilation, public transport and places of high population density – among others.”⁸²

The lack of resources or absence of necessary infrastructure within states to provide each detainee with sufficient PPE cannot justify their failure to uphold their international human rights obligations, as it is their responsibility to ensure the safety and wellbeing of individuals who are in their custody. The WHO has expressly said: “The provision of safe water, sanitation and hygienic conditions is essential to protecting human health during all infectious disease outbreaks, including the COVID-19 outbreak.”⁸³

Furthermore, the UN Committee on Economic, Social and Cultural Rights has urged states to give special attention to ensure prisoners and detainees are “provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners.”⁸⁴

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on all states to ensure that all detainees are regularly provided with face masks, adequate quantities of soap, sanitizing items (free of charge) and access to clean running water.

States should also ensure that all prison staff and others coming into contact with detainees, including during arrest and initial detention in police stations, are provided with and instructed to wear PPE, including masks.

Efforts should be made to improve the hygiene and cleanliness of detention places and ensure sanitary and washing installations are adequate and functioning. Such measures should be sensitive to gender, culture, abilities and age.

4.3 TESTING, SCREENING AND TREATMENT

INADEQUATE TESTING AND TREATMENT

COVID-19 has laid bare years of underinvestment and neglect of health services in prisons. Across all the countries monitored as part of this research, irrespective of the economic status of the state, prison authorities were unable to cope with the increased demand for preventive health measures and medical treatment of prisoners. While finding reliable and updated data on screening and testing protocols and practices in prisons proved difficult, available information showed acute shortages of testing capacity, practices inconsistent with public health guidance and concerning examples of discriminatory and punitive measures.

Huge shortages in testing capacity were particularly evident in the early phases of the spread of COVID-19 in many, if not all, countries monitored for this report. Several independent inspection bodies have pointed to acute shortages in prisons, including in wealthier countries. For instance, in the **UK**, an interim assessment of the situation in prisons by public health experts in April 2020 confirmed limited and variable access to testing for prisoners.⁸⁵ The Independent Advisory Panel on Deaths in Custody, a non-departmental public body providing advice to the UK’s Ministerial Board on Deaths in Custody, quoted a prisoner saying, “there’s lots of prisoners dying and have corona but there is no plan for testing for prisoners. Government has completely forgotten about prisoners, we are still human beings...”⁸⁶ A similar warning came from a public health expert in California, **USA**, after an outbreak of COVID-19 in St Quentin prison:

⁸² WHO, *Coronavirus disease (COVID-19): Masks*.

⁸³ WHO, Water Sanitation and Health, www.who.int/teams/environment-climate-change-and-health/water-sanitation-and-health/burden-of-disease/wash-and-covid19/ (accessed on 22 February 2021), “WASH and COVID-19”.

⁸⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 15, para. 16 (g).

⁸⁵ UK, Public Health England, *Interim assessment of impact of various population management strategies in prisons in response to COVID-19 pandemic in England*, 24 April 2020, assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882622/covid-19-population-management-strategy-prisons.pdf

⁸⁶ Independent Advisory Panel on Deaths in Custody, “*Keep talking, stay safe*”: *A rapid review of prisoners’ experience under Covid-19*, 1 June 2020, static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5ee115af9592717e002903f8/1591809460419/200601+IAP+rapid+review+of+prisoner+experiences+under+Covid-19+-+FINAL+CLEAN.pdf

“You have all of these infected people in an ancient building with bars over the windows – it’s like keeping people in a burning house without putting out the fire. We have to think of this like an earthquake or a wildfire: time is everything. Every hour you wait is potential lives.”⁸⁷

WHO guidance calls for screening of detainees should take place as promptly as possible after the time of entry into or transfer from another place of detention.⁸⁸ With their consent, detainees should have access to COVID-19 testing, medical examination and treatment. But lack of testing capacity led to many countries limiting COVID-19 testing in prisons or not conducting it in a systematic way.

For instance, in **Bulgaria**, between 13 March and 24 November 2020, only 154 tests were carried out among prisoners and 26 of them were identified as positive, while 300 tests were conducted among members of the prison staff and 219 people tested positive.⁸⁹ The Bulgarian Helsinki Committee told Amnesty International that prisoners reported to lawyers their concerns that levels of infection were much higher and were not being recorded because of the low testing rates.⁹⁰

In the **USA**, the wife of a pre-trial detainee at Cooks County Jail, Chicago, Illinois, who had been held in a dormitory with 50 others and subsequently died, reported that she had made a total of 132 calls to various jail authorities to alert them to the lack of personal protective equipment on her husband’s dormitory and seeking to have him treated, but that they had failed to act on her pleas. Her husband was finally transferred to hospital after he became seriously ill, but later died.⁹¹

Amnesty International’s research also found instances where COVID-19 tests were not readily accessible to prison staff either. In **Togo**, for instance, a prison guard interviewed by Amnesty International said:

“There are no systematic tests for prison guards who have been in contact with ill detainees and, particularly, those who caught the virus. Specialized services test detainees who are thought to have contracted the virus but not the guards who have been in contact with them or the guards who brought them to the hospital. Even worse, if [prisoners] test positive, no measure is taken for the guards who have come into contact with them.”⁹²

Some prison staff have spoken to Amnesty International about their concerns on condition of anonymity. One prison staff member from **Madagascar** told Amnesty International:

“The [government] response has been mediocre... because a lot of the measures that should have been taken weren’t taken here on many levels, including in terms of equipment, infrastructure. There is also a discrepancy between what’s said in the newspapers and the reality. For example, they say there is enough equipment in prisons, but the truth is there isn’t any.”⁹³

There were also concerning examples which indicate possible discriminatory or punitive measures, which led to some prisoners being denied adequate medical treatment. In **Iran**, Amnesty International received distressing reports of prisoners with COVID-19 symptoms in being neglected for several days, even when they had pre-existing heart and lung problems, diabetes or asthma. When their conditions worsened, many were quarantined in a separate section in the prison or placed in solitary confinement without access to adequate health care.⁹⁴ Amnesty International also received information on several cases where Iranian prison authorities refused to inform prisoners who had undergone a test of their results or to provide the results in a timely manner.⁹⁵ This was the case for human rights defender and prisoner of conscience Narges Mohammadi, who displayed COVID-19 symptoms and, after much pressure from family members, was tested on 8 July 2020 along with other 11 women in Zajan prison. The authorities denied Narges Mohammadi, who suffers from a pre-existing lung disease that causes difficulty breathing, access to the results of her test and did not offer her any specialized medical care.⁹⁶ In the wake of an international

⁸⁷ Bloomberg, “Virus Ravaging Historic Prison Spirals Into Health Crisis”, 9 July 2020, www.bloomberg.com/news/articles/2020-07-09/virus-ravaging-historic-prison-spirals-into-public-health-crisis

⁸⁸ WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance, 8 February 2021, www.apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y, p. 10.

⁸⁹ Official data provided by the General Directorate Execution of Sentences to the Bulgarian Helsinki Committee and communicated to Amnesty International in interviews in October, November and December 2020.

⁹⁰ Both the Bulgarian Helsinki Committee and the Bulgarian Prisoners’ Association confirmed this in interviews with Amnesty International in October, November and December 2020.

⁹¹ *Current Affairs*, “COVID-19 killed my husband in jail. So did Democrats’ indifference”.

⁹² Amnesty International, interview with prison staff member (name withheld for security reasons), Lomé, 9 September 2020.

⁹³ Amnesty International interview with prison staff member (name withheld for security reasons), 24 August 2020.

⁹⁴ Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*.

⁹⁵ Amnesty International, *Iran: Human rights defender’s life at risk of COVID-19: Narges Mohammadi*, 13 July 2020, www.amnesty.org/en/documents/mde13/2710/2020/en/ (Amnesty International, *Iran: Human rights defender’s life at risk of COVID-19: Narges Mohammadi*).

⁹⁶ Amnesty International, *Iran: Human rights defender’s life at risk of COVID-19: Narges Mohammadi*.

campaign on her behalf, she was released on 8 October 2020 after her sentence was reduced, meaning she could then seek the health care she needed.⁹⁷

In **Turkey**, prison authorities have been unable or unwilling to transfer prisoners to hospitals outside the prison despite requests from doctors.⁹⁸ On 27 August 2020, Mustafa Kabakçioğlu, a detainee held in quarantine on suspicion of having COVID-19 was found dead in his cell.⁹⁹ He had been suffering from diabetes and asthma and, according to media reports, had repeatedly requested to be transferred to hospital, but this had been denied.¹⁰⁰ In its response to a letter sent by Amnesty International about COVID-19 measures in prisons and emergency release measures,¹⁰¹ The Turkish General Directorate of Prisons and Detention Houses did not address the questions regarding deaths of prisoners and guards from COVID-19.¹⁰²

In **Sri Lanka**, Shani Abeysekera, a senior police officer who had been involved in investigating emblematic cases of serious human rights violations during the previous administration and had been arrested on 31 July 2020 for allegedly concealing evidence in a weapons case, tested positive for COVID-19 in November 2020. Instead of being provided adequate treatment, he was transferred from Mahara prison to a remote military-run treatment facility against his will and without his family being informed.¹⁰³ There were serious concerns for his health as he was suffering from diabetes and a heart condition, which warranted hospital care.¹⁰⁴ The Human Rights Commission of Sri Lanka called upon the prison administration to transfer him to “the nearest hospital treating people infected by the virus immediately”.¹⁰⁵ Shani Abeysekera was later transferred to the National Institute of Infectious Diseases¹⁰⁶ and then the National Hospital¹⁰⁷ in Colombo.

One of the first COVID-19-related cases to reach the European Court of Human Rights involved a severely ill prisoner in **Bulgaria** on three months’ home leave starting in January 2020 due to a diagnosis of advanced bone cancer. Due to return to Varna Prison in April 2020, at the peak of the pandemic, the family requested an extension of home leave, which was first refused by the Prosecutor’s Office in Varna. The family appealed, but also engaged the help of the Bulgarian Helsinki Committee to request an order for interim measures to halt the man’s return to prison from the European Court of Human Rights on 21 April; the court ordered the interim measures on 22 April. On the same day, the Prosecutor’s Office agreed to the request for an extension of home leave, ordering a renewable three months’ extension; the latest extension ends in July 2021. An application to the European Court of Human Rights on the merits was filed in May 2020 and focused on the inability of prison authorities to provide the prisoner with treatment or palliative care in prison, specifically in the context of COVID-19.¹⁰⁸

⁹⁷ Amnesty International, *Narges Mohammadi: Iranian Human Rights Defender Released!*, 9 October 2020, www.amnesty.org.uk/iran-narges-mohammadi-prison-human-rights-activist

⁹⁸ Prison Insider, *Country Profile- Turkey*, 2017, www.prison-insider.com/fichepays/prisonsenturquie?s=sante-5cab190969190#sante-5cab190969190

⁹⁹ Amnesty International, interview with CISST.

¹⁰⁰ BBC, “Mustafa Kabakçioğlu: KHK’lı eski polislin ölümü neden cezaevinde ihmal iddialarını gündeme getirdi?”, 15 October 2020, www.bbc.com/turkce/haberler-turkiye-54561319

¹⁰¹ Amnesty International, letter to the Turkish Directorate of Prisons and Detention Houses, 22 September 2020, sent via email.

¹⁰² Turkey, Directorate of Prisons and Detention Houses, letter to Amnesty International, 17 December 2020, received via email.

¹⁰³ Amnesty International, *Sri Lanka: Former Police Investigator Jailed with COVID-19: Shani Abeysekera* (Index: ASA 37/3403/2020), 27 November 2020, www.amnesty.org/en/documents/asa37/3403/2020/en/ (Amnesty International, *Sri Lanka: Former Police Investigator Jailed with COVID-19: Shani Abeysekera*).

¹⁰⁴ Amnesty International, *Sri Lanka: Former Police Investigator Jailed with COVID-19: Shani Abeysekera*.

¹⁰⁵ Human Rights Commission of Sri Lanka, Letter to Commissioner-General of Prisons, 25 November 2020, www.hrcsl.lk/wp-content/uploads/2020/02/HRCSL-Letter-to-Commissioner-General-of-Prisons-25-Nov-2020-1.pdf

¹⁰⁶ *ColomboPage*, “SSP Shani Abeysekera admitted to IDH Hospital, Opposition Leader requests to ensure his safety”, 28 November 2020, www.colombopage.com/archive_20B/Nov28_1606541049CH.php

¹⁰⁷ *NewsFirst*, “Shani Abeysekera transferred to national hospital”, 22 December 2020, www.newsfirst.lk/2020/12/22/shani-abeysekera-transferred-to-national-hospital/

¹⁰⁸ Prison Reform, *On the Incompatibility of Serious Illness with Imprisonment*, 26 May 2020, prisonreform.bg/en/on-the-incompatibility-of-serious-illnesses-with-imprisonment/



Lack of medical staff. © Antonio Colafemmina

INNOVATIVE TESTING AND SCREENING

These findings contrast with some good and innovative practices observed in some countries monitored for this research.

In **Ireland**, for example, the government announced a policy, as early as March 2020, to screen new intakes at the point of entry. Additionally, existing prisoners showing COVID-19 symptoms had access to testing, medical examination, and isolation. A specific unit in Cloverhill prison was dedicated for isolation of prisoners suspected of being infected and prisoners could only leave this facility upon a negative test result.¹⁰⁹ Contact tracing in prisons comprised identification of potential new cases, testing, an interview with the infected individual and review of CCTV footage to identify contacts and implement isolation and quarantine measures.¹¹⁰ Ireland's approach was successful in preventing a major outbreak in prison facilities. The Irish prison service reports that the number of detainees who tested positive for coronavirus in prisons amounted to 51 between March 2020 and 20 January 2021.¹¹¹

¹⁰⁹ Ireland, Department of Justice, "Information regarding the Justice Sector COVID-19 plans", www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

¹¹⁰ Mattea Clarke et al., "Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland", *Journal of Public Health*, June 2020, static.rasset.ie/documents/news/2020/06/journal-of-public-health-covid19-irish-prisons.pdf

¹¹¹ Ireland, Prison Service, "Confirmed cases of Covid-19 in Irish Prisons", 21 January 2021, www.irishprisons.ie/confirmed-cases-covid-19-irish-prisons/

In **Italy**, following a ministerial decree passed on 8 March 2020, the Department of Penitentiary Administration issued a notice the same day with instructions on screening and testing detainees.¹¹² In October, Antigone reported that new intakes went through medical screening and were isolated depending on a doctor's advice. Prisoners who were suspected of having contracted COVID-19 were examined by a prison medical doctor and tested as necessary. If a detainee tested positive, the doctor decided whether to organize a transfer to the hospital or quarantine the individual in prison.¹¹³ However, there were difficulties in access to testing and slow processing of test results during the first lockdown period in the country, which lasted from March to May 2020.¹¹⁴

One practice that has been piloted for early detection of COVID-19 outbreaks in prisons is testing wastewater, which could allow prison authorities to take swift action to stem chains of transmissions, including by limiting interactions, spacing inmates and deciding whether to allow normal levels of in-person visits.¹¹⁵ Some experts suggest that wastewater testing results can identify a COVID-19 outbreak up to seven days sooner than patient testing.¹¹⁶ This is due to the fact that traces of the virus can be detected in excreta soon after the infection whereas an individual would seek medical help only after the onset of symptoms and would need to wait for the test results to obtain a diagnosis.¹¹⁷ In Ohio, **USA**, the state prison system started using this methodology for early detection of COVID-19 cases in September 2020.¹¹⁸ The WHO stressed that more evidence was needed to recommend testing wastewater as a standard practice in the detection of the virus.¹¹⁹ However, in an August 2020 scientific briefing, the WHO examined a number of instances in which the application of this surveillance tool could be explored.¹²⁰ One such case was for early warning purposes in high-risk closed environments, such as prisons.¹²¹

INTERNATIONAL STANDARDS

Screening and early testing are essential components of COVID-19 control and containment measures. The WHO's interim guidance note on preparedness, prevention and control of COVID-19 in prisons and other places of detention recommended robust risk assessment and screening at the point of entry in prisons, and that health care and public health teams should undertake a risk assessment of all people entering the prison.¹²² As such, prisoners should have timely access to testing services for COVID-19 and form part of the priority groups for COVID-19 testing.¹²³

Failing to provide appropriate medical treatment that could reasonably be expected of the state, or to hold prisoners who suffer from serious and highly infectious diseases with other prisoners in an overcrowded cell, may amount to ill-treatment.¹²⁴ Intentionally depriving someone of medical attention would amount to conduct falling within the definition of torture if the deprivation inflicts "severe pain or suffering" and is committed for a prohibited purpose, such as punishment, coercion or intimidation, obtaining a "confession", or discrimination.¹²⁵

¹¹² Italy, Ministry of Justice, "Nota 13 marzo 2020 – Ulteriori indicazioni operative per la prevenzione del contagio da coronavirus negli istituti penitenziari", 13 March 2020,

www.giustizia.it/giustizia/it/mg_1_8_1.page?facetNode_1=0_62&contentId=SDC253426&previousPage=mg_1_8

¹¹³ Antigone, response to Amnesty International questionnaire, 8 October 2020, received via email (Antigone, response to Amnesty International questionnaire).

