



A global analysis of prisoner releases in response to COVID-19

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NOTE: the research in this report is only intended as a general overview and discussion of the issues dealt with. It is not intended to be, and should not be used, as a substitute for taking legal advice in any specific situation.

Part 1 – Introduction

Introduction

This report was prepared by DLA Piper with the support and input of the Association for the Prevention of Torture (APT). DLA Piper is a leading global law firm with offices in more than 40 countries across Asia Pacific, Europe, the Middle East, Africa and the Americas. It has a long-standing commitment to promoting fairer justice systems through its pro bono program. DLA Piper is a trusted advisor to governments and supported governments around the world to reform justice systems to deliver enhanced community outcomes and increased efficiency. The Association for the Prevention of Torture is the leading, independent, non-governmental international organization whose vision is for societies to exist without torture or ill treatment. APT works with governments, justice systems, National Preventive Mechanisms (NPMs), national human rights institutions (NHRIs) and civil society to take effective actions to prevent torture and other ill-treatment.

This report was commissioned to assist policy makers from a range of jurisdictions seeking to identify effective mechanisms to protect the health and safety of correctional staff, prisoners, and the broader community, by reducing prison populations.

The report analyses the diverse approaches taken by governments around the globe to respond to the COVID-19 pandemic and reduce the risk of transmission within prisons

through early release programs (for both adults and children¹) and slowing new prison admissions.

While some governments were able to use existing legislative and regulatory mechanisms, others implemented new programs, via executive powers or legislation.

While many COVID-19 related prisoner release programs are still in their infancy, initial data suggests they have been successful in reducing prison populations,

with large numbers of prisoners released and low short-term recidivism rates. However, the sustainability of such programs may become critical, to ensure prison decongestion strategies continue and overcrowding levels do not return to those seen before the pandemic

The objective of the report is to:

- compare the approaches taken by governments globally to decongest prisons through prisoner release schemes and limiting new prison admissions;
- identify effective approaches and examples of good practice that can be adopted and/or replicated elsewhere; and
- support governments, particularly in countries with severe overcrowding to safely reduce prison populations to reduce the burden on the public purse, limit the risk of transmission of COVID-19 and other viruses and infectious diseases, create safer working conditions for prison staff, reduce the strain on public and prison health services and effectively manage risk and ensure public safety.

Executive summary and recommendations

In March 2020, the COVID-19 pandemic was declared. Overnight, prisons became a key public health concern for governments. Prisons – particularly overcrowded facilities and those with poor

¹ This report takes into consideration that the age of criminal responsibility is different in all jurisdictions. The terms “child” and “juveniles” will be used to refer to persons under the age of 18 in compliance with international law.

sanitation, hygiene and ventilation – are known to act as a source of infection, amplification and spread of infectious diseases. Urgent action was required to limit the transmission of COVID-19 to prisoners, staff and the broader community.

Recognizing the challenge and potential serious health risks, governments globally took swift action to decongest their prison systems through releasing prisoners and limiting new admissions.

This report analyses the approach to decongesting prison systems adopted by governments in 53 jurisdictions across Asia Pacific, Europe, the Middle East, Africa, North and Central America. The results of those 53 jurisdictional analyses have been summarized into key findings set out in **Part 2** of this report and in an infographic at **Annexure A**.

The study concluded that at least 475,000 prisoners comprising convicted prisoners and pre-trial detainees, and both adults and children, were released across the 53 jurisdictions between March and July 2020. Official prisoner release data was however inconsistent and incomplete (only a quarter of jurisdictions published up-to-date, disaggregated data on prisoner releases). In some countries, the legal basis underpinning the release programs and/or the conditions applying to the release schemes, were unclear.

The study identified a number of trends and good practices with respect to the

design and implementation of prisoner population reduction schemes:

- All jurisdictions included in our study had existing mechanisms which allowed for the release of pre-trial and convicted prisoners. In many jurisdictions these mechanisms were relied upon to release prisoners in response to COVID-19 (approximately three-quarters of jurisdictions relied on existing laws). Despite this, two-thirds of jurisdictions implemented new measures to release prisoners given the unique risks associated with COVID-19 infection and transmission in overcrowded facilities. Of the jurisdictions that implemented new measures, 28% enacted new legislation via parliaments and 72% relied on executive powers to release prisoners via regulations and decrees. In terms of good practice, identifying and using existing mechanisms brings significant advantage in terms of speed, which may well prove critical in limiting the spread of COVID-19 and other viruses. Existing mechanisms for early release should be supplemented where necessary with additional measures, including measures to remove elderly people or other prisoners in situations of vulnerability² who pose no or low risk to the community.
- Under the various prisoner release schemes, approval was commonly required by a government official such as a president, state governor or minister, often through an executive pardon or clemency

(47% of jurisdictions). A similar number of jurisdictions (43%) relied on release approval being granted by senior public servants within the prison or corrections administration and a third of jurisdictions (32%) relied on judicial approval. In terms of achieving the related goals of protecting public health, speed and efficiency, the use of administrative decision-making within a strict framework can be an effective way to quickly reduce prisoner populations, but this should be supplemented by a parallel judicial process where discretion can be exercised to achieve fairness through the exercise of discretion and/or judicial review.

- Almost all jurisdictions within the study released convicted prisoners in response to COVID-19. Release eligibility was based on three key criteria: (i) the nature of the offence committed by the prisoner, (ii) the nature or status of the prisoner's sentence, and (iii) whether the prisoner had particular vulnerabilities. Jurisdictions commonly applied a combination of these three criteria, meaning a prisoner needed to satisfy various eligibility tests to be released.
- In terms of the offence committed by the prisoner, the main groups of released prisoners were those convicted of non-violent or minor offences and therefore posed no great risk to the community (83% of jurisdictions expressly referred to such offence criteria). Serious violent offenders and sexual offenders

² Within the broader framework of challenging issues that affect people in prison, certain segments of the prison population are especially vulnerable and therefore at much higher risks of contagion. Those who are particularly vulnerable are elderly people, and detainees suffering from a chronic health condition, among others.

were regularly called out as ineligible for release, although only a quarter of jurisdictions expressly excluded prisoners at risk of, charged with, or convicted of domestic violence related offences from release. Given many countries have reported increased incidents of domestic violence during the pandemic, it is recommended that the risks posed to a domestic partner be considered as part of the decision-making framework for early release.

- In terms of nature or status of sentence, 85% of jurisdictions linked the release of convicted prisoners to the prisoner having served a minimum period in prison or being within days or months of their release date/completing their total sentence.
- In terms of prisoner vulnerability, almost two-thirds of jurisdictions (62%) considered the vulnerability of prisoners in their release criteria. The criteria focused on prisoners who were particularly vulnerable to COVID-19; namely elderly prisoners aged anywhere between 50 and 70 (38% of jurisdictions) and prisoners with chronic health issues (55% of jurisdictions). A quarter of jurisdictions also released female prisoners, pregnant or breastfeeding prisoners, and mothers with children living with them in prisons given their vulnerable status. The pandemic created an opportunity for many

governments to achieve substantial reductions in elderly people and other people in situation of vulnerability being detained, reducing COVID-19-related risks and limiting the high ongoing costs associated with the incarceration for this specific group of people.

- In a third of jurisdictions, release eligibility was further linked to the availability of accommodation for a prisoner on release and the ability of a prisoner to financially sustain themselves. Such considerations are contextual and may or may not be appropriate depending on other social and cultural factors. A small number of jurisdictions (8%) also considered the status of any outstanding fines or debts owed by the prisoner. These criteria likely served as a barrier to release for many poor and/or homeless prisoners and those without support networks on the outside and limited the effectiveness of early release programs from a public health perspective. A third of jurisdictions further considered the wishes of victims as part of the release eligibility assessment, although it is unclear what weight was given to such considerations.
- Almost half of the jurisdictions released adult pre-trial detainees (43%) despite pre-trial detainees making up large portions of prison populations. Eligibility criteria uniformly included that the person was charged with a minor or non-violent offence and/or fell into a vulnerable category of prisoner due to age

or ill health. Releases of pre-trial detainees were effected through a combination of existing provisions (often bail hearings) as well as new release measures which were implemented to speed up the release process and reduce the burden on individual judges. Although the increasing use of remote video technology represented a valuable tool for judges in certain jurisdictions during the pandemic, the judiciary should remain vigilant to ensure that disparities in access to technology do not serve act as barriers to engagement with the courts. Courts should consider adopting guidelines to mitigate any harm, including on attorney-client communications and relations.³ Only a third of jurisdictions released children in prisons, including both convicted and pre-trial detainees. Unfortunately, there was very little data on the number of children released from prison and there was limited information about the criteria used to determine eligibility for release. Some jurisdictions took the approach of a blanket release of any child in detention facilities, whereas other jurisdictions applied similar criteria to the releases of adults with the focus being on children charged with, or convicted of, minor or non-violent offences. In general, children should not be incarcerated, except as a measure of last resort. When detention is absolutely necessary, it should be used for the shortest appropriate period of time and should aim at

³ <https://www.dlapiper.com/en/uk/insights/events/2019/06/access-to-justice-and-technology-summit/17-june-2019/>
<https://www.pilnet.org/effect-of-covid-19-on-access-to-justice/>
<https://www.pilnet.org/effect-of-covid-19-on-access-to-justice-2/>
<https://www.pilnet.org/effect-of-covid-19-on-access-to-justice-3/>
<https://www.pilnet.org/effect-of-covid-19-on-access-to-justice-4/>

rehabilitating and reintegrating children into society. Where these principles are followed, early release of children should not result in significant reductions of the detainee population. Also, as the characteristics of COVID-19 became better understood, and the risks posed to children (or by children) were known to be limited, focus likely shifted to adult detention facilities. It is, however, very likely that in some instances, governments used the pandemic as an opportunity to reduce the total population of juvenile detainees using early release measures – especially in countries where children were being held in adult prisons.

- Releases were often conditional on a prisoner complying with one or more terms (three-quarters of jurisdictions imposed at least one condition). The conditions commonly imposed on released prisoners included good behavior (42%), supervision by prison or corrections staff (34%), compliance with COVID-19 directions including quarantining and testing (13%), home detention (13%) and electronic monitoring (21%). It may well be that a lasting impact of the COVID-19 pandemic will be a shift towards alternatives to full-time custody, as the costs and public health risks make alternatives increasingly attractive. In many Least Developed Countries, it is hoped that increased investment into supervision and monitoring capabilities will achieve substantial savings over the medium term.
- Where releases were granted, most were granted on a permanent basis (83% of jurisdictions facilitated some degree of permanent release of prisoners) consistent with a long-term strategy of prison decongestion. Only 17% of

jurisdictions released prisoners temporarily, which meant certain prisoners were required to return to prison after a fixed period of time or after the COVID-19 health crisis resolved.

- About 70% of jurisdictions reported some degree of support programs available to prisoners on release, although the extent to which those services were practically accessible and effective (particularly during the pandemic) is unknown. In contrast, very few jurisdictions implemented new support programs to respond to the increased numbers of released prisoners and the particular circumstances of the COVID-19 pandemic.
- In addition to releasing prisoners, half the jurisdictions undertook measures to reduce new prison admissions – a critical, complementary strategy to alleviate prison overcrowding. Policies adopted by police, prosecutors and judges included the use of cite and release notices, ceasing arrests for minor offences, postponing prosecutions, the use of summons to attend court, suspending short-term prison sentences and only imposing pre-trial detention in the most serious of cases.

Although it is too soon for formal evaluation of release programs implemented in response to COVID-19, early analysis of recidivism rates across the study suggests that released prisoners have not reoffended at high rates. This indicates that release programs have been successful, and, in a few jurisdictions, governments have confirmed their programs will be continued beyond the pandemic.

The COVID-19 pandemic has put an important stress on prison

management, and hence on prison staff whose health and safety were put at risks during the pandemic. The responses provided by authorities varied across jurisdictions. Some good practices were identified, including providing security bonus to security, medical and administrative personnel; the establishment of inter-institutional dialogues between penitentiary authorities and unions; periodic specialized training using the new technology: for instance in Guatemala, the School of Penitentiary Studies continued to teach courses through digital platforms. The courses included the management of emotions in times of COVID-19, as well as implementation of biosecurity protocols. Strategic plans for vaccination took into consideration prison staff and detainees, although their priority levels varied drastically: in some jurisdictions, staff and detainees are equally a priority group for vaccination, in others only staff is considered a priority, while in others, only detainees.

COVID-19 has demonstrated that governments, when willing, can effectively and swiftly implement prisoner release programs to decongest prisons (whether through existing or new mechanisms) while appropriately balancing risks to the community and supporting prisoner reintegration. Governments must continue this momentum by maintaining prisoner release programs as a core, long-term strategy to reduce prison overcrowding well beyond the pandemic.

Background to report

GLOBAL PRISON LANDSCAPE

More people than at any time in human history are detained in prisons around the globe. As estimated by Penal Reform

International, more than 11 million people were detained in prisons in 2019.⁴ That figure includes 700,000 women, 19,000 children living in prisons with their mothers, and around 410,000 children in juvenile detention facilities.⁵ In addition, it is reported that more than 3 million people are held in pre-trial detention with a further 1 million children detained in police custody.⁶ As governments detain people at higher rates for longer periods, prison systems are strained, causing severe levels of overcrowding within some facilities. At the end of 2019, more than 124 countries reported exceeding their maximum prison occupancy rates.⁷ Some of the highest levels of overcrowding reviewed as part of this report include Guatemala at 374%,⁸ Honduras at 204%⁹ and United Arab Emirates at 160%.¹⁰

Overcrowding is a serious humanitarian concern.¹¹ It undermines hygiene, health, safety and human dignity.¹² It denies prisoners their basic rights to safe and clean accommodation with ventilation and minimum

floor space where they can sleep, eat, sit, exercise, access toilet and washing facilities and maintain personal hygiene.¹³ It also restricts prisoners' rights to access appropriate healthcare.¹⁴ The effects of overcrowding are dire – the inhumane living conditions lead to tensions and outbreaks of violence, higher rates of deaths in custody, and poor physical health, mental health and rehabilitation outcomes for detainees.¹⁵ Prison overcrowding also negatively affects the entire criminal justice system, resulting in staff demotivation, development of parallel coping mechanisms and corruption.¹⁶

Since at least 1985, the United Nations has highlighted the high levels of overcrowding that existed in many countries and the need for States to use alternatives to imprisonment to reduce populations and support the reintegration of prisoners.¹⁷ This subsequently led to seminal agreements such as the 1990 United Nations Standard Minimum rules for Non-custodial Measures¹⁸ (Tokyo Rules) which obligates States

to develop non-custodial measures to reduce the use of imprisonment from pre-trial to post-sentencing dispositions; the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners¹⁹ (Nelson Mandela Rules).

Addressing prison overcrowding is no doubt challenging. Overcrowding has multiple and cumulative causes, often external to the prison system itself, including other spheres of State responsibility such as social welfare policies, access to health services, education and employment.²⁰ Key root causes include limited access to justice for people in conflict with the law, overuse of pre-trial detention, punitive drug laws and policies, inappropriate use of imprisonment, lack of non-custodial alternatives, limited prisoner rehabilitation programs as well as offenders' socio-economic marginalization and inequality.²¹ Given the complexity of the issues, long-term, sustainable reductions in overcrowding can

⁴ Global Prison Trends 2020, Penal Reform International and Thailand Institute of Justice, pg 7

⁵ Global Prison Trends 2020, Penal Reform International and Thailand Institute of Justice, pg 7

⁶ Global Prison Trends 2020, Penal Reform International and Thailand Institute of Justice, pg 6

⁷ Global Prison Trends 2020, Penal Reform International and Thailand Institute of Justice, pg 8

⁸ <https://prisonstudies.org/country/guatemala>

⁹ <https://prisonstudies.org/country/honduras>

¹⁰ <https://prisonstudies.org/country/united-arab-emirates>

¹¹ Pg iii, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

¹² UNODC, WHO, UNAIDS, OHCHR Joint Statement on COVID-19 in prisons and other closed settings, 13 May 2020, accessed at <https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>

¹³ Such rights are set out in the Nelson Mandela Rules 12-23.

¹⁴ Such rights are set out in Nelson Mandela Rules 24-35.

¹⁵ Global Prison Trends 2020, Penal Reform International and Thailand Institute of Justice, pg 8

¹⁶ Pg iii, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

¹⁷ Resolution 16, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August – 6 September 1985, A/CONF.121/22/Rev.1 adopted by UN General Assembly on 29 November 1985 A/RES/40/32

¹⁸ A/RES/45/110

¹⁹ A/RES/70/175

²⁰ Pg iv, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

²¹ Pg 35, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

only be achieved with a holistic, coordinated response from a broad range of authorities, including the legislature, judiciary, police, prosecutors, court administration and oversight bodies, as well as society at large.²²

Despite international commitments to decongest prisons, little progress globally has been made. The prevailing approach of many governments is to be “tough on crime,” leading to progressively more punitive criminal justice policies. Combined with stigmatization of prisoners, community attitudes towards crime, growing inequality and inadequate social safety-nets, holistic criminal justice reform and implementation of non-custodial measures that focus on diversion and rehabilitation of prisoners has been significantly inhibited.

COVID-19 has however provided a unique opportunity for a change in course.

THE IMPACT OF COVID-19

On March 11, 2020, the World Health Organisation Director-General declared COVID-19 a global pandemic.²³ COVID-19 is a respiratory disease that can cause death and spreads from person to person through close human contact, droplets in the air or touching infected surfaces.

It is well documented that prisons act as a source of infection, amplification and spread of infectious diseases within and beyond the prison system.²⁴ Overnight, COVID-19 became a major problem for governments and their congested prison systems. Overcrowded facilities present an insurmountable obstacle for preventing, preparing and responding to COVID-19 and a health response alone is insufficient.²⁵ COVID-19 is not only a risk to prisoners, but also the broader community. Every day large numbers of people come and go from prisons – prison staff, contractors, health professionals, educators and visitors, which creates ample opportunity for COVID-19 to both enter a prison and then be taken back out to the community.

Governments recognized that the risk of rapidly increasing transmission of COVID-19 in prisons would have an amplifying effect on the epidemic, swiftly multiplying the number of people affected.²⁶ Efforts to control COVID-19 in the community would fail unless strong infection prevention and control measures, adequate testing, treatment and care were carried out in prisons.²⁷

Prisoners are more vulnerable to COVID-19 than the general population because of the

confined settings in which they reside.²⁸ People in prisons live in very cramped conditions, for prolonged periods of time, with little ventilation.²⁹ They are forced into close proximity with each other, increasing infection and the spread of COVID-19.³⁰ Social distancing is impossible, meaning disease transmission is inevitable.

Hygiene and sanitation are also very poor, with limited access to soap and hand sanitizer. Prisoners share communal bathrooms and eating areas, and typically sleep in shared cells or dormitories. In some cases, cells only distribute lukewarm water, preventing prisoners from effectively washing their hands and bodies, or cleaning their cells.³¹

Prisoners also typically have a greater underlying burden of disease and worse health conditions than the general population.³² This means the risks for prisoners if they contract COVID-19 are even more severe, and the cost of providing care even higher. However, despite experiencing poorer health, prisoners have very limited access to healthcare.

