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## Commentary: Assessing the Global Impact of the Covid-19 Outbreak on Prison Populations

### Abstract

The author directs the World Prison Research Programme at the Institute for Crime & Justice Policy Research, based at Birkbeck (University of London). The programme's research team monitors trends in world prison populations and examines the causes and the consequences of rising levels of imprisonment. A core component of the programme involves compiling and hosting the World Prison Brief, an online database providing free access to information about prison systems throughout the world. This Commentary revisits key findings from the Programme's ongoing work on prison population growth and its links to prison overcrowding and poor standards of prison healthcare. Within this context, some of the key impacts of the COVID-19 pandemic on prison systems worldwide will be discussed, with a focus on measures taken to reduce prison population sizes and restrictions put in place in prison regimes (including suspending social and other visits to prisons, home or work leave for prisoners, and related restrictions) to help control spread of the virus. Compensatory measures introduced to lessen the adverse effects of greater isolation and reduced contact with the outside world are discussed. It is argued that the pandemic has revealed an unprecedented need for a more health-informed approach to penal reform.

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In June 2019, six months before the first cases of COVID-19 emerged in Wuhan, we published a report on research we had conducted on prisoner health and healthcare (Heard, 2019), research undertaken as part of our ongoing project: *Understanding and reducing the use of imprisonment in ten countries* (the 'ten country project').<sup>1</sup> In a blog at the time of publication, I described the public health risks of prison overcrowding as a 'global time bomb'.

The research that we and our partners had carried out produced disturbing evidence of the impact on prisoners' health and wellbeing of being held in cramped, under-resourced prisons. Prisoners described extreme overcrowding (for example, 60 men sharing cells built for 20 in

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<sup>1</sup> The countries under study in the project are: Kenya, South Africa, Brazil, the United States of America, India, Thailand, England & Wales, Hungary, the Netherlands and Australia. <https://www.icpr.org.uk/theme/prisons-and-use-imprisonment/understanding-and-reducing-use-imprisonment-ten-countries>

Brazil; cells holding up to 200 people in Thailand); inadequate medical treatment, with too few doctors to deal even with routine health issues let alone serious disease outbreaks; constant hunger; lack of fresh air and exercise; shared buckets instead of toilets; insufficient fresh water or soap; and having to eat while seated on the toilet due to lack of space in a shared cell.

To quote some of the prisoners and ex-prisoners whom we and our partners interviewed about the conditions they had faced:

‘It was very dirty, our children regularly got sick with diarrhoea, skin diseases, cholera, they had colds all the time.’ (Kenya)

‘We spend 23 hours a day in the cell. There are 30 inmates in a cell for 15 inmates. Hygiene is bad.’ (South Africa)

‘People died when I was there. I had fevers, I had TB. I thought I would die.’ (Brazil)

‘There are about 40 detainees in my cell. We lie down next to each other.’ (Thailand)

When the pandemic was declared in March 2020, it was all too clear that conditions like those described by our research participants would mean high levels of risk in many countries, not only for prisoners themselves, but also for those working in prisons, and for families and wider communities. Over the weeks and months that followed, we have been monitoring countries’ responses to the crisis, and collecting information on the various measures that have been introduced to contain the risks and prevent spread of the virus, and on their impacts.

### **Incidence of COVID-19 in prisons worldwide**

It has long been known that prisons can be epicentres for infectious diseases. They offer the ideal conditions for a contagious virus to spread. Infections such as tuberculosis and even syphilis have recently been shown to spread rapidly between prisons and the local communities (Correa et al, 2017). When the pandemic was declared it was clear that many prison systems around the world would struggle to cope. During the months that followed, prisons across much of the world saw large numbers of infections, their environments being

especially ill-equipped to take the social distancing and hygiene precautions urged on us by governments and public health bodies.

In late April 2020 there were around 14,000 reported cases among prisoners in 14 countries and at least 385 prisoners had died.<sup>2</sup> By mid-September, confirmed cases had exceeded 205,000 in 101 countries, with almost 2,200 deaths among those cases. (These figures do not include prison staff, among whom infection rates in many countries have been higher than among prisoners.) For several reasons, the reported numbers of confirmed cases and deaths will undoubtedly be significantly lower than the true figures. Prison health systems in much of the world struggle to provide even basic healthcare, so many sick prisoners and prison staff will not have been tested. Without routine and regular testing in prisons, numbers of asymptomatic inmates and staff will present a further, unseen risk to those within and beyond the confines of the prison.