¹¹⁴ Antigone, response to Amnesty International questionnaire.

¹¹⁵ Cleveland.com, "Ohio officials detected coronavirus in Akron, Mansfield, Oregon and prison sewage before cases ticked up", 29 September 2020, www.cleveland.com/open/2020/09/ohio-officials-detected-coronavirus-in-akron-mansfield-oregon-and-prison-sewage-before-cases-ticked-up.html

¹¹⁶ David A. Larsen and Krista R. Wigginton, "Tracking COVID-19 with wastewater", *Nature biotechnology*, 21 September 2020, www.nature.com/articles/s41587-020-0690-1 (*Nature biotechnology*, "Tracking COVID-19 with wastewater").

¹¹⁷ *Nature biotechnology*, "Tracking COVID-19 with wastewater".

¹¹⁸ *The Columbus Dispatch*, "Ohio prisons are combating COVID-19 by keeping an eye on wastewater", 29 September 2020, eu.dispatch.com/story/news/2020/09/29/ohio-prisons-testing-wastewater-keep-eye-covid-19-cases/3560197001/

¹¹⁹ WHO, *Status of environmental surveillance for SARS-CoV-2 virus, scientific briefing*, 7 August 2020, www.who.int/news-room/commentaries/detail/status-of-environmental-surveillance-for-sars-cov-2-virus (WHO, *Status of environmental surveillance for SARS-CoV-2 virus, scientific briefing*).

¹²⁰ WHO, *Status of environmental surveillance for SARS-CoV-2 virus, scientific briefing*.

¹²¹ WHO, *Status of environmental surveillance for SARS-CoV-2 virus, scientific briefing*.

¹²² WHO, *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?ua=1.

¹²³ See also recommendations in Amnesty International, *Exposed, silenced, attacked: Failures to protect health and essential workers during the COVID-19 pandemic* (Index: POL 40/2572/2020), 13 July 2020, www.amnesty.org/download/Documents/POL4025722020ENGLISH.PDF

¹²⁴ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1. See also CESCR, General Comment 14, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 34: "States should also refrain... from limiting access to health services as a punitive measure".

¹²⁵ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.

According to the Nelson Mandela Rules, prison authorities have the responsibility to provide emergency treatment in urgent cases:

“Prisoners who require specialized treatment or surgery must be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.”¹²⁶

As it stands, according to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, prisons are not equipped with “sufficient emergency medical equipment, such as oxygen tanks, nasal cannula, and oxygen face masks, to respond to an outbreak of patients with respiratory distress”.¹²⁷ The UN Special Rapporteur has stated:

“Whenever the State takes in its custody an individual, it has the responsibility to care for the life and bodily integrity of that person. Death resulting, in whole or in part, from the denial of such essentials to life as potable water, safe and sufficient food, sanitation, adequate space, proper ventilation, or adequate medical care is thus an arbitrary death for which the State is responsible.”¹²⁸

States must also ensure there are mechanisms in place to guarantee support for the families of prison staff, including compensation, in case of death or illness because of exposure to COVID-19.¹²⁹ In addition, where detainees have been receiving medical treatment while detained, for example, for transmissible diseases commonly found in detention populations, the continuation of treatment after release should be guaranteed.¹³⁰

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on states to take effective measures to prevent, detect, isolate and treat possible COVID-19 infections amongst prisoners, prison staff and those who come into contact with infected individuals. They should provide emergency treatment where required.

States should ensure that health centres in prisons have sufficient medical equipment of a good standard and enough medical staff to allow prisoners to receive appropriate treatment and care. Prisoners who require specialized treatment or surgery must be transferred to specialized institutions or to civil hospitals.

Amnesty International has previously called on states to recognize COVID-19 as an occupational disease.¹³¹ In this context states must also ensure there are mechanisms in place to support the families of prison staff, including through compensation, in case of death or illness because of exposure to COVID-19.

States must conduct thorough, impartial and independent investigations into all cases of deaths in custody and ensure that relatives of those who died in prison are able to obtain an effective remedy as warranted.

4.4 TACKLING OVERCROWDING

INADEQUATE MEASURES

Amnesty International notes that many countries have released prisoners through measures such as pardons, commutations, temporary suspension of sentences, conditional, temporary or supervised releases, transfers into home confinement, and identification and implementation of alternatives for accommodation and monitoring, such as for prisoners towards the end of their sentences. According to the UNODC, there was an unprecedented wave of prisoner releases in 2020, with more than 600,000 prisoners in more than

¹²⁶ Nelson Mandela Rules, Rule 27.

¹²⁷ UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *COVID-19 and Protection of right to life in places of detention*.

¹²⁸ UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *COVID-19 and Protection of right to life in places of detention*.

¹²⁹ Inter-Agency Standing Committee (IASC), OHCHR and WHO, *Interim Guidance - COVID-19: Focus on Persons Deprived of Their Liberty*, March 2020, interagencystandingcommittee.org/system/files/2020-11/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty_0.pdf (IASC, OHCHR and WHO, *Interim Guidance - COVID-19: Focus on Persons Deprived of Their Liberty*).

¹³⁰ UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*.

¹³¹ Amnesty International, *Exposed, silenced, attacked: Exposed, silenced, attacked: Failures to protect health and essential workers during the COVID-19 pandemic* (Index: POL 40/2572/2020), 13 July 2020, www.amnesty.org/download/Documents/POL4025722020ENGLISH.PDF

100 countries released as of July 2020, mostly individuals with pre-existing health conditions, those whose release would not result in compromising public safety, and those approaching the end of their sentence.¹³²

According to Amnesty International's research, releases of detainees in relation to COVID-19 have taken place across Africa (including in Burkina Faso, Cameroon, Côte d'Ivoire, Ethiopia, Kenya, Mozambique, Niger, Nigeria, Senegal, South Africa, Sudan and Uganda);¹³³ Asia (including in Afghanistan,¹³⁴ India,¹³⁵ Indonesia,¹³⁶ Myanmar,¹³⁷ the Philippines¹³⁸ and Sri Lanka¹³⁹); Europe (including in Belgium, Cyprus, France, Germany, Italy, Portugal and the UK); the Middle East and North Africa (including in Algeria, Bahrain, Iran, Morocco and Tunisia); and the Americas (including in Argentina, Brazil, Canada, Honduras, Mexico, Peru and the USA)¹⁴⁰.

Despite such encouraging steps to reduce overcrowding in prisons, Amnesty International's research indicates that the rates of releases remained ad hoc and insufficient to address the magnitude of the risk.

Some states' prison administrations have attempted to protect older persons by prioritizing them for release. On 8 May 2020, the President of **South Africa** authorized the early release of 19,000 of the country's 155,000 prisoners, or about 12% of the prison population. The measures highlighted that priority was to be given to those convicted of minor offences who had already served part of their sentence and that these persons would be released on parole. Persons who had been convicted of murder, attempted murder, sexual assault or child abuse were excluded from this measure. Detainees with underlying health problems, those 60 years and above, and women with infants were to be considered as priorities.¹⁴¹

In **Indonesia**, older prisoners were moved to less crowded rooms or cells.¹⁴² In **New Zealand**, the Minister of Corrections explained that older detainees (those over 70) were being held separately as a precautionary measure.¹⁴³

In **Italy**, the government informed Amnesty International that under a new decree adopted on 17 March 2020 an exception was introduced to an existing law on house arrest.¹⁴⁴ The new provision allowed prisoners, regardless of their health condition, to serve their sentences at home or "in another public or private place of care, assistance and reception, if not longer than eighteen months, even if it constitutes the residual part of a longer penalty", clarifying that, if there were between seven and 18 months left to serve, electronic monitoring was needed.¹⁴⁵ Some categories of prisoners considered "high-risk", including repeat offenders and those held in respect of organized crime, were excluded from this measure. Following the lapse of the decree in June 2020, another decree was adopted in October 2020 which introduced further urgent measures to ease overcrowding in Italian prisons.¹⁴⁶ These included the extension beyond the standard limits imposed by law of temporary release permits for ordinary prisoners and for prisoners in

¹³² UNODC, *COVID-19 in prisons – Member states and UNODC reiterate their commitment to the Nelson Mandela Rules*, 22 July 2020, www.unodc.org/unodc/en/frontpage/2020/July/covid-19-in-prisons--member-states-and-unodc-reiterate-their-commitment-to-the-nelson-mandela-rules.html (UNODC, *COVID-19 in prisons – Member states and UNODC reiterate their commitment to the Nelson Mandela Rules*).

¹³³ See, for example, ACHPR, *Press Release of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa on the Release of Prisoners during the COVID-19 Pandemic*, 17 April 2020, www.achpr.org/pressrelease/detail?id=492

¹³⁴ Tolo News, "5,300 Prisoners Released Over COVID-19 Fear: Official", 15 April 2020, tolonews.com/afghanistan/5300-prisoners-released-over-covid-19-fear-official

¹³⁵ *The Indian Express*, "Explained: Why prisoners are being freed", 16 May 2020, indianexpress.com/article/explained/mumbai-central-jail-maharashtra-releasing-prisoners-coronavirus-6410383/; and NDTV, "'Not Every Prisoner To Be Released Amid Pandemic': Supreme Court", 23 September 2020, www.ndtv.com/india-news/supreme-court-not-every-prisoner-to-be-released-amid-pandemic-2299616

¹³⁶ Anadolu Agency, "Indonesia releases 22,000 prisoners over COVID-19 fears", 3 April 2020, www.aa.com.tr/en/asia-pacific/indonesia-releases-22-000-prisoners-over-covid-19-fears/1791209; and *Jakarta Post*, "COVID-19: Indonesia releases more than 5,500 inmates, plans to free 50,000", 1 April 2020, www.thejakartapost.com/news/2020/04/01/covid-19-indonesia-releases-more-than-5500-inmates-plans-to-free-50000.html

¹³⁷ Reuters, "Myanmar to free almost 25,000 prisoners in largest amnesty in years", 17 April 2020, www.reuters.com/article/us-health-coronavirus-myanmar-prisoners-idUSKBN21Z0FR

¹³⁸ Al Jazeera, "Philippines: Nearly 10,000 prisoners released over virus fears", 2 May 2020, www.aljazeera.com/news/2020/5/2/philippines-nearly-10000-prisoners-released-over-virus-fears

¹³⁹ Sri Lanka released thousands of prisoners, reducing the prison population from around 28,000 to around 14,000. However, it subsequently detained around 10,000 people on suspicion of drug-related offences. See Voice for Rights, interview with Ramani Muttetuwegama, former commissioner of the Human Rights Commission of Sri Lanka, January 2021, www.youtube.com/watch?v=52jxE4Ys2PY&feature=youtu.be&ab_channel=AithiyaMedia

¹⁴⁰ International Commission of Jurists, *Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses*, September 2020, www.ici.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf, p. 86.

¹⁴¹ South Africa, Ministry of Justice and Correctional Services, "Circular", 8 May 2020, www.dcs.gov.za/wp-content/uploads/2018/10/Minister-Lamola-Final-Parole-8-may-2020.pdf

¹⁴² Amnesty International, interview via video call with Leopold Sudaryono, 28 August 2020.

¹⁴³ Newshub., "Coronavirus: No plans to release low-risk prisoners during COVID-19 crisis", 29 March 2020, www.newshub.co.nz/home/new-zealand/2020/03/coronavirus-no-plans-to-release-low-risk-prisoners-during-covid-19-crisis.html and on file.

¹⁴⁴ Italy, Decreto Cura Italia 18/2020, 17 March 2020, introducing an exception to existing Law 199/2010.

¹⁴⁵ Italy, Department of Penitentiary Administration, letter to Amnesty International, p. 12.

¹⁴⁶ Italy, Decreto Ristori 137/2020, 28 October 2020, Section III.

“semi-custody”,¹⁴⁷ as well as the possibility for detainees to serve the rest of their sentences at home if they satisfied the conditions set out in the decree. These measures remained in force until 31 December 2020.

According to the Italian authorities, from the beginning of the pandemic until 15 September 2020, 969 inmates were released under the March decree.¹⁴⁸ As a result of its application and thanks to supervisory magistrates who adopted a broader interpretation of pre-existing laws in order to put some individuals under house arrest rather than in detention and to place others on probation,¹⁴⁹ the total prison population in Italy decreased from 61,230 on 28 February 2020 to 53,530 on 15 June 2020.¹⁵⁰ It had increased to 54,968 by the end of October 2020¹⁵¹ and was 53,364 at the end of 2020 (which is still more than 3,000 higher than the official maximum capacity).¹⁵² Amnesty International is not aware of data on the age of those released.

In England and Wales in the **UK**, the authorities put in place a new policy (the End of Custody Temporary Release scheme) and issued additional guidance for the Compassionate Release on Temporary Licence scheme. The End of Custody Temporary Release scheme, introduced in April 2020, provided for the “early release of stringently assessed low-risk prisoners who were within two months of their release date”. No high-risk offenders, including those convicted of violent or sexual offences or those who posed a risk to national security, were considered for release. The policy was paused at the end of August 2020 and this decision was kept “under constant review”.¹⁵³ Under the Compassionate Release on Temporary Licence scheme, pregnant women, prisoners with their babies in custody (in mother and baby units) and those defined by National Health Service guidelines as “medically extremely vulnerable” to COVID-19 could apply for Compassionate Release on Temporary Licence on a case-by-case basis.¹⁵⁴ In April, the Ministry of Justice announced that up to 4,000 detainees would be eligible for release under these schemes. However, Her Majesty’s Prison and Probation Service, an executive agency of the UK’s Ministry of Justice responsible for the correctional services in England and Wales, reported that, as of 30 September, only 316 detainees had been released early under these temporary release schemes.¹⁵⁵ Several organizations expressed concern about the lack of public guidance and clarity surrounding the schemes.¹⁵⁶

On 16 April 2020, a law was adopted in **Chile** allowing for detention to be commuted to house arrest to tackle prison overcrowding. Prisoners convicted of crimes against humanity and those found guilty of homicide, kidnapping, drug trafficking and domestic violence were explicitly excluded from this measure.¹⁵⁷ Earlier, on 2 April,¹⁵⁸ the government had presented to the parliament for immediate discussion another draft law, originally formulated in 2018, which would allow persons deprived of their liberty who were “aged 75 or older” or who had been “diagnosed with a terminal illness or a grave and incurable physical harm causing a serious dependency” to be transferred from detention in prison to house arrest. The bill did not exclude persons convicted of crimes under international law from this measure,¹⁵⁹ which caused a public outcry.¹⁶⁰ In April 2020, the Senate Human Rights Committee presented its opinion on the draft law and in June the

¹⁴⁷ Detainees in “semi-custody” (*semilibertà*) are allowed to spend part of the day outside of the prison to work or to participate in educational or other activities that contribute to their social rehabilitation or reintegration.

¹⁴⁸ Italy, Decreto Cura Italia 18/2020, 17 March 2020.

¹⁴⁹ *Sistema Penale*, “Coronavirus ed emergenza carceri: la via del ricorso alla Corte di Strasburgo”, 15 May 2020, www.sistemapenale.it/it/scheda/coronavirus-emergenza-carceri-ricorso-corte-strasburgo (*Sistema Penale*, “Coronavirus ed emergenza carceri: la via del ricorso alla Corte di Strasburgo”).

¹⁵⁰ *Sistema Penale*, “Coronavirus ed emergenza carceri: la via del ricorso alla Corte di Strasburgo”, p. 12.

