



Briefing note | 16 March 2020

Coronavirus: Healthcare and human rights of people in prison

Do no harm, equality, transparency, humanity: values should guide the criminal justice sector's response to coronavirus

At the time of publishing there were more than 164,000* confirmed cases of COVID-19, the novel form of Coronavirus, affecting 110 countries with more than 6,470 deaths. In this briefing we assess the current situation of COVID-19 outbreaks and prevention measures in prisons and wider impacts of responses to governments on people in criminal justice systems. This briefing note argues for action to be taken now and immediately, given the risk people in prison are exposed to, including prison staff.**

Where widespread community transmission of COVID-19 is occurring, there are legitimate concerns of this spreading to prisons. The outbreak of any communicable disease presents particular risks for prisons due to the vulnerability of the prison population and not least because of the difficulties in containing a large outbreak in such a setting. People detained are vulnerable for several reasons, but especially due to the proximity of living (or working) so closely to others – in many cases in overcrowded, cramped conditions with little fresh air.

People in detention also have common demographic characteristics with generally poorer health than the rest of the population, often with underlying health conditions. Hygiene standards are often below that found in the community and sometimes security or infrastructural factors reduce opportunities to wash hands or access to hand sanitizer – as explored below.

Any coronavirus outbreak in prisons should - in principle - not take prison management by surprise, as contingency plans for the management of outbreaks of communicable diseases should be in place. This is an essential part of the obligation of the state to ensure the health care of people in prison required by international human rights law.

Table of contents

From a ‘public health emergency of international concern’ to a pandemic 3
COVID-19 in prisons: cases and responses 3
Civil rights, right to health and preventing COVID-19 in prisons 4
 Right to health and hygiene4
 Equivalence of care for people in prison5
 Contact with the outside world5
 Any limitations on contact with the outside world should be proportionate, including by being time limited and non-discriminatory6
 Quarantine, isolation or limitation on movements within detention facilities.....7
 Isolation or quarantine measures must be proportionate, authorised in law and not result in de facto solitary confinement8
 Fair trials and the right to legal counsel.....8
 Protective measures should allow people to attend trials and receive legal counsel9
 Detention monitoring and right to prohibition of torture and ill-treatment.....9
 States should guarantee access to prison for monitoring bodies.....9
 Health of prison staff10
 Prison management must support prison staff in times of emergency10
Emergency measures to reduce prison populations..... 10
 Do no harm10
 Emergency releases10
 States must put in place plans allowing for emergency releases12
Prison sentences for Coronavirus-related offences 12
 Presumption of innocence and criminalisation as last resort.....13

* All data included is sourced from the World Health Organization or is otherwise cited and is correct as of 16 March 2020.
** In this briefing note we use prisons and detention facilities interchangeably referring to any place where people are deprived of their liberty under criminal justice measures or sanctions.

'Public health emergency of international concern' and pandemic

The World Health Organization (WHO) has deemed the novel coronavirus, COVID-19 a pandemic representing a worldwide spread of the new disease.

The largest number of cases have been in China, where it was first detected with 81,000 cases, followed by Italy, Iran and Republic of Korea, with between 8,000 and 24,000 cases respectively. States have responded to WHO's call for actions to take urgent measures to prevent the disease

spreading further in varying forms. Drastic measures have seen cities in China and in the case of Italy, the whole country, on 'lock down' – entailing restrictions on movement. Since 12 March 2020, many governments have followed suit with a number of measures from a halt to gatherings of over 1,000 people, holding people in isolation after returning from affected areas or calling for people to self-isolate themselves, as well as cancelling flights and closing borders.

COVID-19 in prisons: cases and responses

To-date two countries have confirmed cases of COVID-19 in places of detention. Many more announced moves to prevent people detained or personnel working within such facilities contracting or spreading the disease.

In **China** more than 500 cases were confirmed in prisons. Officials said that they had set up a specialist hospital and organised inspection teams to prisons for testing. The governor of the female prison in Rencheng (where 230 cases were confirmed) was dismissed. In the province of Shandong a further five officials and the party secretary for the province's department of justice were removed.¹

There are some reports that at least eight people in several of **Iran's** prisons have contracted COVID-19.² The government announced that they have temporarily released 70,000 people from prison to

prevent outbreaks. To be released, one had to test negative for COVID-19 and post bail, and priority was reportedly given to people with underlying health issues.³ It is uncertain how much bail was in such cases.

