Briefing note | November 2023

Input to the Special Rapporteur on

torture on prison management

**Penal Reform International (PRI) welcomes the opportunity to inform the Special Rapporteur’s thematic report to be presented to the 55th session of the Human Rights Council on current issues and good practices in prison management, including pre-trial detention facilities. This submission is based on research conducted as part of PRI’s** [**Global Prison Trends**](https://www.penalreform.org/resource/global-prison-trends/) **programme, the development of guidance on** [**natural hazards and prisons**](https://www.penalreform.org/resource/natural-hazards-and-prisons-protecting-human-rights/) **and** [**good governance for prisons**](https://www.penalreform.org/resource/good-governance-for-prisons/)**, and our work in prisons and with prison administrations across multiple regions.**

# Measures to reduce overcrowding

There are an estimated more than 11.5 million people in prison worldwide.[[1]](#footnote-2) Available data shows 123 countries recording occupancy rates exceeding prison system capacity, with 23 countries operating at more than double their official capacity.[[2]](#footnote-3) Overcrowding is not, however, limited to countries whose overall prison population exceeds capacity; individual prisons or sections of prisons can be overcrowded even if the prison system as a whole is not. This is often the case in pre-trial detention facilities, in particular. Moreover, there is no universally agreed definition of what constitutes overcrowding and in the absence of precise international standards, it is up to individual countries themselves to determine – and sometimes revise — the capacity of each facility. The data is therefore likely to understate the extent of the problem.

Overcrowding impacts all aspects of prison management and the treatment and experience of detained persons, with consequences that can at worst be life-threatening and at best prevent prisons from fulfilling their proper function and increase the risk of ill-treatment. A study conducted during the COVID-19 pandemic in the US state of Texas found a correlation between crowdedness and viral spread; prisons operating at 94–102 per cent capacity had higher COVID-19 infection rates and more deaths than those at 85 per cent.[[3]](#footnote-4) Another US study found efforts to depopulate a large urban jail reduced transmission by 56 per cent, with a subsequent 51 per cent decrease in transmission when single-cell occupancy was increased.[[4]](#footnote-5)

In recognition of the risks to prison populations from COVID-19, many governments made commitments when the pandemic was first announced in March 2020 to reduce their prison populations to ease overcrowding. Research by Harm Reduction International found that at least 109 states adopted measures to release people from prison in response to the pandemic,[[5]](#footnote-6) while DLA Piper found at least 475,000 people were released from prison across 53 jurisdictions from March to July 2020.[[6]](#footnote-7)

Measures mainly involved exceptional release mechanisms, including amnesties, pardons, commutations, and early and temporary release schemes, including compassionate release. Many release schemes targeted high-risk groups including older people, those with specific health conditions or disabilities, pregnant women and mothers with young children, in line with guidance from the World Health Organization.[[7]](#footnote-8) Many also included people in pre-trial detention and those serving short sentences or nearing the end of their sentence.

As much as 40 per cent of the prison population was released in Turkey (114,460 people), 30 per cent in Jordan (around 6,000 people) and over 15 per cent in Catalonia (Spain), Cyprus, Norway, Portugal, France and Slovenia.[[8]](#footnote-9) Over 40,000 people were released in Ethiopia[[9]](#footnote-10) and over 68,000 temporarily in India, about 14 per cent of the total prison population.[[10]](#footnote-11) Some of the largest reported releases were in jurisdictions with no official, supporting data, including 104,000 people serving sentences in Iran, and 62,000 people in Iraq, including both sentenced and pre-trial detainees.[[11]](#footnote-12) In Indonesia, the prison population decreased by 12 per cent between January and April 2020, notably because of COVID-19-related emergency releases. By the end of October 2020, 82,000 people had been released in the Philippines,[[12]](#footnote-13) mostly from remand.

Despite obvious benefits of release measures, many targets for decreasing prison populations were missed, and far fewer people than needed to prevent transmission in prisons were released. A regional survey in Latin America found that between March and June 2020, five out of 26 prison systems released less than 1 per cent of their prison population, and nine released between 1 and 5 per cent.[[13]](#footnote-14) In South Africa by July 2020, less than 6,800 of the estimated 19,000 people that would be eligible had been released on parole. Others were said to have been hindered by bureaucratic or practical issues, such as difficulties achieving sign‑off from relevant bodies during lockdown or insufficient supply of electronic monitoring devices to facilitate house arrest.[[14]](#footnote-15)