### **Official responses and their impacts**

In March 2020, days after formally declaring the disease a pandemic, the World Health Organisation warned that global efforts to tackle the spread of COVID-19 would fail without proper attention to infection control inside prisons (WHO 2020). It issued detailed guidance running to 32 pages, and warned: ‘The risk of rapidly increasing transmission of the disease within prisons or other places of detention is likely to have an amplifying effect on the epidemic, swiftly multiplying the number of people affected.’ The document called for ‘strong infection prevention and control measures, adequate testing, treatment and care’ and provided detail on what this would mean in practice. Many other public health and human rights agencies provided a range of guidance and other materials, in a bid to prevent a catastrophic spread of the disease with the potential to overwhelm community healthcare systems.<sup>3</sup>

Official responses ranged across three main areas: managing prison populations (through inflow constraints and expanded release measures) to reduce overcrowding and facilitate social distancing; suspending or restricting visits from family members and others and halting

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<sup>2</sup> Global tracking conducted by Justice Project Pakistan: at <https://www.jpp.org.pk/covid19-prisoners/>

<sup>3</sup> These materials can be found under ‘resources’ on our World Prison Brief site at: <https://www.prisonstudies.org/news/news-covid-19-and-prisons>

temporary leave for home visits, work or other previously permitted purposes; and ensuring provision of sanitation and protective equipment, testing and treatment facilities. The focus of this commentary will be on the first and second areas of activity, beginning with the first.

### **(1) Managing prison population numbers<sup>4</sup>**

As the data we compile for our World Prison Brief database show, overcrowding currently blights the prison systems of over 60% of countries worldwide, with grave consequences for health, rehabilitation and community safety.<sup>5</sup> People held in overcrowded prisons are especially vulnerable to COVID-19. Reducing numbers of prisoners was therefore identified as a key weapon in governments' armouries in the fight against COVID-19. The WHO recommended that 'enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages'.

Similar calls for reduced prisoner numbers came from the United Nations bodies. The UN's Subcommittee on the Prevention of Torture called on governments to 'reduce prison populations and other detention populations wherever possible' and to implement 'schemes of early, provisional or temporary release for those detainees for whom it is safe to do so' (UNODC, 2020) This was echoed by Michelle Bachelet, the UN High Commissioner for Human Rights, who said: 'Now, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.' The UNODC likewise urged consideration of release mechanisms for prisoners facing particular risks due to COVID-19, such as the elderly and pregnant women and those affected by chronic diseases. It also suggested consideration of release mechanisms for people near the end of their sentences, those sentenced for minor crimes and those whose release would not compromise public safety.

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<sup>4</sup> All prison population data in this Commentary are drawn from the World Prison Brief site (except where stated), and reflect the latest available figures as at 10 September 2020. World Prison Brief data are updated on the website on a monthly basis, using data largely derived from governmental or other official sources. <https://www.prisonstudies.org/>

<sup>5</sup> National occupancy levels can be found on each country page on the World Prison Brief website; in addition, the 'Highest to Lowest' function can be selected to rank countries globally or regionally, by occupancy level.

Civil society organisations throughout the world echoed the international agencies' calls. Many issued detailed recommendations for reducing numbers in (and entering) custody and for ensuring the safety of people being considered for release and those in the community who could come into contact with them.<sup>6</sup>

In the weeks that followed, some national governments and justice systems took bold steps to reduce their prison populations, as some of the contributions to this Special Issue will attest. Notable examples reported in late March 2020 included: Iran, where the temporary release of 85,000 prisoners was approved; India, where it was announced that the largest New Delhi prison complex would release 3,000 prisoners, half of them sentenced inmates to be released on temporary furlough or parole, and the other half pre-trial prisoners released on bail; and Ethiopia, where over 4,000 prisoners were released under an executive amnesty order. Across much of Europe, too, prisoner release measures were announced, while prison administrations sought to work with police and prosecutors to limit numbers of new receptions into prisons (EuroPris, 2020). Remands in custody and short-term custodial sentences were replaced by house arrest or electronic monitoring.

Because of significant time lags in the availability of national prison populations data for most countries, it is too soon to know what effects the various initiatives states have been taking to reduce prisoner numbers will have had on prison population sizes worldwide. In addition, it will be difficult, perhaps impossible, to distinguish the impacts of these initiatives from those of other factors attributable to the pandemic, including fewer reported crimes, arrests and prosecutions as well as the temporary closure of many courts.