The UN Special Rapporteur on human rights in Iran criticised the government for not releasing political prisoners, and limiting the people released to those with less than five-year sentences thus excluding many imprisoned for sentences linked to their participation in protests. He noted: 'A number of dual and foreign nationals are at real risk if they have not ... got it [coronavirus] they are really fearful of the conditions.' In an earlier statement the Special Rapporteur had pointed out that 'overcrowding, poor nutrition and a lack of hygiene' were serious concerns, indicating a high risk to prisoners' health.⁴

¹ 'China finds spike in coronavirus cases in jails, officials fired', 21 February 2020, available at <https://www.reuters.com/article/us-china-health-jails/china-finds-spike-in-coronavirus-cases-in-jails-officials-fired-idUSKBN20F0GR>.

² 'Political Prisoners Excluded from Mass Release as COVID-19 Spreads', 6 March 2020, available at <https://iranhumanrights.org/2020/03/political-prisoners-excluded-from-mass-release-as-more-inmates-exhibit-covid-19-symptoms/>.

³ 'Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread', 3 March 2020, available at <https://www.bbc.co.uk/news/world-middle-east-51723398>.

⁴ 'UN urges Iran to free political prisoners amid coronavirus spread', 10 March 2020, available at <https://www.aljazeera.com/news/2020/03/urges-iran-free-political-prisoners-coronavirus-spread-200310184750920.html>.

Civil rights, right to health and preventing COVID-19 in prisons

Right to health and hygiene

Under international human rights law, every human being has the right to the highest attainable standard of physical and mental health. When a state deprives someone of their liberty, it takes on the duty of care to provide medical treatment and to protect and promote his or her physical and mental health and well-being, as laid out by the United Nations Standard Minimum Rules for the Treatment of Nelson Mandela Rules).⁵ This duty of care is critical, because prisoners have no alternative but to rely on the authorities to promote and protect their health.

Rates of disease, substance dependency and mental illness among people in prison are much higher than in the community. People in prison often come from impoverished and marginalised backgrounds where they may have been exposed to transmissible diseases and inadequate nutrition, and their access to good quality health services will have been limited. Some prisoners may have neglected their health and may never have been treated by a qualified doctor before their imprisonment, particularly if they come from rural or remote areas.

Communicable diseases are a particular concern, with infection rates for tuberculosis between 10 and 100 times higher than in the community. People in prison are five times more likely to be living with HIV than adults in the general population, and they have been identified by UNAIDS as a key population that has been left behind in responses to the AIDS epidemic. As we reported in *Global Prison Trends 2019*, which had healthcare in prisons as a special focus,⁶

the transmission of diseases is rife in overcrowded facilities, placing the lives of both prisoners and staff at risk.

The Nelson Mandela Rules require equivalence of healthcare – meaning health provision in prison settings should be the same standard as available in the community. In practice, however the healthcare services many people in prison receive is of an inferior standard to that available in the wider community, and some do not receive treatment at all.

Concerns with ensuring equivalence of care in places of detention amid the COVID-19 pandemic are wide ranging. The basic protective measures issued by the World Health Organization. These include two key components: washing your hands frequently and maintain distance from others. They also advise to seek medical care early in case of a fever, cough or breathing difficulties, and stay informed.

For most people in the community these are relatively easy actions to implement. However, for people in detention they rely on the state authorities to be able to exercise their right to health.

It is reported, for instance, that the Arizona (USA) Department of Corrections has not taken appropriate preventive measures, and that its prison conditions are ‘crowded, filthy, unventilated dorms, tents, and Quonset huts housing elderly, frail men with chronic health conditions and multiple disabilities’.⁷

⁵ For more information on the Nelson Mandela Rules: <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>.

⁶ Global Prison Trends 2019, available at <https://www.penalreform.org/resource/global-prison-trends-2019/>.

⁷ ‘Attorneys, Inmates, Correctional Officers Say Arizona Prisons Not Ready For The Coronavirus’, 14 March 2020, available at <https://kizz.org/content/1485691/attorneys-inmates-correctional-officers-say-arizona-prisons-not-ready-coronavirus>.

