

## SUSTAINABLE MEASURES TO PREVENT AND ADDRESS COVID-19 IN EUROPEAN PRISONS

Prisons and detention facilities are high-risk environments for the spread of COVID-19,<sup>1</sup> as overcrowding and physical proximity make it difficult to maintain adequate standards of physical distancing, sanitation, and hygiene.

At the outbreak of the pandemic, many countries across the world,<sup>2</sup> including France, Italy, Ireland and Poland,<sup>3</sup> took urgent measures to reduce prison population as a key prevention strategy.

As European authorities de-escalate lockdowns and establish permanent measures to manage COVID-19 outbreaks in the foreseeable future, they should retain and expand policies aimed at reducing prison populations, as these are both immediately effective, and sustainable in the long term. Efforts to control COVID-19 in communities could fail without sustainable measures to prevent its spread in prisons.<sup>4</sup>

### 1. Prison overcrowding in Europe

As of 2019, Council of Europe countries hosted over 1.5 million people in prison.<sup>5</sup> Up to 18% of all sentenced prisoners had been convicted for drug offences -the largest cause of incarceration.<sup>6</sup>

According to official data, at least 15 European countries have overcrowded prison systems, including Austria (105%), Hungary (115.5%), or Belgium (120.6%).<sup>7</sup> While the average system occupancy is 87%, any prison at over 90% of its capacity is an indicator of “imminent overcrowding”.<sup>8</sup>

Varying national standards of living space per prisoner mean that prisons that have not reached their maximum official capacity can still be overcrowded under international standards.<sup>9</sup> Prison systems that are on average not overcrowded can, and normally do, include overcrowded detention facilities, or sections within such facilities, from corridors to common rooms.<sup>10</sup>

Crucially, a prison that has not exceeded its maximum capacity can still be excessively cramped for the purposes of preventing COVID-19. Standards for personal living space, such as the European Committee to Prevent Torture’s 10 square meters for a cell of 2 prisoners, or 14 square meters for a cell of 3 prisoners,<sup>11</sup> are not health standards designed to control pandemics.

In prisons, communal eating, showering or going to the toilet make physical distancing impossible.<sup>12</sup> Even in non-overcrowded prisons, preventive strategies based on individual isolation can be incompatible with essential<sup>13</sup> activities such as daily meaningful human contact, or exercise outside the cell.

People deprived of liberty are also more likely to live with underlying health conditions that increase their vulnerability to COVID-19, including HIV, viral hepatitis and tuberculosis.<sup>14</sup> 15% of the prison population in Council of Europe countries is over 50 years old, a concerning fact given that COVID-19 is strongly age-dependent.<sup>15</sup>

## 2. International responses to overcrowding

In response to this situation, a large number of United Nations bodies, including the World Health Organisation, have urged national authorities to reduce prison populations by limiting deprivation of liberty, including pre-trial detention, to a measure of last resort, and through the early release of incarcerated people.<sup>16</sup> (See Box 1 for a list of resources).

Following the same approach, many authorities across the world, from USA states to Myanmar,<sup>17</sup> have reduced the number of incarcerated people through a mix of pardons, temporary and early releases, alternatives to incarceration, and a reduction in the number of detentions.

In Europe there has been no unified policy response. While Poland, France or Italy have taken proactive action to reduce their prison populations,<sup>18</sup> countries with large prison systems and reported deaths, like Spain or the UK, are yet to take significant release measures.<sup>19</sup>

At the outset of the pandemic, some states adopted prevention strategies based on isolating people deprived of liberty from the community, and on widespread solitary confinement.<sup>20</sup> However, these strategies could be unsustainable in the long term, and can violate international standards such as the Nelson Mandela Rules.

## 3. Recommendations

**A: Suspend or reduce all arrests and admissions into prisons and other detention facilities for minor and non-violent offences,** including for drug use and possession, and for any person who violated curfew and 'lockdown' orders relating to COVID-19,<sup>21</sup> using when appropriate alternatives to incarceration.<sup>22</sup>

**B: Grant early release from detention facilities** for those who are vulnerable or can be released without compromising public safety,<sup>23</sup> including:

- i. People who are **over 50 years of age** and/or **have underlying health conditions** that put them at higher risk.
- ii. Women who are **pregnant or nursing**,

- iii. People who are in prison for **minor or non-violent offences**, including drug offences.
- iv. People in **pre-trial detention** (as permitted in national legislation)
- v. People who are **near the end of their sentence** (following national legislation).

**C: Provide a post-release continuum of care** for people returning to their communities, including the immediate provision of assistance to secure official documentation, food, housing, employment, childcare support and healthcare as needed,<sup>24</sup> including drug treatment and harm reduction services. No person should be returned to a situation in which they are at risk of abuse.