The first prisoner infected with COVID-19 was identified in Iran as early as February 19, 2020.³³ By February 29, more than 806 prisoners had been infected in

²² Pg iv and 1, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

²³ <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/novel-coronavirus-2019-ncov>

²⁴ Pg 1, WHO Interim Guidance, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”, 15 March 2020

²⁵ UNODC, WHO, UNAIDS and OHCHR Joint Statement on COVID-19 in Prisons and Other Closed Settings, 13 May 2020 accessed at <https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>

²⁶ Pg 1, WHO Interim Guidance, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”, 15 March 2020

²⁷ Pg 1, WHO Interim Guidance, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”, 15 March 2020

²⁸ Pg 1, WHO Interim Guidance, “Preparedness, prevention and control of COVID-19 in prisons and other places of detention”, 15 March 2020

²⁹ Preparedness, Prevention and Control of COVID-19 in prisons, World Health Organisation, 2020, pg. 9

³⁰ Preparedness, Prevention and Control of COVID-19 in prisons, World Health Organisation, 2020, pg 9

³¹ As reported in Rowson v Department of Justice, Corrections Victoria and the State of Victoria [2020] VSC 236

³² Preparedness, Prevention and Control of COVID-19 in prisons, World Health Organisation, 2020, pg 9

³³ <https://iranprimer.usip.org/blog/2020/mar/03/coronavirus-spreads-iran%E2%80%99s-prisons>

Chinese prisons.³⁴ Shortly after this, major outbreaks of COVID-19 were being reported in Iran, China and the US.

As the COVID-19 health crisis spread, UN High Commissioner for Human Rights, Michelle Bachelet, called for States to “not forget those behind bars” and “act quickly to reduce the number of people in detention”³⁵ as well as implement other prevention measures including use of PPE, physical distancing, much improved sanitation and cleaning practices. A swift, firm, whole of government response aimed at ensuring healthy and safe custody, and reducing overcrowding, would be essential to mitigating the risk of COVID-19 entering and spreading in prisons.³⁶

In response to the UN's call, many governments implemented a range of measures to prevent outbreaks and transmission of the virus. One of the key measures was to reduce prison populations by releasing prisoners and pre-trial detainees and limit new admissions into prison systems. These measures are the subject of this report.

As at November 5, 2020, more than 283,332 prisoners had reportedly contracted COVID-19 across 115 countries³⁷ with more than 2,537 prisoners in 39 countries having died from the disease.³⁸

Approach to report

The first stage in the study was undertaking legal research into prisoner release schemes adopted

by governments to understand how such schemes reduced overcrowding. The research included the releases of convicted prisoners as well as pre-trial detainees, and both adults and juveniles.

The jurisdictional research was undertaken by lawyers at DLA Piper with, in some cases, support from law students who are part of DLA Piper's Global Scholarship Program. Where possible, locally qualified lawyers supported and supervised local law students to undertake the research. The research was conducted between May and July 2020 using a standard scope and format. A copy of the questionnaire is at **Annexure B**. The questionnaire only considered release measures and steps taken to reduce new prison admissions; it did not consider COVID-19 prevention measures including increased sanitation, PPE, or physical distancing procedures that may have been implemented.

The questionnaire was completed for 53 jurisdictions across Asia Pacific, Europe, the Middle East, Africa, North and Central America. A list of those jurisdictions is at **Annexure C**. The jurisdictions selected were those countries that publicly reported prisoner population reduction in response to COVID-19 – either through existing or new measures. Due to their length, the completed questionnaires for each of the 53 jurisdictions are published in a separate, accompanying report called

Prisoner Releases in response to COVID-19 – Individual Research Reports for 53 Jurisdictions.³⁹

The legal research for the questionnaires was desk-based only. Where possible, the research was conducted using primary source material such as legislation, regulations, and other government documents and statements. However, in a number of jurisdictions, primary source materials were not readily available, and accordingly the research relied on secondary source materials such as media and civil society reports.

Following completion of the individual jurisdiction questionnaires, results were compiled to form the basis of this report. The report was drafted by DLA Piper between September and November 2020.

It is important to note that this report uses the broad term “prisoner” to refer to both a person who has been convicted of an offence (also known as a convicted prisoner or offender) as well as a person who has been charged and is awaiting trial in detention (also known as an untried prisoner, pre-trial detainee or remandee). Where the treatment of a prisoner differed depending on their status as a convicted person or a person on pre-trial detention, a distinction is made and the terms “convicted prisoner” or “pre-trial detainee” are used.

³⁴ <https://theconversation.com/why-releasing-some-prisoners-is-essential-to-stop-the-spread-of-coronavirus-133516>

³⁵ <https://news.un.org/en/story/2020/03/1060252>

³⁶ UNODC, WHO, UNAIDS and OHCHR Joint Statement on COVID-19 in Prisons and Other Closed Settings, 13 May 2020 accessed at <https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>

³⁷ <https://www.jpp.org.pk/covid19-prisoners/>

³⁸ <https://www.jpp.org.pk/covid19-prisoners/>

³⁹ Available at <https://www.dlapiper.com/en/us/focus/probono/overview/>

Part 2 – Key findings

This section sets out the key findings identified across the 53 jurisdictional reports on prisoner release schemes. The findings are also summarized in an infographic set out at **Annexure A**

Data on COVID-19-related prisoner releases

LACK OF DATA

One of the most concerning but perhaps unsurprising findings in the study was the lack of publicly available, timely, accurate, disaggregated data provided by governments on prisoners released in response to COVID-19. A number of jurisdictions published data on total prisoner populations month by month; however, it was impossible to determine to what extent any reductions were a direct consequence of COVID-19 release measures or otherwise the usual fluctuation in prisoner numbers. Where possible, the jurisdictional research focused on prisoner release data (as opposed to general prisoner population data), but this was not always available.

A number of the jurisdictions in the study have a history of poor data collection with respect to people in detention generally. Such data gaps have been amplified by COVID-19, with about three-quarters of governments in the study failing to publish any official data on the

number of prisoners released since the pandemic commenced. One example is Honduras⁴⁰ where no up-to-date, official data on people in detention (even pre-COVID-19) was available.

Where no prisoner release data was published by governments, the only available information was figures that were reported in the media as part of statements by government officials or other news reports. In certain jurisdictions, including Northern US states⁴¹ and Germany,⁴² capturing data on prisoner releases was particularly complicated by the fact that state and county level prisons do not aggregate their data and therefore there was no complete or comprehensive data set to rely on.

In contrast, some jurisdictions in the study published excellent data on COVID-19 prisoner releases. Typically available on the relevant Corrections Department website, the data was regularly updated and publicly accessible. Some of the best examples of this were Scotland, which published monthly prisoner release numbers, broken down by the offences committed

by the prisoner and the length of time the prisoner served for that offence before being released.⁴³ Pennsylvania (US) also offered transparent data, publishing daily the number of prisoner releases that had been implemented in response to COVID-19.⁴⁴

While no formal data was provided, Washington (US)⁴⁵ and Rwanda⁴⁶ published the names of the prisoners who were granted early release via executive order.

ESTIMATED NUMBER OF PRISONER RELEASES

Given the lack of official data on prisoner releases, the study was unable to confirm the exact number of prisoners released across the 53 jurisdictions in response to COVID-19. Nevertheless, using both official and non-official prisoner release data, it is estimated that, between March and July 2020, at least 475,000 prisoners were released across the jurisdictions in the report. It is, however, noted that the figure of 475,000 includes temporary releases (ie the prisoner was released but required to return to prison after a set period of time) and therefore it is not reflective of a net reduction of people in detention globally. By the time of publication of this report, we estimate that prisoner release programs in the 53 jurisdictions will have exceeded 1 million people.

⁴⁰ See further Honduras Report, Part 1.

⁴¹ See further various Northern states of United States of America Reports, Part 3.

⁴² See further Germany Report, Part 3.

⁴³ See further Scotland Report, Part 3.

⁴⁴ See further Pennsylvania Report, Part 3.

⁴⁵ <https://www.doc.wa.gov/news/2020/docs/covid-19-reduction-efforts-commutation.pdf>. See further Washington Report, Part 13.

⁴⁶ Annex of the Ministerial Order N° 08/MOJ/AG/20 OF 19/05/2020 Granting Release on Parole, Official Gazette n° 14 of 19/05/2020. See further Rwanda Report, Part 3.

Some of the largest reported prisoner releases were in jurisdictions with no official, supporting data and included:

- Iran which reportedly released 104,000+ convicted prisoners;⁴⁷
- India which reportedly released 68,200+ prisoners (including both convicted prisoners and pre-trial detainees);⁴⁸
- Iraq which reportedly released 62,000+ prisoners (including both convicted prisoners and pre-trial detainees);⁴⁹
- Ethiopia which reportedly released 40,000+ prisoners (including both convicted prisoners and pre-trial detainees);⁵⁰ and
- Indonesia which reportedly released 38,000+ convicted prisoners.⁵¹

Some of the smallest prisoner releases in total numbers were also in jurisdictions without publicly accessible data including Nevada (US),⁵² which reportedly only released 115 convicted prisoners and Botswana,⁵³ which only released 164 convicted prisoners.

Without accurate, up-to-date data, it is impossible to determine the true extent to which the number of people in detention has reduced as a direct consequence of specific

COVID-19-related release measures, which in turn, has reduced global overcrowding in prisons. It is therefore recommended that, consistent with States' international obligations, any future prisoner releases are accompanied by regular and timely, publicly available data, disaggregated at the very least by the status of the prisoner (convicted or remandee), age (including juveniles) and gender.

Implementation of prisoner release measures

As discussed above, COVID-19 forced governments to quickly implement measures to reduce prison populations and limit the spread of the virus within facilities. While the causes of overcrowding are complex and cannot simply be resolved through releases, releasing convicted prisoners and pre-trial detainees can be an effective strategy to decongest prisons quickly. Releases must however be coupled with a simultaneous strategy of limiting new prison admissions to ensure the released prisoners are not simply replaced by new prisoners in the system.

With regards to releasing prisoners, the study found that governments either released prisoners using existing mechanisms set out in their laws and regulations, and/or they implemented new measures,

specific to COVID-19, to facilitate the early release of convicted prisoners and pre-trial detainees. Approaches to limiting new prison admissions is discussed further at **Part 10**.

Of the 53 jurisdictions in the study:

- 40% relied on existing release measures, as set out in existing laws and regulations/decrees;
- 28% relied on new release measures which were specifically created in response to COVID-19 via new legislation or regulations/decrees; and
- 32% relied on a combination of both existing and new release measures.

EXISTING PRISONER RELEASE MEASURES

Non-custodial measures are fundamental elements of all criminal justice systems and required under the Tokyo Rules. Non-custodial measures must balance the rights of offenders, victims and concerns of society for safety and crime prevention⁵⁴. However they can helpfully serve to reduce prison populations by keeping convicted or charged persons out of the prison system and in the community. They are intended to limit institutionalization and assist offenders with reintegration into society.⁵⁵

⁴⁷ <https://www.rferl.org/a/iran-says-1000-foreign-prisoners-released-temporarily-due-to-virus-outbreak/30568248.html> and <https://en.irna.ir/news/83798747/Supreme-Leader-pardons-commutes-prison-terms-of-3-721-inmates> See further Iran Report, Part 3.

⁴⁸ Data provided by the Commonwealth Human Rights Initiative <https://www.humanrightsinitiative.org/content/stateul-wis-prisons-response-to-covid-19-pandemic-in-india>. See further India Report, Part 3.

⁴⁹ <https://nrttv.com/En/News.aspx?id=20870&MapID=2> See further Iraq Report, Part 3.

⁵⁰ <https://www.unodc.org/unodc/frontpage/2020/May/to-address-fears-of-prisoners-from-covid-19-and-minimize-risk-of-transmission--unodc-donates-medical-supplies-to-ethiopia-prisons.html> See further Ethiopia Report, Part 3.

⁵¹ <https://infografik.bisnis.com/read/20200429/547/1234450/dua-sisi-kebijakan-pembebasan-napi> See further Indonesia Report, Part 3.

⁵² Responses to the Covid-19 Pandemic, Prison Policy Initiative, <https://www.prisonpolicy.org/virus/virusresponse.html> See further Nevada Report, Part 3.

⁵³ <https://www.dailymaverick.co.za/article/2020-05-15-prisons-breeding-grounds-for-communicable-and-infectious-diseases-including-covid-19/#qsc.tab=0> and <https://taarifa.rw/botswana-pardons-15-zimbabwean-prisoners-amid-covid-19/>. See further Botswana Report, Part 3.

⁵⁴ Rule 1.4 Tokyo Rules.

⁵⁵ Rule 9 Tokyo Rules.

Consistent with the Tokyo Rules, all jurisdictions in the study have non-custodial measures set out in their laws which can be used as alternatives to detention at different stages in the criminal justice process (namely at pre-trial, on sentence or post-sentence). The nature and range of such non-custodial measures varied widely from jurisdiction to jurisdiction, as did the extent to which they were used by governments to respond to COVID-19.

Non-custodial pre-trial measures

At the pre-trial stage, the most common non-custodial measure that jurisdictions permitted at law was bail. The use of bail to address overcrowding and release pre-trial detainees is further discussed in **Part 7**.

Non-custodial sentencing measures

At the sentencing stage, there was some variance between jurisdictions⁵⁶ as to the extent of non-custodial options available in the relevant criminal procedure legislation.

The vast majority of jurisdictions offered a range of non-custodial sentencing options which included:

- warnings/undertakings
- monetary penalties including fines and compensation
- restitution
- community service orders
- probation
- home detention
- suspended/deferred sentences

In contrast, a few jurisdictions such as Bangladesh,⁵⁷ Kuwait⁵⁸ and Iraq⁵⁹ only permitted one non-custodial sentencing alternative in their criminal legislation, namely, the imposition of fines. Given the limited non-custodial sentencing options available, these countries tended to rely on early release measures (ie post-sentence dispositions) to decongest prisons.

Despite many jurisdictions having a range of non-custodial sentencing options available, there were limited examples of jurisdictions⁶⁰ increasingly using such sentences in the wake of COVID-19 to address overcrowding and limit new prison admissions. Some examples of jurisdictions where non-custodial sentences were imposed more frequently after COVID-19 are:

- In NSW (Australia), there was a 3% increase in the imposition of community based corrections orders from March to July 2020.⁶¹
- In Italy, the Prosecutor of Supreme Court issued a communication⁶² to all public prosecutors in the courts of appeal to encourage the application of non-custodial sentencing measures. Following this directive, judges increasingly imposed home detention on the basis of elderly age of offenders and postponed the execution sentence where an offender was in poor health.⁶³
- In France, courts allowed the conversion of prison sentences for prisoners convicted of delits (a category of crime punishable by two months to ten years imprisonment) to community service or home detention.⁶⁴
- In Scotland, the terms of the Community Payback Orders (a form of community service) were extended given the inability of prisoners to complete the terms of such sentences due to COVID-19 restrictions.⁶⁵ This made community service a more accessible sentencing option than before.

⁵⁶ See generally Part 2 of the Jurisdictional Reports.

⁵⁷ Penal Code of Bangladesh 1860. See further Bangladesh Report, Part 2.

⁵⁸ <https://www.osac.gov/Country/Kuwait/Content/Detail/Report/c5de67ea-8f95-4ebf-8b65-15f4aeb2ac73> See further Kuwait Report, Part 2.

⁵⁹ https://www.ohchr.org/Documents/Countries/IQ/UNAMI_Report_HRAAdministrationJustice_Iraq_28January2020.pdf See further Iraq Report, Part 2.

⁶⁰ See generally Part 4 of the Jurisdictional Reports.

⁶¹ Australian Bureau of Statistics, 2020, Corrective Services, Australia, March Quarter 2020, accessed 15 July 2020, <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Main+Features1March%20Quarter%202020?OpenDocument>>. See further NSW (Australia) Report, Part 3.

⁶² https://www.giurisprudenzapenale.com/wp-content/uploads/2020/04/Nota_PG_carceri.pdf

⁶³ See further Italy Report, Part 4.

⁶⁴ Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&categorieLien=id>, See further France Report, Part 5.

⁶⁵ Part 6, Sch 4 Coronavirus Act (Scotland) 2020. See further Scotland Report, Part 4.

- In Germany, various state courts increased the number of suspended sentences they imposed on people who failed to pay their court mandated fine instead of imposing substitute prison sentences.⁶⁶
- In Nigeria, the Chief Justice issued a directive to all State judges to impose fines instead of imprisonment for people convicted of less serious crimes.⁶⁷
- In Jordan, the courts increased their use of written warnings and undertakings as sentencing alternatives to imprisonment where an accused person agreed to quarantine and not breach the law.⁶⁸
- Even Honduras, with limited non-custodial sentencing options, reported an increased use in home detention, with an additional 548 people being granted home detention sentences in response to the pandemic.⁶⁹

However, while some jurisdictions reported an increased uptake in non-custodial sentencing measures, COVID-19 also had negative implications for the availability such options. Non-custodial sentences were reduced due to the COVID-19

risks for staff overseeing the programs and prisoners involved in such programs. For example, New York (US) suspended their community supervision programs for three months due to the virus risks for staff and prisoners.⁷⁰ France reduced the maximum sentence that could be imposed by judges for community service to 35 hours (down from an average 105 hours), which meant the sentencing measure was available to fewer defendants.⁷¹ California (US) also suspended transfers of inmates into Male Community Re-entry programs, Custody community Re-entry Programs and the Alternatives to Custody Programs (all alternatives to prison), thereby limiting its operation.⁷²

Although there was no data available, it is possible that the reduced availability of non-custodial sentencing measures may have resulted in increased custodial sentences in some instances.

Post-sentence disposition measures

At the post-sentencing stage, all jurisdictions⁷³ offered at least one measure in their laws which allowed for the early release of prisoners. Common examples of early

release measures identified in the study were:

- forms of parole/supervised release
- conditional release
- furlough/temporary release
- home detention with or without electronic monitoring
- pardon/amnesty/clemency

Approximately three-quarters of the jurisdictions in the study relied, to some degree, on existing early release mechanisms to release prisoners. This was a logical and practical response to COVID-19 as it avoided new programs being implemented and allowed existing infrastructure to be employed. Jurisdictions which expanded the operation of existing early or temporary release schemes included:

- England⁷⁴ and Ireland⁷⁵ both expanded the criteria for their temporary release programs, allowing more prisoners to access early release from prison.
- In Italy, through its Curia-Italia Decree Law No 27 of 24 April 2020, the government

⁶⁶ <https://www.berlin.de/sen/justva/presse/pressemitteilungen/2020/pressemitteilung.908021.php>. See further Germany Report, Part 5.

⁶⁷ <https://www.channelstv.com/2020/05/15/cjn-orders-speedy-trial-of-cases-decongestion-of-custodial-centres/>. See further Nigeria Report, Part 4.

⁶⁸ See further Jordan Report, Part 4.

⁶⁹ La Tribuna, 60 juvenile offenders will be released from hospital to avoid Covid infections, 16 April 2020, <https://www.latribuna.hn/2020/04/16/sacaran-de-internamiento-a-60-menores-infracutores-para-evitar-contagios-de-covid-19/>. See further Honduras Report, Part 4.

⁷⁰ Visitation Suspension Details & Community Supervision Restrictions for Office Visits, New York State Department of Corrections and Community Supervision, <https://doccs.ny.gov/visitation-suspension-details-community-supervision-restrictions-office-visits>. See further New York Report, Part 4.

⁷¹ https://oip.org/wp-content/uploads/2020/05/minju-circulaire-200520_application-reforme-justice.pdf. See further France Report, Part 4.

⁷² COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/>. See further California Report, Part 4.

⁷³ See generally Part 2 and Part 5 of the Jurisdictional Reports.

⁷⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881060/covid19-use-compassionate-rotl.pdf. See further England and Wales Report, Part 5.

⁷⁵ http://justice.ie/en/ELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans; <http://www.justice.ie/en/ELR/Pages/SP20000075>. See further Ireland Report, Part 5.