Access to water to maintain hygiene can be limited, due to security reasons or a lack of infrastructure to provide for taps in each cell or dormitory. Soap is frequently not provided in places where people are detained. Hand sanitizer is not readily available in the majority of prisons and is typically considered contraband due to its alcohol

content. People handcuffed cannot cover their mouth when coughing.

Furthermore, people in prison are said to lack information about the outbreak of COVID-19 and about any plan the prison system might have.

Equivalence of care for people in prison

In suspected or confirmed cases of COVID-19 people in prison should be able to access urgent, specialised healthcare without undue complications. Prison administrations should develop close links with community health services and other health-care providers. Such links are also important for the purposes of ensuring equivalence of care, as provided for in the UN Nelson Mandela Rules. For older or ill people in prison, early release programmes should be put in place as a priority, given their specific risks with COVID-19.

Contact with the outside world

The most common measures taken by prison authorities and in other places of detention to prevent an outbreak of COVID-19 in such facilities have related to limiting contact with the outside world through limitations on visits by relatives or legal representatives of people in prisons.

In **Italy**, the Penitentiary Administration issued internal regulations imposing several measures to prevent the general outbreak in the country affecting prisons. Initially these included halting the transfer of people from detention centres to and from those located in the so-called 'red zone' (which at the time constituted an area in the north of Italy). It also denied access to detention centres to anyone coming from this zone and instructed prison administrations to apply necessary limitations to visits and activities.

It was suggested that individual prisons in Italy decide whether to replace in-person visits with online contacts or phone calls. In some cases, prisons decided to ban all visits, including a number that were at the time located far from the outbreak 'red zone' area in the north of the country. Other prisons took less drastic measures, screening visitors and limiting some visits as required. There was a lack of

communication on behalf of the authorities, with people in prison and their family members uninformed as to the status of visits.

The situation in Italy escalated with the number of cases rising and spreading beyond the 'red zone' in the north and subsequently on 8 March 2020, all prison visits were banned, and all rehabilitation activities were paused. Over 8-9 March, riots and protests erupted in 27 prisons across the country. Seven prisoners died by overdosing on methadone after breaking into the infirmary.

While the authorities have managed to bring the situation under control, the Italian prisoner rights' non-governmental organisation, Antigone, has called for a release of prisoners (including through home detention and probation). They noted that the measures to prevent COVID-19 in prisons were imposed in cramped, overcrowded facilities, bringing a tense situation to the brink.

In other countries, prison visits have been banned outright or restricted in some form. In the **Philippines**, where there are 33 cases reported, prison visits were banned from 11 March for a one-week period and **Hungary**

(which has had 12 cases) brought in a ban on physical contact during visits. **Kuwait**, with 69 cases, also banned prison visits. **The Netherlands** also banned prison visits, except for children who are in detention, following the government measures closing most public places and lifting the right to hold assemblies as of 13 March 2020.

Several measures adopted to limit contact with the outside world for people in prison indicated discriminatory treatment of certain categories. For instance, the Minister of Internal Security in **Israel** (where there are a reported 39 cases) ordered that all visits to Palestinian people in detention, or 'security prisoners' are to be suspended. **Hungarian** authorities announced that prisons would make provision for 'special supervision' for visits involving relatives who are foreign nationals.

In the **United States**, 52 New York state prisons are required to implement a new

screening protocol for visitors which involved a series of questions being asked regarding illness, symptoms and travel outside of the country, including that of any family member. The authorities stated that they were 'committed to ensuring family and friends are able to visit with loved ones, with as limited disruption to the normal visiting process as possible.'⁸

The **Irish** Prison Service updated its visiting protocols, and made the temporary restrictions to visits available to the public online.⁹ The restrictions include a limitation to one visit per prisoner per week and a limitation to two adults per visit.

In **England and Wales**, Her Majesty's Prison and Probation Service, issued guidance on 13 March 2020 stating 'prisons will continue to operate normally, with the minimum disruption, for as long as possible'.¹⁰

Any limitations on contact with the outside world should be proportionate, including by being time limited and non-discriminatory

While restrictions on face-to-face or contact visits for people in detention can be legitimate to prevent COVID-19 outbreaks in facilities, authorities bringing in such measures need a comprehensive and transparent decision-making policy. In case of restrictions, these need to be proportionate to the goal of preventing (or responding to) an outbreak. Contact visits must be replaced by increased means and opportunities of contacting the outside world, for example, by phone, emails or video calls.