¹⁵¹ *Sistema Penale*, “Coronavirus ed emergenza carceri: la via del ricorso alla Corte di Strasburgo”, p. 13.

¹⁵² Italy, Ministry of Justice, “Detenuti italiani e stranieri presenti e capienze per istituto - aggiornamento al 31 dicembre”, 31 December 2020, 2020www.giustizia.it/giustizia/it/mg_1_14_1.page?facetNode_1=0_2_7&contentId=SST314850&previousPage=mg_1_14

¹⁵³ UK, Her Majesty’s Prison and Probation Service (HMPPS), letter to Amnesty International, 21 December 2020. See also UK, Ministry of Justice, “Pause to prisoner early release scheme”, 19 August 2020, www.gov.uk/government/news/pause-to-prisoner-early-release-scheme

¹⁵⁴ UK, HMPPS, letter to Amnesty International, 21 December 2020.

¹⁵⁵ UK, Ministry of Justice, *HM Prison and Probation Service COVID-19 Official Statistics*, “Data to 30 September 2020”, 9 October 2020, assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925232/HMPPS_COVID19_SEP20_Pub.pdf, p. 2.

¹⁵⁶ See, for example, Prisoners Advice Service, “Pause to end of custody temporary release (ECTR)”, 25 August 2020, www.prisonersadvice.org.uk/pause-to-end-of-custody-temporary-release-ectr/

¹⁵⁷ OAS, *CIDH expresa preocupación por iniciativa legislativa en Chile que autorizaría la prisión domiciliaria a determinados condenados por graves violaciones a los derechos humanos cometidas durante la dictadura cívico militar*, 22 April 2020, www.oas.org/es/cidh/prensa/comunicados/2020/087.asp

¹⁵⁸ *Diario U Chile*, “Gobierno anuncia veto en respuesta al blindaje del oficialismo a criminales de lesa humanidad”, 4 April 2020, radio.uchile.cl/2020/04/02/gobierno-anuncia-veto-en-respuesta-al-blindaje-del-oficialismo-a-criminales-de-lesa-humanidad/

¹⁵⁹ OAS, *CIDH expresa preocupación por iniciativa legislativa en Chile que autorizaría la prisión domiciliaria a determinados condenados por graves violaciones a los derechos humanos cometidas durante la dictadura cívico militar*, 22 April 2020, www.oas.org/es/cidh/prensa/comunicados/2020/087.asp

¹⁶⁰ *Diario U Chile*, “Ley Humanitaria: un proyecto inviable que le guña el ojo a la impunidad”, 18 April 2020, radio.uchile.cl/2020/04/18/ley-humanitaria-un-proyecto-inviable-que-le-guina-el-ojo-a-la-impunidad/

Senate Constitutional Committee did the same. Both committees rejected it.¹⁶¹ At the time of writing, the bill was still under consideration.¹⁶²

In **Bulgaria**, the temporary suspension in March 2020 of new criminal proceedings, with the exception of urgent ones, and the ongoing release of those who had served their sentences led to some reduction in overcrowding.¹⁶³ One detainee with COVID-19 had been transferred from prison to house arrest as of April 2020.¹⁶⁴ However, the Bulgarian Helsinki Committee reported that, unlike other European states, Bulgaria did not implement any general reductions of the prison population in the context of the pandemic.¹⁶⁵ This is despite reports that 15-20% of prisoners and detainees in Bulgaria were living in overcrowded cells as of May 2020 (although the overall prison population is below maximum capacity).¹⁶⁶ The two main prison buildings in Sofia and Plovdiv, two key population centres, and five of the 28 investigation detention centres where pre-trial detainees are held were affected by overcrowding.¹⁶⁷ Of key concern is overcrowding in Sofia's central prison, where it is thought to be impossible to carry out repairs that would allow it to provide adequate conditions for serving sentences, especially in the absence of statutory standards for the required quantity of fresh air and day or artificial light for prisoners' physical and psychological wellbeing.¹⁶⁸

Many other countries with high levels of prison overcrowding failed to address the concern adequately within the context of COVID-19.

In the **Democratic Republic of the Congo**, where there is considerable overcrowding in prisons, between March and May 2020, only around 2,000 pre-trial detainees and prisoners detained for low-level offences were released.¹⁶⁹

In **Egypt** far fewer people were released through presidential pardons in 2020 than in 2019 despite repeated calls to reduce overcrowding in its badly ventilated and unsanitary prisons. Amnesty International documented how the authorities ignored calls to reduce the prison population amid COVID-19 outbreaks, endangering lives; hundreds of detainees were crammed into overcrowded cells with an estimated average 1.1m² floor space available per prisoner.¹⁷⁰ The UN had earlier expressed its concern about "the overcrowded prisons in Egypt and the risk of the rapid spread of the COVID-19 virus among the country's more than 114,000 inmates" and urged the authorities "to follow the lead of other states around the world and release those convicted of non-violent offences and those who are in pre-trial detention, who make up just below one third of those in jail".¹⁷¹

In **Iran**, the authorities announced that, between late February and late May 2020, they had temporarily released around 128,000 prisoners on furlough and pardoned another 10,000 in response to the outbreak. On 15 July 2020, as COVID-19 cases spiked again, the spokesperson of the judiciary announced that the head of the judiciary had issued new guidelines to facilitate a second round of leave measures. However, hundreds of prisoners detained arbitrarily, including prisoners of conscience, were excluded from these welcome measures, including human rights defenders, foreign and dual nationals, environmentalists, individuals detained due to their religious beliefs and people arbitrarily detained in connection with nationwide protests in November 2019. The authorities also continued to detain unjustly convicted

¹⁶¹ Chile, Senate, "Proyecto de Ley Humanitaria fue despachado a la Sala con informes negativos de comisiones de DD.HH. y de Constitución", www.senado.cl/proyecto-de-ley-humanitaria-fue-despachado-a-la-sala-con-informes/senado/2020-06-10/192001.html

¹⁶² Chile, Chamber of Deputies, "Proyecto de Ley: Regula las sustitución de penas privativas de libertad por razones humanitarias para las persona que indica", www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmlID=12863&prmlBOLETIN=12345-07 (accessed on 22 February 2021).

¹⁶³ Krassimir Kanev, "Covid-19 and the prison system in Bulgaria" in Antigone, *Have prisons learnt from Covid-19? How the world has reacted to the pandemic behind bars*, 2021, www.antigone.it/rivista-archivio/Rivista_Anno_XV_N1/Rivista%20Anno%20XV%20N1.pdf (Krassimir Kanev, "Covid-19 and the prison system in Bulgaria"), p. 35.

¹⁶⁴ Marcelo F. Aebi and Mélanie M. Tiago, *Prisons and Prisoners in Europe in Pandemic Times: An evaluation of the short-term impact of the COVID-19 on prison populations*, Council of Europe Annual Penal Statistics, June 2020, www.antonioscasella.eu/nume/Aebi-Tiago_18giu20.pdf, p. 9.

¹⁶⁵ Krassimir Kanev, "Covid-19 and the prison system in Bulgaria", pp. 34-38. This was confirmed in an Amnesty International interview with Bulgarian Helsinki Committee staff in December 2020.

¹⁶⁶ European Commission, *Commission staff working document. Turkey 2020 Report*.

¹⁶⁷ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2019 (Summary)*, page 30, bghelsinki.org/web/files/reports/129/files/BHC-Human-Rights-in-Bulgaria-in-2019-en.pdf (Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2019 (Summary)*).

¹⁶⁸ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2019 (Summary)*. See also *Annual Report of the Ombudsman Acting as National Preventive Mechanism (Summary)*, 2019,

www.ombudsman.bg/pictures/file/6345_%D0%A0%D0%B5%D0%B7%D1%8E%D0%BC%D0%B5_final%20%202019_EN.pdf, p. 8.

¹⁶⁹ Al Jazeera, "Overcrowded DRC prisons 'ticking time-bomb' for COVID-19 pandemic", 30 April 2020,

www.aljazeera.com/news/2020/4/30/overcrowded-drc-prisons-ticking-time-bomb-for-covid-19-pandemic

The total prison population around that time was around 40,000, according to the UN. See UN News, "COVID-19: UN teams step up efforts to protect rights in prisons, as revolts intensify worldwide", 5 May 2020, news.un.org/en/story/2020/05/1063292

¹⁷⁰ Amnesty International, *Egypt: Abused and denied health care, prisoners' lives at risk*, 25 January 2021,

www.amnesty.org/en/latest/news/2021/01/egypt-abused-and-denied-health-care-prisoners-lives-at-risk/

¹⁷¹ OHCHR, "Press briefing note on Egypt", 3 April 2020,

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25772&LangID=E

protesters, dissidents, minority rights activists and human rights defenders to begin serving prison sentences. Some prisoners of conscience who had been granted leave in March 2020 were also called back to prison. According to official statements, as of 13 June 2020, Iran's prison population was around 211,000, two and half times more than the officially declared capacity of 85,000. In July 2019, Iran's prison population was 240,000, according to officials.¹⁷²

In **Turkey**, the law was changed in April 2020 to allow for the conditional release of 90,000 prisoners. By July 2020, 65,110 had been released. This was, however, limited to prisoners over the age of 65 who had been convicted of ordinary crimes and who had almost served their sentences. Those held in pre-trial detention for alleged terrorism-related offences, including lawyers, journalists, politicians and human rights defenders were excluded.¹⁷³

In **Nepal**, despite court interventions, a long-standing situation of overcrowding continued as COVID-19 spread in prisons.¹⁷⁴ Some detainees, including 228 children held in juvenile detention facilities, were released after the Supreme Court directed the government to do so on 20 March 2020.¹⁷⁵ However, in an order issued on 3 August 2020, the court noted that "the current COVID crisis" was "taking [a] fearful form" and stated that it was necessary to "address the problem of prison overcrowding and management of prisons" and to "look for alternative ways of penalizing like Probation and Parole..."¹⁷⁶ The court ordered the Department of Prison Management to prepare a list of older prisoners who could have their sentence reduced as per Section 12 of the Senior Citizen Act 2006 and instructed the Ministry of Home Affairs to make a prompt decision to release older prisoners based on the list.¹⁷⁷ As of the end of February 2021, no older prisoners had been released, according to the department.

One welcome measure that may contribute to easing overcrowding in African prisons was a timely ruling issued by the African Court on Human and Peoples' Rights in December 2020, which declared vagrancy laws and related by-laws as incompatible with the African Charter on Human and Peoples' Rights and other regional normative frameworks.¹⁷⁸ In general, states should repeal or amend any vagrancy-related laws to ensure compliance with international human rights standards.

¹⁷² Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*, 31 July 2020, www.amnesty.org/en/latest/news/2020/07/iran-leaked-letters-reveal-state-denial-of-covid19-crisis-in-prisons/ (Amnesty International, *Iran: Leaked official letters reveal state denial of COVID-19 crisis in prisons*).

¹⁷³ European Commission, *Commission staff working document. Turkey 2020 Report*.

¹⁷⁴ *The Record*, "Nepal struggling to protect its inmates from Covid-19", 14 August 2020, www.recordnepal.com/covid19/nepal-struggling-to-protect-its-inmates-from-covid-19/; and *The Kathmandu Post*, "Overcrowded prisons pose challenge for keeping inmates safe", 7 October 2020, kathmandupost.com/national/2020/10/07/overcrowded-prisons-pose-challenge-for-keeping-inmates-safe

¹⁷⁵ Advocacy Forum, *Factsheet on COVID-19 and its effect on juvenile justice system in Nepal*, June 2020, advocacyforum.org/downloads/pdf/publications/factsheet-on-covid-19-and-its-effect-on-juvenile-justice-system-in-nepal.pdf

¹⁷⁶ Nepal, Supreme Court, Writ 076-WO-0939, 3 August 2020.

¹⁷⁷ Nepal, Supreme Court, Writ 076-WO-0939, 3 August 2020.

¹⁷⁸ Africa Criminal Justice Reform (ACJR), *African Court declares vagrancy offences are incompatible with the African Charter and other key regional human rights instruments*, undated, acjr.org.za/news/african-court-declares-vagrancy-offences-are-incompatible-with-the-african-charter-and-other-regional-human-rights-instruments



Prisoners sleeping on the floor. © Antonio Colafemmina

INTERNATIONAL STANDARDS AND CALLS FOR REDUCTION IN OVERCROWDING

There have been growing calls for governments to take urgent measures to reduce overcrowding in prisons as part of their response to COVID-19, from UN and regional human rights bodies and other intergovernmental agencies and public health experts. As early as March 2020, the UN High Commissioner for Human Rights urged governments to release inmates who are especially vulnerable to COVID-19, such as older people, as well as low-risk offenders, pleading that “imprisonment should be a measure of last resort, particularly during this crisis”.¹⁷⁹ In a joint statement issued in May 2020, the heads of the UNODC, the WHO, UNAIDS and the OHCHR raised alarm about the heightened vulnerability of prisoners and other people deprived of liberty to COVID-19 and urged states “to take all appropriate public health measures in respect of this vulnerable population that is part of our communities”.¹⁸⁰

On the regional level, the ACHPR and the IACHR welcomed ongoing efforts to reduce overcrowding in prisons and called for more releases of prisoners in order to reduce the risk of the spread of COVID-19.¹⁸¹ Council of Europe institutions have also called for the decrease of the prison population and to generally use

¹⁷⁹ OHCHR, *Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’* – Bachelet, 25 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745

¹⁸⁰ UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*. See also CPT, CPT Standards, Prisons, Imprisonment, para. 46.

¹⁸¹ ACHPR, *Press Release of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa on the Release of Prisoners during the COVID-19 Pandemic*, 17 April 2020; IACHR, *The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic*, 31 March 2020 (IACHR, *The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic*).

all available alternatives to detention whenever possible and without discrimination.¹⁸² NGOs around the globe have also made similar calls.¹⁸³

The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment noted that “[persons] deprived of their liberty comprise a particularly vulnerable group”, partly because of “their limited capacity to take precautionary measures”, and urged states to:

“Reduce prison populations and other detention populations wherever possible, by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of non-custodial measures indicated, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)”.¹⁸⁴

This call was also echoed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which recommended that states should resort, as far as possible, to alternatives to deprivation of liberty, including commutation of sentences, early release and probation, and should refrain, to the maximum extent possible, from detaining migrants.¹⁸⁵

UN Special Rapporteurs have also made a number of calls for temporary releases in the context of COVID-19.¹⁸⁶

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International’s research demonstrates that states worldwide should urgently take comprehensive measures to reduce overcrowding in prisons and thereby reduce the risk of COVID-19 infections and death. They should do so as part of their obligations to protect the rights to life and to physical and mental integrity.

States should undertake legal reform to address the use of pre-trial detention, especially for minor and non-violent offences. They should explore alternatives to custody, including commutation of sentences, early release and probation, at the pre-trial, trial, sentencing and post-sentencing stages. Priority should be given

¹⁸² CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, 20 March 2020, rm.coe.int/16809cfa4b; CPT, *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic*, 9 July 2020, rm.coe.int/16809ef566; and Council of Europe Commissioner for Human Rights, *COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe*, April 2020, www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe

¹⁸³ The International Committee of the Red Cross (ICRC) has called for the reduction of the number of people in prison which could help reduce COVID-19 risks. ICRC, *COVID-19: Authorities must protect health of detainees, staff and ultimately surrounding communities*, 7 April 2020, www.icrc.org/en/document/covid-19-places-detention-must-protect-health-detainees-staff-and-ultimately-surrounding Human Rights Watch (HRW), the International Federation for Human Rights (FIDH) and the American Civil Liberties Union (ACLU) have made similar calls, especially to consider releasing prisoners who are particularly vulnerable to coronavirus. HRW, *Human Rights Dimensions of COVID-19 Response*, 19 March 2020, www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response; FIDH, *COVID-19: States bear direct responsibility for the health of individuals in their custody*, 7 April 2020, www.fidh.org/en/region/Africa/covid-19-states-bear-direct-responsibility-for-the-health-of; and *The Hill*, “ACLU calls on Justice Department, Bureau of Prisons to release inmates vulnerable to coronavirus”, 18 March 2020, thehill.com/policy/healthcare/public-global-health/488244-aclu-calls-on-justice-department-federal-bureau-of

Penal Reform International (PRI) has pointed out that people in prison and the personnel who work there not only are in close proximity, but that the former also commonly are in generally poorer health than the rest of the population; that containing a large outbreak in detention facilities would be difficult; and that release would free up health care resources within the facility; it has therefore called for “emergency measures” to reduce prison populations. PRI, *Coronavirus: Healthcare and human rights of people in prison*, 16 March 2020, www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/

The Association for the Prevention of Torture (APT) has pointed out that “those deprived of liberty, are de facto more vulnerable to viral contamination”, such as by COVID-19, and that turning to non-custodial alternatives to detention could even be a template for “less extreme circumstances”. APT, *COVID-19 in prison*, 30 April 2020, www.apt.ch/en/blog/covid-19-prison

¹⁸⁴ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc. CAT/OP/10 (2020), [para. 9\(b\)](https://www.unhcr.org/refugees/documents/43969696) (SPT, *Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic*).