- extended the scope of its 18 Months Home Detention measure by amending the exclusions and simplifying the approval procedure, therefore reducing the workload of the administration staff and shortening the decision time by the Supervisory Judge.⁷⁶
- In Spain, Norway and Minnesota (US), the governments increased the availability of electronic monitoring for prisoners. The Spanish government increased its use of electronic monitoring on inmates who would usually spend the night in penitentiary establishments and instead allowed them to stay at home.⁷⁷ Through its COVID-19 program, the Norwegian government increased the period electronic monitoring could be used on from four months to six months⁷⁸ and it expanded its use of electronic control measures to make it more accessible for prisoners to be granted parole who would not otherwise have been eligible.⁷⁹ In Minnesota (US), electronic monitoring was used to release prisoners who had committed minor offences or were serving a sentence in a county workhouse, allowing them to return home at night⁸⁰
 - In Washington (US), the Department of Corrections granted furlough to an extra 66 people from Work Release Facilities to release them back into the community⁸¹
 - In Bahrain, the government increased its use of early release measures under its Alternative Sentencing Law, which allowed prisoners to return to the community and participate in rehabilitation programs⁸²
 - In Honduras, an additional 173 people were released on parole in response to the pandemic⁸³ Colorado (US) also reported an increase of about 1,000 prisoners on parole between January and May 2020⁸⁴
 - In Rwanda, the Attorney General issued a Ministerial Order granting parole to an extra 3,596 prisoners⁸⁵ Similarly, the South African President issued a Proclamation to grant parole to an extra 19,000 prisoners⁸⁶
 - In Bangladesh, the Home Ministry issued a pardon to 2,889 prisoners as per powers set out the Code of Criminal Procedure⁸⁷

⁷⁶ Section 123 of Law Decree No. 18 of 17 March 2020, as converted into law by Law No. 27 of 24 April 2020. See further Italy Report, Part 5.

⁷⁷ <https://www.elmundo.es/espana/2020/06/18/5eeb4fb8fc6c831f1d8b45f9.html>. See further Spain Report, Part 5.

⁷⁸ <https://www.kriminalomsorgen.no/measures-in-prison.527287.no.html>. See further Norway report, Part 4.

⁷⁹ LOV-2001-05-18-21, The Norwegian Execution of Sentences Act section 43 (2) and FOR-2020-03-27-461, Temporary Regulation of Execution of Sentences to Mitigate Effects of Covid-19 section 3. See further Norway Report, Part 4

⁸⁰ <https://www.ramseycounty.us/content/justice-collaborative-works-protect-public-safety-and-health-during-covid-19-pandemic> See further Minnesota Report, Part 4

⁸¹ <https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf> See further Washington Report, Part 4.

⁸² 'The Minister of Justice, Islamic Affairs and Endowments Shaikh Khalid bin Ali Al Khalifa lauded the royal decree pardoning some convicts for humanitarian reasons' (Ministry of Justice, Islamic Affairs and Endowments, 13 March 2020) <https://www.moj.gov.bh/en/sample-news-2>. See further Bahrain Report, Part 4.

⁸³ La Tribuna, 60 juvenile offenders will be released from hospital to avoid Covid infections, 16 April 2020, <https://www.latribuna.hn/2020/04/16/sacaran-de-internamiento-a-60-menores-infraiores-para-evitar-contagios-de-covid-19/> See further Honduras Report, Part 4.

⁸⁴ https://drive.google.com/file/d/1byPip77Gpz4do6Awyd_upD8Fzr8CpSr4/view (Colorado Dept. of Corrections, Monthly Population and Capacity Report as of May 31, 2020). See further Colorado Report, Part 4.

⁸⁵ Art. 1 of the Ministerial Order No 08/MOJ/AG/20 of 19/05/2020 Granting Release on Parole, Official Gazette no 14 of 19/05/2020. See further Rwanda Report, Part 3 and 5.

⁸⁶ <https://www.gov.za/speeches/presidency-placement-parole-selected-categories-sentenced-offenders-during-coronavirus> See further South Africa Report, Part 3.

⁸⁷ Bangladesh set to release another 385 inmates early to combat COVID19 risks" Bangladesh News 24, 3 May 2020, <https://bdnews24.com/bangladesh/2020/05/03/bangladesh-set-to-release-another-385-inmates-early-to-combat-virus-risks>. See further Bangladesh Report, Part 5

- In Uganda,⁸⁸ Ethiopia,⁸⁹ Botswana,⁹⁰ Ghana⁹¹ and Nigeria⁹² the Presidents used their constitutional powers to issue pardons and grant releases to convicted prisoners.

A very small number of early release programs were in fact curtailed on the basis of COVID-19 risks created by prisoners. One such example was in Florida (US), where the Commission on Offender Review (tasked with reviewing mechanisms for prisoner releases including conditional medical release, “control releases” and others) refused to release prisoners in response to COVID-19 and restricted release programs by shutting down and furloughing such programs, to limit the risk that prisoners would transmit COVID-19 to the public.⁹³

NEW PRISONER RELEASE MEASURES

Despite all jurisdictions having some form of post-sentence,

early release measure and/or non-custodial sentencing option available in existing laws, more than half of jurisdictions determined it was necessary to implement new mechanisms to more effectively and robustly respond to the COVID-19 pandemic. Most governments did so quickly, responding swiftly to the COVID-19 crisis and the UN's call to decongest prisons. For example, by March 23, 2020, France had introduced new legislation to enable further prisoner releases.⁹⁴ By March 31, 2020, Indonesia declared a public health emergency which quickly precipitated new regulations allowing adult and juvenile prisoner releases by April 1.⁹⁵

Of the jurisdictions that implemented new release measures, 28% did so by way of new legislation enacted by parliaments and 72% did so by way of new executive regulations or decrees issued by governments.

The study did not consider whether the use of legislation or regulations/decrees to facilitate prisoner releases was a better approach. Nevertheless, it can be argued that prisoner release measures introduced through legislation are indicative of countries where there was strong, widespread parliamentary support for decongesting prisons. This is despite the fact that enacting legislation is a more time-consuming process because parliament must be sitting to debate and approve the law (parliaments were often shut down during COVID-19) and there must also be a parliamentary support. Examples of jurisdictions where new COVID-19 prisoner release legislation was approved by parliaments included NSW (Australia),⁹⁶ Belgium,⁹⁷ Poland,⁹⁸ Portugal⁹⁹ and Mozambique.¹⁰⁰ Interestingly, new legislation was proposed in Florida (US),¹⁰¹ Lebanon¹⁰² and

⁸⁸ <https://www.monitor.co.ug/News/National/Museveni-pardons-833-prisoners-Attorney-General-Covid19/688334-5536982-ed9kg9/index.html> See further Uganda Report, Part 5.

⁸⁹ See FDRE Constitution Art 71 (7) with Proclamation No. 840/2014 Art 5 (1). See further Ethiopia Report, Part 5.

⁹⁰ <https://www.facebook.com/BotswanaGovernment/posts/press-release-presidential-pardonmembers-of-the-public-are-informed-that-his-exc/2909960685753237/>. See further Botswana Report, Part 5.

⁹¹ <https://www.myjoyonline.com/news/national/president-nana-akufo-addo-has-freed-808-prisoners-on-the-recommendation-of-the-prisons-service-council/> See further Ghana Report, Part 5.

⁹² <https://www.aljazeera.com/news/2020/04/coronavirus-buhari-asks-nigeria-chief-judge-free-prisoners-200422053224030.html> See further Nigeria Report, Part 5.

⁹³ www.dc.state.fl.us/comm/covid-19.html#deaths [<http://archive.is/F0Wnb>]. See further Florida Report, Part 3.

⁹⁴ LOI n 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00041746313&categorieLien=id>. See further France Report, Part 5.

⁹⁵ Presidential Decree No. 12 of 2020 in response to the COVID19 pandemic. See further Indonesia Report, Part 5.

⁹⁶ COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1 (NSW) Schedule 2 and Crimes (Administration of Sentences) Act 1999 No 93. See further NSW, Australia Report, Part 5.

⁹⁷ Royal Decree No. 3, as published in the Belgian State Gazette on 9 April 2020. See further Belgium Report, Part 5.

⁹⁸ <http://dziennikustaw.gov.pl/D2020000056801.pdf> See further Poland Report, Part 5.

⁹⁹ Law No. 9/2020 of 10th April, available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized>. See further Portugal Report, Part 3 and 5.

¹⁰⁰ See further Mozambique Report, Part 3 and 5.

¹⁰¹ <https://wusfnews.wusf.usf.edu/post/slew-criminal-justice-bills-are-teeed-2020-session-heres-look-few-them> [<http://archive.is/SUyrj>]. See further Florida Report, Part 5.

¹⁰² <https://www.amnesty.org/en/latest/news/2020/04/lebanon-government-must-urgently-release-more-prisoners-to-prevent-spread-of-covid19/> See further Lebanon Report, Part 5.

Guatemala,¹⁰³ but they were not successful due to a lack of parliamentary support.

However, as explained above, the more common approach to implementing new releases measures in the study was through regulations and decrees. Using executive powers has the advantage of release schemes being implemented quicker although the downside is that the measure can be criticized as not having broad parliamentary approval. Examples where governments issued new release measures in regulations and directives included Indonesia,¹⁰⁴ England and Wales,¹⁰⁵

Scotland,¹⁰⁶ Spain,¹⁰⁷ Kuwait,¹⁰⁸ Rwanda,¹⁰⁹ South Sudan¹¹⁰ and North American states such as Maryland (US),¹¹¹ Utah (US)¹¹² and California (US).¹¹³

Irrespective of approach, measures introduced by governments to release prisoners and decongest prisons should ideally be transparent. It was troubling that, in most jurisdictions that implemented new release measures, the relevant COVID-19 laws, regulations or decrees were unavailable for public review. This lack of transparency undermines confidence and prevents scrutiny of the release measure, including

whether it has been legally, fairly and appropriately applied by the government.

Decision-making authority and administrative release process

Depending on the nature and structure of the release scheme, decision-making authority rests with different bodies. Three approaches emerged in the study:

- approval by a government official;
- approval by a senior public servant; and
- approval by the judiciary.

¹⁰³ Government of the Republic of Guatemala, Supreme Court of Justice. Law Initiative 5813. https://www.congreso.gob.gt/detalle_pdf/iniciativas/5687#gsc.tab=0 and Cuevas, D., 2020. Coronavirus: Relatores Contra la Tortura proponen libertad temporal para algunos detenidos, Prensa Libre, [online] Available at: <https://www.prensailibre.com/guatemala/justicia/coronavirus-relatores-contra-la-tortura-proponen-libertad-temporal-para-algunos-detenidos/>; Alvarez, N., 2020. Presentan iniciativa de ley de excarcelación por emergencia del COVID-19. PublineWS, [online] Available at: < <https://www.publineWS.gt/gt/noticias/2020/04/28/oficina-tortura-iniciativa-excarcelacion-covid-19.html> > [Accessed on October 28th, 2020]. See further Guatemala Report, Part 4.

¹⁰⁴ The Minister of Law and Human Rights Regulation No. 10 of 2020 on the Conditions for the Grant of Assimilation and Integration Rights for Prisoners and Children for the Purpose of Prevention and Handling of COVID-19 Transmission and its implementing regulation, Decree of the Minister of Law and Human Rights No. M.HH-19.PK.01.04.04 of 2020 on the Release of Prisoners and Children through Assimilation and Integration to Prevent COVID-19 Transmission was enacted on 1 April 2020. See further Indonesia Report, Part 5.

¹⁰⁵ The End of Custody Temporary Release Scheme as set out in Rule 9A of the Prison Rules 1999 (for prisons) and Rule 5A of the Young Offender Institution Rules 2000 (for young offender institutions), was implemented by way of Statutory Instrument 2020 No. 400 (The Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020). <http://www.legislation.gov.uk/ukSI/2020/400/contents/made> See further England & Wales Report, Part 5.

¹⁰⁶ Part 6, Sch 4 Coronavirus (Scotland) Act 2020. See further Scotland Report, Part 3 and 5.

¹⁰⁷ <https://www.lavanguardia.com/vida/20200319/474259821524/justicia-envia-a-dormir-a-su-casa-a-251-presos-en-tercer-grado-el-15-.html> See further Spain Report, Part 3 and 5.

¹⁰⁸ See further Kuwait Report, Part 5.

¹⁰⁹ Art. 1 of the Ministerial Order No 08/MOJ/AG/20 of 19/05/2020 Granting Release on Parole, Official Gazette no 14 of 19/05/2020. See further Rwanda Report, Part 5.

¹¹⁰ <https://africa.cqtn.com/2020/04/21/south-sudan-to-release-prisoners-on-minor-offences-amid-covid-19/>. See further South Sudan Report, Part 5.

¹¹¹ Executive Order No. 20-04-18-01 regarding "Implementing Alternative Correctional Detention and Supervision at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf> See further Maryland Report, Part 5.

¹¹² <https://corrections.utah.gov/index.php/home/alerts-2/1239-utah-identifies-early-releases-to-create-additional-capacity-within-correctional-facilities>. See further Utah Report, Part 3 and 5.

¹¹³ COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER> See further California Report, Part 5.

APPROVAL BY GOVERNMENT OFFICIAL

Release approval by a government official was required in almost half of all jurisdictions. In these jurisdictions, the release mechanism usually involved the grant of an amnesty or pardon by the president, state governor or minister which was then implemented by the relevant department of corrections or prison authority. Reliance on a government pardon was particularly common across Africa and the Middle East. For example:

- In Botswana, once a release request is received from a prisoner, the president considers factors including the severity of crime, time remaining on sentence and number of offences committed by the prisoner. The president then uses constitutional powers to grant a pardon and release the prisoner.¹¹⁴ Similarly in Ghana, the president, following recommendations from the Prisons Service Council and in consultation with Council of State, grants prerogative mercy to prisoners using their constitutional powers.¹¹⁵
- In Nigeria, the controller of the relevant prison considers eligible prisoners and makes a recommendation to the State Advisory Council of Prerogative Mercy. The Advisory Council must then consider the

recommendation and where approved, recommend the release to the state governor. The state governor then approves the recommendation and grants a pardon using their constitutional powers. The governor's release order is finally executed by the relevant state chief judge.¹¹⁶

- In South Africa under the Correctional Services Act, the president must approve any release of prisoners on parole via proclamation. As part of the country's COVID-19 measures, the president issued Proclamation 19 of 2020, which authorized parole for 19,000 low-risk prisoners who had passed the minimum detention period or would approach that period within five years. The president's decision to grant parole was made following a recommendation of the Parole Board and Correctional Supervision team. The president's proclamation was assented to on April 24 and commenced on May 8. Following commencement of the proclamation, the Parole Board issued the release decision for each prisoner.¹¹⁷
- In Kuwait, under Decree 87 which related to COVID-19 measures, the Ministry of Interior was responsible for preparing a list of prisoners which was then submitted to Public Prosecutor's office for review and approval. The Public Prosecutor's office

reviewed the list and determined if any prisoners should not be released because they posed a danger to public security. Once the list was finalized and approved, the deputy prime minister, minister of interior and minister of justice then approved and implemented the Decree which permitted the release of those prisoners.¹¹⁸

- In Pennsylvania (US), the state governor was responsible for approving all COVID-19 prisoner releases. The governor issued a COVID-19 order directing the Department of Corrections to implement a release scheme for prisoners who would otherwise be eligible for release within the 12 months or who are within nine months of their minimum eligibility release date and meet other release criteria. The Department of Corrections then identified eligible prisoners and conferred with the court, the Attorney General and District Attorney General to consider any public safety risks. The Department of Corrections' recommendation was then submitted to the governor, who issued a conditional reprieve.¹¹⁹
- Portugal implemented a particularly detailed process known as the Special Penalty Pardon Regime which ended with approval by the president.¹²⁰ Under that scheme, first, the prisoner must authorize the

¹¹⁴ <http://www.dailynews.gov.bw/news-details.php?nid=2482>. See further Botswana Report, Part 5

¹¹⁵ <https://www.myjoyonline.com/news/national/president-nana-akufo-addo-has-freed-808-prisoners-on-the-recommendation-of-the-prisons-service-council/>. See further Ghana Report, Part 5.

¹¹⁶ See generally Nigeria Report, Part 5.

¹¹⁷ <https://www.gov.za/speeches/presidency-placement-parole-selected-categories-sentenced-offenders-during-coronavirus>. See further South Africa Report, Part 3.

¹¹⁸ Article 9-11 Decree No. 87 of 2020. See further Kuwait Report, Part 12.

¹¹⁹ <https://www.governor.pa.gov/newsroom/qov-wolf-department-of-corrections-to-establish-temporary-program-to-relieve-sentences-of-incarceration/>; <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-relieve-release-order-COVID-19.pdf>. See further Pennsylvania Report, Part 5.

¹²⁰ Article 3, paragraph 1 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized>. See further Portugal Report, Part 5.

release application which was presented by the director of the prison. Once this authorization was obtained, the director of the prison referred the matter within 48 hours to the general-director of reintegration and prison services with an exceptional pardon proposal accompanied by the prisoner's medical information, the prisoner's file, criminal record and a calculation of sentence.¹²¹ After obtaining the relevant documentation and opinion of the general-director of reintegration and prison services, the proposal was submitted within 48 hours to the Ministry of Justice. The Ministry of Justice then presented the proposal to the President of the Portuguese Republic who, through a Presidential Decree, decided whether to grant the pardon.¹²² Once granted, the Ministry of Justice then provided the Presidential Decree to the court of enforcement of sentences who issued the corresponding release warrant.¹²³

APPROVAL BY SENIOR PUBLIC SERVANT

In 43% of jurisdictions, approval to release a prisoner was granted by

a senior public servant(s) working within the prison or corrections administration. The release was usually then managed exclusively within that department. Examples of this approach were:

- In India, a High Powered Committee which comprised of senior bureaucrats from the prison administration was established to assess and approve prisoner releases in response to COVID-19.¹²⁴ Similarly in Louisiana (US), a COVID-19 Furlough Review Panel was established to consider the eligibility of prisoners for release.¹²⁵ The panel included the secretary of department of corrections; director of probation & parole; executive director of pardon and parole board; victim's advocate; executive director of Louisiana Sheriff's Association and the executive director of the LA District Attorney's Association.¹²⁶ At least a five out of six vote of approval was required for a prisoner to be furloughed.¹²⁷
- In California (US), the Department of Corrections and Rehabilitation was responsible for developing criteria for release on parole and then overseeing the release and supervision process. Based on these criteria, the department identified eligible prisoners who were then screened by a probation officer through a pre-release verification. Where all conditions were satisfied, the department then approved and released the prisoner. Expedited parole releases in response to COVID-19 were effectuated by the departmental secretary's authority under the Government Code section 8658.¹²⁸
- In Indonesia under its COVID-19 release programs, a correctional officer provided information on the adult and juvenile prisoners eligible for early release and supporting paperwork to the relevant correctional supervision team. Following this, the correctional supervision team reviewed the documentation and where satisfied, recommended the prisoner's release to the head of the correctional institution. The head of the correctional institution then approved and granted the release via an issuance of letter (either online or in hardcopy).¹²⁹

¹²¹ Article 3, paragraph 2 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized> See further Portugal Report, Part 5.

¹²² Article 3, paragraph 3 and 4 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized> and Article 227 of Code of Enforcement of Sentences and Custodial Measures available at http://www.pqdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=1147A0078&nid=1147&tabela=leis&pagina=1&ficha=1&so_miolo=&nversao=#artigo See further Portugal Report, Part 5.

¹²³ Supporting document about the Code of Enforcement of Sentences and Custodial Measures (page 137), available at <https://e-learning.mj.pt/dgai/dados/0F/003/0F003TEMA1.pdf> See further Portugal Report, Part 5.

¹²⁴ Order dated 16.03.2020 passed by the Supreme Court in IN RE: CONTAGION OF COVID-19 VIRUS IN PRISONS [SUO MOTU WRIT PETITION (CIVIL) NO.1/2020 (https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf) See further India Report, Part 5

¹²⁵ No official government document found except the LA-DPSC's official press release <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lqveg0>. See further Louisiana Report, Part 5.

¹²⁶ <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lqveg0>. See also <https://www.wafb.com/2020/04/14/la-department-corrections-creates-covid-panel-consider-furloughs-certain-inmates/>. See further Louisiana Report, Part 5.

¹²⁷ <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lqveg0>. See further Louisiana Report, Part 5.

¹²⁸ Expedited Releases, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/expedited-releases/>. See further California Report, Part 5 and 12.

¹²⁹ See further Indonesia Report, Part 13.