Despite these challenges in understanding precisely how prison population reduction policies have impacted prisoner numbers worldwide so far in the pandemic's history, we can obtain insights from prison population data produced by countries for which data were available as at February 2020 and have been updated since. This is the case for twenty jurisdictions, eight of which had prison populations above 70,000 as at February. These eight countries are shown in Table 1 below, together with information on how their prison populations changed during the first five months of the pandemic. All these countries were reported to have

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<sup>6</sup> Examples include Human Rights Watch, the International Legal Foundation, Penal Reform International, Fair Trials, the European Prisons Observatory, Centre for Crime and Justice Studies, the Thailand Institute of Justice, and the Commonwealth Human Rights Initiative. For further information, see the COVID-19 news and resources page on our World Prison Brief website at: <https://www.prisonstudies.org/news/news-covid-19-and-prisons>

announced policies aimed at reducing prison population sizes as part of their efforts to control spread of the virus (as summarised in the table).

Table 1: Prison population change in eight countries since February 2020

	<b>Total prisoners February 2020</b>	<b>Total prisoners July/August 2020</b>	<b>Reduction policies (reported as at end July 2020)<sup>7</sup></b>
<b>Nigeria</b>	74,106	62,258 (24.8.20)	Almost 8,000 released including the elderly or sick, and those with 6 months or less to serve. More use of non-custodial orders reported.
<b>Colombia</b>	122,085	102,637 (31.8.20)	Around 4,000 released to temporary house arrest including the vulnerable, pregnant women, and those who had committed minor offences.
<b>Indonesia</b>	269,062	232,736 (31.8.20)	Over 39,000 released early or granted parole, with a further 11,000 releases planned.
<b>Thailand</b>	371,461	379,274 (1.8.20)	Some sentences suspended. Some early releases. Greater focus on creating more space in prisons.
<b>England &amp; Wales</b>	83,868	79,433 (28.8.20)	Early release scheme introduced for some categories of prisoner. Limited use made of scheme, with 275 released.
<b>France*</b>	70,651	58,695 (1.7.20)	Early releases and reduced new receptions led to fall of around 10,000.
<b>Poland</b>	75,664	69,375 (31.7.20)	Temporary release programme announced for up to 12,000; unclear how many released.
<b>Russian Federation</b>	519,618	496,791 <sup>8</sup> (1.8.20)	Amnesty programme potentially applicable to 30,000; unclear how far implemented.
Combined totals	1,586,515	1,481,199(105,316 fewer prisoners: a 6.64% reduction)	

\* The French data are for 'France entière' (ie including French overseas departments and territories), as at 1 January (data for February unavailable) and 1 July 2020.

<sup>7</sup> Information sourced from national news reports and official policy announcements.

<sup>8</sup> The recent falls in Russia's prison population rate have left it at an historic low, though it is still very high by European standards, at 344 per 100,000 of the population.

According to current World Prison Brief occupancy data, most of these countries were running their prison systems significantly above official capacity prior to the pandemic, with particularly severe levels of overcrowding in Nigeria (147%), Thailand (145%), Indonesia (176%) and Colombia (130%).<sup>9</sup>

As the data in Table 1 show, all the countries in this group except Thailand saw reductions in their prison populations over the period from February to July 2020. During this period there were reports of many countries (including those in the table) implementing new early or temporary release schemes, and making wider use of alternatives to custody (both pre-trial and at sentencing). In several cases, the population reduction measures were expressed to be temporary and therefore any amelioration in the countries' prison overcrowding will, likewise, be short-lived. By way of example, on 20 August, Nigeria's federal government announced that 9,900 new receptions would soon take place in prisons across the country.

With the last national figures from the USA's Bureau of Justice Statistics dating back to June 2018, it will not be possible to track the precise changes in the country's prison population during the course of the pandemic. Some analysis has been carried out by justice reform organisations such as the Prison Policy Initiative, the Marshall Project, the Vera Institute and others, in an effort to mitigate against this data lag. In their review of changes in the the country's jail population, the Prison Policy Initiative reported a median drop of over 30% in jail populations between March and May 2020, which they ascribed to quick action at local government level to reduce the numbers incarcerated. However, the NGO has since reported a slowing of these reductions and even a reversal of the downward trend in some cases.<sup>10</sup>

The Marshall Project (in a study conducted with the Associated Press) found that between March and June 2020, US state and federal prison populations decreased by around 100,000, equating to an 8% drop nationwide.<sup>11</sup> (This compared to a 2.2% decrease in state and federal prison populations over the whole of 2019.) The research showed that the reduction came about largely due to prohibitions on new prisoners being transferred from local jails, parole

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<sup>9</sup> Estimated occupancy levels based on latest official capacity data available can be found on the World Prison Brief website.