Decisions to limit or restrict visits need to bear in mind that contact is essential to the mental well-being of people in detention and can reduce levels of violence. In many countries it is common for visitors to bring prisoners supplies of food, drinks, sanitary items and medicine. Furthermore, restricting visits from legal representatives can bring increased levels of anxiety and impact on the right to fair trials. For caregivers, separation from children can bring a whole host of consequences for both the caregiver and the child(ren) affected.

Any decision should be communicated promptly to all people affected with clear information on the restrictions and time periods for review or lifting of such policies.

⁸ New York State Department of Corrections and Community Supervision press release, available at <https://doccs.ny.gov/doccs-increased-screening-protocols-covid-19-visitors-facilities>

⁹ Irish Prison Service visitor information, 12 March 2020, available at <https://www.irishprisons.ie/6664-2/>.

¹⁰ Guidance issued by the Ministry of Justice of the United Kingdom and Her Majesty's Prison and Probation Service, 13 March 2020, available at <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons>.

Quarantine, isolation or limitation on movements within detention facilities

In view of the risk of COVID-19 spreading in prisons, there have been some cases where prison authorities have quarantined wings or whole facilities, affecting people detained and members of staff alike. Putting people in isolation and limiting movement within prisons are also recommended by some authorities where there are known cases of COVID-19.

In **England**, one prison wing was quarantined after panic when one prisoner fell ill and advice issued to prisons says 'says inmates who had contact with a known coronavirus patient should be isolated in single accommodation'.

In **Canada**, nearly 160 people at the Saskatoon Correctional Centre are under quarantine after one detainee said he had previously come into contact with someone with COVID-19. Six of the 13 living areas at the Saskatoon Correctional Centre, affecting 158 people, have been quarantined.¹¹

Quarantines can also be imposed upon the arrival of new people sentenced to prison. In the southern state of Kerala in **India**, where there have been 14 cases, the prisons decided to quarantine new prisoners arriving.

In **New Zealand**, quarantine measures were taken at the Waikeria Prison. They were however lifted as soon as the medical test results for COVID-19 were negative.¹²

While quarantine or isolation of individual(s) may be legitimate to protect the health of

people, any involuntary separation from the general prison population must be subject to authorisation by the law.

In some cases quarantine or isolation may constitute solitary confinement (defined by the UN Nelson Mandela Rules as confinement of prisoners for 22 hours or more a day without meaningful human contact).¹³ The Rules require that solitary confinement only be in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorisation by a competent authority.

Where isolation is necessary it therefore follows that authorities should put in place a regime so people can benefit from meaningful human contact. They should have full access to means of contacting the outside world, and be able to participate in rehabilitation programmes and socialise with other people – as far as possible.

Any measures imposed by prison authorities, albeit at a time of emergency, need to recognise that isolation can exacerbate anxiety and insecurity for people in prisons leading to violence and impact mental health of detainees. Therefore, blanket measures should be avoided, or if imposed only for the time required to undertake a more individualised and independent medical assessment.

¹¹ 'Coronavirus: Inmates at Saskatoon jail under quarantine after possible link to COVID-19', 11 March 2020, available at <https://globalnews.ca/news/6662877/coronavirus-inmate-saskatoon/>.

¹² 'Coronavirus: Waikeria Prison cleared of probable threat', 12 March 2020, available at

<https://www.stuff.co.nz/national/health/coronavirus/120241017/coronavirus-precautionary-measures-stop-waikeria-prison-visits>.

¹³ See OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Penal Reform International, Guidance Document on the UN Nelson Mandela Rules, 2018.

Isolation or quarantine measures must be proportionate, authorised in law and not result in *de facto* solitary confinement

Any decision to quarantine or isolate people in detention should only be taken following an independent medical assessment and be proportionate to the risk posed. This assessment should be transparently communicated with the persons concerned. Furthermore, the medical assessment should allow for the measure to be time limited. Quarantines should only be imposed if no alternative protective measure can be taken by the prison management to prevent or respond to the spread of the infection.