¹⁸⁵ CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, 20 March 2020, rm.coe.int/16809cfa4b

¹⁸⁶ See, for example, UN Special Rapporteur on the Situation of Human Rights in Eritrea, *Eritrea must free political prisoners and low-risk offenders to reduce COVID-19 threat in crowded jails, says UN expert*, 2 April 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25764&LangID=E; UN Special Procedures, *Iran urged to immediately release prisoners of conscience and dual and foreign nationals at risk of COVID-19*, 17 April 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25803&LangID=E; UN Special Procedures, *COVID-19: Israel must release Palestinian prisoners in vulnerable situation, say UN experts*, 24 April 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25822&LangID=E; and UN Special Procedures, *US Government urged to do more to prevent major outbreaks of COVID-19 in detention centres – UN experts*, 29 May 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25912&LangID=E
See also OHCHR, *COVID-19, prison overcrowding, and serving sentences for serious human rights violations*, www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/infonotecovid.aspx (accessed 24 February 2021).

to non-custodial measures for alleged offenders and people in prison with low-risk profiles and caring responsibilities, with preference given to pregnant women and women with dependent children,¹⁸⁷ older detainees, those convicted of minor offences and those not posing a significant threat to the public. They should also consider releasing detainees with underlying medical conditions.

Regarding people convicted of drug-related offences, states should ensure they can be considered for early, temporary or conditional release without discrimination and provide them with the appropriate health and social services they may require after release. States should also close compulsory drug detention centres permanently and without delay, and immediately release all those detained in them.¹⁸⁸

States should consider deferring the intake of new arrivals in appropriate cases or converting prison sentences to fines or other non-custodial penalties, including when the nature of the offence committed does not require incarceration.¹⁸⁹

As part of their duty to review the need for continued custodial detention, states should consider alternatives to custody, such as parole and early, conditional or temporary release, especially when detainees have been convicted of minor offences and do not pose a significant threat to the public. In considering such measures, states must take full account of individual circumstances and the risks posed to groups of prisoners specifically at risk. States should provide for and implement processes in which prisoners can apply for early release due to medical circumstances; failure to do so may amount to a violation of their right to an effective remedy.

States should make efforts to release older detainees if they do not pose a threat to public safety and have already served a portion of their prison sentence. In addition, they should consider releasing detainees with underlying medical conditions, including those with a weakened immune system. States should review custodial sentences for women and girls who are in detention with their dependent children or who are pregnant, in line with the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the Bangkok Rules).¹⁹⁰

Finally, states must also ensure the immediate and unconditional release of all prisoners detained solely for the peaceful exercise of their human rights.

In taking all measures to reduce overcrowding in prisons, states should not create, de jure or de facto, impunity for persons convicted of serious human rights violations, crimes against humanity, genocide or war crimes. Pardons on humanitarian grounds for such persons can only be granted in cases of terminal illness of imminent resolution. Instead, states should explore, when necessary, alternative measures such as relocating such prisoners to other safer prison facilities or provide for temporary house arrest with appropriate controls. All such persons must return to prison to serve the remainder of their prison term once the situation improves.

More broadly, Amnesty International draws the attention of states to the UNODC's *Handbook on strategies to reduce overcrowding in prisons*. While the strategies are not specifically linked to epidemics, they recommend a range of measures to mitigate overcrowding, taking into account its multiple and cumulative causes requiring a holistic and co-ordinated response.¹⁹¹

¹⁸⁷ WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance, 8 February 2021, www.apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y, p.5.

¹⁸⁸ Amnesty International, *The COVID-19 pandemic must serve as a catalyst for the transformation of outdated and failed drug policies* (Index: POL 30/2508/2020), 26 June 2020, www.amnesty.org/download/Documents/POL3025082020ENGLISH.pdf

¹⁸⁹ UNODC, *Position Paper: COVID-19 preparedness and responses in prisons*, 31 March 2020, www.unodc.org/documents/hiv-aids/publications/UNODC_position_paper_COVID-19_in_prisons_-_FINAL.pdf (UNODC, *COVID-19 preparedness and responses in prisons*).

¹⁹⁰ Bangkok Rules, Rule 64: "Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate."

¹⁹¹ UNODC, *Handbook on strategies to reduce overcrowding in prisons*, 2013, www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf

4.5 ACCESS TO VACCINES

VACCINATION POLICIES¹⁹²

Amnesty International recognizes that many countries, particularly those in the Global South, are struggling to access vaccines and are unlikely to start vaccination drives for some time to come, and therefore may not have finalized their vaccination strategies. Nonetheless, at the time of writing, at least 71 countries and territories had a “vaccination policy with regard to at least one clinically vulnerable group.”¹⁹³

While encouragingly some countries have already adopted policies that put prison populations and staff among the priority groups to receive vaccines, many others are either silent or remain unclear on their plans.

The federal authorities in the **USA**, more specifically the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention (CDC), have recommended that police and corrections officers, among others, be included in “Phase 1a” of the distribution of vaccines.¹⁹⁴ There have been calls from others, including the American Medical Association and the National Commission on COVID-19 and Criminal Justice (notably in its final report to the Council on Criminal Justice, a non-partisan group)¹⁹⁵, for prisoners to be included in “Phase 1b”.¹⁹⁶ A US state-level examination of vaccination policy by the Prison Policy Initiative found that 39 states have (or at least appear to have) addressed incarcerated populations in their vaccine priority policies, whereas other states, including ones with some of the largest and most overcrowded prison systems, have failed to do so.¹⁹⁷

The Correctional Service of **Canada** began the roll-out of vaccinations to the highest-risk inmates in federal correctional institutions on 8 January 2021, under the recommendation of the National Advisory Committee on Immunization.¹⁹⁸ It said that vaccines would be offered to all federal inmates as further supplies of vaccines became available. Approximately 600 prisoners were expected to be vaccinated in the first phase.¹⁹⁹ They are those considered “high-risk”, because they are either elderly or vulnerable due to a pre-existing health condition.²⁰⁰ Correctional Service staff are to be vaccinated by the health authorities in their home province or territory.²⁰¹

The government of **South Africa** has also been one of the first to explicitly incorporate prison populations among the priority groups in its vaccination plan. Prisoners have been included under the “persons in congregate or overcrowded settings” sub-group, and will be prioritized after health care workers, and

¹⁹² Amnesty International recognizes that national distribution of vaccines for COVID-19 will necessarily be phased and that governments have complex prioritization decisions to make. It also recognizes that states will have to implement different vaccine roll-out plans depending on their demographics and public health and epidemiological situation, as well as their access to vaccines. It has joined the global campaign for a fair distribution of vaccines across all countries, to achieve a broad, non-discriminatory immunization coverage around the world to overcome two barriers which have already emerged at the global level: “vaccine nationalism” and the intellectual property rights regime. In early November 2020, a group of UN human rights experts also called on governments to stop hoarding vaccine supplies, and on pharmaceutical companies to share their innovations to ensure everyone can access tests, treatments and vaccines for COVID-19. See OHCHR, *Statement by UN Human Rights Experts Universal access to vaccines is essential for prevention and containment of COVID-19 around the world*, 9 November 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26484&LangID=E

¹⁹³ Blavatnik School of Government, University of Oxford, “Coronavirus Government Response Tracker”, 2020, www.bsg.ox.ac.uk/research/research-projects/coronavirus-government-response-tracker (accessed 31 January 2021).

¹⁹⁴ CDC, *When vaccine is limited, who should get vaccinated first?*, 8 January 2021, www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations.html

¹⁹⁵ Council on Criminal Justice, *Experience to actions: Reshaping criminal justice after COVID-19*, December 2020, assets.foleon.com/eu-west-2/uploads-7e3kk3/41697/final_report_-_designed.83f2289da58b.pdf (Council on Criminal Justice, *Experience to actions: Reshaping criminal justice after COVID-19*).

¹⁹⁶ Council on Criminal Justice, *Experience to actions: Reshaping criminal justice after COVID-19*, p. 12.

¹⁹⁷ At the time of writing, these states included Alaska, Arkansas, Colorado, Florida, Michigan, Oregon, South Carolina, South Dakota, Texas, and Wisconsin. See Prison Policy Initiative, *Incarcerated people and corrections staff should be prioritized in COVID-19 vaccination plans*, 8 December 2020, www.prisonpolicy.org/blog/2020/12/08/covid-vaccination-plans/ (accessed 31 January 2021).

Little information has been released since April 2020 about COVID-19 cases at Guantánamo Bay Naval Station, although Carol Rosenberg of *The New York Times* reported that several base personnel tested positive in February 2021 despite the mandatory 14-day quarantine for all new arrivals. It is to be noted that initial plans to vaccinate detainees held at Guantanamo Bay were paused on 30 January 2021. See CNN, “Plan to vaccinate Guantanamo Bay detainees has been paused”, 30 January 2021, edition.cnn.com/2021/01/30/politics/guantanamo-bay-detainees-covid-19-vaccine-paused/index.html

No detainees are known to have tested positive and, as of 19 February 2021, none had been offered the vaccination. Amnesty International is urging the US authorities to ensure all detainees at the facility are vaccinated without discrimination.

¹⁹⁸ *Excalibur*, “COVID-19 vaccines roll out in federal prisons, 20 January 2021”, www.excal.on.ca/news/2021/01/20/covid-19-vaccines-roll-out-in-federal-prisons/ (*Excalibur*, “COVID-19 vaccines roll out in federal prisons, 20 January 2021”).

¹⁹⁹ Canada, Government, “Correctional Service Covid-19 vaccine roll-out”, www.canada.ca/en/correctional-service/news/2021/01/correctional-service-canada-covid-19-vaccine-roll-out.html (Canada, Government, “Correctional Service COVID-19 vaccine roll-out”).

²⁰⁰ *Excalibur*, “COVID-19 vaccines roll out in federal prisons”.

²⁰¹ Canada, Government, “Correctional Service COVID-19 vaccine roll-out”.

alongside people over 60, people over 18 with comorbidities and essential workers.²⁰² The Kenyan government included prison officers in the first priority group for vaccination (January to June 2021), and “persons in prisons and detention centers” in the third priority group (July 2022-June 2023).²⁰³

As of late February 2021, **Angola**,²⁰⁴ **Ethiopia**²⁰⁵ and the **Seychelles**²⁰⁶ had published vaccine roll-out policies but none of these mention prisons or prisoners. In North Africa, **Egypt** and **Morocco** have also announced vaccination plans but they do not include detainees either.²⁰⁷ The government of **Lesotho** identified health workers as the first priority group and announced that it would decide on other priority groups in February.²⁰⁸ At the time of writing there was little information available from other African countries regarding priority groups and, more generally, vaccination plans.

A review of the national COVID-19 vaccination strategies and vaccine deployment plans in Europe presents a mixed picture. The guidance from the European Centre for Disease Prevention and Control does not explicitly include prisoners or prison staff. It references prisons as one of a number of “settings with little ability to physical distance” and states that EU governments should give “consideration” to these specific settings when deciding upon priorities for COVID-19 vaccination.²⁰⁹ Among the countries in Europe monitored for the purpose of this research, the vaccination strategies of **Bulgaria**, **France**²¹⁰, **Germany**, **Hungary** and **Norway** had not explicitly referenced prison populations as of mid-January 2021. Some of these countries’ strategies do include some prioritized categories, such as, for instance, Hungary’s strategy, which prioritizes law enforcement personnel who “come into direct contact with citizens during their duty”.²¹¹ This description could be interpreted to include prison staff, but does not explicitly state this.

In **Italy**, the Extraordinary Commissioner for the Implementation of Health Measures to Contain the COVID-19 pandemic announced that prisoners and prison staff would be prioritized for vaccination after the population over 80.²¹² In **Switzerland**, where vaccination plans are decided at canton level, the Canton of Zurich decided that, after older persons, it would vaccinate prisoners and health personnel.²¹³

In **Ireland**, there was some uncertainty around the prioritization of prisoners and prison staff. The Irish government’s strategy includes a reference to prioritizing vaccination of 18- to 64-year-old individuals “living or working in crowded settings where self-isolation and social distancing may be difficult to maintain”, though it was not explicit whether this included prisoners.²¹⁴ The Irish Prison Service appealed to the government to include the country’s 3,800 prisoners among the priority groups to receive a vaccine ahead of its distribution to the general population.²¹⁵

In the **UK**, where the vaccination roll-out in the community started in early December 2020, the Vaccine Deployment Minister told the House of Commons Science and Technology Committee that the government would vaccinate according to age cohorts, rather than prioritizing any particular group or institutional setting,

²⁰² South Africa, Department of Health. “COVID-19: Vaccine Strategy”, 3 January 2021, sacoronavirus.co.za/2021/01/03/covid-19-vaccine-strategy/

²⁰³ Republic of Kenya, National COVID-19 Vaccines Deployment and Vaccination Plan, 2021, January 2021.

²⁰⁴ Agência Angola Press, “COVID-19: Angola adopts vaccination plan”, 21 December 2020, www.angop.ao/en/noticias/politica/covid-19-governo-aprova-vacinacao/

²⁰⁵ Ethiopia, Ministry of Health, Facebook page, 9 February 2021, facebook.com/EthiopiaFMoH/posts/1748573548646774/

²⁰⁶ Seychelles, Ministry of Health, “COVID vaccination FAQs”, www.health.gov.sc/index.php/covid-19-vaccination-faqs/

²⁰⁷ *Egypt Today*, “Phase 1 of Egypt’s vaccination plan in effect: what you need to know”, 25 January 2021, www.egypttoday.com/Article/1/96845/Phase-1-of-Egypt%E2%80%99s-vaccination-plan-in-effect-what-you

²⁰⁸ Lesotho, Government, “Lesotho To Receive Covid-19 Vaccine- Health Minister”, 7 January 2021, www.gov.ls/lesotho-to-receive-covid-19-vaccine-health-minister/

²⁰⁹ European Centre for Disease Prevention and Control, *COVID-19 vaccination and prioritisation strategies in the EU/EEA*, 22 December 2020, www.ecdc.europa.eu/sites/default/files/documents/COVID-19-vaccination-and-prioritisation-strategies.pdf

²¹⁰ Amnesty International notes, however, that the Minister of Justice announced on 5 February that detainees were included in the national vaccination campaign, under the same conditions as the general population. France Info, “Covid-19 : plus d’un quart des détenus de plus de 75 ans ont été vaccinés, selon Éric Dupond-Moretti”, 05 February 2021, www.francetvinfo.fr/sante/maladie/coronavirus/vaccin/vidéo-covid-19-plus-d-un-quart-des-detenus-de-plus-de-75-ans-ont-ete-vaccines-selon-eric-dupond-moretti_4284809.html

²¹¹ Nemzeti Népegészségügyi Központ, “A COVID-19 védőoltásra jelentkezési hely az egészségügyi és egészségügyben dolgozók számára”, 31 December 2020, www.nnk.gov.hu/index.php/koronavirus-tajekoztato/932-a-covid-19-vedooltasra-jelentkezési-hely-az-egeszsegugyben-dolgozok-szamara?fbclid (translation by Amnesty International).

²¹² *Internazionale*, “I vaccini nelle carceri e le alter notizie sul virus”, 29 January 2021, www.internazionale.it/notizie/giovanna-chioini/2021/01/29/notizie-virus-vaccini-carceri

According to a response by the Italian Department of Prison Administration to Amnesty International dated 4 December 2020, the ratio of prison guards to prisoners in Italy stood at 66:100 and, out of a total of 35,970 guards, there were 129 aged between 60 to 69 (83 women and 46 men).