Barriers to the success of these schemes varied across countries and regions. Where there is chronic overcrowding, the measures did not reach far enough. In Malawi, it is estimated that the number of people imprisoned was reduced by just over 12 per cent through emergency releases, but with prisons operating at 260 per cent capacity, this was not enough to effectively reduce the risk of outbreaks.[[15]](#footnote-16) Changes in political sentiment saw U-turns on emergency release schemes in several countries, including England after six people were mistakenly released.[[16]](#footnote-17) Media reports of negative public opinion also led to changes like in Argentina where protests against prison releases were held in the capital in April 2020[[17]](#footnote-18) and within weeks court decisions to release high-risk groups were reverted and no more releases were offered to at-risk individuals.[[18]](#footnote-19)

Courts in some countries ruled on the emergency release of detainees. In Pakistan, the Supreme Court in April 2020 overturned lower courts’ decisions to release people on bail due to the pandemic. This meant that in Sindh province, for example, 90 per cent of the 500 people released in March were returned to jail,[[19]](#footnote-20) and the prison population increased by 21 per cent from April to December 2020.[[20]](#footnote-21) In the US, however, successful litigation efforts, including by the American Civil Liberties Union, resulted in a number of court orders and settlements including in the state of North Carolina where 3,500 people will be released early as a result of a lawsuit challenging prison conditions during the pandemic.[[21]](#footnote-22)

### **Measures to reduce prison populations in Kenya**

From the early days of the COVID-19 pandemic, Kenya’s justice system adopted a collaborative, proactive approach to tackling the pandemic ensuring buy in from the different agencies. On 15 March, three days after the first COVID-19 case was reported in Kenya, the National Council for the Administration of Justice (NCAJ) announced mutually agreed measures to mitigate COVID-19 in the justice sector whilst aiming to continue to render essential services and safeguarding health. These included the following measures to reduce prison populations:

* People convicted of or charged with petty offences were held in police custody for no more than 24 hours and released on cash bail or police bond to ensure minimal number of people were held in police custody.
* Magistrates across the country reviewed and revised bail and bond terms for petty offenders to facilitate their release from pre-trial detention.
* The High Court reviewed the files of convicted petty offenders jailed for less than six months and others who had less than six months left on their sentence to facilitate their early release.

By 1 April 2021, the review of people convicted of petty offences led to the release from prison of 4,800 people following court hearings mainly conducted via online platforms. It has also been reported that the prison decongestion measures resulted in the reduction of the prison population from 55,000 in March 2020 to 41,119 in August 2020, more than a 25% reduction in the prison population with a particularly significant decrease in the numbers of pre-trial detainees.[[22]](#footnote-23)

The rapid response was made possible in Kenya because of the existence of the National Council for the Administration of Justice (NCAJ), a high-level policymaking, implementation and oversight coordinating mechanism composed of State and non-State actors from the justice sector. The NCAJ was established in 2011 ‘to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.’[[23]](#footnote-24) The NCAJ was able to mobilise quickly in response to COVID-19 and to effectively coordinate communications and the division of responsibilities.

*‘The high court has been revising the sentences of the lower courts and people are being released every day. The pandemic has removed a lot of the barriers that stopped this happening before – there is a lot of goodwill among the justice sector at the moment, with everyone working together. I don’t know if it is sustainable, it depends a lot on political will.’[[24]](#footnote-25)*

# 6. Preparing for next pandemic (what worked and what didn’t in

# COVID-19 responses to prison management? Any negative

# consequences of those measures?)

Many of the measures undertaken in prisons as part of the COVID-19 response undoubtedly had a negative impact on the treatment of prison populations. The restrictions put in place to respond to the pandemic severely and disproportionately impacted detained persons’ access to basic goods, services, and protection of their human rights, including mental and physical health and contact with the outside world. Many of the restrictive measures with negative impact on human rights and well-being that were introduced on the grounds of COVID-19 remained in place far beyond restrictions in the community, despite the prevention and control measures that were put in place (testing, vaccines etc), and some are still in place today. For example, in the Philippines, PRI observed that in-person visits were still banned in late 2022. In England and Wales, research found 85% of those surveyed were confined to cells for 23 hours a day during lockdown, with more than 1 in 3 people showing symptoms of ‘severe anxiety disorder’ indicating high levels of post-traumatic stress.[[25]](#footnote-26) It also exposed that most focus group participants “considered that rather than lockdown restrictions being tied to the period of Covid-responsivity, prison authorities intended they would become the “new normal” for those in prison… with Covid now used as ‘an excuse’ to mask issues relating to under-resourcing of prisons. … participants believed the restrictive regimes implemented during Covid responsivity were preferable for staff, leading to a reluctance to facilitate a post-Covid regime”.[[26]](#footnote-27)