During isolation or a quarantine, the conditions and regime should at a minimum, meet the standards set out in the UN Nelson Mandela Rules. During a quarantine or isolation there should be open and clear communication by prison management, including in regard to the provision of food, drinks, sanitary items and medicine, and contact with the outside world.

Fair trials and the right to legal counsel

Measures limiting access to prisons and quarantines may in effect prevent people in prison from attending their court hearings, meetings with parole boards or meetings with their legal counsel, which is particularly relevant for people in pre-trial detention.

In **Israel**, all entries and exits from the Moscovia Detention Centre were blocked pending test results. The prison has stated it will not take detainees to court.

In New York (**US**), following court orders, inmates held at Metropolitan Correction Center will not be admitted in court if they have high temperatures.¹⁴ In the State of Washington (**US**), federal courts in Tacoma and Seattle have postponed jury and grand jury trials in response to the coronavirus.¹⁵

In **Italy**, as most criminal trials are suspended, there will be closed courtrooms without defendants held in pre-trial detention present to prevent spreading of

COVID-19 to other people in detention, raising concerns of fair trial guarantees.

No health measure can in any case justify restrictions to meet with legal counsel. If prison management is under the impression that lawyers should not access the facilities, they must at least ensure that lawyers can speak with their clients in an unhindered way online or over the phone.

Blanket measures restricting access to courts and legal counsel are inadmissible and effectively keep some individuals who could see their sentence reduced or who could qualify for early release being detained, and therefore at risk of the serious consequences of being in prison during a COVID-19 outbreak. Moreover, pausing or slowing down criminal justice processes results in more people being detained, increasing levels of overcrowding and pressure on detaining authorities.

¹⁴ 'Coronavirus: Federal Judge In NY Orders Inmates To Get Temperatures Checked', 9 March 2020, available at <https://www.msn.com/en-us/news/crime/coronavirus-federal-judge-in-ny-orders-inmates-to-get-temperatures-checked/ar-BB10SB9M>.

¹⁵ 'Federal courts for Western Washington cancel jury trials amid coronavirus outbreak', 6 March 2020, available at <https://www.thenewstribune.com/news/local/article240974361.html#storylink=cpy>.

Protective measures should allow people to attend trials and receive legal counsel

Law enforcement, prisons, parole boards and courts should take all appropriate measures to protect anybody from contracting COVID-19. To ensure criminal justice bodies can continue functioning, measures such as remote hearings or appointments should be put in place and/or providing recommended protective gear for face-to-face processes. Any restrictive measure – if needed at all – should be individualised and based on independent medical findings. Blanket restrictive measures contravene to principles of fair trial and the right to access legal counsel.

Detention monitoring and right to prohibition of torture and ill-treatment

In addition to limiting contacts with relatives and legal representatives, authorities will be generally restricting any access into places of detention including for members of monitoring bodies. In times of emergency, the ability of independent bodies to monitor developments in detention facilities is essential to prevent excessive use of quarantine, abuse of power, use of torture or ill-treatment.

Visits by monitoring bodies can only be limited exceptionally. Such exceptions are foreseen in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), under the following circumstances (art 14 (2) OPCAT): 'Objection to a visit to a particular place of detention may be made only on urgent and compelling

grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit'.

As outlined by the United Nations Sub-committee for the Prevention of Torture in advice provided to the United Kingdom National Preventive Mechanism, in view of COVID-19, 'there would need to be a particular reason why ... a visit ought not to take place at a particular point in time, rather than that such visits ought not to take place at all'.¹⁶

Furthermore, places of quarantine fall within the mandate of monitoring bodies, as they should have access to all areas of places of detention run by the state.

States should guarantee access to prison for monitoring bodies

While some protective measures are legitimate, there is no evidence indicating that during the COVID-19 pandemic places of detention should not be accessed by monitoring bodies. States should follow the principles laid out in Optional Protocol to the Convention against Torture, as their legal obligation for those who have ratified it, and as a guidance for those who have not yet ratified the instrument.

Access of monitoring bodies is a key safeguard against torture and other ill-treatment. It can prevent human rights violations from taking place, but also provides opportunities for reporting ill-treatment and for taking action.