²¹³ Swiss Radio and Television (SRF), “Diese Kantone haben bereits geimpft”, 23 December 2020, www.srf.ch/news/schweiz/covid-impfung-in-der-schweiz-diese-kantone-haben-bereits-geimpft

²¹⁴ Ireland, Health Service Executive National Immunisation Office, *Clinical Guidance for COVID-19 Vaccination, Version 8.0*, 19 February 2021, www.hse.ie/eng/health/immunisation/hcpinfo/covid19vaccineinfo4hps/clinicalguidance.pdf, pp. 6-7.

²¹⁵ *The Irish Times*, “Over 70s, care home residents and frontline staff set to be vaccinated first in Republic”, 8 December 2020, www.irishtimes.com/news/ireland/irish-news/over-70s-care-home-residents-and-frontline-staff-set-to-be-vaccinated-first-in-republic-1.4430232

suggesting that both prisoners and prison staff who fell within the prioritized age groups would be vaccinated as a priority.²¹⁶ On 29 January 2021, vaccine roll-out among prisoners in England and Wales started, following the same prioritization as within the community.²¹⁷

The government of **Turkey**'s vaccination prioritization plans included "prisons" as a second priority group, together with soldiers, police, gendarmes, judicial personnel and civil servants.²¹⁸ It was not clear whether the term "prisons" referred to prison staff only or also included prisoners. Between 29 January 2021, when the government began to roll out vaccination of people over 75, and 8 February 2021, Amnesty International contacted over 20 lawyers with clients in this age group, but none of them had heard of any prisoners in this age group who had received the vaccine.

In Asia, the authorities in **Nepal** included prisoners and prison guards among the first priority group. By mid-February 2021, more than 21,000 prisoners and guards had been vaccinated, according to data provided by the Department of Health Services.²¹⁹

The government of **China** identified priority groups for vaccination in line with its basic two-step plan announced by the State Council (Information Office) on 19 December 2020 prior to the Lunar New Year holiday in mid-February 2021. Prisoners and prison guards were not identified as priority groups during this period. There was some ambiguity about whether some prison guards might be covered under the category of public security and armed police, but neither prisons nor other places of detention had been publicly identified as priority sites for vaccination.²²⁰

In **India**, prison staff were included among front-line workers, one of three priority categories for vaccination.²²¹ Prisoners were not listed among the priority groups in the relevant Ministry of Health and Family Welfare guidelines.

In other countries, not only were prisoners and prison staff initially omitted from vaccination roll-out plans, groups such as older people and people with comorbidities were deprioritized relative to others, such as members of the security forces. For instance, a decree signed by the Health Minister of **Indonesia**, Terawan Agus Putranto, on 3 December 2020 prioritized health workers, but also members of the security forces and government administrators, over and above populations widely accepted as more at risk, such as older people.²²² However, in January 2021, a follow-up decree did include people over 60 as a priority category.²²³ Neither decree explicitly mentioned prisoners or prison staff members as priority vaccine recipients.

²¹⁶ UK, Parliament LiveTV, "Science and Technology Committee – Extract", 13 January 2021, parliamentlive.tv/event/index/68d1c853-13b2-4022-85ff-dc439f1476b1?in=11:39:55&out=11:41:26

²¹⁷ Sky News, "COVID-19: Vaccine rollout in English prisons to begin today", 29 January 2021, news.sky.com/story/covid-19-vaccine-rollout-in-english-prisons-to-begin-today-12201902

²¹⁸ T.C. Sağlık Bakanlığı, "Aşı Uygulanacak Grup Sıralaması", covid19asi.saglik.gov.tr/TR-77707/asi-uygulanacak-grup-siralamasi.html
See also BBC, "Aşı: Türkiye'de Covid aşısı nasıl yapılıyor, sağlık meslek örgütlerinin endişeleri neler?", 12 January 2021 (with 14 January update), www.bbc.com/turkce/haberler-turkiye-55629803

²¹⁹ The Record, "Vaccines for everyone, except the elderly", 17 February 2021, www.recordnepal.com/covid19/vaccines-for-everyone-except-the-elderly/

²²⁰ China, State Council Information Office, "China to prioritize key groups for COVID-19 vaccination", 19 December 2020, english.scio.gov.cn/pressroom/2020-12/19/content_77030105.htm
Details on the priority groups, including public security and armed police, were reported in *Xinhua*, "Shànghǎi yī qǐdòng xīnguān yímiào jiēzhōng, zhǔyào shèjì fēngxiǎn jiào gāo de zhōngdiǎn gǎngwèi rényuán", 26 December 2020, m.xinhuanet.com/2020-12/26/c_1126910999.htm

²²¹ India, Ministry of Health and Family Welfare, *COVID-19 Vaccines. Operational Guidelines*, updated 28 December 2020, www.mohfw.gov.in/covid_vaccination/vaccination/dist/images/documents/COVID19VaccineOG111Chapter16.pdf, pp. 61-62.

²²² *The Jakarta Post*, "Indonesia greenlights adoption of major COVID-19 vaccines", 5 December 2020, www.thejakartapost.com/news/2020/12/05/indonesia-greenlights-adoption-of-major-covid-19-vaccines.html

²²³ Decree HK.02.02/4/1/2021 on the Technical Guidelines for Vaccination within the Context of the COVID-19 Pandemic (issued to implement the December decree). Indonesia, Ministry of Health, Directorate General Disease Prevention and Control, "Petunjuk teknis pelaksanaan vaksinasi dalam rangka penanggulangan pandemi corona virus disease 2019 (COVID-19)", 4 January 2021, covid19.go.id/storage/app/media/Regulasi/2021/Januari/Final%20SK%20Dirjen%20Juknis%20Vaksinasi%20COVID-19%20020202021.pdf
On 8 February 2021, after the approval of the Sinovac vaccine, a vaccination drive for people over 60 in the community started, though it remained unclear as to whether older prisoners and prison staff would be included. See *Tempo*, "BPOM Approves Sinovac Covid-19 Vaccine for Elderly", 8 February 2021, en.tempo.co/read/1430716/bpom-approves-sinovac-covid-19-vaccine-for-elderly



Vaccines. © Antonio Colafemmina

INTERNATIONAL STANDARDS

States have obligations to implement public health guidance in line with international human rights standards, including with respect to the right to life and right to health. The UN Human Rights Committee has affirmed states parties' "heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State".²²⁴

In a framework document issued on 14 September 2020, the WHO provided guidance for the allocation and prioritization of groups for vaccination within countries while supplies were limited.²²⁵ It stressed six values,

²²⁴ Human Rights Committee, General Comment 36, The right to life, UN Doc. CCPR/C/GC/36, para. 25.

²²⁵ WHO, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*, 14 September 2020, apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf?ua=1 (WHO, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*).

all of which are particularly relevant to countries' roll-out of vaccinations: human wellbeing, equal respect, global equity, national equity, reciprocity and legitimacy.²²⁶

The WHO recognized that, given country-specific nuances in epidemiology, demographics and vaccine delivery systems, decisions on priority groups would need to be interpreted at a national level.²²⁷ It published a roadmap for prioritizing use of COVID-19 vaccines on 13 November 2020 to assist states when considering priority populations for vaccination under different epidemiological and vaccine supply conditions.²²⁸

The roadmap explicitly references people living and working in detention facilities and incarcerated people as "social/employment groups at elevated risk of acquiring and transmitting infection because they are unable to effectively physically distance".²²⁹

In its February 2021 interim guidance on the preparedness, prevention and control of COVID-19 in prisons and other places of detention, the WHO further urges for the principle of equality to be upheld (in line with the Mandela Rules) and that priority groups for vaccination should include "non-health-care staff providing services that carry significant risk of infection, older adults, and people at high risk of death because of underlying conditions such as heart disease and diabetes."²³⁰

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on all states to join and support the COVAX facility (a procurement mechanism aimed at guaranteeing fair access to vaccines for all countries) among other forms of international cooperation and is working to ensure that COVID-19 health products are made available and accessible to the maximum number of people at a global level.²³¹

At the same time, Amnesty International calls on states not to discriminate against those held in detention when developing vaccination policies and plans.²³² Furthermore, it urges states to make every effort to prioritize prisoners in their national vaccination plans, particularly given that their confined conditions do not allow them to physically distance, and ensure at least that those at particularly high risk of COVID-19 (such as older prisoners and those with comorbidities) are prioritized for vaccination on a par with comparative groups in the general population.

Amnesty International also calls for prison guards and other prison staff to be prioritized in vaccination policies as essential workers, especially given their inability to physically distance in the workplace.

Decision makers should be transparent about the process involved in determining which groups are prioritized so that campaigners working on behalf of prisoners are able to monitor the implementation of the state's obligations under international human rights law. This information should also be shared in ways that can be readily understood by the people affected by these decisions.²³³

²²⁶ WHO, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*, p. 4.

²²⁷ WHO, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*, p. 8.

²²⁸ WHO, *SAGE Roadmap for prioritizing uses of COVID vaccines in the context of limited supply*, 13 November 2020, www.who.int/publications/m/item/who-sage-roadmap-for-prioritizing-uses-of-covid-19-vaccines-in-the-context-of-limited-supply (WHO, *SAGE Roadmap for prioritizing uses of COVID vaccines in the context of limited supply*).

²²⁹ WHO, *SAGE Roadmap for prioritizing uses of COVID vaccines in the context of limited supply*, pp. 15-17.

²³⁰ WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim Guidance, 8 February 2021, www.apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y, p. 24.

²³¹ For details on Amnesty International's general position on the fairness of vaccination initiatives, see Amnesty International, *The fight for a fair COVID-19 vaccine explained*, 12 December 2020, www.amnesty.org/en/latest/news/2020/12/the-fight-for-a-fair-covid-19-vaccine-explained/

²³² This call is in line with those made by public health and other experts. See, for instance, *The Lancet*, "Experts call to include prisons in COVID-19 vaccine plans", 12 December 2020, [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)32663-5/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32663-5/fulltext)

²³³ WHO, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*.

5. CONTROL MEASURES

Some of the measures governments have introduced to prevent the spread of COVID-19 have themselves led to various human rights violations.

5.1 ISOLATION MEASURES

CONFINEMENT AND QUARANTINING

While there is limited publicly available information on COVID-19 control and prevention measures introduced by prison authorities in the countries monitored for this report, Amnesty International has identified several concerning examples of use of isolation and quarantine measures. Although these public health measures can help prevent exposure to people who have or may have COVID-19, in some cases, the measures introduced went beyond the necessity and proportionality test for solitary confinement and appeared arbitrary, excessive and abusive, giving rise to concerns that they could amount to a breach of the prohibition of torture and other, cruel, inhuman or degrading treatment or punishment.²³⁴

In **Argentina**, the Prison Ombudsman's National Office, part of the country's National Preventive Mechanism, found, during its monitoring of prisons in March and April 2020, that a number of prisoners had been subjected to a regime of prolonged and indefinite isolation beyond what was provided in health regulations issued by the national government or in the COVID-19 protocols implemented by the Federal Penitentiary Services.²³⁵ According to the Prison Ombudsman's National Office, "detainees were subjected to an isolation regime in individual cells for 23 hours per day. In that condition they were between 60 to 95 days."²³⁶ The Federal Penitentiary Services ceased implementing these measures in July 2020 after the Regional Representative of the UN High Commissioner for Human Rights raised concerns and the Prison Ombudsman's National Office appealed to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the IACHR.

In **Norway**, the country's correctional services directorate introduced severe restrictions in April 2020 as part of efforts to prevent the spread of COVID-19, which included a nationwide directive to use solitary confinement for quarantine purposes. Shortly after the introduction of these measures, the Norwegian Parliamentary Ombudsman initiated an investigation, as part of its role as the National Preventive Mechanism. It issued its findings in June 2020 and concluded that prison authorities lacked an appropriate legal basis for introducing solitary confinement as an infection control measure and that "the complete exclusion of all new inmates for 14 days, without this being based on an individual assessment of the risk of infection, was not in accordance with the requirements for necessity and proportionality, as stipulated in

²³⁴ See, among other provisions of international law, International Covenant on Civil and Political Rights, Article 7.

²³⁵ The Prison Ombudsman's National Office is one of several bodies that make up the country's National Preventive Mechanism. The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Argentina is a state party, requires that all places of detention are visited regularly by a designated National Preventive Mechanism, which monitors the treatment of and conditions for detainees. See OHCHR, *Preventing torture: The Role of National Preventive Mechanisms – A practical guide*, 2018, www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf

²³⁶ Argentina, Prison Ombudsman's National Office (Procuración Penitenciaria de la Nación), "Denuncia internacional de la PPN: situación del coronavirus en cárceles federales", 4 August 2020, www.ppn.gov.ar/index.php/institucional/noticias/2746-denuncia-internacional-de-la-ppn-situacion-del-coronavirus-en-carceles-federales (translation by Amnesty International).

human rights requirements.”²³⁷ The findings further revealed a failure of prison authorities to adequately assess alternative protection measures and how these measures were introduced despite contrary advice from health officials. The use of solitary confinement as a quarantine measure was eased from 18 May 2020.²³⁸

Her Majesty’s Inspectorate of Prisons, which provides independent scrutiny of detention facilities in England and Wales as one of several bodies making up the National Preventive Mechanism in the UK, found in June 2020 that inmates in three prisons it visited were spending 23 hours a day in their cells. In a report summarizing the findings of “short scrutiny visits” undertaken on 16 June 2020 to Brinsford, Maidstone and Onley prisons, it described its findings as follows:

“For the last 12 weeks, most prisoners had spent at least 23 hours locked up each day. Time unlocked varied across the three sites. At Onley, most prisoners consistently received an hour out of their cells each day to exercise and shower. At Maidstone it ranged between 30 and 50 minutes and at Brinsford it could also be as little as 30 minutes. Some prisoners described feelings of isolation and believed their mental and emotional well-being was suffering as a result. Governors recognised that the current position was unsustainable but believed they had no autonomy to increase time out of cell, even though they felt they had sufficient staff and had contained the spread of COVID-19. They could offer prisoners no reassurance about when the current restrictions would be eased.”²³⁹

The report explained that Maidstone prison lacked a suitable unit to dedicate to shielding the few medically vulnerable prisoners and, as a result, “one very elderly prisoner had lived on the segregation unit by his own consent for nearly three months. Although he was coping well, there were no regular, recorded multidisciplinary reviews to ensure oversight of this decision.”²⁴⁰

Her Majesty’s Inspectorate of Prisons considered that the practice in one prison where over half of the prison population (approximately 550 prisoners) had been shielded in April and May 2020, with only one and a half hours per week out of their cells to shower, make phone calls or spend time in the open air, effectively constituted solitary confinement.²⁴¹ One prisoner interviewed by Prison Reform Trust, and the Prisoner Policy Network, expressed his experience as follows:

“Anyone who felt ill especially with typical symptoms was immediately isolated in their cell for 14 days. I was one of those and I can honestly say since being in prison this was undoubtedly my worst time. I felt weak, afraid, vulnerable, and alone. Meals were brought to my door and left on a stool for me to pick up. There was little if no check to see how I was.”²⁴²

In Sri Lanka, the Human Rights Commission of Sri Lanka, which is the country’s National Prevention Mechanism, urged the prison authorities to keep families of all prisoners infected by COVID-19 informed of their whereabouts and provide them with the results of their tests. Having received many complaints from family members desperate for information regarding their loved ones in custody, the commission suggested that the prison authorities provide it with an updated list of all prisoners affected by the virus and their current location and treatment.²⁴³

²³⁷ Norway, Parliamentary Ombudsman, *Protecting prison inmates during the COVID-19 pandemic*, June 2020, www.sivilombudsmannen.no/wp-content/uploads/2020/08/Protecting-prisons-inmates-during-Covid-19.pdf (Norway, Parliamentary Ombudsman, *Protecting prison inmates during the COVID-19 pandemic*), p. 7.

²³⁸ Norway, Parliamentary Ombudsman, *Protecting prison inmates during the COVID-19 pandemic*.