- In England and Wales, a list of eligible prisoners was considered by the COVID-19 Offender Management Hub, which worked with probation services and police to assess each individual, including any risks around domestic violence and child safeguarding. The final decision to release a prisoner was made by the COVID-19 Offender Management Hub, as delegated by the Secretary of State.¹³⁰
- In Iraq, the Supreme Court ordered the release of 16,000 prisoners as a COVID-19 preventative measure. This decision was subsequently endorsed by the Supreme Judicial Council (a body which comprises the chief and vice-chief of the Court of Cassation, the head of public prosecution, the chief of the Judicial Supervisory Authority and the head of the Court of Appeal.)¹³³

APPROVAL BY JUDGE

The final approval mechanism used in about a third of jurisdictions was where a judge approves a prisoner's release. Judicial releases were granted with or without input from the relevant prison administration or corrections department. For example:

- In Kenya following an order from the Chief Justice, judges of the HIGH COURT visited prisons to identify eligible prisoners for release. After a review of individual prisoner files, a High Court judge approved the release of prisoners who had been convicted of minor offences and were serving jail terms of less than six months.¹³¹ Nigeria adopted a similar approach where state chief judges, following a directive by the relevant chief justice, attended prisons to review individual prisoner files and approve prisoners for release.¹³²
- In Italy, Supervisory Judges were given powers to grant home detention upon the request of a prisoner without the need to obtain a report from the prison authority on the prisoner's behavior. The prison director did however provide an assessment on the suitability of the prisoner for home detention, as well as other certification documents, which were reviewed and approved by the supervisory judge as part of the process.¹³⁴
- In Spain, a prisoner was required to apply to the Treatment Board which is comprised of series of prison officials. The application involved a series of documents including a release program and follow up plan, a certificate of commitment by prisoner's family or relatives to provide shelter on release, a statement by the prisoner of the location where they intend to live and that they accept supervision and monitoring by social services.

The Treatment Board then submitted the application to the prison supervisory judge, who assessed the personality of the prisoner, the crime committed, family/social circumstances and prisoner's conduct while serving their sentence. Where satisfied, the prison supervisory judge then approved and executed the release.¹³⁵

- In El Salvador, prison supervision judges have the power to grant conditional liberty and order the enforcement of an amnesty, pardon and commutation of sentences. In response to the pandemic, prison supervision judges reviewed individual files of prisoners over 60 years of age with chronic health issues who could be vulnerable to COVID-19 for consideration for release.¹³⁶
- In Guatemala, prisoners could request early release through their lawyer or the penitentiary system. The release application was then reviewed and approved by the Sentencing Enforcement Judges. In response to COVID-19, the general directorate of the penitentiary system prepared 884 prisoners files and presented them to the Public Defender's Office and private lawyers, in order to guarantee the right to opt for early release of those prisoners with the sentencing enforcement judges.¹³⁷

¹³⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf See further England & Wales Report, Part 13.

¹³¹ Statement by the Chief Justice of Kenya available at <https://www.capitalfm.co.ke/news/2020/04/4-800-inmates-freed-in-measures-to-prevent-spread-of-covid-19-in-prisons/> accessed on 10th June 2020. See also <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>. See further Kenya Report, Part 5.

¹³² <https://www.thisdaylive.com/index.php/2020/04/22/president-writes-cjn-on-speedy-trials-prison-decongestion/> See further Nigeria Report, Part 5.

¹³³ <https://english.alaraby.co.uk/english/news/2020/4/16/iraq-releases-16-000-prisoners-amid-covid-19-outbreak>. See further Iraq Report, Part 5.

¹³⁴ Article 123 of the Cura Italia Decree. See further Italy Report, Part 13.

¹³⁵ See further Spain Report, Part 13.

¹³⁶ <https://www.elsalvador.com/noticias/nacional/covid-19-enfermedades-terminales-reos/699806/2020/>. See further El Salvador Report, Part 5.

¹³⁷ <https://dgsp.gob.gt/ante-la-pandemia-del-covid-19-el-sistema-penitenciario-implementa-estrategias-preventivas-y-aqiliza-procesos-incidentales-en-garantia-del-derecho-de-libertad-anticipada-a-privados-de-libertad/> See further Guatemala Report, Part 13.

APPEAL PROCESSES

Irrespective of whether a government official, public servant or judge was the decision-maker in a prisoner's release, no jurisdiction in the study provided any appeal procedures for a prisoner to challenge a decision to deny them early release.

PRISONER'S ROLE IN APPLICATION PROCESS AND CONSENT TO RELEASE

It was encouraging that the vast majority of release programs identified in the study did not require particular action to be taken by the prisoner as part of the application process. This meant that a prisoner was not responsible for preparing or lodging a request for release but rather, the release process was conducted automatically and independently by prison or corrections staff. This approach ensured there were no barriers to release in circumstances where a prisoner may be illiterate, unaware of or unfamiliar with the release application process, or lacking a lawyer to represent them. It would be interesting to further analyze release schemes in jurisdictions such as Italy,¹³⁸ Spain,¹³⁹ Botswana¹⁴⁰ and Bahrain¹⁴¹ which did require individual prisoners to take specific steps to initiate and

progress early release applications and what impact this had on release outcomes.

It was also uncommon in the study that prisoner consent was a formal element of the release determination or administrative process. However, whilst consent may not have been a formal requirement in most jurisdictions, informed and free consent of a prisoner, particularly one who does not want to be released early, should be considered by administrative and judicial authorities as a relevant factor in any release determination.

This was the situation in Norway, which had to amend the operation of its release scheme to incorporate free and informed consent of prisoners. In the initial days of the government's COVID-19 release program, it was identified that local correctional services were releasing prisoners against their will. This led the Directorate of Norwegian Correctional Services, who decides if a prisoner is eligible, to reiterate to local authorities that early releases should not be forced on prisoners if early release would affect a planned rehabilitation phase or if the preconditions for good reintegration to society were not in place.¹⁴²

Portugal (in respect of the Special Penalty Pardon Regime),¹⁴³ Germany (in respect of the Bremen release scheme)¹⁴⁴ and England and Wales¹⁴⁵ also ensured its release schemes were voluntary, therefore guaranteeing the free and informed consent of prisoners was taken into consideration.

With the exception of these few jurisdictions, there was little explicit consideration for the views of prisoners as part of any early release determination.

Prisoner release eligibility criteria

There was no one, uniform approach to the selection of prisoners who were eligible for release under the various COVID-19 release programs. Jurisdictions applied their own specific criteria for assessment which, where available for review, were set out in laws or other government regulations and directives. Nevertheless, one trend was identified – jurisdictions applied eligibility criteria across three key categories:

- eligibility based on the offence committed by the convicted prisoner or pre-trial detainee;

¹³⁸ Article 123 of the Cura Italia Decree. See further Italy Report, Part 13.

¹³⁹ See further Spain Report, Part 13.

¹⁴⁰ <http://www.dailynews.gov.bw/news-details.php?nid=2482>. See further Botswana Report, Part 5.

¹⁴¹ Article 1 of Law No. 18 of 2017 with respect to Alternative Penalties Law. See further Bahrain Report, Part 13.

¹⁴² This information was given in an email from the Directorate of Norwegian Correctional Services. The Directorate could not provide reports other base line documents to support this. See further Norway Report, Part 13.

¹⁴³ See further Portugal Report, Part 5.

¹⁴⁴ https://www.weser-kurier.de/bremen/bremen-stadt_artikel.-bremen-laesst-haeftlinge-vorzeitig-frei-._arid,1905002.html. See further Germany Report, Part 9.

¹⁴⁵ See further England and Wales Report, Part 5.

- eligibility based on the status or nature of the sentence being served by the convicted prisoner; and
- eligibility based on the vulnerability of the convicted prisoner or pre-trial detainee.

The majority of jurisdictions adopted a complex eligibility assessment where they applied one or more criteria within each of these three categories. Very few jurisdictions applied just one eligibility criteria for release.

RELEASE CRITERIA ACCORDING TO OFFENCE

The first and perhaps most contentious release eligibility criteria identified in the study was the offence committed by the prisoner.

About 83% of jurisdictions applied release schemes which expressly stated that only prisoners who had been convicted of (or charged with) minor or non-violent offences were eligible for release. Restricting releases to only minor or non-violent prisoners was generally seen as necessary to protect the community from serious, violent

offenders who were deemed inappropriate for release. This was not always adopted though. Scotland's¹⁴⁶ releases included prisoners who had committed robbery, house break-ins, serious assault and attempted murder (although attempted murder was not the primary offence), but it did exclude prisoners sentenced to life imprisonment.¹⁴⁷ Rwanda's¹⁴⁸ Ministerial Order also granted parole to 769 prisoners convicted of violent offences, including torture, assault and attempted murder.

Where the terms of a release scheme were available for review, the study found that eligibility criteria were often framed and drafted by reference to a list of offence exclusions. In other words, the release scheme, as set out in the relevant law or regulation, stated that a prisoner would be eligible for release *unless* they had committed certain types of serious offences (the offences would be referenced in the relevant penal code). Examples where this approach was adopted by law makers was in Indonesia,¹⁴⁹ England and Wales,¹⁵⁰ Italy,¹⁵¹ Pennsylvania (US)¹⁵² and California

(US)¹⁵³ where the scheme terms contained a detailed list of excluded criminal offences.

Some jurisdictions were even more specific and only released prisoners by reference to one or more types of offence, for example, *only* prisoners with outstanding debts from unpaid fines were eligible for release in Germany,¹⁵⁴ Saudi Arabia¹⁵⁵ and Jordan.¹⁵⁶

It is difficult to determine whether eligibility criteria drafted on the basis of an exclusionary list of offences (as opposed to an inclusionary list) had any impact on the operation of the scheme and numbers of prisoners granted release. One might argue that an exclusionary list is a preferable approach because it is easier for a decision-maker (often administrative prison staff) to apply a list of excluded offences than to determine whether a prisoner's offence constitutes a "minor" or "non-violent" offence. Further investigation into the link between legal drafting of schemes and release outcomes is recommended.

¹⁴⁶ <https://www.edinburghnews.scotsman.com/news/crime/hundreds-scotlands-prisoners-including-21-convicted-serious-assault-released-early-stop-spread-covid-19-2896849>. See further Scotland Report, Part 6.

¹⁴⁷ Scottish Government News 'Short-term prisoner release' dated 4 May 2020 available at <https://www.gov.scot/news/short-term-prisoner-release/>. See further Scotland Report, Part 6.

¹⁴⁸ Ministerial Order No 08/MOJ/AG/20 of 19/05/2020 Granting Release on Parole, Official Gazette no 14 of 19/05/2020. See further Rwanda Report, Part 6

¹⁴⁹ See further Indonesia Report, Part 6.

¹⁵⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England & Wales Report, Part 6.

¹⁵¹ Article 123 of Cura-Italia Decree. See further Italy Report, Part 6

¹⁵² <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reeprive-release-order- COVID-19.pdf> See further Pennsylvania Report, Part 6.

¹⁵³ COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER>. See further California Report, Part 6.

¹⁵⁴ See further Germany Report, Part 6.

¹⁵⁵ "Saudi Arabia suspends prison sentences in debt cases", Arab News, 8 April 2020, accessed online from <https://www.arabnews.com/node/1654971/saudi-arabia> See further Saudi Arabia Report, Part 6.

¹⁵⁶ "Jordan releases thousands of debt prisoners to combat coronavirus outbreak", Middle East Monitor, 19 March 2020, accessed online from <https://www.middleeastmonitor.com/20200319-jordan-releases-thousands-of-debt-prisoners-to-combat-coronavirus-outbreak/> See further Jordan Report, Part 6.

Irrespective of release eligibility criteria, all countries appeared to impose at least some restrictions on releasing prisoners who had committed very serious, violent crimes. Common offence exclusions included homicide, sexual offences and terrorism.

Domestic violence offences

The study also considered the approach to domestic violence offences across the jurisdictions given the particular risks for victims if a perpetrator of such violence is released.

The study found that domestic violence was an express, excluded category of offence in the release programs in about a quarter of jurisdictions (it is noted, however, that not all jurisdictions in the study have penal codes that contain specific domestic violence offences).

Some of the jurisdictions that excluded prisoners charged with, or convicted of, domestic violence offences included Scotland,¹⁵⁷ France,¹⁵⁸ Italy,¹⁵⁹ Portugal,¹⁶⁰ South Africa,¹⁶¹ India¹⁶² and California (US).¹⁶³ Guatemala¹⁶⁴ excluded prisoners from early release where they had been convicted of femicide and while Bangladesh¹⁶⁵ did not exclude domestic violence offenders as such, it excluded prisoners who had been convicted of acid attacks, a category of offence often perpetrated by men against women. Lebanon's¹⁶⁶ draft bill for a COVID-19 amnesty prisoner release proposed that prisoners convicted of domestic violence offences be excluded from release, but the bill was never passed.

NSW (Australia) did not specifically exclude prisoners who had been convicted of a domestic violence

offence; however, the Commissioner of Corrective Services was required to consider the protection of domestic violence victims and any person who the prisoner may reside with on release as a criteria for release.¹⁶⁷ Similarly, in Pennsylvania (US), a prisoner was excluded from release if there were any active protective orders against them.¹⁶⁸

It is noteworthy that England and Wales went a step further to exclude prisoners where there was simply a risk of domestic violence being committed on release. The scheme stated that eligible prisoners must "not be identified as posing a risk of domestic abuse or a concern about child safeguarding."¹⁶⁹

Drug offences

The criminalization of drug use and drug possession for personal use remain a key driver of incarceration

¹⁵⁷ Scottish Government News 'Short-term prisoner release' dated 4 May 2020 available at <https://www.gov.scot/news/short-term-prisoner-release/>. See further Scotland Report, Part 6.

¹⁵⁸ Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&categorieLien=id>. See further France Report, Part 6.

¹⁵⁹ Article 123 of Cura-Italia Decree. See further Italy Report, Part 6.

¹⁶⁰ Article 2, paragraph 6 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized>. See further Portugal Report, Part 6.

¹⁶¹ <https://openbylaws.org.za/za/act/p/2020/19/eng/>. See further South Africa Report, Part 6.

¹⁶² See further India Report, Part 6 and 17.

¹⁶³ COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER>. See further California Report, Part 6.

¹⁶⁴ Ley contra el Femicidio y otras Formas de Violencia contra la Mujer, [Law against Femicide and other Forms of Violence against Women], Decree No. 22-2008. Article 6. See further Guatemala Report, Part 6.

¹⁶⁵ "Bangladesh to release selective prisoners in late April", Dhaka Tribune, 19 April 2020, <https://www.dhakatribune.com/bangladesh/2020/04/19/bangladesh-to-release-selective-prisoners-in-late-april>. See further Bangladesh Report, Part 6.

¹⁶⁶ "Lebanon preparing to grant thousands of prisoners amnesty amid coronavirus pandemic", The New Arab, 21 April 2020 accessed online from <https://english.alaraby.co.uk/english/news/2020/4/21/lebanon-preparing-for-mass-prisoner-release-amid-coronavirus-pandemic>. See further Lebanon Report, Part 5.

¹⁶⁷ Criminal (Administration of Sentences) Act 1999 No 93 (NSW) s 276(4), amended by the COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1 (NSW) Schedule 2, Part 2.5. See further NSW (Australia) Report, Part 9.

¹⁶⁸ <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reprieve-release-order- COVID-19.pdf>. See further Pennsylvania Report, Part 6.

¹⁶⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England and Wales Report, Part 6.

rates globally, with an estimated 470,000 people in prison for drug use only.¹⁷⁰ People with drug charges or convictions consistently make up large portions of prison populations and therefore significantly contribute to overcrowding levels.

Despite the known link between drug offences and high prisoner populations, the study found that at least 15% of jurisdictions took a punitive approach to drug users and specifically excluded prisoners who had committed drug-related offences from release. Often the exclusions also lacked any differentiation between low-level offences such as drug use and possession and the more serious offences of production or trafficking. Jurisdictions that excluded prisoners with drug convictions or charges included India,¹⁷¹ Ghana,¹⁷² El Salvador¹⁷³ and Cameroon.¹⁷⁴ Interestingly, Honduras,¹⁷⁵ via decree, expanded its application of

alternatives to pre-trial detention to reduce the numbers of remandees in prisons however such alternatives were not available to prisoners charged with drug trafficking offences. England and Wales¹⁷⁶ also excluded children convicted of certain drug offences, including possession of Class A drugs, yet did not impose a similar restriction on adult prisoners.

By comparison, only a few jurisdictions expressly included people convicted of drug offences as a category of prisoners eligible for release (see for example Ethiopia¹⁷⁷ and Kuwait¹⁷⁸ where offences did not involve importing, fetching or trafficking). Indonesia also released prisoners sentenced to 5-10 years for drug use who had served at least two-thirds of their sentence but it excluded prisoners serving sentences for other drug crimes.¹⁷⁹ In Washington (US), prisoners convicted of drug offences with release dates before

June 29 were a particular category of prisoners identified for sentence commutation.¹⁸⁰ In Pennsylvania (US), more than half of the releases under the Governor's Executive Release order involved prisoners convicted of low-level drug offences (prisoners convicted on drug trafficking offences were excluded).¹⁸¹

COVID-19 related offences

As governments placed cities into lockdown and imposed restrictions on citizens' freedom of movement, it was not unexpected that people would fall foul of such COVID-19 directives and laws. A handful of jurisdictions pre-empted this and excluded such people from release under the schemes. For example, England and Wales,¹⁸² Scotland¹⁸³ and France¹⁸⁴ deemed prisoners who had been convicted of a COVID-19-related offence ineligible for early release.

¹⁷⁰ https://www.ohchr.org/Documents/Issues/Detention/Call/CSOs/International_Drug_Policy_Consortium.pdf

¹⁷¹ See further India Report, Part 6 and 17.

¹⁷² See further Ghana Report, Part 6.

¹⁷³ Law Relative to Drug Related Activities, Article 71 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/4EE3FF23-76DC-400D-8800-A00892F09D3F.pdf> See further El Salvador Report, Part 6.

¹⁷⁴ <https://www.voanews.com/africa/cameroonian-president-orders-de-crowding-prisons-combat-covid-19>. See further Cameroon Report, Part 6.

¹⁷⁵ http://transparencia.scqg.qob.hn/descargas/Decreto_Ejecutivo_No_003-2020.pdf. See further Honduras Report, Part 10.

¹⁷⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England and Wales Report, Part 6.

¹⁷⁷ <https://www.facebook.com/FAGEthiopia/videos/346718636306849> FDRE Attorney General (March 25), 2020. See further Ethiopia Report, Part 6

¹⁷⁸ Article 5 Decree No. 87 of 2020. See further Kuwait Report, Part 6.

¹⁷⁹ <https://jakartaglobe.id/news/indonesia-releases-30000-prisoners-as-covid19-cases-double-in-a-week>. See further Indonesia Report, Part 6.

¹⁸⁰ <https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf>; <https://www.doc.wa.gov/news/covid-19-faq.htm> See further Washington Report, Part 5.

¹⁸¹ <https://theappeal.org/pennsylvania-prisoners-governor-release-coronavirus/>. See further Pennsylvania Report, Part 6.

¹⁸² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England and Wales Report, Part 9.

¹⁸³ Scottish Government News 'Short-term prisoner release' dated 4 May 2020 available at <https://www.gov.scot/news/short-term-prisoner-release/>. See further Scotland Report, Part 6.

¹⁸⁴ Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&categorieLien=id>. See further France Report, Part 6.

Political prisoners

In April 2020, the UN specifically highlighted political prisoners as a class of prisoners who should be prioritized for release in response to COVID-19 given they are often imprisoned without sufficient legal basis.¹⁸⁵

Notwithstanding such calls, the approach to releasing political prisoners was mixed. Some jurisdictions like Cameroon¹⁸⁶ expressly excluded political prisoners from release, whereas Bahrain¹⁸⁷ identified such prisoners a key category eligible for release under their scheme.