**D: To ensure the health, well-being and safety of those who remain in prison:**

- i. **Improve standards of sanitation and hygiene**, including by ensuring the stock of soap, drying materials for hand washing, hand sanitisers that contain at least 60 % alcohol, and environmental disinfection.
- ii. **Ensure the availability of PPE**, especially for prison and healthcare staff, and appropriate training on how to implement and communicate preventative measures.<sup>25</sup>
- iii. **Ensure availability of testing for COVID-19, and access to medical treatment for people deprived of liberty.** Those who need medical treatment should be transferred to a hospital or health care facility.
- iv. **Ensure that quarantine measures are time-limited, proportionate, and based on medical advice.** Everyone should be allowed every day **two hours of meaningful human contact.**<sup>26</sup>
- v. **Ensure that people deprived of liberty are provided with additional psychological support.**<sup>27</sup> Suicides of people detained for 'lockdown' breach have been reported.<sup>28</sup>
- vi. **Restrictions on external visits should be strictly proportionate, time-bound, and based on medical advice.**<sup>29</sup> They should be compensated with increased free access to phone or online conferences.<sup>30</sup>
- vii. **Guarantee safe access to prisons for key external service, from lawyers<sup>31</sup> to harm reduction and drug treatment services.**

### Box 1: Key guidance relevant to COVID-19, prisons and detention

- World Health Organisation (WHO), Europe office: [Preparedness, prevention and control of COVID-19 in prisons and other places of detention](#)
- United Nations Office on Drugs and Crime (UNODC): [Position Paper COVID-19 preparedness and responses in prisons](#)
- UNODC, WHO, UNAIDS, OHCHR: [Joint Statement on COVID-19 in prisons and other closed settings](#)
- UN Inter-Agency Standing Committee: [Interim Guidance – COVID-19: Focus on Persons Deprived of Their Liberty](#), WHO and Office of the High Commissioner for Human Rights (OHCHR)
- Statement by the UN expert on the right to health [on the protection of people who use drugs during the COVID-19 pandemic](#).
- OHCHR Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic \(adopted on 25<sup>th</sup> March 2020\)](#)
- Penal Reform International, [Coronavirus: Healthcare and human rights of people in prison](#)

## Endnotes

<sup>1</sup> The novel strain of coronavirus is called Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2). COVID-19 is the name given to the disease associated with the virus. Source: European Centre for Disease Prevention and Control <https://www.ecdc.europa.eu/en/publications-data/covid-19-what-we-know>

<sup>2</sup> See Transform Drug Policy Foundation, *Prison releases by country/jurisdiction* (2020). Available at: <https://transformdrugs.org/prisoner-releases-by-country-jurisdiction/>

<sup>3</sup> See: Prison Insider, *Europe: coronavirus, prison fever* (2020). Available at: <https://www.prison-insider.com/en/articles/europe-coronavirus-la-fievre-des-prisons>

<sup>4</sup> World Health Organisation (WHO), *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (2020), [http://www.euro.who.int/\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1), p. 2.

<sup>5</sup> M. Aebi and M. Tiago (February 2020), *Prisons and Prisoners in Europe 2019: Key Findings of the Space I report*, [http://wp.unil.ch/space/files/2020/04/Key-Findings-2019\\_200406.pdf](http://wp.unil.ch/space/files/2020/04/Key-Findings-2019_200406.pdf), p. 1.

<sup>6</sup> Ibid, p. 7.

<sup>7</sup> Ibid, p. 9.

<sup>8</sup> Council of Europe European Committee on Crime Problems, *White Paper on Prison Overcrowding*, <https://rm.coe.int/16806f9a8a>, para. 20.

<sup>9</sup> Ibid, para. 19.

<sup>10</sup> Ibid, para. 11.

<sup>11</sup> Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2015), *Living space per prisoner in prison establishments: CPT standards*, <https://rm.coe.int/16806cc449>.

<sup>12</sup> WHO *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 5.