<sup>10</sup> Prison Policy Initiative, 'Jails and prisons have reduced their populations in the face of the pandemic, but not enough to save lives', article, 5 August 2020, <https://www.prisonpolicy.org/blog/2020/08/05/jails-vs-prisons-update-2/>

<sup>11</sup> The Marshall Project, 'Prison populations drop by 100,000 during pandemic: but not because of COVID-19 releases', article, 16 July 2020, <https://www.themarshallproject.org/2020/07/16/prison-populations-drop-by-100-000-during-pandemic>



officers sending fewer people back to prison for low-level violations, and fewer people being sentenced to prison (due to court closures).

England and Wales failed fully to implement its early release programme, heralded as capable of reducing the prison population by 4,000 when introduced. The programme was shelved in August after just 275 prisoners had been released. The Government concluded at that point that it had sufficient extra headroom to ease overcrowding and facilitate isolation of COVID-19-positive inmates, so the early release scheme would not be required. The scheme's design has been criticised by some penal reform experts as having been designed to make early release very difficult even where prisoners met eligibility criteria. It had so many exclusions and so many layers of decision-making, that it was described by independent monitoring boards as having 'simply added to bureaucracy without any noticeable effect' (Independent Monitoring Boards, 2020).<sup>12</sup> As a result of considerable falls in the numbers of reported crimes, and reduced arrests and court hearings, fewer people were remanded in custody or sentenced to prison. It is these changes, rather than any deliberate strategies to reduce prisoner numbers overall, that explain the fall in the England & Wales prison population over the first six months of the pandemic.

In Thailand, recent reports suggest that a mass prisoner amnesty will take effect over the remainder of 2020, as part of the royal pardon process implemented in the country every few years.<sup>13</sup> The last such amnesty was declared in late 2016 and reportedly extended to around 30,000 prisoners including people with disabilities, chronic illnesses, and any prisoner over 60 who had served at least a third of their sentence. This will no doubt go some way to reducing prisoner overcrowding, while not assuaging the need for structural change in pre-trial and sentencing policy and practice.

## **(2) Limiting prisoners' contact with the outside world**

Across the world, state authorities and prison administrations moved quickly to 'lock down' prisons in order to reduce risk of infection passing between communities and prisons.

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<sup>12</sup> The independent monitoring boards are statutory bodies performing the role of the national preventive mechanism in the United Kingdom following ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>13</sup> Thailand Bail, 23 August 2020, 'Thailand royal pardon 2020: many in Thai prisons receive sentence reductions'. <http://www.thailandbail.com/thailand-royal-pardon-2020-many-in-thai-prisons-receive-sentence-reductions/>

Regimes became even more closed and restricted than before. Measures taken typically included:

- suspending visits from family members and other loved ones;
- suspending meetings with lawyers, religious counsellors, consular staff;
- curtailment of visits by prisons inspectorate staff and other monitoring bodies – a vital check on conditions and standards
- suspension of training and work activities in prison factories and workshops;
- stopping the normal day-to-day activities involving outside volunteers, probation or social work staff, or businesses in the local community, all of which routinely provide advice, support, training, education, rehabilitation and resettlement help to prisoners;
- restricting or ending schemes for day release for purposes of work and rehabilitation programmes;
- ending furloughs and family leave schemes (including leave for attending funerals or other important family events);
- restrictions on use of gyms, libraries and other communal spaces within prisons;
- reduced movement around prison spaces, with smaller groups being moved to help facilitate distancing and maintain order;
- more time spent inside cells and longer periods of isolation.

As at August 2020, restrictions had begun to be eased in many countries, notably in many parts of Europe (EuroPris, 2020), while in others they remained in place, the picture sometimes varying considerably from prison to prison in a given country.