Foreign citizen prisoners

There was also a differing approach to the release of prisoners who were foreign citizens. Jurisdictions such as Indonesia¹⁸⁸ specifically excluded such prisoners from release; however, in contrast, presidents in

Ethiopia,¹⁸⁹ Uganda,¹⁹⁰ Botswana¹⁹¹ and South Africa¹⁹² granted a special amnesty for the release of foreign prisoners. The King of Saudi Arabia also ordered the release of foreign detainees held on non-violent immigration crimes.¹⁹³

Previous criminal conduct of prisoner

Jurisdictions in the study also excluded prisoners from release based on their previous criminal conduct. This appeared to be an attempt to limit the release of habitual offenders or those people who posed a higher risk to community safety. A number of release schemes therefore excluded prisoners who had committed further offences, or been subject to disciplinary proceedings, while in prison (eg North Rhine-Westphalia in Germany¹⁹⁴ and Pennsylvania (US)).¹⁹⁵ Botswana,¹⁹⁶ Cameroon,¹⁹⁷ Poland¹⁹⁸ and Guatemala¹⁹⁹ all took

this one step further and expressly excluded prisoners who had been convicted of multiple offences, irrespective of what the offences were and where the offences were committed.

RELEASE CRITERIA ACCORDING TO NATURE AND STATUS OF SENTENCE

The second category of release criteria adopted by about 85% of jurisdictions in the study involved consideration of the status of a prisoner's sentence. Three approaches emerged:

- eligibility based on the period of imprisonment left to serve by the prisoner (in other words, period until earliest release);
- eligibility based on the minimum imprisonment period (in other words, where the prisoner had served a minimum period in prison); and

¹⁸⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E> See further Indonesia Report, Part 6.

¹⁸⁶ <https://www.voanews.com/africa/cameroonian-president-orders-de-crowding-prisons-combat-covid-19>. See further Cameroon Report, Part 6.

¹⁸⁷ Human Rights Watch, press release, issued 6 April 2020, <https://www.hrw.org/news/2020/04/06/bahrain-free-imprisoned-rights-defenders-and-opposition-activists> See further Bahrain Report, Part 6.

¹⁸⁸ Articles 2a. and 2b. of MOLHR Decree 19/2020. See further Indonesia Report Part 9

¹⁸⁹ <https://www.facebook.com/FAGEthiopia/> FDRE Attorney General (March 25). See further Ethiopia Report, Part 6.

¹⁹⁰ <https://www.radiokapi.net/2020/05/05/actualite/societe/ouganda-74-pecheurs-congolais-liberes-par-grace-presidentielle> See further Uganda Report, Part 9.

¹⁹¹ <https://taarifa.rw/botswana-pardons-15-zimbabwean-prisoners-amid-covid-19/>. See further Botswana Report, Part 3.

¹⁹² <https://www.prison-insider.com/en/articles/afrique-coronavirus-la-fievre-des-prisons#afrique-du-sud-5e81fd6b2aacd>; <https://www.theeastafrican.co.ke/news/africa/South-Africa-sends-home-589-Mozambicans/4552902-5551138-q8rfuz/index.html> See further South Africa Report, Part 9.

¹⁹³ "Saudi Arabia releases 250 immigration offenders amid coronavirus outbreak: statement." Reuters., J. Neely and A. Hudson. <https://www.reuters.com/article/us-health-coronavirus-saudi-prisoners/saudi-arabia-releases-250-immigration-offenders-amid-coronavirus-outbreak-statement-idUSKBN21D119>. See further Saudi Arabia Report, Part 6.

¹⁹⁴ NRW Decree 25 March 2020 available at <https://www.justiz.nrw.de/JM/ministerium/corona/justizvollzug/index.php>, https://www.justiz.nrw.de/JM/Presse/PresseJM/2020_03_25_Strafzussetzung/index.php. See further Germany Report, Part 6.

¹⁹⁵ <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reeprieve-release-order- COVID-19.pdf> See further Pennsylvania Report, Part 6.

¹⁹⁶ <https://www.dailymaverick.co.za/article/2020-05-15-prisons-breeding-grounds-for-communicable-and-infectious-diseases-including-covid-19/#gsc.tab=0>. See further Botswana Report, Part 6.

¹⁹⁷ <https://www.voanews.com/africa/cameroonian-president-orders-de-crowding-prisons-combat-covid-19>. See further Cameroon Report, Part 6.

¹⁹⁸ <https://sip.lex.pl/#/publication/470129774/ornowska-alicia-dozor-elektroniczny-w-czasach-epidemii-koronawirusa-i-regulacji-z-tzw-tarczy...?cm=URELATIONS>. See further Poland Report, Part 6.

¹⁹⁹ Article 264 of the Criminal Procedure Code. See further Guatemala Report, Part 6.

- eligibility based on the total sentence imposed on the prisoner.

Jurisdictions commonly adopted one of more of these eligibility requirements, often in conjunction with other criteria relating to the offence or vulnerability of the prisoner.

Imprisonment sentence left to serve

Jurisdictions that tied release eligibility to the imprisonment period left to serve by a prisoner included Scotland,²⁰⁰ Kenya²⁰¹ and Nigeria.²⁰² The period varied widely – from 60 days until release in California (US)²⁰³ up to 12 months in Ethiopia²⁰⁴ and NSW (Australia).²⁰⁵

Minimum period of imprisonment served

There were a few jurisdictions that based release eligibility on the prisoner having served a minimum period in prison. For example,

Indonesia required prisoners to have served at least half their sentence to be eligible for release on home detention²⁰⁶ or at least two-thirds of their sentence to be eligible for release without home detention, provided that the total time in prison was a minimum of six months.²⁰⁷ Louisiana (US) required that certain prisoners had served at least six months in prison and were within six months of their scheduled release date to be eligible for early release.²⁰⁸ Ghana also mandated that prisoners must have served at least half their sentence to be eligible for release,²⁰⁹ whereas India placed different restrictions on a minimum period of imprisonment and, depending on the state, released prisoners who had served anywhere between three months and ten years in prison.²¹⁰ South Africa took a particularly broad approach, granting parole to low-risk prisoners who would reach their minimum detention period within the next five years.²¹¹

The justification for a prisoner having served a minimum imprisonment period is likely to be driven by the belief that prisoners should be adequately punished before they can be released. Governments may not want to be seen to be releasing prisoners who have only just commenced an imprisonment sentence for their offence.

Total imprisonment sentence imposed

Finally, a number of jurisdictions in the study linked release eligibility to the total sentence imposed on a prisoner. The sentence period that would deem a prisoner eligible for release ranged anywhere from 6 months in Kenya²¹² through to 18 months in Italy²¹³ (in respect of COVID-19-related home detention) through to 3 years in Spain²¹⁴ (in respect of conditional release). A couple of jurisdictions also linked the total sentence imposed on the prisoner to the nature of the

²⁰⁰ Section 2(3), The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 See further Scotland Report, Part 7.

²⁰¹ Statement by the Chief Justice of Kenya available at <https://www.capitalfm.co.ke/news/2020/04/4-800-inmates-freed-in-measures-to-prevent-spread-of-covid-19-in-prisons/>. See also <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>. See further Kenya Report, Part 7

²⁰² <https://prnigeria.com/2020/06/10/covid-delta-cj-releases-inmates/> See further Nigeria Report, Part 7.

²⁰³ COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER>. See further California Report, Part 7

²⁰⁴ <https://www.facebook.com/FAGEthiopia/videos/346718636306849> FDRE Attorney General (March 25). See further Ethiopia Report, Part 7

²⁰⁵ Criminal (Administration of Sentences) Act 1999 No 93 s 276(3), amended by the COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1 (NSW) Schedule 2, Part 2.5. See further NSW (Australia) Report, Part 7.

²⁰⁶ Articles 2(2)c. and 23(1) of MOLHR Regulation 10/2020, and Article 2a.1. of MOLHR Decree 19/2020. See further Indonesia Report, Part 7

²⁰⁷ Article 10a. of MOLHR Regulation 10/2020 and Article 2b.1. of MOLHR Decree 19/2020. See further Indonesia Report, Part 7.

²⁰⁸ <https://myemail.constantcontact.com/DOC-Creates-+-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmjU0Lqveg0>. See also <https://www.wafb.com/2020/04/14/la-department-corrections-creates-covid-panel-consider-furloughs-certain-inmates/> See further Louisiana Report, Part 7

²⁰⁹ <https://www.myjoyonline.com/news/national/president-nana-akufo-addo-has-freed-808-prisoners-on-the-recommendation-of-the-prisons-service-council/>. See further Ghana Report, Part 6.

²¹⁰ See further India Report, Part 7 and 17.

²¹¹ <https://www.gov.za/speeches/minister-ronald-lamola-special-covid19-parole-dispensation-statement-8-may-2020-0000>. See further South Africa Report, Part 7.

²¹² Statement by the Chief Justice of Kenya available at <https://www.capitalfm.co.ke/news/2020/04/4-800-inmates-freed-in-measures-to-prevent-spread-of-covid-19-in-prisons/>. See also <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>. See further Kenya Report, Part 7.

²¹³ Article 123 of Cura-Italia Decree. See further Italy Report, Part 7.

²¹⁴ Article 90 Spanish Criminal Code. See further Spain Report, Part 7.

offence committed by the prisoner. For example, Bangladesh required that the prisoner had committed a minor offence and was sentenced to a minimum of one year to be eligible for release.²¹⁵

There was, however, a mixed approach to releasing prisoners who had been sentenced to life imprisonment. Countries such as Indonesia,²¹⁶ Scotland,²¹⁷ Alabama (US)²¹⁸ and South Africa²¹⁹ expressly excluded prisoners serving life sentences due to the serious nature of the offence committed by the prisoner. However, in Bangladesh, a life sentence was not a barrier to release under the president's sentence commutation. Rather, prisoners who had been sentenced to life could be released provided they had served a minimum of 20 years in prison.²²⁰

RELEASE CRITERIA ACCORDING TO VULNERABILITY OF PRISONER

The third category of prisoner release criteria that was adopted by two-thirds of jurisdictions in the study was based on the vulnerability of a prisoner.

Where jurisdictions applied a vulnerability test to determine eligibility for release, it sometimes also involved connecting two vulnerabilities – namely that a prisoner was in poor health *and* that the prisoner was elderly.

Prisoner health

As explained above, prisoners experience much higher rates of chronic illness than the general population yet have very poor access to healthcare.

Just over half of all jurisdictions facilitated the release of prisoners in ill health. This was a particularly important consideration in the COVID-19 pandemic given the higher risk of health complications and death for people with pre-existing, chronic health issues. Indeed, a number of the release schemes specifically called out COVID-19 and the increased risk it posed prisoners as a key determinant for release (see for example NSW (Australia),²²¹ England and Wales,²²² Belgium,²²³ the State of Bremen in Germany²²⁴ and El Salvador).²²⁵ Other schemes like Nigeria²²⁶ and India²²⁷ identified prisoners with chronic health issues as eligible for release without specific reference to COVID-19.

²¹⁵ "2,329 prisoners to be freed over COVID-19 outbreak", TBS News, 9 May 2020, <https://tbsnews.net/coronavirus-chronicle/covid-19-bangladesh/2329-prisoners-be-freed-over-covid-19-outbreak-79330>. See also "Covid-19 Risk: 385 Prisoners to Be Released Today." The Daily Star, 3 May 2020, www.thedailystar.net/covid-19-risk-385-prisoners-be-released-today-1899019 and "Bangladesh to release selective prisoners in late April", Dhaka Tribune, 19 April 2020, <https://www.dhakatribune.com/bangladesh/2020/04/19/bangladesh-to-release-selective-prisoners-in-late-april>. See further Bangladesh Report Part 7.

²¹⁶ Article 65 of MOLHR 3/2018. See further Indonesia Report, Part 6.

²¹⁷ Scottish Government News 'Short-term prisoner release' dated 4 May 2020 available at <https://www.gov.scot/news/short-term-prisoner-release/>. See further Scotland Report, Part 6.

²¹⁸ <https://www.alreporter.com/wp-content/uploads/2020/05/ReleasePDF.pdf> See further Alabama Report, Part 6.

²¹⁹ <https://openbylaws.org.za/za/act/p/2020/19/eng/> See further South Africa Report, Part 6.

²²⁰ "Bangladesh to release selective prisoners in late April", Dhaka Tribune, 19 April 2020, <https://www.dhakatribune.com/bangladesh/2020/04/19/bangladesh-to-release-selective-prisoners-in-late-april>. See further Bangladesh Report Part 7.

²²¹ Criminal (Administration of Sentences) Regulation 2014 s 330. See further NSW (Australia) Report, Part 8.

²²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881060/covid19-use-compassionate-rotl.pdf. See further England and Wales Report, Part 8.

²²³ Article 7, al. 1 of Royal Decree No. 3. See further Belgium Report, Part 8.

²²⁴ https://www.weser-kurier.de/bremen/bremen-stadt_artikel,-bremen-laesst-haeftlinge-vorzeitig-frei- arid,1905002.html See further Germany Report, Part 8.

²²⁵ Penal Code Article 86 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf> and <https://www.laprensagrafica.com/elsalvador/Penales-pide-libertad-para-557-reos-por-riesgo-de-COVID-19-en-El-Salvador-20200325-0128.html> See further El Salvador Report, Part 8.

²²⁶ <https://prnigeria.com/2020/06/10/covid-delta-cj-releases-inmates/> and <https://www.aljazeera.com/news/2020/04/coronavirus-buhari-asks-nigeria-chief-judge-free-prisoners-200422053224030.html>. See further Nigeria Report, Part 7.

²²⁷ See further India Report Part 7 and 17.

Where a vulnerable prisoner was seeking release on the basis of their poor health, medical evidence was sometimes required to support such an application for release (see for example El Salvador²²⁸ and Guatemala).²²⁹ It is unknown whether such medical evidence was easily accessible and obtainable by prisoners or prison staff, especially given the impact of COVID-19 on strained health systems and health professionals.

Prisoner age

About 38% of jurisdictions imposed eligibility criteria based on the age of a prisoner. Similarly to chronic health issues, the apparent rationale was that elderly prisoners

were more likely to contract COVID-19 and suffer more serious health consequences.

The age criteria set out in prisoner release schemes varied widely. In Bremen, Germany, prisoners from the age of 50 were eligible for release.²³⁰ The Metro Jail in Alabama (US) released prisoners over the age of 55.²³¹ In El Salvador,²³² Honduras²³³ and South Africa²³⁴ the minimum eligibility age was 60. In Minnesota (US)²³⁵ and Portugal,²³⁶ prisoners had to be over 65 and in Spain the minimum release eligibility was prisoners aged 70.²³⁷

Female prisoners, including pregnant, breastfeeding and those with children in prison

A quarter of jurisdictions also applied criteria to enable the release of female prisoners, including those who were pregnant, breastfeeding or had young children in prison. For example, Jordan²³⁸ and Bahrain²³⁹ facilitated the release of female prisoners, whereas Maryland (US),²⁴⁰ allowed the release of pregnant prisoners. South Africa²⁴¹ and Ethiopia²⁴² released convicted female prisoners with young children living with them in prison, whereas Rwanda²⁴³ released female pre-trial detainees with children in prison.

²²⁸ Penal Code Article 86 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/COAB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf> and <https://www.laprensagrafica.com/elsalvador/Penales-pide-libertad-para-557-reos-por-riesgo-de-COVID-19-en-El-Salvador-20200325-0128.html> See further El Salvador Report, Part 8

²²⁹ Congress of the Republic of Guatemala, Decree 33-2006. Ley del Régimen Penitenciario, Article 69. See further Guatemala Report, Part 8.

²³⁰ https://www.weser-kurier.de/bremen/bremen-stadt_artikel.-bremen-laesst-haeftlinge-vorzeitig-frei-_arid,1905002.html. See further Germany Report, Part 8.

²³¹ <https://www.al.com/news/2020/04/amid-covid-19-pandemic-mobile-metro-jail-releases-a-third-of-inmates.html> See further Alabama Report, Part 8.

²³² Penal Code Article 86 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/COAB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf> and <https://www.laprensagrafica.com/elsalvador/Penales-pide-libertad-para-557-reos-por-riesgo-de-COVID-19-en-El-Salvador-20200325-0128.html> See further El Salvador Report, Part 8.

²³³ International Development Law Organization, Honduras Court Admits Petition to Protect Prisoners From COVID-19, 11 May 2020, <https://www.idlo.int/news/honduras-court-admits-petition-protect-prisoners-covid-19> See further Honduras Report, Part 8.

²³⁴ <https://www.timeslive.co.za/news/south-africa/2020-05-08-old-sick-and-female-inmates-with-infants-first-in-line-for-coronavirus-parole-in-sa/> See further South Africa Report, Part 8.

²³⁵ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> See further Minnesota Report, Part 8.

²³⁶ Article 3, paragraph 1 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized>. See further Portugal Report, Part 8

²³⁷ Article 91 Spanish Criminal Code. See further Spain Report, Part 8.

²³⁸ "Jordan releases thousands of debt prisoners to combat coronavirus outbreak", Middle East Monitor, 19 March 2020, <https://www.middleeastmonitor.com/20200319-jordan-releases-thousands-of-debt-prisoners-to-combat-coronavirus-outbreak/> See further Jordan Report, Part 8.

²³⁹ 'The Minister of Justice, Islamic Affairs and Endowments Shaikh Khalid bin Ali Al Khalifa lauded the royal decree pardoning some convicts for humanitarian reasons' (Ministry of Justice, Islamic Affairs and Endowments, 13 March 2020) <https://www.moj.gov.bh/en/sample-news-2>. See further Bahrain Report, Part 8.

²⁴⁰ Section 4 of the Maryland Release Order at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf>. See further Maryland Report, Part 8.

²⁴¹ <https://www.thesouthafrican.com/news/prison-correctional-services-covid-19-cases-rising-western-cape-eastern-cape/> See further South Africa Report, Part 8.

²⁴² <https://www.facebook.com/FAGEthiopia/ FDRE Attorney General> (March 25). See further Ethiopia Report, Part 8

²⁴³ Nasra Bishumba, COVID-19: Prosecution to release detainees, Retrieved from <https://www.newtimes.co.rw/news/covid-19-prosecution-release-detainees>. See further Rwanda Report, Part 8

There was however no data in the study on how many releases fell into this category.

OTHER RELEASE CRITERIA

Further to the three key categories of criteria described above, a range of additional criteria were identified in the study as part of COVID-19 prisoner release determinations. These extra criteria included the availability of accommodation for the prisoner on release, whether there were outstanding fines/debts owed by the prisoners and general risks to the community arising from release.

Accommodation and livelihood

About a third of jurisdictions considered the availability and/or suitability of accommodation for a prisoner on release as an eligibility criterion. Belgium²⁴⁴ required the prisoner to have a fixed address where they can be released to, and Texas (US)²⁴⁵ required that a prisoner's release address undergo a review and verification process. Indonesia²⁴⁶ required a letter of

guarantee from family members that the prisoner be released to their home. Other North American states, including Minnesota (US),²⁴⁷ Louisiana (US) and Utah (US)²⁴⁸ also required the prisoner to have housing plans identified as a prerequisite to release.

A few European jurisdictions considered the livelihood of the prisoner as a criterion for release. In Bremen in Germany,²⁴⁹ a prisoner without housing, healthcare and livelihood secured was excluded from release. In Spain,²⁵⁰ a prisoner needed to have employment or other living means available to them in order to be released. Belgium²⁵¹ required prisoners to have sufficient means of subsistence as a release precondition.