¹⁶ Advice from the SPT to the UK NPM regarding compulsory quarantine for Coronavirus, 27 February 2020, available at <https://icva.org.uk/advice-from-the->

[spt-to-the-uk-npm-regarding-compulsory-quarantine-for-coronavirus/](https://icva.org.uk/advice-from-the-spt-to-the-uk-npm-regarding-compulsory-quarantine-for-coronavirus/).

Health of prison staff

In any detention facility where there are people held, staff and personnel are required to maintain security and provide for the people they supervise. When there is a lock-down, or quarantine, in a wing or facility, prison staff may also be required to stay.

Prison staff need paid sick leave, to avoid situations where due to financial need they come to work in the detention facility while they are unwell.

Furthermore, information to relatives of members of staff working in places of detention affected by COVID-19 is essential.

Prison management must support prison staff in times of emergency

Prison management should be proactive in planning the work of members of staff during the COVID-19 pandemic, share the emergency preparedness plan, and provide support for relatives of members of staff. Specific training should be provided to all staff and efforts to increase healthcare and hygiene provision should be prioritised

Emergency measures to reduce prison populations

Do no harm

Criminal justice systems need to take measures to adapt to the fast-evolving situation with COVID-19 by reducing the number of people in detention facilities. This can include reducing unnecessary pre-trial detention and sentencing individuals - particularly for minor and non-violent offences to prison.

In Seattle (WA, US), the district attorney said his office was filing only serious violent

cases.¹⁷ In Boston (MA, US), prosecutors will ask for 60-day continuances in criminal cases in which defendants are not in custody.¹⁸

Criminal justice systems must adapt the way they operate to prevent doing harm. The risk otherwise is that vulnerable individuals confronted with some time in detention could have long-lasting and potentially irreversible consequences of being exposed to COVID-19.

Emergency releases

Prison overcrowding presents a high risk for any situation of outbreaks of communicable diseases. To date, prisons in over 124 countries exceed their maximum occupancy rate. In the ordinary life of a prison,

overcrowding leads *inter alia* to violence, higher rates of death in custody, and lack of proper healthcare provision.

¹⁷ 'Our Courts and Jails Are Putting Lives at Risk', 13 March 2020, available at <https://www.nytimes.com/2020/03/13/opinion/coronavirus-courts-jails.html>.

¹⁸ 'District Attorney Rollins Proposes Immediate Steps Amid Rising Health Concerns', 12 March 2020, available at <https://www.suffolkdistrictattorney.com/press-releases/items/2020/3/12/district-attorney-rollins-proposes-immediate-steps-amid-rising-health-concerns>.

On 12 March, judges, prosecutors and the sheriff of Cuyahoga County in Ohio (**US**) began holding mass plea hearings to release people held in pre-trial detention in the county's jail in an effort to lessen the spread of COVID-19 in case anyone tests positive for the virus.¹⁹

The **Irish** Prison Service is considering 'contingency measures' to reduce the number of people in custody, including through temporary release if the person considered does not pose an undue risk to public safety.

In cases of emergency, overcrowding challenges prison management to the extreme. Overcrowding can lead to abuse and violence by people in prison, including prison staff towards prisoners. Furthermore, overcrowding seriously challenges a state's ability to deliver on its obligation to provide healthcare in cases of health emergencies, such as the outbreak of COVID-19.

Lowering the number of people in detention facilities is therefore a key way to lower the risk of irreversible health consequences or death for people in prison, including prison staff, due to an emergency situation. Such emergency releases are however usually not part of preparedness plans for disasters. All cases of individuals in pre-trial detention for minor or non-violent offences should be reviewed. Alternatives to pre-trial detention should in particular be considered for all those individuals presenting minimal flight risk, little risk of collusion, and presenting

low risk to society. In countries having cash bail systems, authorities should consider lifting the cash bail system for suspects awaiting criminal trial in cases of emergency and solely impose pre-trial detention in exceptional circumstances. To date, about around 30 percent of the prison population worldwide comprises pre-trial detainees not yet convicted of a crime.