Reports suggest that restrictions of this nature will frequently have led to increased anxiety for both prisoners and their loved ones, and to a worrying fall in housing, healthcare and similar support for people being released from prison (whether during the pandemic or after it). In a recent report by one English prison's independent monitoring board ('IMB'), prisoners described the mental health impacts of the highly restricted regime in place between March and July 2020:

[The prisoners'] view was that the harmful effects did not stem simply from being locked up and having nothing to do (*'we can get used to that'*). It was the reduced contact with the outside world, particularly families, that was *'doing people's heads*

*in*'. This reinforces the critical role that family contact plays in keeping prisons stable.<sup>14</sup>

The joint IMBs' annual report for the whole of England reached similar conclusions, noting that many prisoners had been locked in their cells for around 23 hours a day, with all social interaction and face-to-face education and training stopped. While these policies undoubtedly helped keep infection and mortality rates lower than had been feared, the IMBs reported a damaging cumulative impact on prisoners' mental and physical health and wellbeing and their chances of progression and rehabilitation (Independent Monitoring Boards, 2020). Concerns were raised about the impact of isolation on young people in custody, about the withdrawal of rehabilitative work, and evidence of growing frustration and rising incidence of self-harm, particularly in some women's prisons. There were particular concerns about hidden levels of distress and mental ill-health, often due to difficulties in accessing treatment and medication (for problems not principally related to COVID-19).

A similar picture emerges from the Correctional Association of New York (CANY), which also performs an oversight role and enjoys access to state prisons across New York State. CANY's survey of family members of prisoners across the state found that 'the lack of regular and predictable communication between incarcerated people and their loved ones, and the longstanding and well-documented inadequacy of medical services in New York prisons [had] culminated in a high level of distrust' in the prison authorities' ability to care properly for prisoners during the pandemic' (Correctional Association of New York, 2020).

### ***Family contact***

Research shows that people who receive visits and maintain relationships while in prison are 38% less likely to reoffend after release than those who do not (Ministry of Justice, 2014). Family visits are vital to the maintenance of prisoner-family relationships, and extended visits of a few hours to a few days can provide opportunities for prisoners to spend quality time with their families. Maintaining family ties during a prison sentence is not just important for the prisoner but also for the prisoner's children and other family members. In many countries, prisoners also rely on relatives and loved ones to bring in goods such as medicines, nutritious

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<sup>14</sup> Extract from draft annual report of an English prison's Independent Monitoring Board, provided to author by a member of the board.

foods, sanitary or hygiene products and sometimes cash, which prisoners may need to purchase items from prison commissaries.

Visits and contact with the outside world are a lifeline for many of the world's prisoners. This goes some way to explaining why, in the earliest stages of the pandemic, protests, riots and disturbances took place at prisons in many countries, some of them with tragic consequences. In Italy, unrest among prisoners when visits were abruptly suspended in March eventually spread to two dozen of the country's prisons, leading to twelve prisoners' deaths and widespread injuries to prisoners and prison staff. Riots or protests also occurred in prisons across most Central and Latin American countries, many Middle Eastern countries, in Sierra Leone, South Africa and a few other African states, India, Thailand, Sri Lanka, England, Scotland, France, Luxembourg and several other countries. In many cases, lives were lost during the unrest. The suspension of visits, along with fears that prisons would fail to put in place sufficient protection measures for prisoners, were most commonly cited as catalysts for the unrest.

A less obvious but potentially equally damaging consequence of the severely restricted regimes imposed in response to the pandemic is the psychological harm they will have caused for many prisoners. Peter Clarke, the Chief Inspector of Prisons in England & Wales, presented stark findings from the 'short scrutiny visits' which replaced the usual, more comprehensive inspection regime for several weeks in the early phase of the pandemic (HM Chief Inspector of Prisons, 2020). In an amalgamated report covering 35 prisons visited during eleven weeks, Mr Clarke noted that prisoners were initially willing to accept and cooperate with the suspension of social visits, limited time out of the cell, and other restrictions, because of a sense of 'being in this together' with staff and the community outside during 'lockdown'. However, after these initial few weeks: 'Our visits identified increasing levels of stress and frustration among many prisoners and evidence that prisoner well-being was being increasingly affected by the continuation of restrictions.' The most commonly identified cause was the suspension of visits.

The report pointed to the particularly severe consequences for women prisoners:

'In the women's estate, there are some exceptionally vulnerable individuals who usually benefit from a range of specialist support services provided by external

providers; their absence was extremely damaging. For these prisoners, the long hours of lock up were compounded by the sudden withdrawal of services on which they depended, and self-harm among prisoners in prisons holding women has remained consistently high throughout the lockdown period.’