Outstanding fines

Only a very small number of jurisdictions (8%) considered the status of any outstanding fines owed by a prisoner as a condition of release. This

meant that in Guatemala²⁵² and Bangladesh²⁵³ where a prisoner had outstanding fines, they were prevented from being released early. South Sudan adopted a different but still problematic approach to COVID-19 releases – allowing the temporary release of prisoners who had committed minor offences for a period of 30 days but with a requirement that the prisoners resolve any outstanding fines or debts during the release. If the prisoner failed to do so within the 30 days, they would be rearrested.²⁵⁴

Fortunately, under the Indonesian scheme, while consideration was given to the status of any outstanding fines owed by the prisoner, those fines could be worked off by the prisoner through additional supervision on release.²⁵⁵ This is a practice that should be explored in other jurisdictions instead of penalizing prisoners who cannot repay fines and preventing their release.

²⁴⁴ Article 7, al. 1 of Royal Decree No. 3. See further Belgium Report, Part 9.

²⁴⁵ <https://corrections.utah.gov/index.php/offender-resources/address-verification-form>. See further Texas Report, Part 9.

²⁴⁶ <https://www.merdeka.com/khas/menkom-ham-yasonna-laoly-tidak-sembarangan-membeaskan-napi.html> See further Indonesia Report, Part 9.

²⁴⁷ <https://mn.gov/doc/community-supervision/covid-19-conditional-medical-release-process/>. See further Minnesota Report, Part 9.

²⁴⁸ <https://corrections.utah.gov/index.php/home/alerts-2/1239-utah-identifies-early-releases-to-create-additional-capacity-within-correctional-facilities>. See further Utah Report, Part 9.

²⁴⁹ https://www.weser-kurier.de/bremen/bremen-stadt_artikel,-bremen-laesst-haeftlinge-vorzeitig-frei-_arid,1905002.html See further Germany Report, Part 9.

²⁵⁰ Article 195 Penitentiary Regulations. See further Spain Report, Part 9.

²⁵¹ Article 8 of Royal Decree No. 3. See further Belgium Report Part 12.

²⁵² Articles 78 to 82 Criminal Procedure Code. See further Guatemala Report, Part 9.

²⁵³ "Bangladesh set to release another 385 inmates early to combat COVID19 risks" Bangladesh News 24, 3 May 2020, <https://bdnews24.com/bangladesh/2020/05/03/bangladesh-set-to-release-another-385-inmates-early-to-combat-virus-risks>. See further Bangladesh Report, Part 9.

²⁵⁴ <https://www.pmldaily.com/news/2020/04/covid-19-crisis-south-sudan-releases-140-prisoners-amid-coronavirus-fears.html>. See further South Sudan Report, Part 12.

²⁵⁵ Articles 6, 7 and 21 of MOLHR Regulation 10/2020. See further Indonesian Report, Part 13.

Criteria that ties a prisoner's eligibility for release to stable accommodation (discussed above) or availability of income is troubling as it discriminates against and excludes homeless, financially vulnerable and very disadvantaged prisoners from release. Rather than imposing such eligibility criteria, a government should be supporting prisoners to identify appropriate accommodation or waive debt obligations to ensure no prisoner is unfairly discriminated against on the basis of their disadvantage.

Risks to community and victims' wishes

The last criteria that about a third of jurisdictions embedded into release schemes was consideration for a victim's wishes or an express assessment of community risk arising from release. For example, Poland²⁵⁶ included criteria that the prisoner must have a "positive criminological prediction" to be eligible for release. England and Wales²⁵⁷ determined that the prisoner must be assessed as low or medium risk of serious harm.

Other jurisdictions that undertook a similar assessment of community risk included NSW (Australia),²⁵⁸ Scotland,²⁵⁹ Kuwait,²⁶⁰ Nevada (US)²⁶¹ and California (US).²⁶² Alabama (US)²⁶³ and Maryland (US)²⁶⁴ prioritized the needs of victims as part of the release determination, ensuring that victims were notified in advance of any release and they had the opportunity to express their view. Colorado (US)²⁶⁵ required sign-off from Victims' Services before releasing any prisoner.

In contrast, Indonesia was the sole jurisdiction in the study that considered specific risks to the prisoner on release. Specifically, the Indonesian COVID-19 release scheme excluded prisoners whose "life would be threatened upon release."²⁶⁶ This criteria clearly prioritizes the interests of prisoners; however, it is unclear if any prisoners in Indonesia were deemed ineligible for release on this basis (and if this provision was used to unfairly discriminate against any prisoners).

Conditions attached to prisoner releases

Once a prisoner satisfied the eligibility criteria, it was common for conditions to be imposed as part of the government's agreement to release them. Although a few jurisdictions imposed no express conditions, three-quarters of jurisdictions in the study imposed at least one condition, ranging from regular reporting obligations through to intensive electronic monitoring.

GOOD BEHAVIOR AND REGULAR SUPERVISION

The most common condition attached to release in 42% of jurisdictions was that a prisoner must be of good behavior and not commit any further offences after being released. If a further offence was committed, the release would be revoked and the prisoner returned to prison. The condition to maintain good behavior was applied in release schemes in Norway,²⁶⁷ Kuwait,²⁶⁸ UAE,²⁶⁹ Mozambique²⁷⁰ and

²⁵⁶ Article 14c Section 2 Act of March 2, 2020. See further Poland Report, Part 9.

²⁵⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England and Wales Report, Part 6.

²⁵⁸ Criminal (Administration of Sentences) Act 1999 No 93 (NSW) s 276(4), amended by the COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1 (NSW) Schedule 2, Part 2.5. See further NSW (Australia) Report, Part 9.

²⁵⁹ Section 19(3)(b), Sch 4 Coronavirus (Scotland) Act 2020 See further Scotland Report, Part 5.

²⁶⁰ Article 11 Decree No. 87 of 2020. See further Kuwait Report, Part 9.

²⁶¹ See further Nevada Report, Part 9.

²⁶² COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER>. See further California Report, Part 5.

²⁶³ [https://codes.findlaw.com/al/title-15-criminal-procedure/al-code-sect-15-22-36.html#:~:text=\(a\)%20In%20all%20cases%2C,to%20remit%20fines%20and%20forfeitures](https://codes.findlaw.com/al/title-15-criminal-procedure/al-code-sect-15-22-36.html#:~:text=(a)%20In%20all%20cases%2C,to%20remit%20fines%20and%20forfeitures). See further Alabama Report, Part 9.

²⁶⁴ Section 5 of the Maryland Release Order at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf>. See further Maryland Report, Part 9.

²⁶⁵ <https://drive.google.com/file/d/1-pE-amf-EUX12WQZ9mwsrweb-Flf9Pl1/view>. See further Colorado Report, Part 7.

²⁶⁶ Article 65 of MOLHR 3/2018. See further Indonesia Report, Part 6.

²⁶⁷ LOV-2001-05-18-21, The Norwegian Execution of Sentences Act section 43. See further Norway Report, Part 12.

²⁶⁸ Article 11 Decree No. 87 of 2020. See further Kuwait Report, Part 12.

²⁶⁹ <https://gulffnews.com/uae/ramadan/1899-prisoners-released-across-four-uae-emirates-ahead-of-ramadan-1.71115035> See further UAE Report, Part 12.

²⁷⁰ <https://clubofmozambique.com/news/mozambique-inmates-to-go-home-watch-157550/>. See further Mozambique Report, Part 12.

North American states including Alabama (US)²⁷¹ and New York (US).²⁷² About a third of jurisdictions also imposed some level of supervision by corrections staff (commonly where the prisoner was placed on parole). India,²⁷³ Rwanda,²⁷⁴ Honduras,²⁷⁵ Portugal²⁷⁶ and California (US)²⁷⁷ were examples of jurisdictions that imposed such supervision requirements.

Indonesia adopted a particularly unique and flexible approach to supervision of released prisoners. Given the challenges posed by COVID-19 and risks for corrections staff associated with face-to-face supervision meetings, the Prison Authority permitted supervision through online means. The new approach allowed prison staff to supervise released prisoners via phone, video call, SMS or WhatsApp. Following

these supervision “meetings,” a supervision report would be prepared by the relevant parole officer with minutes of the meeting taking place and the report would then be submitted to the Head of the Regional Office of Ministry of Law and Human Rights.²⁷⁸ Although there has been no formal evaluation of Indonesia’s use of technology to supervise released prisoners, it is recommended that more

²⁷¹ Alabama Rules of Criminal Procedure, Rule 7.3 See further Alabama Report, Part 12.

²⁷² Division of Parole Rules and Regulations On the Web, Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, <https://doocs.ny.gov/system/files/documents/2019/09/nysrulesregs.pdf>. See further New York Report, Part 12.

²⁷³ ‘This is how prisons across India plan to release and track 34,000 inmates’ (<https://theprint.in/health/this-is-how-prisons-across-india-plan-to-release-and-track-34000-inmates/392108/>). See further India Report, Part 12.

²⁷⁴ Art. 2 Para 1 (1°) Presidential Order N° 067/01 of 19/05/2020 Granting Collective Pardon, Official Gazette n° 14 of 19/05/2020. See further Rwanda Report, Part 12.

²⁷⁵ Legislative Branch, Penal Code, Tegucigalpa M.D.C, Official Gazette, March 12, 1984, p. 51. See further Honduras Report, Part 11.

²⁷⁶ Article 4, paragraph 2 of Law No. 9/2020 available at <https://dre.pt/pesquisa/-/search/131338919/details/maximized>. See further Portugal Report, Part 12.

²⁷⁷ Expedited Releases, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/expedited-releases/> and Robert Lewis, California’s post-prison chaos: Thousands released early, including many with coronavirus, CalMatters (Aug. 18, 2020), <https://calmatters.org/justice/2020/08/california-prisons-early-release-coronavirus/>. See further California Report, Parts 12 and 13.

²⁷⁸ Paragraphs 5b.5) and 6) of Dirjen-PAS 516/2020. See further Indonesia Report, Part 12.



jurisdictions explore the use of technology to conduct remote supervision.

HOME DETENTION AND ELECTRONIC MONITORING

A more severe condition imposed on release was that a prisoner must submit to home detention. This condition was imposed in release schemes in jurisdictions including Indonesia,²⁷⁹ Nigeria,²⁸⁰ Louisiana (US)²⁸¹ and Minnesota (US).²⁸²

Italy is a jurisdiction worth highlighting as good practice based on its innovative approach to supporting homeless prisoners with home detention obligations.

Recognizing that homeless prisoners would be unable to meet home detention conditions but should not be denied the right to access early release, the Italian government allocated specific funding to ensure such prisoners had accommodation where they could undertake home detention on release.²⁸³

The most restrictive condition imposed on released prisoners in about a fifth of jurisdictions was that the prisoners submit to electronic monitoring for the duration of their release. Electronic monitoring was a fundamental condition in the COVID-19 release

schemes in jurisdictions including England and Wales,²⁸⁴ Italy,²⁸⁵ Poland,²⁸⁶ Washington (US)²⁸⁷ and Guatemala.²⁸⁸ It is also notable that Jordan²⁸⁹ invested in additional electronic monitoring bracelets to facilitate more prisoner releases in response to the pandemic (before COVID-19, electronic monitoring as an early release option was not widely used in the country).

COMPLIANCE WITH COVID-19 DIRECTIONS

In addition to the above requirements, 13% of jurisdictions including Belgium,²⁹⁰ Poland²⁹¹ and Botswana²⁹² imposed COVID-19 related conditions on release such

²⁷⁹ Article 2a.4. of MOLHR Decree 19/2020. See further Indonesia Report, Part 12.

²⁸⁰ <https://prnigeria.com/2020/04/23/covid-inmates-amnesty-kebbi/> See further Nigeria Report, Part 12.

²⁸¹ No official government document found. However, the LA-DPSC's official press release was found at <https://myemail.constantcontact.com/DOC-Creates-COVID-19-Furlough-Review-Panel.html?soid=1125804998217&aid=wmiU0Lgveq0>. Please note that the plan was suspended as of June. (<https://thelensnola.org/2020/06/03/doc-to-suspend-prisoner-release-program-as-state-enters-phase-two-of-reopening/>) See further Louisiana Report Part 12.

²⁸² <https://www.co.itasca.mn.us/Faq.aspx?QID=302>; https://famj.org/wp-content/uploads/Minnesota_Final.pdf. See further Minnesota Report, Part 12.

²⁸³ https://www.giustizia.it/giustizia/it/mg_1_11_1.page?contentId=SPR264443&previousPage=mg_2_21 See further Italy Report, Part 4.

²⁸⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England and Wales Report, Part 12

²⁸⁵ Article 123 of Cura-Italia Decree. See further Italy Report, Part 12.

²⁸⁶ Article 43n § 1 Executive Penal Code. See further Poland Report, Part 12.

²⁸⁷ <https://doc.wa.gov/docs/publications/300-HA002.pdf> See further Washington Report, Part 12.

²⁸⁸ Articles 78 to 82 Criminal Procedure Code. See further Guatemala Report, Part 12.

²⁸⁹ "Health Minister: 10, 000 electronic bracelets to track people subject to home quarantine", Roya News, 19 May 2020, <https://en.royanews.tv/news/21055/Health-Minister--10-000-electronic-bracelets-to-track-people-subject-to-home-quarantine> See further Jordan Report, Part 12.

²⁹⁰ Article 8 of Royal Decree No. 3. See further Belgium Report, Part 12.

²⁹¹ Article 14c Section 1 Act of March 2, 2020. See further Poland Report Part 5.

²⁹² <https://twitter.com/BWGovernment/status/1250728142983086082>. See further Botswana Report, Part 12.

as complying with government directives, undertaking testing and agreeing to quarantine on release. Iran²⁹³ in particular required that prisoners tested negative to COVID-19 before being released despite reports of limited or unavailable COVID-19 testing facilities for prisoners. Maryland (US)²⁹⁴ imposed 14 days of self-quarantine on prisoners on release and also refused releases for prisoners who tested positive for COVID-19.

While such COVID-19 directions may seem fair and reasonable, compliance may be challenging for many prisoners who are without accommodation on release and therefore cannot quarantine or self-isolate.

In this regard, California (US) is an example of good practice where extensive steps were taken to support prisoners with COVID-19 conditions. Shortly after the pandemic hit, the Californian authorities recognized that prisoners may not be able to comply with quarantine or self-isolation obligations where they do not have housing on release, cannot socially distance within their accommodation or need to live with elderly family members. To address this, the Department of Corrections

and Rehabilitation offered those prisoners accommodation placement assistance so they could quarantine safely and in compliance with government health directives.²⁹⁵

England and Wales also allocated GBP5 million funding to support Homelessness Prevention Taskforces to secure accommodation for prisoners released through the End of Custody Temporary Release scheme who did not have suitable accommodation to return to.²⁹⁶ This ensured those prisoners could comply with any COVID-19-related isolation requirements once back in the community.

OTHER CONDITIONS

A few other conditions were identified in the study which, on their face, appear unreasonable and unjustified.

The first example was in England and Wales²⁹⁷ and Ireland²⁹⁸ where restrictions were placed on a prisoners' freedom of expression after being released. Under the terms of those COVID-19 release schemes, released prisoners were prohibited from contacting media or using social media to upload any material. This measure raises concerns with respect to freedom of expression and other civil rights.

The second example was in South Africa, where a prisoner released under the COVID-19 scheme was required to provide a set of fingerprints and DNA samples to the South African police.²⁹⁹ It is unclear whether this was a new requirement imposed only on prisoners released through a COVID-19 program, or a uniform requirement applied to all released prisoners. Further analysis is required to determine the appropriateness of such a condition (or whether COVID-19 released prisoners were being unfairly targeted).

Duration of prisoner releases

The study found that jurisdictions adopted varied approaches to the duration of prisoner releases in response to COVID-19. Either jurisdictions imposed temporary releases for a short, fixed period of time, or permanent releases where prisoners were permanently released back into the community, or a combination of both temporary and permanent releases.

TEMPORARY RELEASE

About 17% of jurisdictions in the study imposed temporary release measures only. This meant that at the end of the declared COVID-19 health emergency or another determined period, all released

²⁹³ <https://www.bbc.com/news/world-middle-east-51723398> and <https://iranwire.com/en/features/6748>. See further Iran Report, Part 9.

²⁹⁴ Section 7 and 8 of the Maryland Release Order at <https://governor.maryland.gov/wp-content/uploads/2020/04/Prisoner-Release-4.18.20.pdf> See further Maryland Report, Part 9.

²⁹⁵ Expedited Releases, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/expedited-releases/>. See further California Report, Part 9.

²⁹⁶ https://npsservice.org.uk/media/filer_public/ff/3b/ff3b981b-5f16-4ebc-ba0c-5cf255124555/accommodation_support_all_releases_-_operational_guidance_v1.pdf. See further England and Wales Report, Part 12.

²⁹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England & Wales Report, Part 12.

²⁹⁸ S.I. No. 680/2004 – Prisoners (Temporary Release) Rules 2004. See further Ireland Report, Part 12.

²⁹⁹ See further South Africa Report, Part 9.

prisoners must return to prison and continue to serve their sentence or pre-trial detention. Generally, the time spent on temporary release did count towards that prisoner's overall sentence or pre-trial detention period.

Examples of temporary release measures included Haryana in India,³⁰⁰ which imposed a six-week parole period after which prisoners needed to return. In Berlin in Germany,³⁰¹ prisoners serving substitute sentences for failing to pay fines were temporarily released from March 16 until July 15 only. South Sudan³⁰² released prisoners for 30 days, during which they were required to resolve any outstanding fines or else return to prison. Under the furlough scheme in Iran,³⁰³ 100,000 prisoners were released for a temporary period only (the period was subject to one-month extensions as determined by the government). Honduras³⁰⁴ permitted prisoners on pre-release to stay in their own homes under house

arrest for the duration of the COVID-19 health emergency, and Poland³⁰⁵ also temporarily released prisoners with the requirement that they return to prison three days after the end of the declared state of emergency.

The problem with the use of temporary releases in response to COVID-19 is that they fail to address systemic overcrowding and decongest prisons in the longer term. As soon as the temporary release period is over, the prison population simply returns to the same overcrowded levels it was pre-COVID-19.

PERMANENT RELEASE

Some 85% of jurisdictions in the study offered some degree of permanent release measure – either under existing or new measures.

Permanent releases were typically adopted in jurisdictions where the prisoner was granted a

government amnesty or pardon such as in Bangladesh,³⁰⁶ UAE,³⁰⁷ Uganda³⁰⁸ and Portugal³⁰⁹ (under the Partial Pardon and Special Penalty Pardon Regimes). Permanent releases were also implemented in specific COVID-19 release schemes, including in Belgium³¹⁰ (under the Anticipated Release scheme), Spain³¹¹ (under the conditional release scheme), Washington (US)³¹² (under the Rapid Re-Entry Program), Honduras³¹³ (where released on parole) and El Salvador³¹⁴ (where released on conditional liberty).

When an early release is permanent, a prisoner is released into the community to serve out the balance of their sentence. Permanent releases are a more effective, long-term strategy to prison decongestion and, at the same time, support the rehabilitation and reintegration of prisoners back into the community. Where possible, jurisdictions should always prioritize designing permanent

³⁰⁰ See further India Report, Part 11 and 17.

³⁰¹ Berlin Decree 16 March. See further Germany Report, Part 11.

³⁰² <https://www.pnldaily.com/news/2020/04/covid-19-crisis-south-sudan-releases-140-prisoners-amid-coronavirus-fears.html>. See further South Sudan Report, Part 11.

³⁰³ <https://www.rferl.org/a/iran-says-1000-foreign-prisoners-released-temporarily-due-to-virus-outbreak/30568248.html> and <https://en.irna.ir/news/83798747/Supreme-Leader-pardons-commutes-prison-terms-of-3-721-inmates> See further Iran Report, Part 3.

³⁰⁴ La Tribuna, 60 juvenile offenders will be released from hospital to avoid Covid infections 19, 16 April 2020. <https://www.latribuna.hn/2020/04/16/sacaran-de-internamiento-a-60-menores-infracutores-para-evitar-contagios-de-covid-19/> See further Honduras Report, Part 4.

³⁰⁵ Article 14c Section 7 Act of March 2, 2020. See further Poland Report, Part 5.