<sup>13</sup> See among others the recommendations set in: European Council European Committee on Crime Problems (2018), *Revised Rules and Commentary to Recommendation CM/REC(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, Rules 25 27 and 53, <https://rm.coe.int/pc-cp-2018-15-e-rev-8-12-12-19/1680994e24>

<sup>14</sup> Lipi Roy, *Infections And Incarceration: Why Jails And Prisons Need To Prepare For COVID-19 Now* (2020), <https://www.forbes.com/sites/lipiroy/2020/03/11/infections-and-incarceration-why-jails-and-prisons-need-to-prepare-for-covid-19-stat/#2ac566c049f3>

<sup>15</sup> United Nations Department of Economics and Social Affairs,

<sup>16</sup> UNODC, WHO, UNAIDS, OHCHR (2020), *UNODC, WHO, UNAIDS, OHCHR Joint Statement on COVID-19 in prisons and other closed settings*, [https://www.unaids.org/sites/default/files/20200513\\_PS\\_covid-prisons\\_en.pdf](https://www.unaids.org/sites/default/files/20200513_PS_covid-prisons_en.pdf).

<sup>17</sup> Transform Drug Policy Foundation, *Prison releases by country/jurisdiction* (2020). Available at: <https://transformdrugs.org/prisoner-releases-by-country-jurisdiction/>

<sup>18</sup> See: Prison Insider, *Europe: coronavirus, prison fever* (2020). Available at: <https://www.prison-insider.com/en/articles/europe-coronavirus-la-fievre-des-prisons>

<sup>19</sup> Ibid.

<sup>20</sup> For instance, in a prison in the UK people with COVID-19 symptoms were not allowed to leave their cells for 14 days. See: The Telegraph (19 May 2020), *Prisoners with COVID-19 symptoms denied showers for fortnight, inspector report finds*, <https://www.telegraph.co.uk/news/2020/05/18/prisoners-covid-19-symptoms-denied-showers-fortnight-inspection/>.

<sup>21</sup> Penal Reform International, *Coronavirus: Healthcare and human rights of people in prison* (March 2020), <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>, pp. 12 - 13

<sup>22</sup> The European Council endorsed alternatives to incarceration for drug offences in: European Council (2019), *Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice*, 2019/C422/06, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG1216\(02\)&rid=2](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG1216(02)&rid=2)

<sup>23</sup> UNODC, *Position Paper COVID-19 preparedness and responses in prisons* (March 2020), [https://www.unodc.org/do/cuments/hiv-aids/publications/UNODC\\_position\\_paper\\_COVID-19\\_in\\_prisons\\_FINAL.pdf](https://www.unodc.org/do/cuments/hiv-aids/publications/UNODC_position_paper_COVID-19_in_prisons_FINAL.pdf); WHO, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, p. 5; Penal Reform International, *Coronavirus: Healthcare and human rights of people in prison* (March 2020), <https://cdn.penalreform.org/wp-content/uploads/2020/03/FINAL-Briefing-Coronavirus.pdf>

<sup>24</sup> Rule 108, *The Nelson Mandela Rules: The United Nations Standard Minimum Rules for the Treatment of Prisoners*, <https://www.un.org/en/events/mandeladay/mandela-rules.shtml>; World Health Organisation, *Prisons and Health* (2014), [https://www.unodc.org/documents/hiv-aids/publications/Prisons\\_and\\_other\\_closed\\_settings/2014\\_WHO\\_UNODC\\_Prisons\\_and\\_Health\\_eng.pdf.pdf](https://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/2014_WHO_UNODC_Prisons_and_Health_eng.pdf.pdf), at 1.

<sup>25</sup> WHO, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*.

<sup>26</sup> European Council European Committee on Crime Problems (2018), *Revised Rules and Commentary to Recommendation CM/REC(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, Rule 53.

<sup>27</sup> Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2020), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, <https://rm.coe.int/16809cfa4b>

<sup>28</sup> See: La Vanguardia, *Aparece ahorcado un preso de Logrono que ingresó en la cárcel tras saltarse 16 veces el confinamiento* (4 May 2020). Available at: <https://www.elmundo.es/espana/2020/05/04/5eaff9defdddf22b18b45cf.html>

<sup>29</sup> See for instance: Asociación Pro Derechos Humanos de Andalucía (2020), *Propuestas para la desescalada en el contexto en el contexto de COVID-19 en las prisiones dependientes de la administración general del Estado*, <https://www.ap-dha.org/wp-content/uploads/2020/05/Propuesta-plan-desescalada-SGIP-12052020.pdf>.

<sup>30</sup> CPT, *Statement of principles relating to the treatment of persons deprived of their liberty in the contexts of the coronavirus disease (COVID-19) pandemic*.

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<sup>31</sup> According to reports, in at least certain regions of Russia legal service providers have been denied access to pre-trial detainees. See: M. Agaltsova (3 April 2020), *What laws does the FSIN violate by restricting access to lawyers in pre-*

*trial detention centres*, <https://www.forbes.ru/obshchestvo/396673-kakie-zakony-narushaet-fsin-ogranichivaya-dostup-advokatam-v-size> (in Russian).