The report also addressed the risk of mental illness:

[I]n prisons, there is now a real risk of psychological decline among prisoners, which needs to be addressed urgently, so that prisoners, children and detainees do not suffer long-term damage to their mental health and well-being, and prisons can fulfil their rehabilitative goals.

In countries where many prisoners are serving exceptionally long (or indeterminate) sentences, the importance of family visits, and the potential psychological harm caused by greater isolation, are all the greater. In New York State, visiting loved ones had already been fraught with difficulty for many even before the pandemic. Travelling for several hours at great expense (cost of travel and lost earnings) was just one aspect of this, but the highly restricted visiting hours, security checks and other features of the visiting system were also seen as needlessly punitive for families. Most New York State prisons and jails were closed to visitors from March to August 2020 (and in many cases remained so beyond August). On 6 August, New York’s Alliance of Families for Justice held a rally outside the Governor’s office to call for visiting rights to be restored.<sup>15</sup> In a statement, it said:

These restrictions deepen the pain felt by the COVID-19 pandemic by limiting visiting hours, forbidding physical contact, limiting the number of visitors to two, closing the children’s play area and shuttering the Family Reunion Program.<sup>16</sup>

Prisoners in Thailand could receive two types of visit before the pandemic. There were standard visits several times per week over several hours each day, where prisoners would be separated from the visitors outside by both a fence and a screen (communicating by fixed phones). There were also less frequent ‘open visits’ when the prisoner’s family members would be allowed into closer physical contact with the prisoner, sitting together in the yard or admissions area of the prison; such visits would be restricted to three or four per prisoner

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<sup>15</sup> Brooklyn Daily Eagle, 6 August 2020, ‘Families of incarcerated people rally outside Cuomo’s office to demand visitation rights.’ <https://brooklyneagle.com/articles/2020/08/06/families-of-incarcerated-people-rally-outside-cuomos-office-to-demand-visitation-rights/>

<sup>16</sup> The Department of Corrections and Community Supervision of New York’s website states that the Family Reunion Program ‘provides approved incarcerated individuals and their families the opportunity to meet for a designated period of time in a private home-like setting’. <https://doccs.ny.gov/family-reunion-program>

annually before the pandemic. Prisoners interviewed for our project in 2019 described the hardship caused when their families lived in parts of the country remote from the prison location. One, a woman six years into a life sentence for a drug dealing offence, said simply: ‘My family do not have much money. They visit me twice a year.’<sup>17</sup> Such prisoners will benefit from the advent of video calls (introduced in 2019 in some prisons but by no means all), particularly during the pandemic when visits were suspended for two months. Calls have been made for greater investment in the required technology and infrastructure to ensure larger numbers of prisoners can have some form of contact with their families.<sup>18</sup>

In the largest Dutch prison, housing around 800 prisoners, the usual practice of family visits was altered, but to a fairly limited extent. Face-to-face visits in which physical contact was allowed were replaced by visits separated by a plexiglass screen. As at early September following a successful pilot, prisons were planning to revert to normal family visits but with masks having to be worn by family members (apart from children under twelve years).

### **Work, education, preparation for release**

External work placements and internal work and training schemes in prison factories and workshops often provide a basic level of income on which prisoners rely, whether to help support their families, or to save towards a fund they can have recourse to on release. Education programmes, where available and properly supported, can also make prison life bearable and equip prisoners with the tools to transform their chances on release.

In many countries these opportunities to earn an income, receive training or education, along with the routine interaction with others which participation entails, were abruptly halted with the pandemic.

In Thailand, the country’s severe prison overcrowding has been mitigated to a limited extent by regimes in which ten hours each day would typically be spent outside the communal cells.<sup>19</sup> A range of activities are provided to prisoners during these hours (including using

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<sup>17</sup> Around one quarter of all prisoners in Thailand are serving sentences ranging between 10 and 50 years. At least 80% of the country’s sentenced prisoners have been convicted of drug offences. Thailand Institute of Justice, March 2020, *Report on the COVID-19 situation in prisons and policy recommendations for Thailand*.

<sup>18</sup> Thailand Institute of Justice (fn 17)

<sup>19</sup> Information drawn from interviews with serving prisoners conducted in the course of ICPR’s ongoing project *Understanding and reducing the use of imprisonment in ten countries* (see fn 1).

prison library and gym facilities, meditation, dance, music, viewing pre-recorded film and TV content, training and some work opportunities). Much of this activity came to a halt during the early stages of the pandemic, although restrictions began to be eased from July. Day release schemes allowing prisoners near the end of their sentence to work outside the prison were also put on hold. It is feared that the resulting lack of earnings, together with the economic hardships families themselves are experiencing due to the pandemic and associated restrictions, could result in financial difficulties for many prisoners and their families.