³⁰⁶ Bangladesh set to release another 385 inmates early to combat COVID19 risks" Bangladesh News 24, 3 May 2020, <https://bdnews24.com/bangladesh/2020/05/03/bangladesh-set-to-release-another-385-inmates-early-to-combat-virus-risks>. See further Bangladesh Report, Part 11.

³⁰⁷ See further UAE Report, Part 11.

³⁰⁸ Ugandan Prison Services, '833 Prisoners Pardoned by President's Prerogative of Mercy', 15 June 2020, <https://www.prisons.go.ug/media/833-prisoners-pardoned-president%E2%80%99s-prerogative-mercy> See further Uganda Report, Part 11.

³⁰⁹ See further Portugal Report, Part 11.

³¹⁰ Royal Decree No. 3. See further Belgium Report, Part 11.

³¹¹ See further Spain Report, Part 11.

³¹² <https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf> See further Washington Report, Part 11.

³¹³ La Tribuna, 60 juvenile offenders will be released from hospital to avoid Covid infections 19, 16 April 2020. <https://www.latribuna.hn/2020/04/16/sacaran-de-internamiento-a-60-menores-infracutores-para-evitar-contagios-de-covid-19/>, Legislative Branch, Penal Code, Tegucigalpa M.D.C., Official Gazette, March 12, 1984, p. 51. See further Honduras Report, Part 12.

³¹⁴ Penal Code Article 88, 89, 91 <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/COAB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf> See further El Salvador Report, Part 11.

release schemes over temporary schemes as a strategy to address prison overcrowding.

Release of pre-trial detainees

Pre-trial detainees occupy large portions of prisoner populations in many countries. In the study, some of the highest reported levels of remandee populations were:

- Bangladesh at 81% of prison population;³¹⁵
- Nigeria at 71% of the prison population;³¹⁶
- Florida (US) at 67% of the prison population;³¹⁷
- Saudi Arabia at 58% of the prison population;³¹⁸ and
- Honduras at 55% of the prison population.³¹⁹

High rates of pre-trial detention exist despite international human rights norms that pre-trial detention only be used as a measure of last resort and, if imposed, should last no longer than is

necessary. However, even with these protections, many people on remand are there unlawfully, for unreasonably long periods of time and living in squalid conditions.

- Just fewer than half the jurisdictions in the study recognized the high number of pre-trial detainees in their prison populations and the urgent need to release them as a decongestion measure. Unfortunately, however, those jurisdictions published almost no data on remandee releases and therefore it is impossible to estimate what impact such release measures had on total prison populations. Some of the largest reported releases were in Iraq,³²⁰ which released 40,000 pre-trial detainees and Bangladesh,³²¹ which released more than 29,000 pre-trial detainees on bail. In Nigeria,³²² a presidential directive ordered the release of more than 52,000 pre-trial detainees (although it is unclear if all such releases were in fact implemented).

EXISTING RELEASE MEASURES

The vast majority of jurisdictions in the study had measures in place to release pre-trial detainees within existing criminal justice systems (even if those measures were not used to respond to COVID-19).

The most common of those measures were bail. Bail is often a quick and effective way to release pre-trial detainees, although it typically involves a hearing and determination by a judge.

- Some examples where bail provisions were relied on to release pre-trial detainees in response to COVID-19 were in NSW (Australia),³²³ England and Wales,³²⁴ Spain³²⁵ and Utah (US).³²⁶ In those jurisdictions, judges actively used existing powers under bail laws to release remandees from pre-trial detention. Under the COVID-19 Directive in the UAE,³²⁷ the Dubai Police and Prosecution ordered that prisoners charged with minor offences, including financial crimes and minor assault, be released on bail. In Florida (US),³²⁸

³¹⁵ World Prison Brief <https://www.prisonstudies.org/country/bangladesh> accessed 15 July 2020. See further Bangladesh Report, Part 1.

³¹⁶ https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All. See further Nigeria Report, Part 1.

³¹⁷ <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-florida.pdf> and <https://www-media.floridabar.org/uploads/2018/04/Criminal-Justice-Data-Study.pdf>. See further Florida Report, Part 1.

³¹⁸ <https://www.prisonstudies.org/country/saudi-arabia>. See further Saudi Arabia Report, Part 1.

³¹⁹ https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All. See further Honduras Report, Part 10.

³²⁰ <https://english.alaraby.co.uk/english/news/2020/4/16/iraq-releases-16-000-prisoners-amid-covid-19-outbreak>. See further Iraq Report, Part 10.

³²¹ M Moneruzzaman, "Over 33,000 prisoners get bail, jails free 29,692", New Age Bangladesh, 13 June 2020, <https://www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692>. See further Bangladesh Report, Part 10.

³²² <http://apanews.net/en/news/nigeria-moves-to-release-52000-awaiting-trial-inmates> See further Nigeria Report, Part 10.

³²³ NSW Government, The Public Defenders, 2020, COVID-19 Resources for Criminal Lawyers, accessed 14 May 2020, <<https://www.publicdefenders.nsw.gov.au/Pages/c19resources.aspx>>. See further NSW (Australia) Report, Part 10.

³²⁴ <https://www.cps.gov.uk/legal-guidance/bail>. See further England & Wales Report, Part 10.

³²⁵ See further Spain Report, Part 10.

³²⁶ <https://www.deseret.com/utah/2020/3/20/21188889/salt-lake-county-jail-to-release-90-deemed-low-risk-amid-virus-concerns> See further Utah Report, Part 10.

³²⁷ <https://gulffnews.com/uae/coronavirus-how-dubai-central-jail-is-guarding-against-covid-19-1.71640608>. See further UAE Report, Part 10.

³²⁸ <https://www.tampabay.com/news/hillsborough/2020/03/19/hillsborough-sheriff-releases-164-county-jail-inmates-to-reduce-coronavirus-risk/> [<http://archive.is/KJfEJ>]. See further Florida Report, Part 10.

the majority of pre-trial detainees releases were authorized by local decision-makers in various county sheriff's offices. The decision to release did not depend on whether the detainee was accused of a misdemeanor or felony but rather the subjective judgment of each sheriff that the offence was "low-level" and "non-violent."³²⁹

Judges in Bangladesh, Lebanon and Kenya were particularly innovative in their approach to releasing pre-trial detainees on bail through their adoption of technology.

In Bangladesh, following the closure of criminal courts due to COVID-19, the Supreme Court's Reform Committee enacted a special ordinance permitting the establishment of virtual courts for judges to hear bail applications by remandees. The courts took place over videoconference and, over the course of ten business days, the judiciary heard 33,287 bail applications.³³⁰ As at June 9, 2020, it

was reported that 29,692 pre-trial detainees had been released on bail following a virtual court hearing.³³¹

Although the Bangladesh response has been widely praised for its success, the virtual courts have also been criticized on the basis that they were not available to all pre-trial detainees. Legal advocates argued that very poor and remote pre-trial detainees were denied the opportunity to make bail applications because the virtual courts were only accessible to people who could access legal aid in cities, through their families.³³²

Lebanon also adopted a proactive approach to releasing pre-trial detainees. First, the Attorney General issued a circular advising against pre-trial detention except in extreme cases and ordered the immediate release of suspects if their pre-trial detention had been for longer than 24 hours without appearing before the public prosecutor.³³³ Second, the circular permitted judges to hear

bail applications using WhatsApp, Zoom and other videoconferencing services. These virtual courts were supported by the local bar association which set up special call centers and "emergency cells" that could receive phone calls and faxes from prisoners, and coordinate lawyers to visit jails to lodge virtual bail applications on behalf of remandees.³³⁴ This collaboration between the courts, prisons and bar association reportedly resulted in the release of 350 pre-trial detainees.³³⁵

The Kenyan judiciary also relied on Skype and Zoom to run virtual bail hearings while courts were shut down during the pandemic.³³⁶ This initiative was supported by the Kenyan Law Society, which donated computers and webcams to prisons to facilitate remandees' involvement in online hearings.³³⁷

Interestingly in Nigeria, judges did not rely on bail laws but instead used their powers under the Criminal Justice Release from

³²⁹ <https://www.tampabay.com/news/hillsborough/2020/03/19/hillsborough-sheriff-releases-164-county-jail-inmates-to-reduce-coronavirus-risk/> [<http://archive.is/KjIFJ>]. See further Florida Report, Part 10.

³³⁰ Justice Imman Ali, "Releasing 20,000+ people from prison in Bangladesh in 10 days – the view from a Judge", 11 June 2020, <https://www.penalreform.org/blog/releasing-20000-people-from-prison-in-bangladesh-in/>. See further Bangladesh Report Part 10.

³³¹ M Moneruzzaman, "Over 33,000 prisoners get bail, jails free 29,692", New Age Bangladesh, 13 June 2020, <https://www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692>. See further Bangladesh Report, Part 10.

³³² M Moneruzzaman, "Over 33,000 prisoners get bail, jails free 29,692", New Age Bangladesh, 13 June 2020, <https://www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692>. See further Bangladesh Report, Part 10.

³³³ "Judges in Lebanon Can Now Interrogate Detainees Via WhatsApp Video Call", The961, 26 March 2020, <https://www.the961.com/lebanons-judges-use-whatsapp-video-call-to-interrogate-detainees/>. See further Lebanon Report, Part 10.

³³⁴ <https://english.aawsat.com/home/article/2204081/lebanese-judicial-measures-ease-pressure-overcrowded-prisons>. See further Lebanon Report, Part 10.

³³⁵ "Coronavirus: Lebanon moves to release inmates from overcrowded prisons", Al Arabiya, 3 April 2020. See further Lebanon Report, Part 10.

³³⁶ Comments by the Chief Registrar of the Judiciary, available at <https://edition.cnn.com/2020/04/02/africa/kenya-courts-on-skype/index.html>. See further Kenya Report, Part 10.

³³⁷ <https://www.the-star.co.ke/news/2020-06-16-Isk-donates-computers-to-kamiti-and-kiambu-prisons/>. See further Kenya Report, Part 10.

Custody (Special Provisions) Law to release pre-trial detainees who had been in custody longer than the maximum period of imprisonment for the crime for which they were detained. It was also reported that the Nigerian government issued a Directive to the Nigerian Corrective Services to release some 52,226 pre-trial detainees.³³⁸

NEW RELEASE MEASURES

Where pre-trial release measures were not available in existing criminal processes or additional release measures were required, a few jurisdictions implemented new programs to release pre-trial detainees in response to COVID-19.

The new pre-trial detainee release programs that were implemented in the study often operated in a similar way to the release programs for convicted prisoners – the scheme was set out in law or regulation with specific eligibility criteria to protect the community and ensure violent offenders would not be released. For example, some of the key provisions in COVID-19 pre-trial detainee release programs were:

- Certain states in India released pre-trial detainees charged with

certain crimes where the maximum penalty was less than seven years.³³⁹

- Mozambique released pre-trial detainees under its Amnesty Law where they were charged with crimes punishable by up to one year imprisonment.³⁴⁰
- The National Council on the Administration of Justice in Kenya required that judges release all petty and traffic pre-trial detainees on cash bail or free police bond instead of remanding them in custody.³⁴¹
- Jordan released pre-trial detainees awaiting trial for security offences and those in pre-trial administrative detention. It also released certain remandees after considering the merits of their cases and confirming they were no threat to themselves or society.³⁴²
- The governor of Alabama (US) issued an Executive Order releasing pre-trial detainees who had allegedly violated the terms of their parole or probation, had been in custody for more than 20 days and were still waiting to have a hearing in relation to the violation.³⁴³

- In Maryland (US), the Court of Appeals Order required judges to quickly facilitate bond reviews for pre-trial detainees and hold hearings for pre-trial detainees held on charges of nonviolent crimes and minor probation violations.³⁴⁴
- Honduras amended its Criminal Code to specifically enable a judge to apply alternatives to pre-trial detention provided there was no severe risk of escape. The expansion of alternative measures to pre-trial detention did not, however, apply to people charged with crimes such as drug trafficking, rape, or crimes related to gangs. To seek an alternative to pre-trial detention under the decree, an accused person needed to submit their request to a judge by email.³⁴⁵

One highly effective release policy implemented in the US states of Pennsylvania (US) and California (US) was the elimination of cash bail. Cash bail requires that a defendant must provide money to the court to guarantee their appearance at trial or hearing. In many cases, the standard bail amount is set for the relevant offence, but judges often have broad discretion to

³³⁸ <http://apanews.net/en/news/nigeria-moves-to-release-52000-awaiting-trial-inmates> See further Nigeria Report, Part 10.

³³⁹ See further India Report, Part 10 and 17.

³⁴⁰ See Democracy and Development Centre, Lei da Amnistia extingue 150.000 processos e beneficia mais de 150.000 criminosos e suspeitos de práticas criminosas, (14th April 2020), pgs. 1 and 2. Available on: https://cddmoz.org/wp-content/uploads/2020/04/Pessoas_em_liberdade_tambem_beneficiam_de_amnistia_e_perdao_Lei_da_Amnistia_extingue_cerca_de_150.000_processos_e_beneficia_mais_de_150.000_criminosos_e_suspeitos_de_praticas_criminosas.pdf. See further Mozambique Report, Part 10.

³⁴¹ <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>. See further Kenya Report, Part 10.

³⁴² Human Rights Watch, "Jordan: State of Emergency Declared – Government Promises to Respect Rights in COVID-19 Response", 20 March 2020, accessed online from <https://www.hrw.org/news/2020/03/20/jordan-state-emergency-declared> and Taylor Luck, The National, "Jordan announces sweeping new measures to combat coronavirus", 17 March 2020, <https://www.thenational.ae/world/mena/jordan-announces-sweeping-new-measures-to-combat-coronavirus-1.993768>. See further Jordan Report, Part 10

³⁴³ https://www.alreporter.com/wp-content/uploads/2020/04/2020-04-02-Fifth-Supplemental-SOE_COVID-19.pdf See further Alabama Report, Part 10.

³⁴⁴ <https://www.marylandmatters.org/2020/04/14/chief-judge-wants-courts-to-release-medically-vulnerable-inmates/> See further Maryland Report Part 10.

³⁴⁵ http://transparencia.scgg.gob.hn/descargas/Decreto_Ejecutivo_No._003-2020pdf.pdf See further Honduras Report, Part 10.

raise or lower the bail amount. If a defendant cannot provide the bail money, they are remanded in custody. Cash bail has been widely criticized as discriminating against people of limited financial means, disproportionately affecting people of color, and its use significantly increases the pre-trial prison population in the US.

When the COVID-19 pandemic hit, the Judicial Council in California (US)³⁴⁶ issued a state-wide rule setting bail for most misdemeanors and some low-level felonies at USD0. This resulted in the automatic release of large numbers of pre-trial detainees who had been unable to post bail in their cases. Judges in Pennsylvania (US)³⁴⁷ similarly used their discretion to eliminate cash bail requirements and release those pre-trial detainees.

CONDITIONS ON RELEASE

Where pre-trial detainees were released, it was common that some restrictions were imposed as conditions of release particularly to be of good behavior and reporting obligations (similar to bail conditions).

Indonesia³⁴⁸ released pre-trial detainees but also placed them on home detention.

INCREASING RATES OF PRE-TRIAL DETENTION

While good progress was made in releasing pre-trial detainees from prisons (either through existing legal mechanisms or new ones) a number of jurisdictions also took steps that had the unintended effect of increasing prison populations.

When the pandemic first erupted, many governments responded by closing courts and postponing or suspending criminal trials. Such court closures – while intended to limit the risk of transmission of COVID-19 within court systems and the broader community – also prolonged the detention of remandees. This in turn inhibited efforts to reduce pre-trial prison populations during the court shutdown period.

A few jurisdictions attempted to respond to the increasing detention levels of remandees. In Nigeria, State Chief Judges were ordered to establish special courts to try

cases of armed robbery, banditry, kidnapping and other serious offences to facilitate speedy trials and ensure defendants had their matters dealt with quickly, rather than remaining on remand and increasing congestion.³⁴⁹ Similarly, Guatemala established two mobile courthouses in two prisons to continue to hear *habeas corpus* matters and arraignments and avoid the transfer of prisoners to court houses³⁵⁰ but, despite the operation of such courts, it was also reported that more people were detained in prisons after the first three months of the pandemic than before COVID-19.³⁵¹

France was one jurisdiction which enacted new measures that specifically *increased* pre-trial detention. Under its COVID-19 ordinance, pre-trial detainees could have their detention extended:

- where the maximum penalty for the offence was less than or equal to five years, pre-trial detention could be extended for two months;
- where the maximum penalty for the offence exceeded

³⁴⁶ California's Jail Population Has Plummeted during COVID-19, Public Policy Institute of California, May 2020, <https://www.ppic.org/blog/californias-jail-population-has-plummeted-during-covid-19/>. See further California Report, Part 3.

³⁴⁷ https://www.inquirer.com/jobs/labor/coronavirus-philadelphia-prisons-reduce-jail-population-unions-20200422.html?fbclid=IwAR1RaxDOvINtbPrajZtUm-849k8EKdE_vclnz4g7h09qvPAqrGY5FADWFg; <https://www.inquirer.com/news/coronavirus-philadelphia-jail-inmate-release-bail-infection-larry-krasner-court-20200411.html> See further Pennsylvania Report, Part 6.

³⁴⁸ <https://www.liputan6.com/news/read/4212563/imbas-epidemi-corona-kemenkumham-beri-3-opsi-perpanjangan-penahanan>. See further Indonesia Report, Part 10

³⁴⁹ <https://www.thisdaylive.com/index.php/2020/04/22/president-writes-cjn-on-speedy-trials-prison-decongestion/> See further Nigeria Report, Part 16.

³⁵⁰ Dirección General del Sistema Penitenciario. 2020. Instalación Juzgados Móviles en complejo carcelario de Fraijanes y Preventivo de la zona 18. Ministerio de Gobernación del Gobierno de Guatemala. <https://dqsp.gob.gt/instalan-juzgados-moviles-en-complejo-carcelario-de-fraijanes-y-preventivo-de-la-zona-18/>. See further Guatemala Report, Part 16

³⁵¹ <https://www.laprensa.com.ni/2020/05/23/politica/2676999-covid-19-pone-en-relieve-condiciones-precarias-de-los-sistemas-penitenciarios-de-america-latina>. See further Guatemala Report, Part 16.

five years, pre-trial detention could be extended for three months; and

- where the person was awaiting trial before the court of Appeal, pre-trial detention could be extended for six months.³⁵²

This appears to be in stark conflict with human rights principles that pre-trial detention should only be used as a measure of last resort and for the shortest period possible.

It is recommended that jurisdictions look closely at all options for the release of pre-trial detainees in their existing systems and, if not available, implement new measures. Close attention should also be paid to ensure COVID-19 health responses do not inadvertently and unreasonably increase the numbers of pre-trial detainees, therefore adding to overcrowding levels.

Release of children in prison

In 2019, at least 410,000 children³⁵³ were globally detained in prisons and juvenile detention facilities³⁵⁴ and an estimated 1 million children were detained in police custody.³⁵⁵ Urgent action to reduce the detention of children

in conflict with the law has long been called for by the UN, but with limited success.

The study revealed that only a third of jurisdictions took active measures to release children from detention as a COVID-19 decongestion measure. This statistic must be viewed in the context of custodial sentences often being imposed as a measure of last resort for child offenders. The largest reported releases of children from prison or other forms of juvenile detention centers were in Indonesia³⁵⁶ which reportedly released 939 children, followed by 665 children released in India³⁵⁷ and 489 children released in Bangladesh.³⁵⁸

Research into release programs applicable to children was challenging due to there being a considerable gap in publicly available information and data. Often governments referred to children being eligible for release in response to COVID-19, but there was no data to confirm whether such releases had in fact occurred.