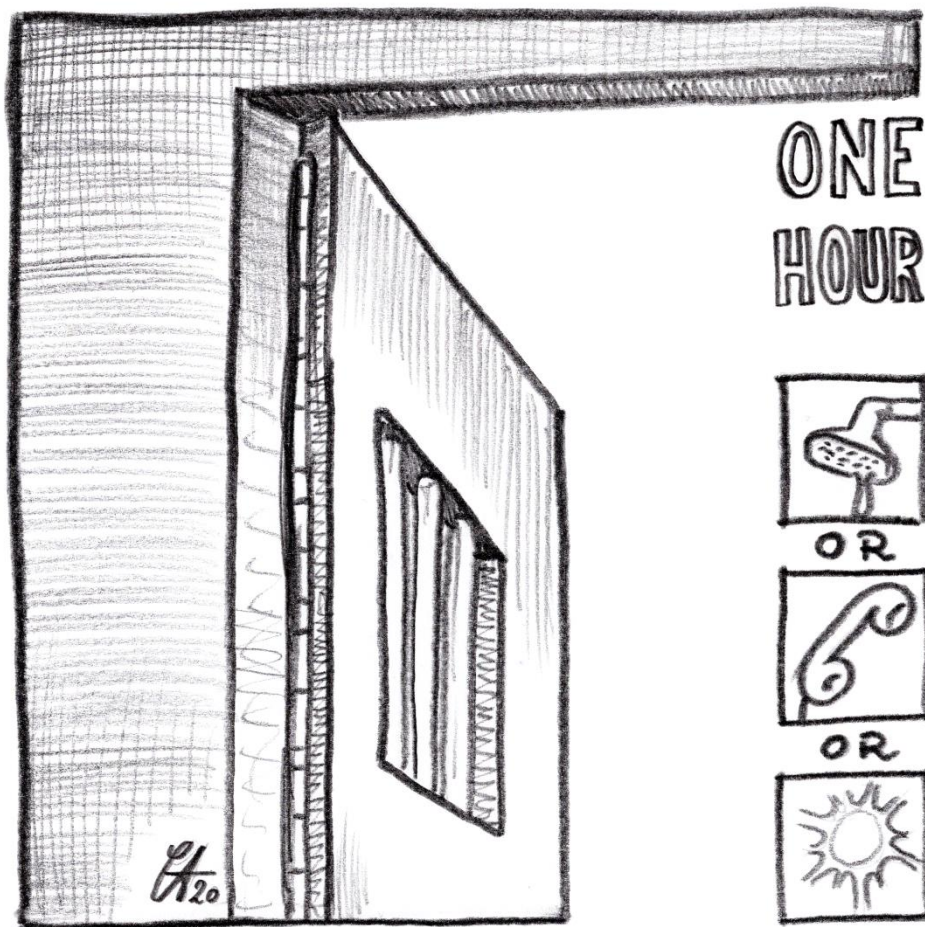
²³⁹ UK, Her Majesty’s Inspectorate of Prisons, *Report on short scrutiny visits to Category C prisons*, 16 June 2020, www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/07/Category-C-SSV-web-2020.pdf (UK, HMIP, *Report on short scrutiny visits to Category C prisons*), p. 16.

²⁴⁰ UK, HMIP, *Report on short scrutiny visits to Category C prisons*, p. 11.

²⁴¹ UK, HMIP, *Report on short scrutiny visits to Category C prisons*, p. 12.

²⁴² Prison Reform Trust and Prisoner Policy Network, *CAPPTIVE. Covid-19 Action Prisons Project: Tracking Innovation, Valuing Experience. How prisons are responding to Covid-19. Briefing #2, Regimes, reactions to the pandemic, and progression*, www.prisonreformtrust.org.uk/Portals/0/Documents/CAPPTIVE2_regimes_and_progression_web_final.pdf, p. 20.

²⁴³ Human Rights Commission of Sri Lanka, “Letter to Commissioner General of Prisons”, 26 November 2020, www.hrcsl.lk/wp-content/uploads/2020/02/HRCSL-letter-to-Commissioner-General-of-Prisons--26-November-2020.pdf



Prisoners spending 23 hours in their cells. © Antonio Colafemmina

INTERNATIONAL STANDARDS

The UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules) define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”²⁴⁴ They state that prolonged solitary confinement – that is, beyond 15 days – is prohibited at all times, as it is regarded as a form of torture.²⁴⁵ They go on to state:

“Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner’s sentence.”²⁴⁶

Isolation or quarantine measures should only be imposed if no alternative protective measure can be taken by authorities to prevent or respond to the spread of infection in prisons. The WHO has recommended use of preventive measures that do not involve solitary confinement or result in violations of the prohibition of ill-treatment.²⁴⁷ The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading

²⁴⁴ Nelson Mandela Rules, Rule 44.

²⁴⁵ Nelson Mandela Rules, Rules 43 and 44.

²⁴⁶ Nelson Mandela Rules, Rule 45.1.

²⁴⁷ WHO, Regional Office for Europe, “FAQ: Prevention and control of COVID-19 in prisons and other places of detention”, www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/faq-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention#441898 (accessed 24 February 2021)

Treatment or Punishment has issued similar advice relating to COVID-19. On 25 March 2020, it urged states to “[p]revent the use of medical isolation taking the form of disciplinary solitary confinement” and “[e]nsure that fundamental safeguards against ill-treatment, including the right of access to independent medical advice, to legal assistance and the right to ensure that third parties are notified of detention, remain available and operable, restrictions on access notwithstanding”.²⁴⁸

The UNODC, the WHO, UNAIDS and the OHCHR stressed the importance of limiting restrictions on detainees in the context of COVID-19 in a joint statement in May 2020:

“Restrictions that may be imposed must be necessary, evidence-informed, proportionate (i.e. the least restrictive option) and non-arbitrary. The disruptive impact of such measures should be actively mitigated, such as through enhanced access to telephones or digital communications if visits are limited.”²⁴⁹

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on states to ensure COVID-19-related isolation or quarantine measures in places of detention do not result in de facto solitary confinement and are legal, proportional, strictly necessary, time-bound and subject to review by a competent medical professional. They should only be imposed if no alternative protective measure can be taken by authorities to prevent or respond to the spread of infection in prisons.

During such isolation or quarantine measures, authorities need to ensure adequate measures are in place to reduce the detrimental effects of isolation, lack of activity and human contact, including adequate daily access to fresh air, physical activity, additional phone time, video calls and other opportunities for entertainment and contact with family and friends.

States also need to ensure that isolation or quarantine are not used, under any circumstances, to justify discrimination or the imposition of harsher or less adequate conditions on a particular group, including children.

5.2 RESTRICTIONS ON VISITS

REDUCED ACCESS TO FAMILIES

Family visits are essential to detainees, contributing not only to their emotional, but also their physical, wellbeing. Detainees often rely on their families for food and medicine, when criminal justice systems fail to provide them with adequate food and health care.

COVID-19-related lockdown measures in prisons have often severely impacted family visits. While some prison systems have retained visits by adapting conditions for them, others have resorted to banning visitors, effectively depriving detainees from their lifeline to the outside world.

The lack of visits impacted prisoners’ emotional wellbeing. In **Pakistan**, at the beginning of the COVID-19 outbreak, prison authorities banned visits to jails to prevent transmissions within prisons. They officially stopped visits on 1 April and allowed them to restart in early July 2020. During this period, many prisoners, prevented from seeing their loved ones for months, were at increased risk of suffering from mental health issues. Deputy Inspector General Shaukat Feroze said a mental health counsellor was arranged for prisoners in Rawalpindi Central Jail when they observed a surge in mental health issues, particularly depression, as a result of the more intensive isolation.²⁵⁰ In Peshawar Central Jail, which had three psychiatrists (two women

²⁴⁸ SPT, Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic. Similarly, in advice provided to the National Preventive Mechanism in the UK, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognized that “while quarantine is imposed for the public benefit, it must not result in the ill-treatment of those detained”. It stated that it is part of the role of National Preventive Mechanisms to “ensure that all fundamental safeguards are respected, including the right to be informed about the reason for being placed in quarantine, to have a third party notified, to have access to independent legal advice and to be seen by a doctor of one’s own choice.” See UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Advice provided by the Subcommittee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus (COVID-19 virus), 31 March 2020, UN Doc. CAT/OP/9, para. 8.

²⁴⁹ UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*.

²⁵⁰ Justice Project Pakistan, interview with Shaukat Feroze, Deputy Inspector General of Prisons, Rawalpindi, 25 August 2020.

and one man) on staff, the administration observed that prisoners were more listless and depressed.²⁵¹ However, access to counselling and psychiatric support appears to have varied from one prison to another. “Wasim” told Justice Project Pakistan²⁵² that, despite repeated requests to the prison officials in Lahore Central Jail, he was never given access to a psychologist.²⁵³

In many countries, the lack of visits also impacted prisoners’ physical wellbeing. In **Cambodia**, a female detainee told Amnesty International, after being released from prison in August 2020, about how she and other detainees “really suffered from a lack of food and hygiene material during the period when family was not allowed to visit”.²⁵⁴

In many countries, authorities sought to mitigate the effect of lockdowns in prisons, by creating or expanding alternative means for detainees to communicate, or otherwise maintain social links, with loved ones. These had varying degrees of success.

In India, after the national lockdown was announced on 24 March 2020, prison departments across the country barred all personal meetings inside prisons, with plans to shift meetings with lawyers and family members to phone or video calls after a Supreme Court order required all higher courts to adopt video conferencing technologies.²⁵⁵ Just as there were problems with the introduction of video conferencing in courts,²⁵⁶ the roll-out of video conferencing in prisons to allow detainees to communicate with family members was very slow. In the state of Karnataka, for instance, it only became operational in December 2020.²⁵⁷ In Haryana, it was not until February 2021 that officials announced that the first prison in the state had introduced a video conferencing facility.²⁵⁸ The duration of video calls was very limited. In Karnataka, for instance, it was reportedly between five and 10 minutes. A reliable source told Amnesty International that in Jammu and Kashmir detainees were only allowed a phone call to their family once in 15 days.²⁵⁹

In Turkey, the authorities in March 2020 suspended all family visits to prisons, but compensated the restrictions by allowing detainees to make an additional 10-minute call to families each week.²⁶⁰ However, prison authorities did not supply prisoners with phone cards; this meant that prisoners who could not afford one were unable to make calls, giving rise to concerns that the policy was discriminatory. As part of a project that had started before the COVID-19 pandemic, the Ministry of Justice announced the installation of video conferencing facilities in prisons in March, but initially very few prisons (only two women’s prisons and one children’s prison) were provided with such facilities.²⁶¹ Inmates were to be allowed 30 minutes of video calls each week and those who chose to forgo their weekly visits would be allowed 30 additional minutes; however, prisoners held under anti-terrorism legislation, who included many lawyers and human rights defenders, would require a committee’s approval based on good behaviour.²⁶² In practice, this approval was generally denied.²⁶³

In **Hungary**, the National Prison Headquarters on 8 March 2020 prohibited all personal visits at all of the country’s prisons. Visits by church representatives and civil society organizations were also terminated. Visits were not reintroduced even after the first wave of COVID-19 had passed in June 2020 and on 27 October 2020 a law was adopted that allowed for the prohibition of personal visits until 30 June 2021.²⁶⁴ This means that detainees may be deprived of personal visits for a period of over 15 months. Prisoners were granted an additional 15 minutes per week to speak with their relatives on phone and video calls. However, prisoners need to have a security deposit of 35,000 Hungarian forints (US\$118) to access a device provided by the prison system. The cost of a call of one minute is reported to be between 73 and 90 Hungarian forints

²⁵¹ Justice Project Pakistan interview with Khalid Abbas, Additional Inspector General of Prisons, Khyber Pakhtunkhwa, 26 August 2020.

²⁵² See Justice Project Pakistan, Facebook page, www.facebook.com/JusticeProjectPakistan/

²⁵³ Justice Project Pakistan, interview with former prisoner “Wasim” (real name withheld for security reasons), 1 September 2020.

²⁵⁴ Amnesty International, interview with “Sopheap”.

²⁵⁵ India, Supreme Court, *Suo Motu Writ (Civil)*, 3 of 2020, 6 May 2020.

²⁵⁶ Tata Trusts, *India Justice Report*, January 2021, www.tatatrusters.org/Upload/pdf/iir-2020-overall-report-january-26.pdf, p. viii.

²⁵⁷ *The Times of India*, “Karnataka: Prisoners can meet family via video call”, 6 December 2020, timesofindia.indiatimes.com/city/bengaluru/prisoners-to-get-5-10-min-for-online-meeting/articleshow/79585981.cms

²⁵⁸ *The Times of India*, “A first for Haryana: prisoners to talk to kin via video”, 1 February 2021, www.timesofindia.indiatimes.com/city/gurgaon/bhondsi-inmates-get-video-link-to-talk-to-families/articleshow/80619186.cms

²⁵⁹ Amnesty International, telephone interview with “Ahmad” (real name withheld for security reasons), 25 September 2020.

²⁶⁰ Human Rights Watch, *Turkey: COVID-19 Puts Sick Prisoners at Grave Risk*, 3 April 2020, www.hrw.org/news/2020/04/03/turkey-covid-19-puts-sick-prisoners-grave-risk

²⁶¹ Amnesty International, interview with member of staff at CISST, 15 September 2020; and Turkey, Regulation 2324, 28 March 2020 www.mevzuat.gov.tr/MevzuatMetin/21.5.2324.pdf

²⁶² *Duvar English*, “Turkish inmates now allowed weekly video calls, correctional staff to remain isolated on days off”, 30 March 2020, www.duvarenglish.com/coronavirus/2020/03/30/professor-warns-human-to-human-contact-must-be-further-prevented-to-break-the-cycle-in-turkey

²⁶³ Amnesty International, interview with member of staff at CISST, 15 September 2020.

²⁶⁴ Hungary, Act 10 of 2020.

(US\$0.25-0.30), which is significantly higher than the rate outside the prison system.²⁶⁵ If a prisoner cannot afford the deposit or the cost of the connection, they are unable to make a call, giving rise to concerns that the practice is discriminatory. Dóra, a released inmate was quoted as saying that the guards had monitored every second of her video calls.²⁶⁶ The restrictions on contact with the outside world have resulted in prisoners developing mental health issues.²⁶⁷

In **Pakistan**, some prisons installed additional phones so that prisoners could speak to their loved ones more frequently. However, many former prisoners said that these did not help significantly as they were only accessible at limited times and calls were still generally restricted to a duration of about five to 10 minutes. Prisoners also had to pay for the service. “Zahid”, a former detainee in Lahore District Jail, said that he was allowed to use the phone once every four days and that a 15-minute call cost him 200 Pakistani rupees (US\$1.25).²⁶⁸ “Wasim”, a former detainee in Lahore Central Jail said that the phones were at least a kilometre away from his cell and that they were only 20 booths, which at any given time at least 70 prisoners were waiting to use. More worryingly still, he said, no one kept a safe distance and none of the mouthpieces were disinfected after use.²⁶⁹

In **Morocco**, the prison authorities allowed inmates to receive food from families despite face-to-face visits being banned.²⁷⁰ Similarly, in **Chile** and **Mexico**, where prisoners rely on families for their food and other items, when family visits were stopped, measures were put in place allowing families to deliver these items on specific dates and times and to a special distribution area outside prison facilities.²⁷¹

Family visits to prisons in **Bulgaria** were banned during the whole period of the state of emergency (March-May 2020) and only lawyers could visit their clients.²⁷² Virtual visits – 15-20 minute video calls – were introduced to replace personal visits. According to the Ministry of Justice, more than 4,000 calls were organized between prisoners and detainees, on the one hand, and their relatives, on the other, in three months.²⁷³ Access to virtual visits was limited to only a few institutions where the conditions, such as the availability of suitable equipment, a strong internet connection and suitably knowledgeable and willing staff, allowed. Longer phone calls were allowed but the family members were required to pay for those calls and no compensation was offered, creating a financial burden.²⁷⁴

In the **UK**, a manager at Wymott prison in England, told Amnesty International that the prison administration enabled prison staff to take photos of detainees, which were then sent through the post to their families: “They wrote a note that was then put in an envelope and we’d send it out with the picture so families knew they were well.”²⁷⁵

In a response to Amnesty International dated 21 December 2020, Her Majesty’s Prison and Probation Service stated that “confidential legal visits in prisons have continued to take place throughout the pandemic, in line with the necessary safety restrictions required at each prison”.²⁷⁶ The UK government also reported that, in May 2020, secure video calls were introduced to prisons and young offender institutions across England and Wales and had been made available in “virtually all prisons” by mid-December 2020. These secure video calls were being offered at no cost to families. In addition, “60% of the prison estate” had access to in-cell telephony. Where access was lacking, the authorities introduced over 1,200 secure mobile handsets which could be used to contact family and friend via the usual phone system requiring a personal identification number. Every prisoner was also provided with credit of £5 (US\$7) per week for this purpose. The Prison Voicemail service and Email a Prisoner service were made available in all prisons as another option for families and others close to prisoners to stay in touch with people in prison alongside phone and video calls. Prisons continued to provide initiatives such as “Bedtime Stories”, which allow

²⁶⁵ 444, “A magyar rabokat nem engedik ki a börtönökből”, 11 April 2020, 444.hu/2020/04/11/a-magyar-rabokat-nem-engedik-ki-a-bortonokbol

²⁶⁶ Szabad Európa, “Börtönélet a koronavírus alatt: fokozódó indulatok, szétszakított családok”, 25 October 2020, www.szabadeuropa.hu/a/borton-koronavirus-latogatas-tilalom/30908703.html (Szabad Európa, “Börtönélet a koronavírus alatt: fokozódó indulatok, szétszakított családok”).