Increased isolation, use of solitary confinement and the suspension of family visits, education, treatment and rehabilitation programmes – all factors which contribute to good mental health –impacted all detained people, especially those with an existing mental health condition. In Italy, there were 61 suicides reported in prison in 2020, a rise from the year before. A report on the experience of people in isolation in Irish prisons found that the lack of social contact and purposeful activity, inconsistency and uncertainty in regime delivery, and feelings of being punished for being vulnerable contributed to deteriorating mental health.[[27]](#footnote-28) The pandemic also had a major impact on the working conditions and well-being of prison staff.[[28]](#footnote-29)

People who use drugs in prison faced heightened risks during the COVID-19 pandemic due to underlying health issues and a lack of access to harm reduction and healthcare services.[[29]](#footnote-30) The majority of prisons globally still do not provide adequate treatment and harm reduction measures for people who use drugs, and women in particular have little to no access to available services. Furthermore, many such services that are available in prisons were suspended during COVID-19 restrictions,[[30]](#footnote-31) for example Opioid Agonist Therapy programmes in at least certain prisons in Moldova and Kyrgyzstan.[[31]](#footnote-32) One notable exception was seen in Kenya, where civil society efforts resulted in the opening of the first Opioid Agonist Therapy programme in Africa, in the Shimo La Tewa prison facility in Mombasa.[[32]](#footnote-33)

Women also face(d) unique issues during COVID-19 which were often overlooked, from having less access to hygiene products (due to visitor restrictions and redirection of resources) and mental health impacts, including higher rates of suicide and self-harm compared to males proportionally, not least from being (further) separated from their children and support networks.[[33]](#footnote-34)

In some instances, however, COVID-19 necessitated, facilitated, and accelerated justice sector and prison reforms that might otherwise have never happened or taken years to be realised. In the early days of the COVID-19 pandemic, many countries exhibited enhanced cooperation and coordination between justice sector actors aimed at controlling the spread of COVID-19 in prisons, providing key services in prisons in new ways, and maintaining the core functions of justice systems where possible.

While telemedicine was established in some countries before the pandemic, including in the US, Thailand, France and Romania, its use was not widespread. In some places, the pandemic has acted as a catalyst for digital innovation to mitigate the impacts of restrictions on movement on healthcare provision in prisons. In England, a two-year pilot telemedicine programme using secure 4G tablets for health visits and access to medical notes was launched in June 2020. In Sweden, use of the existing Skype platform was expanded to facilitate appointments between prison healthcare staff and detainees remotely. Doctors were assigned to 24 prison institutions in Morocco and new communications technology was set up to facilitate weekly remote medical consultations, and Armenia is also looking to introduce telemedicine in the penitentiary system.[[34]](#footnote-35) Phone and internet-based services have also been used for mental health provision in a number of systems to mitigate the suspension of external visits. In one US prison, access to tele-psychiatry was expanded to 60 per cent of all sessions, with training provided to staff and patients on how to use the equipment, which also reduced time escorting patients and helped to conserve the prison’s PPE supply.[[35]](#footnote-36)

While there are many lessons still to be learned on what worked well and what could have been done better, it is clear that the timely and effective collaboration demonstrated between different stakeholders in many countries should – and can – be possible beyond COVID-19 and can provide important lessons for pandemic and other emergency preparedness, as well as longer-term systematic reforms for prisons to function more effectively on a daily basis. This includes in relation to protecting the human rights, health and well-being of people in prison, and the working conditions for staff.

Responding to the needs of people in prison during a crisis requires a resilient justice system with an adaptable workforce which has received appropriate training and support, and which will continue to receive the support it needs during the crisis response. The COVID-19 pandemic unfortunately laid bare the deficiencies in many prison systems with regard to staff terms and working conditions. COVID-19 also led to additional staff shortages and pressures on their workloads and employment conditions, with some staff living on site for weeks or months and all facing an increased risk to their own health and that of their families.[[36]](#footnote-37)

However, areas of good practice have emerged, including additional training, psycho-social support, staff buddy systems, relaxation activities and other programmes being made available to prison staff. In Tunisia, organisations with experience in psychosocial support have been able to provide such support to prison staff during COVID-19[[37]](#footnote-38) whilst In England, an NGO was providing yoga and meditation classes to staff in 12 prisons to help them cope with work stress during COVID-19.[[38]](#footnote-39) In Thailand, online support services were run for prison staff with a focus on assisting with work-related stress. The programme ran for over 10 weeks and involved therapeutic art sessions, group counselling and mindfulness, benefitting 30 members of staff, with 85% of them reporting that it had had a positive impact. Thailand’s Department of Corrections in 2021 published guidelines for mental healthcare for prison staff and people in prison to prevent stress or mental health problems during the pandemic, with recommendations for reducing anxiety and a mental health assessment form.[[39]](#footnote-40) Documentation of best practices and lessons learnt has been undertaken by several institutions.[[40]](#footnote-41)