In this spirit, **The Netherlands** announced that individuals who were to present themselves to a detention facility to serve a short sentence will not be called up to do so for the time being.²⁰

In **England**, however, 'ministers are thought to have not ruled out releasing vulnerable inmates most at risk, but the instinct in government is that they should serve their sentences'.²¹

To prevent grave consequences related to the spread of COVID-19, populations most at-risk, in particular older persons and individuals with mental and underlying physical health issues, should be immediately considered for release. Furthermore, individuals convicted for minor or non-violent offenses, especially those sentenced for drug-related offenses or for socio-economic offenses, should be immediately considered for release. Early release, parole and other non-custodial alternatives, such as electronic surveillance, should be put in place as an urgent measure to reduce risks

¹⁹ 'Ohio county to hold mass plea hearings to reduce jail population over coronavirus concerns', 12 March 2020, available at <https://www.correctionsone.com/coronavirus-covid-19/articles/ohio-county-to-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns-ZhEvkxZ5tpo3Tv/>

²⁰ 'DJI treft preventieve corona-maatregelen', 13 March 2020, available at <https://www.dji.nl/pers-media/nieuws/2020/dji-treft-preventieve-corona-maatregelen.aspx>.

²¹ 'Coronavirus: Emergency plan for prisons in England and Wales', *op. cit.*

States must put in place plans allowing for emergency releases

In view of reducing risks associated to COVID-19, authorities should urgently review the detention of individuals on remand. Cash bail systems should be lifted, to ensure that pre-trial detention is not excessively imposed.

Individuals most at-risk, in particular older persons and individuals with mental and underlying physical health issues, should be immediately considered for release, to avoid the serious consequences in case COVID-19 would spread in a prison and also to free up essential healthcare services.

Prison sentences for Coronavirus-related offences

There have been many reports that prison sentences would be handed out to people who failed to obey the various measures imposed in response to COVID-19 – most notably in countries who traditionally take hard approaches to crime.

In **Russia**, authorities in Moscow threatened prison terms of up to five years for people who were not self-isolating for 14 days after visiting one of the listed countries most affected. In **Bahrain**, one case on these grounds is attracting a three-month prison sentence and a fine. **Singapore** and **Hong Kong** have announced they are charging people who are accused of misleading authorities and breaking travel restrictions, and **Iranian** authorities are prioritizing prosecuting those who are believed to be hoarding medical supplies.

South Korea is threatening prison time for possible coronavirus patients that break quarantine. Legislation passed through an accelerated procedure by the National Assembly foresees a punishment of up to a year in prison or up to a 10 million won (approximately €8,000) in fine for suspected patients who deliberately break quarantine. In **Israel**, individuals caught

violating a mandatory home quarantine for travellers who have recently visited East Asia could face a prison sentence of up to seven years. The Ministry of Health put in place an online system for allowing any person to denounce somebody presumed of violating such an imposed quarantine.²² At times of emergency, the recourse to denunciation systems presents a high risk of abuse against minorities and other marginalised groups, and generally opens the door to abuses and might lead to health and security services being diverted from their primary missions.

While the need to prevent state-imposed quarantines from being broken is undisputed, the answer does not come from threatening or imposing long sentences. As underlined by the United Nations High Commissioner for Human Rights, quarantine measures can have dire consequences for people who are already barely surviving economically: '[such preventive measures] may result in lost pay or a lost job, with far-ranging consequences for people's livelihoods and lives'.²³

Criminalising individuals for violating quarantine and other measures aiming to protect society from the spread of COVID-19

²² See the website of the Israeli Ministry of Health dedicated to Israel's response to Covid-19, available at <https://govextra.gov.il/ministry-of-health/corona/corona-virus-en/>.

²³ 'Coronavirus: Human rights need to be front and centre in response, says Bachelet', 6 March 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>.

could lead to criminalising behaviour due to the low socio-economic status of such individuals - in other words societies would

punish the poorest members of society for trying to provide for their families.

Presumption of innocence and criminalisation as last resort

In cases of emergency the presumption of innocence is paramount. States must ensure social measures are in place to support those most at need, before taking any possible penal measure. Furthermore, imprisonment should only be a last resort measure and any judgement should take into account the conditions and the reasons for which the particular individual had to violate a protective measure ordered.

No state should put into place a system of denunciation by citizens, only law enforcement should be charged of ensuring that society respects protective measures put into place.

Penal Reform International briefing note

Contact person at PRI:

Olivia Rope, Director of Policy and International Advocacy

+44 20 3119 0982

ORope@penalreform.org

www.penalreform.org

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

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