²⁶⁷ Szabad Európa, “Börtönélet a koronavírus alatt: fokozódó indulatok, szétszakított családok”.

²⁶⁸ Amnesty International, *Prisoners of the pandemic: The right to health and COVID-19 in Pakistan’s detention facilities*, p. 29. The real name of “Zahid” has been withheld to protect his identity.

²⁶⁹ Amnesty International, *Prisoners of the pandemic: The right to health and COVID-19 in Pakistan’s detention facilities*, p. 29. The real name of “Wasim” has been withheld to protect his identity.

²⁷⁰ *Morocco World News*, “Eid Al Adha: Morocco’s Prison Authority Allows Inmates to Receive Food From Families”, 24 July 2020, www.morocoworldnews.com/2020/07/311700/eid-al-adha-moroccos-prison-authority-allows-inmates-to-receive-food-from-families/

²⁷¹ Lina Marmolejo et al., “Responding to COVID-19 in Latin American Prisons: The Cases of Argentina, Chile, Colombia, and Mexico”, *Victims and Offenders*, 26 October 2020, doi.org/10.1080/15564886.2020.1827110, pp. 13-14.

²⁷² Jago Russell, “Covid-19 in Europe’s Prisons and the Response”, *Euroobserver*, 18 May 2020, euobserver.com/opinion/148385

²⁷³ Prison Insider, *Europe : coronavirus, la fièvre des prisons*, updated 31 December 2020, www.prison-insider.com/en,%20https://www.prison-insider.com/en/articles/europe-coronavirus-la-fievre-des-prisons

²⁷⁴ Bulgarian Helsinki Committee, interview with Dilyana Angelova, researcher, 20 October 2020.

²⁷⁵ Amnesty International, interview via video call with Michael Butler, custodial manager at Wymott prison, 17 September 2020.

²⁷⁶ UK, HMPPS, letter to Amnesty International, 21 December 2020.

residents to record themselves reading a story to their child and opportunities to make items that they could send to them.²⁷⁷ Despite all these measures, Amnesty International received many complaints from prisoners' families, especially in the early phase of the pandemic. The complaints concerned the fact there was only one 30-minute video call per month in some prisons; and the poor technical quality of calls. A review conducted by Her Majesty's Inspectorate of Prisons and published in February 2021 identified the use of video as a positive measure and urged it to be continued beyond the pandemic.²⁷⁸

INTERNATIONAL STANDARDS

The rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations, including torture or other ill-treatment and enforced disappearance. They affect the ability of an accused to prepare their defence and are required to protect the right to a fair trial, to private and family life and the right to health.

While it is recognized that under certain circumstances restrictions on social visits and cancelling contact visits can be legitimate, they must be compensated by increasing other means and opportunities to contact the outside world. This can be done by, for example, allowing frequent, longer, free-of-charge and safe access to phone, internet, emails or video calls and continued provision of food and other supplies by family members as appropriate.²⁷⁹

Blanket bans on social visits without ensuring alternative means of communication would be disproportionate and increase the risk of violence and further human rights violations.²⁸⁰

Restrictions to, or prevention of, visits with legal counsel would violate detainees' right to a fair trial if penal authorities did not introduce alternative sufficient and effective measures allowing lawyers' unimpeded and confidential access to their clients.²⁸¹ The right of access to detention facilities by external monitoring bodies must also continue to be fully respected.²⁸²

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is urging states to ensure that any restrictions on social visits to prevent the spread of COVID-19 are strictly necessary and proportionate, including by being time limited and non-discriminatory, and that decision-making is transparent.

States must compensate cancelled contact visits and other extra restrictions by increasing other means and opportunities to contact the outside world, such as by allowing more frequent, longer, free-of-charge and safe access to phone, internet, emails or video calls, and continued provision of food and other supplies by family members as appropriate.

Confidential legal visits in prisons should be allowed to continue, in line with necessary safety restrictions. Prison authorities must introduce alternative sufficient and effective measures allowing for lawyers' unimpeded and confidential access to their clients.

States must fully respect the right of access to detention facilities by monitoring bodies, such as National Preventive Mechanisms, the International Committee of the Red Cross, UN Special Procedures, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and NGOs, whenever visits can be conducted safely.

²⁷⁷ UK, HMPPS, letter to Amnesty International, 21 December 2020.

²⁷⁸ HMIP, *What happens to prisoners in a pandemic?*, February 2021, www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf, p. 3.

²⁷⁹ SPT, Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic. See also PRI, Briefing Note *Coronavirus: Healthcare and human rights of people in prison*, March 2020, www.penalreform.org/resource/coronavirus-healthcare-and-human-rights-of-people-in/; and European Committee for the Prevention of Torture, *Follow-up statement regarding the situation of persons deprived of their liberty in the context of the ongoing COVID-19 pandemic*, 9 July 2020, rm.coe.int/16809ef566.

²⁸⁰ See IACHR, *The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic*; Edwin Cameron, "Covid-19 and the perils of over-incarceration", *The Daily Maverick*, 24 April 2020, www.dailymaverick.co.za/article/2020-04-24-covid-19-and-the-perils-of-over-incarceration/; and IASC, OHCHR and WHO, *Interim Guidance - COVID-19: Focus on Persons Deprived of Their Liberty*.

²⁸¹ IASC, OHCHR and WHO, *Interim Guidance - COVID-19: Focus on Persons Deprived of Their Liberty*.

²⁸² UNODC, WHO, UNAIDS and OHCHR, *Joint statement on COVID-19 in prisons and other closed settings*.

5.3 RESPONSE TO PROTESTS AND UNREST

EXCESSIVE USE OF FORCE

Protests and unrest have broken out in prisons in the context of COVID-19 and have often been attributed to the introduction of restrictive measures like the suspension of prison visits or poor health and living conditions.²⁸³ The UNODC reported such events in over 40 countries. Among other countries, Brazil, India, Italy, Jordan, Lebanon, Nigeria, Romania, Sri Lanka, Thailand, the UK and Venezuela have seen violent prison protests erupt, resulting in death or injury of prisoners and prison staff or prisoner escapes.²⁸⁴

Amnesty International has documented a number of human rights violations in the context of governments' response to suppress COVID-19-related protests and unrest, including excessive use of force (such as the use of live ammunition and tear gas) in **Iran, Italy, Madagascar, Mexico, Sierra Leone** and **Sri Lanka**. As a result, scores have been killed and hundreds injured and many more have been subjected to prolonged incommunicado detention, punitive isolation and denial of access to adequate medical treatment.

In **Sierra Leone** in April 2020 prison guards used live ammunition to disperse a riot in Freetown's central prison, killing 31 people, including one prison officer, and leaving dozens of people injured. Twelve inmates died from gunshot wounds. Prisoners were reportedly protesting about overcrowding and restrictive measures to tackle COVID-19, including the prohibition of family visits.²⁸⁵

In **Iran**, security forces used live ammunition, tear gas and beatings to suppress protests in several prisons in March and April 2020, killing several prisoners and injuring others.²⁸⁶

In **Mexico**, AsiLegal, an NGO, reported that 20 violent incidents had taken place in the country's prisons since the beginning of the pandemic.²⁸⁷ In May 2020, a violent clash in the Puente Grande prison, in the central state of Jalisco, left eight inmates dead and another eight hospitalized with injuries. According to AsiLegal, the tensions were linked to the spread of the COVID-19 in national prisons.²⁸⁸ Earlier that month, AsiLegal reported that riots in Huitzilzingo prison in the municipality of Chalco, in the central State of Mexico, and in Colima prison, in the western state of Colima, resulted in the death of three detainees and injuries to 29 others.²⁸⁹

In **Madagascar**, security forces killed 22 detainees escaping from Farafangana prison in the south-east of the country on 23 August 2020. In total, 88 detainees had escaped. According to local media reports, the detainees escaped to protest prolonged pre-trial detention, the use of pre-trial detention for minor offences, squalid conditions of detention characterized by severe overcrowding and widespread corruption within the prison system; conditions had worsened since the outbreak of COVID-19, with detainees no longer receiving visits from their families or lawyers.²⁹⁰

In **Italy**, in early March 2020, peaceful protests and some violent unrest took place in 49 of the country's prisons in the context of restrictions on family visits, the lack of compensatory measures and inadequate information, leading to the death of 14 inmates.²⁹¹ Nine inmates held in Modena prison lost their lives (five in the prison itself and four after transfer to another prison), one detainee died in Bologna and four in a prison in Rieti, although the Ministry of Justice claims those deaths resulted from overdoses of drugs stolen from

²⁸³ UNODC, *COVID-19 in prisons – Member states and UNODC reiterate their commitment to the Nelson Mandela Rules*.

²⁸⁴ UNODC, *COVID-19 preparedness and responses in prisons*.

²⁸⁵ Amnesty International, *Sierra Leone: Reasons underlying prison riot amid COVID-19 case must be investigated*, 30 April 2020, www.amnesty.org/en/latest/news/2020/04/sierra-leone-reasons-underlying-prison-riot-amid/; *AYV Newspaper*, "April 21, 2020 Pademba Road Correctional Centre attack report out; 31 Inmates Killed, 53 Injured", 8 July 2020,

www.ayvnewspaper.com/index.php/2020/07/08/april-21-2020-pademba-road-correctional-centre-attack-report-out-31-inmates-killed-53-injured/; and *The Sierra Leone Telegraph*, "Freetown Correctional Centre publishes report into Pademba Road prison riot", 8 July 2020, www.thesierraleonetelegraph.com/freetown-correctional-centre-publishes-report-into-pademba-road-prison-riot/

²⁸⁶ Amnesty International, *Iran: Prisoners killed by security forces during COVID-19 pandemic protests*, 9 April 2020,

www.amnesty.org/en/latest/news/2020/04/iran-prisoners-killed-by-security-forces-during-covid19-pandemic-protests/

²⁸⁷ AsiLegal, "Mapa penitenciario COVID-19. Monitoreo de la pandemia en centros penitenciarios mexicanos", asilegal.org.mx/mapa-penitenciario-covid-19/ (accessed 24 February 2020) (AsiLegal, "Mapa penitenciario").

²⁸⁸ Eme Equis, "¿Que se pudran!... momento: los contagiados en prisión también importan", 23 May 2020, www.m-x.com.mx/al-dia/que-se-pudran-momento-los-contagiados-en-prision-tambien-importan

²⁸⁹ AsiLegal, *La desinformación también se propaga y genera muertes: Colima, Edomex y CDMX*, 13 May 2020,

asilegal.org.mx/comunicados/la-desinformacion-tambien-se-propaga-y-genera-muertes-colima-edomex-y-cdmx/

²⁹⁰ Amnesty International, *Madagascar: Killing of 22 detainees an appalling attack on the right to life*, 25 August 2020,

www.amnesty.org/en/latest/news/2020/08/madagascar-killing-of-detainees-an-appalling-attack-on-the-right-to-life/

²⁹¹ Antigone, response to Amnesty International questionnaire, 8 October 2020.

the prisons' clinics.²⁹² After receiving more than 20 complaints from prisoners and their relatives, Antigone, an organization monitoring prison conditions, filed five complaints of torture with relevant prosecutor's offices in respect of violence, abuse and mistreatment by prison guards at the Opera prison in Milan, Melfi prison, Santa Maria Capua Vetere prison and Pavia prison.²⁹³ The organization also submitted a complaint regarding medical doctors in Modena and Maria Capua Vetere prisons, alleging that they did not file medical reports despite examining prisoners who had signs of beatings. At the time of writing, investigations into all these complaints were under way.²⁹⁴

In **Sri Lanka**, security forces killed prisoners on three different occasions during 2020. In March 2020, two prisoners were killed and several others injured in Anuradhapura prison in North Central Province, following a protest related to COVID-19 measures. On 18 November 2020, a prisoner was shot dead while trying to escape from Bogambara prison in Central Province, where more than 100 inmates had tested positive for COVID-19. Eleven prisoners were killed and more than 50 others injured following an incident at Mahara prison in Western Province.²⁹⁵ According to media reports, post-mortem examinations concluded that all 11 prisoners were killed by gunshots,²⁹⁶ suggesting police were responsible for the killings rather than the deaths being the result of clashes between prisoners as had earlier been suggested by the Minister of Prisons.²⁹⁷

The Human Rights Commission of Sri Lanka, after an on-site visit to Mahara prison, issued its findings on 2 December 2020. It stated:

“The protests were sparked by the transfer of prisoners infected with the coronavirus from Welikada prison to Mahara. If the authorities had responded to prison officials’ concerns to this proposed transfer and had, instead, set up a separate treatment facility for prisoners, this clash and the subsequent deaths could have been completely avoided.”²⁹⁸

INTERNATIONAL STANDARDS

Prison authorities must ensure that force is only ever used against prisoners where it is strictly necessary and proportionate to a legitimate objective, as set out in the UN's Code of Conduct for Law Enforcement Officials and its Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.²⁹⁹

The principle of necessity requires that law enforcement officials use force only when strictly necessary,³⁰⁰ and that they use non-violent means as far as possible before resorting to the use of force.³⁰¹ Force may therefore be used only when non-violent means remain ineffective or without any promise of achieving the intended result.³⁰² While the principle of necessity governs the circumstances under which force may be used, the principle of proportionality governs the manner in which force may be used. The principle of proportionality requires that force be used with restraint, and only to the extent required.³⁰³

The means any amount of any force which is used must therefore be in proportion to the seriousness of the offence and the legitimate objective to be achieved.³⁰⁴ When using force, law enforcement officials must also

²⁹² Antigone, *I processi*, www.antigone.it/cosa-facciamo/i-processi (accessed 29 January 2021) (Antigone, *I processi*); Reuters, “Death toll rises from Italy's coronavirus prison riots”, 10 March 2020, www.reuters.com/article/us-health-coronavirus-italy-prisons/death-toll-rises-from-italys-coronavirus-prison-riots-idUSKBN20X2DG; and *Avvenire*, “Coronavirus. Rivolta carceri, morti salgono a 14. Ancora ricercati 10 evasi da Foggia”, 10 March 2020, www.avvenire.it/attualita/pagine/rivolta-carceri-i-morti-salgono-a-13-ancora-ricercati-10-detenuiti-evasi-dal-penitenziario-di-foggia-catturati-62

²⁹³ Antigone, *The prison to the Test of Phase 2*, 10 August 2020, www.antigone.it/upload2/uploads/docs/Reporthalf2020.pdf, pp. 10-11.

²⁹⁴ Antigone, *I processi*.

²⁹⁵ Amnesty International, *Sri Lanka: Prison deaths must be investigated amid growing COVID-19 unrest*, 30 November 2020, www.amnesty.org/en/latest/news/2020/11/sri-lanka-prison-deaths-must-be-investigated-amid-growing-covid-19-unrest/

²⁹⁶ Colombo Page, “All 11 inmates of Mahara Prison died from gunshot wounds”, 8 January 2021, www.colombopage.com/archive_21A/Jan08_1610129592CH.php

²⁹⁷ *The Island*, “Autopsies prove minister prisons and police wrong”, 26 December 2020, island.lk/autopsies-prove-minister-prisons-and-police-wrong/

²⁹⁸ Human Rights Commission of Sri Lanka, *Interim recommendations of HRCSL on incidents at Mahara Prison on 29 November 2020*, 2 December 2020, www.hrcsl.lk/wp-content/uploads/2020/02/Interim-Recommendations-of-HRCSL-on-Incidents-at-Mahara-Prison-on-29-November-2020.pdf

²⁹⁹ Code of Conduct for Law Enforcement Officials (Code of Conduct), 17 December 1979, www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), 7 September 1990, www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx. See also OHCHR, *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*, www.ohchr.org/documents/publications/training5add1en.pdf, pp. 7-11.