# 7. Responding to climate-change effects on prisons and prison

# populations and climate-proofing prison management and

# conditions of detention.

People in prison are among the most vulnerable to suffering from the negative effects of natural hazards, including extreme weather and climate change. An academic study found that between 2001 and 2019, 271 people died in Texas prisons due to extreme heat exposure, notably finding that these all occurred in prisons without air conditioning, whereas not a single heat-related death occurred in climate-controlled prisons.[[41]](#footnote-42) An inquiry by the National Human Rights Commission in Chad found 44 people died in a prison in one night because they were all kept in a dangerously overcrowded cell at 46 degrees Celsius.[[42]](#footnote-43)

In heatwaves in England in 2022, there were reports of inadequate supplies of drinking water and people being held in cells at least 22 hours a day due to staffing shortages, and in some cases being required to wear standard uniforms of trousers and long-sleeve shirts.[[43]](#footnote-44) In Spain, the Assembly of Families of Prisoners of the Association for Human Rights of Andalusia (Apdha) submitted a complaint to penitentiary authorities, requesting measures to combat the excessive heat inside prisons during heat waves, with temperatures exceeding 40 degrees Celsius in some areas, making it ‘impossible to fall asleep, perform activities or stay in the courtyard’.[[44]](#footnote-45) In France, the International Observatory of Prisons has highlighted that infrastructure is not fit to cope with extreme temperatures, lacking thermal insulation and ventilation systems, with some prisons having windows that only open a small amount, making the heat unbearable.[[45]](#footnote-46)

Many people are detained in facilities that are vulnerable to natural hazards. According to data from the INFORM Risk Index cross-referenced with national prison population data from the World Prison Brief, almost 30 per cent (3,167,816 people) of the global prison population lives in the 12 countries most exposed to natural hazards.[[46]](#footnote-47) For example, in Peru half of the country’s prisons are located in areas that registered at least 301 disasters in 2018 constituting over 50 per cent of emergencies.[[47]](#footnote-48) The earthquake that struck Türkiye and Syria in February 2023 impacted 17,600 detainees held in prisons across 6 provinces in the earthquake zone in Türkiye alone. Authorities transferred and evacuated people; the prison administration stated that there were no deaths in prisons as a result of the earthquake but did confirm that some people in prison were injured by security forces after unrest and escapes in protest at not being able to contact families.

People detained and working in prisons have been injured, sometimes fatally, because of damage and destruction caused by natural hazards, exacerbated by inadequate preparations, plans or steps taken by prison authorities to ensure their safety. Despite international and national momentum in many countries towards increasing and improving Disaster Risk Reduction (DRR), the application of DRR in prison systems is often not a primary concern. Across the world, governments and states have policies, procedures and guidance on DRR, addressing vulnerabilities in their countries, but these rarely include mention of prisons or address the specific needs and circumstances of prisons and people in prison.

In some places, DRR is in place for prisons, typically in countries or jurisdictions that experience high frequency of natural hazards or have been supported by international actors to support DRR. Evacuation plans in the US are common, for example in Florida, where authorities reported that 2,500 people were evacuated from at least 25 facilities in September 2022 before a hurricane hit.[[48]](#footnote-49) In the Philippines, mapping of hazards for the 475 jails nationwide has been carried out, with the support of the ICRC. It was found that around a quarter of the 130,000 detainees held pre-trial detention in the country’s jails are in areas at high risk of floods, drought, typhoons, landslides, heatwaves, earthquakes and volcanoes.[[49]](#footnote-50)

### **National DRR policy frameworks for prisons**

The **United States** (US) Department of Justice, National Institute of Corrections, published a *Guide to Preparing for and Responding to Prison Emergencies* in 2005 and in 2009 published a *Guide to Preparing for and Responding to Jail Emergencies*. Both publications recognise the critical need for prisons and jails (primarily pre-trial detention facilities in the US) to have an emergency plan for disasters. The publications give guidance to US prisons and jails in planning for emergencies, including those associated with natural hazards and in developing the appropriate response capacities to cope with these events where they cannot be prevented.[[50]](#footnote-51)

However, there is still no nationally coordinated strategic planning across the US with prisons and jails not explicitly included in the federal government’s nationwide emergency planning.[[51]](#footnote-52) In 2020 a proposed bill was introduced to improve disaster response and recovery plans in prisons across the country.[[52]](#footnote-53) It was reintroduced in August 2021, having not been passed in the last Congress.