In England & Wales, the system of release on temporary licence ('ROTL') was suspended in order to minimise the spread of COVID-19. ROTL aims to facilitate rehabilitation, by helping prisoners to prepare for resettlement in the community after release. Many prisoners who had been working in the community and beginning to build a new life were reported to have felt the loss of opportunity keenly and expressed frustration at the scheme's suspension.

Substitute work schemes were introduced in parts of the USA to enable prisoners to use workshop facilities to make protective equipment. Some reports suggested that prisoners themselves were not allowed to use masks despite being required to mass-produce them in prison workshops.<sup>20</sup>

The Netherlands, with its low prison population rate and occupancy levels at around 75% of available capacity, experienced very low numbers of confirmed COVID-19 cases (11 cases according to Justice Project Pakistan).<sup>21</sup> In one of the country's larger establishments, it was possible to keep the prison workshops open but create different working shift patterns and reduce overall time in the workshop, to ensure social distancing would be possible.<sup>22</sup>

In Kenya, NGOs have in recent years become increasingly involved with many aspects of prisoner release. One, the Faraja Foundation, regularly participates in prisoner resettlement and discharge committee meetings. Their staff provide support and counselling to prisoners likely to face major problems on release because of poverty, ill health, illiteracy and other

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<sup>20</sup> Delaware News Journal, 17 April, 2020, 'Delaware officials: Prisoners won't get masks or release during COVID-19 fight', <https://eu.delawareonline.com/story/news/2020/04/16/delaware-officials-prisoners-wont-get-masks-release-during-coronavirus-fight/2988586001/>

<sup>21</sup> As fn. 2 above.

<sup>22</sup> Information obtained in early September from a deputy governor of a prison holding around 800 inmates.

challenges. Faraja also carry out important and sensitive work to prepare communities for the return of people being released from prison. This work can help ensure protection from revenge attacks and also safeguard vulnerable individuals, including children who have been incarcerated with their mothers and who would otherwise be at risk of exploitation or abuse. As late as August 2020, restrictions on prison visits were still preventing this work to a large extent, leaving many prisoners effectively ‘stuck’ in the system who would otherwise be moving towards a successful managed release.

### **Compensatory measures**

In some countries, compensatory measures were announced to reduce the isolation and deprivation experienced by prisoners due to restrictions on visits and similar activities. These have included introducing secure video calls for ‘virtual visits’, prison-administered email systems, and increased access to internet and telephones. Some prison services provide additional or unlimited phone credits to prisoners and some have purchased extra mobile phones and video conferencing equipment. EuroPris have reported that there have been negotiations with telecommunication providers by some prison services in European Union countries to reduce the costs of prisoners’ calls, ‘not all of them successful’ (EuroPris 2020).

Provision of video conferencing has presented challenges for many countries where it was not yet available (or in use for family communication) in the national prison systems. For other countries, the pandemic has been a spur to faster implementation of what had already been piloted or planned. In England & Wales, for example, prisons are reported to be moving at last towards national roll-out of free family-prisoner video visits, following years of stop-start on various pilots. In Kenya, while some of the work of organisations providing mentoring, counselling and training has been made available to prisoners via large screens, more hardware and other investment will be needed for this to have any lasting positive impact.

While these various compensatory measures were welcomed, there were also concerns over the inadequacy of supplies or the poor implementation of the measures promised. In England & Wales the Government announced in March that secure phone handsets would be given to ‘prisoners at 55 jails’ and, in May, that video calls for family contact would now be available in 26 prisons. The inadequacy of these steps to mitigate the loss of in-person visits was



described as ‘obvious’ by the NGO Prison Reform Trust, in a report noting that demand for the new provision entirely outstripped supply, resulting in a post-code lottery of available means of staying in touch with families. The compensatory measures promised were ‘raising hopes but leading to frustration, distress and anger’. Many family members and prisoners providing information to the NGO spoke of their intense feelings of loss and hopelessness during the months in question (Prison Reform Trust, 2020).