³⁰⁰ Code of Conduct, Article 3.

³⁰¹ Basic Principles, Principle 4.

³⁰² Basic Principles, Principle 4.

³⁰³ Code of Conduct, Article 3; Basic Principles, Principle 5(a).

³⁰⁴ Basic Principles, Principle 5(a).

minimize damage and injury, and respect and preserve human life.³⁰⁵ The use of live ammunition, therefore, can only be justified as a last resort and in the most dire of circumstances, in self-defence or in defence of others against an imminent threat of death or serious injury.³⁰⁶

RECOMMENDATIONS TO GOVERNMENTS

Amnesty International is calling on states to initiate independent and impartial investigations into all incidents involving lethal use of force, and to bring those responsible to justice following a fair trial, if it is found that they failed to adhere to the standards set out in the Code of Conduct and Basic Principles.

In accordance with international principles, in cases where prison guards, police or other security forces are found to have been responsible for deaths or injuries as a result of excessive use of force, victims or their families must be adequately compensated.

³⁰⁵ Basic Principles, Principle 5(b).

³⁰⁶ Basic Principles, Principle 9.

6. STATE OBLIGATIONS

Complementing the international law and standards relevant to the specific human rights violations described above, this chapter sets out wider underlying rights which states are duty bound to uphold, first and foremost the right to health. It also briefly addresses states' obligations regarding the rights of prisoners held in prisons managed by private companies, and the standards applicable to the companies to ensure they meet their responsibility to respect human rights.

6.1 RIGHT TO HEALTH

The Universal Declaration on Human Rights states: “Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care...”³⁰⁷

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which 117 states are party,³⁰⁸ recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.³⁰⁹ The right to health is also enshrined in several other international human rights treaties and almost all countries are legally bound to at least one treaty that covers this right.

The ICESCR recognizes that the realization of the right to health (among others) will be “progressive” (as opposed to immediate) and according to the “maximum available resources” of the concerned state, but crucially prohibits “discrimination of any kind”.³¹⁰

The UN Committee on Economic, Social and Cultural Rights (CESCR), the body that provides authoritative interpretation of the ICESCR's articles, has spelled out the duties and responsibilities of states and non-state actors around the right to health. It has clarified that states have a core obligation to ensure minimal levels of economic, social and cultural rights. In the case of the right to health, this includes essential primary health care³¹¹ and essential medicines, without delay.³¹² These measures include prevention, treatment and control of epidemics and other diseases by making relevant technologies available and implementing and/or enhancing relevant immunization programmes and other strategies.³¹³ The CESCR has further established that these measures are “obligations of comparable priority” to core obligations of the right to health so states cannot justify non-compliance.³¹⁴

The CESCR has specified that states must refrain from “denying or limiting equal access for all persons, including prisoners or detainees... to preventive, curative and palliative health services”.³¹⁵ It has established that this means that states must work towards ensuring that all health facilities, goods and services

³⁰⁷ Universal Declaration of Human Rights, Article 25.1.

³⁰⁸ ICESCR, Article 12.2. See OHCHR, “Status of Ratification, Interactive Dashboard”, indicators.ohchr.org/ for a list of countries and their ratification status. As of December 2020, only the Comoros, Cuba, Palau and the USA had not ratified the ICESCR. States that have signed but not yet ratified treaties are still bound by these principles through Article 18 of the Vienna Convention on the Law of Treaties adopted on 23 May 1969, which establishes that these states must not “defeat the object and purpose of a treaty prior to its entry into force”. See Vienna Convention on the Law of Treaties (with annex), 23 May 1969, treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf

³⁰⁹ ICESCR, Article 12.

³¹⁰ ICESCR, Article 2.

³¹¹ CESCR, General Comment 3, The Nature of States Parties' Obligations, UN Doc. E/1991/23, para. 10.

³¹² CESCR, General Comment 14, para. 43.

³¹³ CESCR, General Comment 14, Article 12.2(c), paras 16, 44.

³¹⁴ CESCR, General Comment 14, paras 43, 44, 47. Paragraph 47 states that the “core obligations” in paragraph 43 are non-derogable.

³¹⁵ CESCR, General Comment 14, para. 34.

(including information) must be available, accessible (physically and financially), acceptable and of good quality.³¹⁶

Diagnostics, treatments, and vaccines fall squarely within the state's comparable core obligations as goods that play an essential role in curbing communicable diseases. As a surveillance tool, diagnostics detect outbreaks of infectious diseases and offer insight into the effectiveness of immunization programmes.³¹⁷ Treatments reduce morbidity and mortality, easing the strain on health systems and contributing to the overall realization of the right to health. Likewise, vaccines prevent infection and transmission. In the context of a pandemic, "sharing the best scientific knowledge and its applications, especially in the medical field, becomes crucial to mitigate the impact of the disease and to expedite the discovery of effective treatments and vaccines".³¹⁸

In case states are unable to uphold their minimum core obligations, the ICESCR establishes that they must undertake "to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the Covenant."³¹⁹

6.2 HEALTH OF DETAINEES

The revised UN Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) were adopted by the UN General Assembly in 2015.³²⁰ They state that the "prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."³²¹ Furthermore, they state:

"The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."³²²

This rule was reiterated at the start of the spread of COVID-19 in guidance issued by the OHCHR and the WHO through the Inter-Agency Standing Committee (IASC):

"International standards highlight that states should ensure that persons in detention have access to the same standard of health care as is available in the community, and that this applies to all persons regardless of citizenship, nationality or migration status."³²³

The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also stressed the heightened duty of care of the state to those whom it detains, stating:

"Because incarceration causes a heightened degree of vulnerability of the detained individuals, it causes a related heightened duty of care on the part of the State, which has the obligation to take the necessary measures to protect their lives."³²⁴

The OHCHR has explained that "states must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases... Positive measures of protection are particularly necessary when certain groups of persons have continuously been discriminated against in the practice of states parties or by private actors."³²⁵

³¹⁶ CESCR, General Comment 14, para. 12.

³¹⁷ WHO, *Vaccination greatly reduces disease, disability, death and inequity worldwide*, www.who.int/bulletin/volumes/86/2/07-040089/en/

³¹⁸ CESCR, General Comment 25, Science and Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/25, para. 82.

³¹⁹ ICESCR, Article 2.1.

³²⁰ Nelson Mandela Rules. See also UNODC, *Assessing compliance with the Nelson Mandela Rules. A checklist for internal inspection mechanisms*, August 2017, www.unodc.org/documents/justice-and-prison-reform/17-04946_E_ebook_rev.pdf

³²¹ Nelson Mandela Rules, Rule 5.

³²² Nelson Mandela Rules, Rule 24.

³²³ IASC, OHCHR and WHO, *Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty*, 27 March 2020.

interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who

³²⁴ UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *COVID-19 and Protection of right to life in places of detention*.

³²⁵ OHCHR and WHO, *Factsheet 31: The Right to Health*, www.ohchr.org/documents/publications/factsheet31.pdf

6.3 THE RIGHT TO WATER AND SANITATION

The right to water has been recognized as being derived from the right to an adequate standard of living, and therefore implicitly contained in the International Covenant on Economic, Social and Cultural Rights and other instruments.³²⁶ It has also been recognised as a legally binding right in a growing number of national constitutions. In its General Comment 15 on the right to water, the Committee on Economic, Social and Cultural Rights, stressed the need for states to “give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including ... prisoners and detainees”. In particular, it urged states to take steps to ensure that prisoners and detainees “are provided with sufficient and safe water for their daily individual requirements”.³²⁷

The right to sanitation, like the right to water, has been recognized as being derived from the right to an adequate standard of living, and therefore implicitly contained in the International Covenant on Economic, Social and Cultural Rights.³²⁸ This right requires that sufficient sanitation facilities (with associated services) be available within, or in the immediate vicinity of, each household, health or educational institution, workplace, public institution and public place. It requires quality of sanitation facilities, which means they must be hygienically safe to use, including regular cleaning, maintenance and emptying of pits or other places that collect human excreta. Facilities must be in a safe location and be physically accessible for everyone at all times. Access to sanitation facilities and services must be affordable, ensure privacy and dignity, and be socially and culturally acceptable.³²⁹

³²⁶ ICESCR, Article 11; CRC, Article 14(2); CEDAW, Article 14(2); and African Union, African Charter on the Rights and Welfare of the Child, 1 July 2020, au.int/en/treaties/african-charter-rights-and-welfare-child

³²⁷ CESCR, General Comment 15, paras 16 and 16(g).

³²⁸ CESCR, Statement on right to sanitation, 2010, UN Doc. E/C.12/2010/1, para. 7; UN Human Rights Council (UNHRC), Resolution 15/9: Human rights and access to safe drinking water and sanitation, adopted on 30 September 2010, UN Doc. A/HRC/RES/15/9; and UN General Assembly (UNGA), Resolution 68/157: The human right to safe drinking water and sanitation, adopted on 18 December 2013, UN Doc. A/RES/68/157.

³²⁹ The criteria used here to describe the right to sanitation are drawn from CESCR, Statement on the Right to Sanitation; and UN Independent Expert on the issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation, Report, 1 July 2009, UN Doc. A/HRC/12/24, paras 64-66 and 70-80.

7. CONCLUSION AND CALL FOR ACTION

7.1 CONCLUSION

The spread of COVID-19 in prisons and other detention facilities has highlighted pre-existing flaws in many criminal justice systems. It has also thrown into stark relief systemic threats to health in detention facilities, such as overcrowding and poor sanitation and the excessive use of incarceration and the disproportionately high incarceration rates of people who are marginalized and experience intersectional injustices and forms of racial and other discrimination.

As infection rates in prisons and other detention facilities have soared, governments have often struggled to gather and share disaggregated data on infections and deaths and to put in place adequate sanitary measures. While there have been some examples of innovative screening in prisons, in general testing, screening and treatment of both prisoners and prison officials have been found wanting. While some measures have been taken to reduce overcrowding, they have been inadequate. As vaccine roll-out strategies and plans take shape, there remain many questions about what priority prisoners and prison officials will be given. More broadly, a failure to prioritize the health of people in detention can have catastrophic consequences for both prisoners and the public health care system.

Measures introduced to contain the spread of COVID-19 in prisons have included excessive and abusive use of isolation and quarantine measures, which in some cases may have amounted to a breach of the prohibition of torture and other, cruel, inhuman or degrading treatment. Authorities also reduced or completely halted family visits, affecting detainees mental and physical wellbeing. While many governments have made efforts to introduce compensatory measures, they have had varying degrees of success. Partly in response to these measures, there have been widespread protests and unrest in prisons to which the authorities have sometimes responded using excessive force.

7.2 CALL FOR ACTION

Amnesty International is calling for urgent action from governments across the world in eight key areas to address the growing crisis in prisons and other detention facilities. As set out in Chapters 4, 5 and 6 of this report, these relate to: overcrowding; inadequate sanitary measures; data on infections and deaths; testing, screening and treatment; access to vaccines; isolation measures; restrictions on visits; and responses to protests and unrest.

These recommendations are by no means an exhaustive list of measures. Rather they are priority areas identified by Amnesty International on the basis of governments' obligations under international human rights law. The recommendations are also made bearing in mind that preventing COVID-19 transmission within and between prisons and the community is vital to protect everyone against infection and to prevent further spread of the disease. Moreover, as *The Lancet* has promoted, "humane and evidence-based prison

health systems with community links will improve public health within and outside prison walls, both for COVID-19 and other health issues.”³³⁰

7.3 RECOMMENDATIONS TO UN AGENCIES

In addition to the recommendations addressed to governments in the preceding chapters, Amnesty International is also calling upon a number of UN agencies to step up their efforts in this respect.

WHO

Amnesty International recommends that the WHO:

- Keep under regular review the guidance on fair access to COVID-19 health products, including vaccines, with explicit reference to prison staff and prisoners at particularly high risk of death or severe illness from COVID-19 as being among the at-risk groups who should be prioritized for vaccines;
- Work with the OHCHR and regional human rights mechanisms to promote the right to health of prisoners;
- Consider conducting an updated global study on prisons and health, including lessons learnt from the experience of COVID-19 and its impact on prisons and the health of prisoners and prison staff.
- Urge governments to address the concerns and implement the recommendations highlighted in this report, including those related to addressing overcrowding; inadequate sanitary measures; absence of data on infections and deaths; testing, screening and treatment; access to vaccines; isolation measures; and restrictions on visits.

UNODC

Amnesty International recommends that the UNODC:

- Expand the system of crime data collection across states, allowing for a more detailed disaggregated analysis to assist towards improving states’ pandemic prevention and control strategies;
- Promote a comprehensive set of guidance, including practical measures for states to address overcrowding through releases and other non-custodial measures.

OHCHR

Amnesty International recommends that the OHCHR:

- Urge governments to respond to the concerns and implement the recommendations highlighted in this report related to overcrowding; inadequate sanitary measures; data on infections and deaths; testing, screening and treatment; access to vaccines; isolation measures; restrictions on visits; and responses to protests and unrest.
- Provide technical advice and support, where necessary, to national human rights bodies and others to perform the critical function of monitoring the situation of prisons during the COVID-19 pandemic;
- Promote, in co-operation with UN expert mechanisms as appropriate, the right to health of prisoners, and urge states to take all appropriate public health measures in respect of this population through monitoring, investigations, education and any other appropriate means;
- Ensure that the UN’s expert mechanisms, among them the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the relevant Special Procedures, have the financial means and logistical support to resume their country visit mandates, including prisons, at the earliest occasion possible;

³³⁰ *The Lancet*, “Improving prisoner health for stronger public health”.

- Urge states that have not done so to ratify relevant treaties, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to promptly establish an independent National Preventive Mechanism;
- Encourage states under review in the Universal Periodic Review process to include in their national reports how they have addressed the right to health of prisoners during the pandemic and urge reviewing states to make strong recommendations on how the health of prisoners could be improved including during future pandemics.

UN TREATY BODIES AND SPECIAL PROCEDURES

Amnesty International recommends that the UN treaty bodies and Special Procedures continue to monitor the right to health of prisoners during the pandemic and provide advice and recommendations to states on non-discriminatory and human rights compliant implementation of isolation and quarantine measures, vaccine roll-out programmes for prisoners and prison staff, and steps to be taken to reduce the prison populations.

In particular, it recommends that the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment builds on much welcomed efforts and advice issued in February and March 2020 and engagement with National Preventive Mechanisms throughout the pandemic, and provides guidance and support to states and National Preventive Mechanisms on how to prevent ill-treatment and protect the rights of those deprived of their liberty during the pandemic.

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FORGOTTEN BEHIND BARS

COVID-19 AND PRISONS

The spread of COVID-19 in prisons and other detention facilities has thrown into stark relief systemic threats to health in detention such as overcrowding and poor sanitary conditions and laid bare years of underinvestment and neglect of health services in prisons.

Against this backdrop, this report summarizes a review of 69 governments' response to COVID-19 in detention facilities. It concludes that the measures governments have introduced to prevent the spread of COVID-19 have often been inadequate and, in some cases, have themselves led to human rights violations.

Irrespective of the economic status of the state, prison authorities have generally been unable to cope with the increased demand for preventive health measures and medical treatment of prisoners. Available information showed acute shortages of testing capacity, practices inconsistent with public health guidance and concerning examples of discriminatory and punitive measures, especially in the early phases of the spread of COVID-19.

Lack of clarity about vaccination plans, policies, and treatment of incarcerated populations is also a pressing, global concern. While, encouragingly, some countries have already adopted policies that put prison populations and staff among the priority groups to receive vaccines, Amnesty International's research found that many others, including high-income countries, either are silent or remain unclear on their plans.

Amnesty International is calling for urgent action from governments across the world to address the concerns in detention facilities highlighted here. Preventing COVID-19 transmission within and between prisons and the community is vital to protect everyone against infection and to prevent further spread of the disease.