In the **Philippines**, the Bureau of Jail Management and Penology (BJMP) issued a circular to jails in 2020 entitled Mainstreaming Disaster Risk Reduction and Management in BJMP. The circular provides a national framework for jails (also referring to pre-trial detention facilities in the Philippines) for Disaster Risk Reduction and Management (which is the term used by all Philippine government agencies for DRR) and mandates the creation of DRR committees at the national headquarters, regional and jail levels. The document’s aim is, among other measures, to provide a comprehensive system and integrated approach to DRR in jails and to identify the roles of different stakeholders.[[53]](#footnote-54) The ICRC’s ‘Climate Risk Mapping Approach and Tool’ developed for Asia is central to this work, and the organisation had aimed to roll it out also in Bangladesh, Sri Lanka and Cambodia.[[54]](#footnote-55)

### **Emergency response guidelines**

In **Indonesia**, the Director-General of Corrections of the Ministry of Law and Human Rights has published comprehensive guidelines on DRR in prisons. The guidelines serve as a good practice example because they provide a comprehensive template for SOPs for earthquakes, tsunamis, smog, volcanic eruptions, fires, floods and landslides setting out clearly what is required in each hazardous event including components covering the activities before, during and after the occurrence of a disaster. The guidelines recognise international best practice measures for DRR and set out the stages for preparedness that each prison must establish, including standby teams, risk assessment, preparedness plan, evacuation plan, and contingency plan.[[55]](#footnote-56)

### **Interagency involvement in drills**

In 2017, the National Penitentiary institute (INPE) in **Peru** and other agencies organised their first earthquake evacuation national drill involving 69 prisons housing 85,000 people.[[56]](#footnote-57) With the active involvement of people in prison, the drill practised the safe evacuation of people detained to secure zones. Representatives of the prison population participated in the review of the security zone. A rescue brigade was used to transport the injured, and the fire brigade undertook a firefighting drill.

### **Open-source information on natural hazard risks**

Prison administrations can make use of open source and publicly available information about disaster risks faced in their country or region. For example, **Indonesia’s** prisons have access to InaRISK, a portal that displays information on disaster threats.[[57]](#footnote-58) In the US and covering the Caribbean, the National Weather Service provides forecast information about extreme weather to better support emergency managers, first responders, government officials, businesses and the public to take advance action to reduce the impacts of extreme weather events.[[58]](#footnote-59) Some prison facilities have been evacuated due to forecasted hurricane and wind changes fuelling wild fires or preparing to shelter in place due to severe storms thanks to this service.

### **Supporting local community response**

During Hurricane Irma, detainees in Balsam Ghut prison in the **British Virgin Islands** were left trapped in a prison without access to food or water. The hurricane caused severe damage to the prison including to the roof, thereby letting in rainwater, and they were freed by a local resident. Local news reports said freed detainees sought to get home to check on their families’ safety. Residents also reported that many went around the community helping their neighbours take out their furniture and board up their homes.

In the aftermath of the 2018 earthquake that hit the island of Sulawesi in **Indonesia**, many of the detainees who returned to prison in Palu (after being allowed to leave for their own safety and to check on their families) organised themselves into volunteer teams to support the local community relief effort. The detainees saw that ongoing support was needed, but many volunteers and official relief workers had already returned home. The detainees looked for areas they could help and even gave themselves a name, a logo and a uniform to be identifiable to the community. The prison gave them permission to leave every day, and they helped distribute food, clear rubble, erect tents and repair damaged infrastructure. The Head of Rehabilitation at the prison commented on how positive the initiative was for the volunteers as it gave them a sense of purpose and a way to be able to give back to society.[[59]](#footnote-60)

**Rehabilitation and reconstruction**

Recovery from natural hazards in **Peru** consists of two processes: rehabilitation and reconstruction. Rehabilitation is reactive and falls under the responsibility of INDECI and refers to the provision of basic services immediately after the event and the relocation of the affected population. Reconstruction, which falls under the responsibility of the National Centre for Disaster Risk Estimation, Prevention and Reduction (CENEPRED), refers to a risk assessment of the damages. If a prison collapses, an evaluation of the type of soil or infrastructure is needed. The assessment looks at why the building collapsed and whether the building complied with construction regulations and seismic resistant infrastructure. Reconstruction must be based on a risk assessment to decide on whether to rebuild in situ or to relocate to another area based on vulnerability studies.

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