The restrictions imposed by the Dutch prison regime appear to have been limited and short-lived in comparison with England & Wales and many other countries we have studied. Although in-person family visits were suspended for a brief period and some restrictions were placed on prisoners’ movement, family and other visits – conducted through plexiglass screens – were still possible. In addition, by staggering the periods of circulation of small groups of prisoners, significant time out of the cell engaging in purposeful activity – which had long been a hallmark of Dutch prison regimes – was still being maintained in this more restricted regime.<sup>23</sup>

### **What will COVID-19 mean for penal reform?**

COVID-19 has made particularly evident the permeability of prison walls, as the virus spread from prison staff to prisoners and back into communities, taking a heavier toll in areas where prisons are located.<sup>24</sup> Just as it was impossible for prison administrations to keep the virus out, so, too, it is futile and dangerous to expect prison walls to contain the risk of crime or keep communities safe from harm. So, can we hope for a silver lining from the COVID-19 cloud, in the shape of a health-informed approach to criminal justice reform?

As we have seen, when the pandemic was declared, some countries moved decisively to reduce prisoner numbers in order to minimise the risk that overcrowded conditions would present. For this and other reasons related to the pandemic, it is likely that prisoner numbers across the world will fall during 2020 – 2021, following decades of growth.<sup>25</sup> If these lower

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<sup>23</sup> See fn 22.

<sup>24</sup> In the USA, several studies have demonstrated the significant capacity for community spread of COVID-19 infections in areas with jails and prisons. See for example, Ollove, 2020.

<sup>25</sup> For the most comprehensive data on prison population trends since 2000 see Walmsley, 2018.

levels can be maintained, the resulting savings could be reinvested in health and social interventions known to reduce crime. For the present, it is too soon to know whether falls seen in some prison populations will be maintained, and whether the lifting of pandemic restrictions will bring with it a return to criminal justice business-as-usual.

The devastating public health consequences of the pandemic should make us all wary of returning to prison population growth, or of accepting it as an inevitable facet of modern times. Overcrowded prisons mean increased prevalence of communicable and chronic diseases, mental illness, substance misuse, violence, self-harm and suicide. The risks affect prisoners, staff, the families of prisoners and staff, and wider communities. Prison populations already bear a far greater burden of mental and physical health problems than general populations. People who enter custody usually come from the poorest and most marginalised sections of society – communities that often have worse health due to socio-economic and health inequalities. People with mental health problems, drug or alcohol dependency or other vulnerabilities are also over-represented in prison populations. It is far too easy for them to be propelled into the criminal justice system and custody *because* of those problems, when their needs would be better addressed through health-led interventions. Furthermore, prison environments tend to exacerbate existing health problems and often give rise to new ones, because of poor living conditions, lack of healthcare, availability of illicit drugs, social and psychological stresses, violence and mistreatment.

The COVID-19 pandemic has revealed an unprecedented need for a health-informed approach to penal reform. What would this entail? For most countries, reducing prisoner numbers overall is an essential first step to ensuring better conditions and access to healthcare and treatment in custody. That means limiting the use of pre-trial detention, as many European countries have done in recent years (Heard & Fair, 2019, Walmsley, 2020). It means fairer, more proportionate sentencing and making smarter use of alternatives to custody. It also means reducing the numbers of people in poor health who go to prison. To achieve that, most countries need to improve healthcare provision in the community, particularly for mental health conditions and drug and alcohol problems.

Then, for those reduced numbers of prisoners for whom custody is inevitable, there must be proper access to healthcare, screening and treatment, harm reduction measures, and decent living conditions. Daily life in prison settings should be modelled to resemble life outside in

as many ways as possible; deprivation of liberty should be the only detriment of a prison sentence, because it already entails the pain of separation from loved ones, friends and community. These are principles that underlie prison regimes in the Netherlands, Finland and a few other countries. Time spent out of the cell is maximised, visits and communication with family and loved ones are encouraged and enabled, activities and interaction involving outside organisations and volunteers are promoted and supported, and the regime's focus is on resocialisation and getting the prisoner ready for life outside.

It is likely that some of the technology introduced during the pandemic to make up for lost in-person visits will be placed on a permanent footing, either to provide extra connectivity for prisoners and better linkage with the outside world, or as a cheaper, easier substitute for face-to-face visits and real-life interactions with people from outside the prison. While remote contact would help increase the frequency of contact with family, in-person contact plays a key role and its facilitation should remain a priority even after technological connectivity has been enhanced. The 'new normal' as we move out of the pandemic should therefore mean that prison systems provide and promote in-person visits and real-life activities to the widest extent possible, *and* make wider use of remote technology-enabled communication and learning.

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