For example, Malawi identified juvenile prisoners convicted of petty offences and those who had

served a significant portion of their sentences for moderate crimes in the list of eligible prisoners, but there was no reports of any releases.³⁵⁹ Similarly, Rwanda identified children in pre-trial detention as eligible for release but no further information about releases was available.³⁶⁰ England and Wales,³⁶¹ Scotland³⁶² and Italy³⁶³ applied the same release eligibility criteria to children in detention centers as to adults in prisons, although there was no data supporting any releases (the only difference in the Italian program was that released children were not required to submit to electronic monitoring but they were required to undertake an educational program as part of the release scheme).

Other practices that emerged in the study where children in prisons or detention centers were released included:

- In Indonesia, children who had served at least three months of their sentence or who would have served at least half of their sentence by December 31, displayed good behavior and actively participated in

³⁵² Ordonnance n° 2020-303 du 25 mars 2020 portant adaptation de règles de procédure pénale sur le fondement de la loi n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19, Article 16, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&categorieLien=id>. See further France Report, Part 10.

³⁵³ A child is defined as a person under the age of 18 years

³⁵⁴ Global Study on Children Deprived of Liberty, 11 July 2019, A/74/136

³⁵⁵ Global Study on Children Deprived of Liberty, 11 July 2019, A/74/136

³⁵⁶ See further Indonesia Report, Part 3.

³⁵⁷ Nearly 18,000 prisoners released on parole amid COVID-19 pandemic: Uttar Pradesh officials, (<https://www.newindianexpress.com/nation/2020/jun/26/nearly-18000-prisoners-released-on-parole-amid-covid-19-pandemic-uttar-pradesh-officials-2161760.html>) See further India Report, Part 15.

³⁵⁸ M Moneruzzaman, "Over 33,000 prisoners get bail, jails free 29,692", New Age Bangladesh, 13 June 2020, <https://www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692>. See further Bangladesh Report, Part 15

³⁵⁹ <https://reprise.org.uk/update/covid-19-in-malawi-vulnerable-prisoners-at-risk/>. See further Malawi Report, Part 15.

³⁶⁰ Nasra Bishumba, COVID-19: Prosecution to release detainees, Retrieved from <https://www.newtimes.co.rw/news/covid-19-prosecution-release-detainees>. See further Rwanda Report, Part 10

³⁶¹ <http://www.legislation.gov.uk/uk/si/2020/400/contents/made>. See further England and Wales Report Part 15

³⁶² See further Scotland Report, Part 15.

³⁶³ See further Italy Report, Part 15.

correctional programs were entitled to release with home detention. Further, children who had served at least half their sentence and displayed good behavior were entitled to conditional release without home detention.³⁶⁴

- In Bangladesh, through the implementation of virtual courts established by the Supreme Court Reform Committee, judges heard bail applications using video conferencing facilities which resulted in the release of 489 children in pre-trial detention.³⁶⁵
- In Berlin in Germany, the government temporarily suspended the enforcement of all juvenile sentences for the duration of the emergency COVID-19 decree.³⁶⁶ This meant any child currently held in prison was released.
- South Sudan released 85 child prisoners as part of the country's COVID-19 response measures on the basis that the children had committed only minor offences (the 11 children who reportedly remained in prison had committed serious crimes).³⁶⁷
- In California (US), following the state wide emergency bail rule which set bail at USD0, 21 children who could not previously post cash bail were released.³⁶⁸ In March 2020, the government also placed a short suspension on all new juvenile admissions, which limited the number of children entering detention facilities during that month.³⁶⁹
- In Colorado (US), the Governor's Executive Order required that children who were not sentenced as Aggravated or Violent Juvenile Offenders were released from custody and placed under the supervision of Juvenile Parole services.³⁷⁰
- Honduras released 60 children on the basis that they had served half of their up to two-year sentence for minor crimes, and where they had complied with re-educational measures. The other criteria for release included that children were charged with minor crimes and were still awaiting trial, or they suffered from illness. The releases were implemented by the Inter-institutional Commission of Juvenile Criminal Justice, which comprised of

sentencing enforcement judges, prosecutors and public defenders, among others.³⁷¹

While the above jurisdictions were examples of good practice, the study also revealed the concerning response by the government in Portugal, which specifically *excluded* child prisoners from release. The justification given by the government was that children are young and therefore the COVID-19 health risks were lower. Further, the government argued that juvenile detention centers had lower density rates than adult prisons and therefore social distancing was feasible and transmission risks lower.³⁷² Whether such justifications were reasonable and appropriate is questionable given what is known about the high transmission rates of COVID-19 in places of poor sanitation and hygiene like prisons and detention centers.

Florida (US) also reported a 6% increase in detention levels of children in prisons in May 2020. A recent study concluded that "after a surge of releases in March, young people were less likely to be released from detention in April

³⁶⁴ Articles 3(2)(a). and (b), 11(a) and (b) of MOLHR Regulation 10/2020 and Article 2(b)(2) of MOLHR Decree 19/2020. See further Indonesia Report, Part 15. ³⁶⁵ M Moneruzzaman, "Over 33,000 prisoners get bail, jails free 29,692", New Age Bangladesh, 13 June 2020, <https://www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692>. See further Bangladesh Report, Part 15

³⁶⁶ <https://www.berlin.de/sen/justva/presse/pressemitteilungen/2020/pressemitteilung.908021.php>. See further Germany Report Part 15

³⁶⁷ <https://www.unicef.org/press-releases/unicef-welcomes-release-85-children-detention-south-sudan> and <https://radar.outside.rs/en/south-sudan-releases-child-detainees-to-lower-prison-numbers-amid-the-covid-19-pandemic/>. See further South Sudan Report, Part 15.

³⁶⁸ Kate Bradshaw, Hundreds of inmates have been released from San Mateo county jails in recent weeks, The Almanac (Apr.16, 2020), <https://almanacnews.com/news/2020/04/16/hundreds-of-inmates-have-been-released-from-san-mateo-county-jails-in-recent-weeks>. See further California Report, Part 15.

³⁶⁹ COVID-19 Response Efforts, California Department of Corrections and Rehabilitation, July 2020, <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#ER>. See further California Report, Part 16

³⁷⁰ <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20034%20CDHS.pdf> See further Colorado Report, Part 15

³⁷¹ <http://www.poderjudicial.gob.hn/Paginas/Boletin13042020.aspx> and <https://www.latribuna.hn/2020/04/16/sacaran-de-internamiento-a-60-menores-infracutores-para-evitar-contagios-de-covid-19/> See further Honduras Report, Part 15

³⁷² See article from newspaper "Diário de Notícias", available at <https://www.dnoticias.pt/pais/ministra-da-justica-recusa-libertar-jovens-em-centros-educativos-DL6159173>. See further Portugal Report, Part 15.

and May than they were before the pandemic started.”³⁷³ This increase in detention rates was despite efforts by Florida officials to issue civil citations instead of arresting children in conflict with the law³⁷⁴ and should be explored further.

Support measures available to prisoners on release

Before completion of a sentence, human rights principles require that steps be taken to assist a prisoner with their reintegration into society.³⁷⁵ Governments should also provide efficient aftercare for the prisoner to support their social re-integration.³⁷⁶ This means that, as far as possible, released prisoners should be provided with identification papers, have suitable homes and work to go to, be suitably and adequately clothed, and have sufficient means to both reach their destination and maintain themselves following their release.³⁷⁷

In the study, there were mixed examples of support measures available for released prisoners.

About a third of jurisdictions, particularly across Africa, Asia and the Middle East, did not report any support measures available to prisoners on release (pre – or post-COVID-19). In contrast, the remaining

two-thirds of jurisdictions reported some level of support for prisoners, including programs related to accommodation, financial support, counselling, drug and alcohol rehabilitation and employment. All such programs were, however, in place pre-COVID-19 and there were almost no examples of such programs being expanded or receiving additional funding to assist with the sudden increase in released prisoners in the community in the wake of the pandemic.

Only a handful of jurisdictions in the study implemented new programs to specifically support prisoners released in response to COVID-19. The new supports were typically minor and involved small grants of financial or in-kind support such as in Nigeria, where the government provided prisoners with small sums of money on release and funded transport back to their home towns.³⁷⁸ In England and Wales mobile phones were also given to prisoners to ensure they could remain in contact with corrections staff remotely.³⁷⁹

The notable exceptions were South Africa and Pennsylvania (US).

In South Africa, the government responded to the COVID-19 crisis by implementing a program that

provided special social grant funds to prisoners released on parole. Additional community corrections officers were deployed to work with the new prisoners on parole to ensure they were successfully reintegrated into society³⁸⁰ and the Gender-Based Command Centre also made more counselling sessions available. Further, the government expanded their social assistance program to ensure released prisoners were able to access unemployed social assistance package.³⁸¹

Pennsylvania (US) also implemented a special support program for prisoners released during COVID-19. The tailored program included several days of release planning with each prisoner, preparing and connecting them to treatment programs in the community, organizing release transportation and undertaking medical screening to ensure sick prisoners were not being released and placed at risk. Where prisoners needed medical assistance or had health issues, they were provided with the necessary supply of medication and were connected with medical providers in the community. The program also involved parole agents assisting the released prisoners with job training and employment skills and making referrals for the

³⁷³ <https://www.aecf.org/blog/youth-detention-admissions-remain-low-but-releases-stall-despite-covid-19/> [<http://archive.is/0MwDU>]. See further Florida Report Part 15.

³⁷⁴ <http://archive.is/uPtjC> (archiving Florida Department of Juvenile Justice data). See further Florida Report, Part 16.

³⁷⁵ Nelson Mandela Rule 87

³⁷⁶ Nelson Mandela Rule 90

³⁷⁷ Nelson Mandela Rule 108

³⁷⁸ See further Nigeria Report, Part 14.

³⁷⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881061/end-custody-temporary-release.pdf. See further England & Wales Report, Part 14.

³⁸⁰ <https://ewn.co.za/2020/06/14/dept-fast-tracking-release-of-inmates-as-covid-19-infections-in-prisons-rise> See further South Africa Report, Part 14.

³⁸¹ <https://www.iol.co.za/sundayindependent/news/thousands-of-parolees-eligible-for-social-relief-grant-48050075> See further South Africa Report, Part 14.

treatment of mental/physical illness, drug and alcohol rehabilitation programs and cognitive behavioral life skills classes.³⁸²

It should be noted that several countries introduced enhanced social safety nets and social welfare programs during the pandemic which were available to the wider community and in many instances were also available to early release prisoners, even if not specifically designed as a form of post-release support.

When granting early release to large numbers of prisoners within a short period of time, it is recommended that an assessment of aftercare services and support be conducted to ensure the capacity of such services can be expanded to support all newly released prisoners. Consideration should be given to the expansion of existing services (like in South Africa) or whether new bespoke programs are required (like in Pennsylvania).

Mechanisms to reduce new prison admissions

Recognizing the need for a dual strategy to reduce prison

populations during COVID-19, many jurisdictions in the study implemented specific measures to reduce new prison admissions in parallel to release schemes.

Approximately half the jurisdictions in the study adopted measures to limit new prison admissions in response to COVID-19. Governments typically described such measures as temporary – only for the duration of the health crisis – but it is possible such programs might survive the pandemic, especially as government debt has increased and new pressures on government budgets have emerged, in particular the need for increased spending on public health.

One of the most common responses to reducing new prison admissions was to ensure pre-trial detention was a measure of last resort and alternatives to arrest were employed. Governments in Indonesia,³⁸³ Nigeria³⁸⁴ and Lebanon³⁸⁵ issued specific orders to police and prosecution departments to refrain from detention of suspects, reserving it for only the most serious of crimes. In Texas (US)³⁸⁶ and Florida (US),³⁸⁷ certain sheriffs' offices required the use of

cite and releases (a notice where a person is issued with a citation and allowed to return home on the agreement that they attend court at a later date) instead of arresting and admitting them to jail. In Los Angeles, California (US),³⁸⁸ the use of cite and releases reduced daily arrests from 300 to 60 a day. In Nigeria,³⁸⁹ state chief judges were ordered to use summons for court attendance instead of remanding defendants in custody and the Chief Justice of Kenya³⁹⁰ suspended the execution of arrest warrants. Texas (US)³⁹¹ also suspended active warrants and issued personal bonds for certain types of low-level offences.

More extreme measures were also implemented in some jurisdictions to limit prison admissions during the pandemic. For example, Norway³⁹² and New York (US)³⁹³ imposed a suspension on prosecutions for certain categories of low-level, non-violent offences such as shoplifting and minor drug crimes. Similarly, Florida (US)³⁹⁴ applied discretionary non-enforcement of low-level crimes and first time offenders. Colorado (US)³⁹⁵ and Louisiana (US)³⁹⁶ suspended arrests for parolees involved in technical

³⁸² <https://www.governor.pa.gov/newsroom/gov-wolf-department-of-corrections-to-establish-temporary-program-to-reprieve-sentences-of-incarceration/>

See further Pennsylvania Report, Part 14

³⁸³ <https://kabar24.bisnis.com/read/20200402/16/1221700/cegah-corona-kapolri-perintahkan-tersangka-pidana-tak-ditahan>. See further Indonesia Report, Part 10 and 16.

³⁸⁴ <https://punchng.com/covid-19-us-nigeria-iran-others-release-detainees-prisoners/> See further Nigeria Report, Part 16.

³⁸⁵ <https://www.aljazeera.com/news/2020/04/lebanon-prisons-hit-unrest-coronavirus-fears-200407181016398.html> See further Lebanon Report, Part 16.

³⁸⁶ <https://smcorridornews.com/wp-content/uploads/2020/04/SMTX-Ordinance-2020-18-CiteRelease-1st-Reading.pdf> See Texas Report, Part 16

³⁸⁷ <https://www.miamiherald.com/news/local/crime/article241531041.html> [<http://archive.is/4flLj>]. See Florida Report, Part 16

³⁸⁸ <https://www.prisonpolicy.org/virus/virusresponse.html#state> See further California Report, Part 16.

³⁸⁹ <https://www.thisdaylive.com/index.php/2020/04/22/president-writes-cjn-on-speedy-trials-prison-decongestion/> See further Nigeria Report, Part 16.

³⁹⁰ <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/> See further Kenya Report, Part 16.

³⁹¹ <https://www.traviscountytx.gov/images/courts/Docs/dc-order-temp-suspension-warrant-exec-certain-cases.pdf> See further Texas Report, Part 16.

³⁹² <https://www.riksadvokaten.no/wp-content/uploads/2020/04/Midl-direktiv-oppdatert030420.pdf> See further Norway Report, Part 16.

³⁹³ Andrew Denney & Larry Celona, Coronavirus in NY: Brooklyn DA to stop prosecuting 'low-level' offenses, New York Post (Mar. 17, 2020), <https://nypost.com/2020/03/17/coronavirus-in-ny-brooklyn-da-to-stop-prosecuting-low-level-offenses/>. See further New York Report, Part 16.

³⁹⁴ See further Florida Report, Part 16. ³⁹⁵ See further Colorado Report, Part 16.

³⁹⁶ See further Louisiana Report, Part 16

parole violations, and Uganda³⁹⁷ suspended arrests for all petty offences. France³⁹⁸ also banned all prison sentences of less than one month and Austria,³⁹⁹ Baden-Wuerttemberg in Germany⁴⁰⁰ and Saudi Arabia⁴⁰¹ postponed the execution of imprisonment sentences for certain categories of low-level offences such as debt crimes.

While there is limited available data linking these measures to overall reductions in prison overcrowding, it is without doubt that such steps would have had some positive impact. Governments should now consider whether such measures can be continued after the pandemic and engage in a broader review of their criminal justice policies with respect to arrest and detention.

The risk of *not* implementing strategies to reduce prison admissions was also ably demonstrated in the study. In two jurisdictions, governments did not take any measures to reduce new prison admissions and instead imposed harsher arrest policies which caused an overall increase in prison populations.

In Uganda, despite releasing some 833 prisoners in early April via a Presidential pardon,⁴⁰² admissions to prisons skyrocketed following widespread arrests by police for breaches of the country's COVID-19 directives relating to curfews and social distancing. By August 2020, the prison population had increased by 10% from 59,000 to 65,000⁴⁰³ (even though the president issued an additional pardons for 4,000+ people in pre-trial detention or convicted of breaches of the COVID-19 regulations).⁴⁰⁴ In Guatemala 11,000 people were arrested for breaches of COVID-19 quarantine measures, which saw the prison population increase between March and June 2020.⁴⁰⁵ This was despite the government implementing special measures to release convicted prisoners in response to the pandemic.

Despite implementing early release measures, Louisiana (US) also reported an increase in prison population between December 2019 and April 2020.⁴⁰⁶ This suggests the state's early release measures were insufficient to meet the increasing prison admissions during the same period.

Successes and challenges with prisoner release schemes

At this early stage, one cannot fully evaluate the COVID-19 prisoner release schemes that have been implemented across the globe as the schemes are still in their infancy. The sudden nature of the pandemic meant that release programs (especially where they did not exist before) had to be designed and rolled out quickly – and they are still being developed and implemented today.

Two main flaws in prisoner release schemes emerged in the study. These were the inclusion of inappropriate prisoners in the early release programs, and the burdensome, ineffective, inefficient and/or restrictive criteria that hampered early release schemes. In contrast, however, early analysis of recidivism rates for released prisoners suggests that in fact the release schemes have been generally successful, with low rates of re-offending.

³⁹⁷ <https://www.newvision.co.ug/news/1517189/decongest-prisons-police-cell-curb-spread-covid-19> See further Uganda Report Part 16.

³⁹⁸ Compte rendu de la Commission des lois constitutionnelles, de la législation et de l'administration générale de la République, Audition, en visioconférence, de Mme Nicole Belloubet, garde des Sceaux, ministre de la Justice, 14 May 2020, p. 3, www.assemblee-nationale.fr/dyn/15/comptes-rendus/cion_lois/115cion_lois1920062_compte-rendu. The relevant Circulaire can be found at: https://oip.org/wp-content/uploads/2020/05/minju-circulaire-200520_application-reforme-justice.pdf. See further France Report, Part 16.

³⁹⁹ https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_16/BGBLA_2020_I_16.pdf See further Austria Report, Part 16.

⁴⁰⁰ See further Germany Report, Part 16.

⁴⁰¹ "Saudi Arabia suspends prison sentences in debt cases", Arab News, 8 April 2020, <https://www.arabnews.com/node/1654971/saudi-arabia> See further Saudi Arabia Report, Part 16.

⁴⁰² <https://hrapf.org/index.php/10-hrapf-news/95-csos-call-for-further-decongestion-of-prisons-as-part-of-the-covid-19-response>. See further Uganda Report Part 3.

⁴⁰³ <https://www.nytimes.com/reuters/2020/08/07/world/africa/07reuters-health-coronavirus-uganda-prisons.html> See further Uganda Report Part 3

⁴⁰⁴ <https://www.independent.co.uk/prisons-ready-to-release-violators-of-covid-19-regulations/> and <https://www.nytimes.com/reuters/2020/08/07/world/africa/07reuters-health-coronavirus-uganda-prisons.html>. See further Uganda Report Part 3

⁴⁰⁵ <https://republica.gt/2020/06/08/presos-en-carceles-de-guatemala-covid-19/> and Centro de Investigaciones Económicas Nacionales (CIEN), 2020. Seguridad Ciudadana En Tiempos Del COVID-19, <https://cien.org.gt/wp-content/uploads/2020/04/Resumen-Ejecutivo-IDD-y-Seguridad-Ciudadana-COVID19-vf.pdf> See further Guatemala Report, Part 3 and 16.

INCLUSION OF INAPPROPRIATE PRISONERS

Given the urgency with which COVID-19 measures were implemented, it is perhaps unsurprising that the study highlighted some problems with the roll-out of release schemes, namely, the release of inappropriate categories of prisoners.

In England in April 2020, six prisoners were mistakenly released under the End of Custody Temporary Release scheme.⁴⁰⁷ The incorrectly released prisoners were all low-level offenders and eligible

for release under the ECTR scheme – they were simply released too early. The mistake was attributed to “human administrative error” and, once the error was identified, all six prisoners compliantly returned to prison. The error did however lead to the scheme being temporarily suspended.⁴⁰⁸

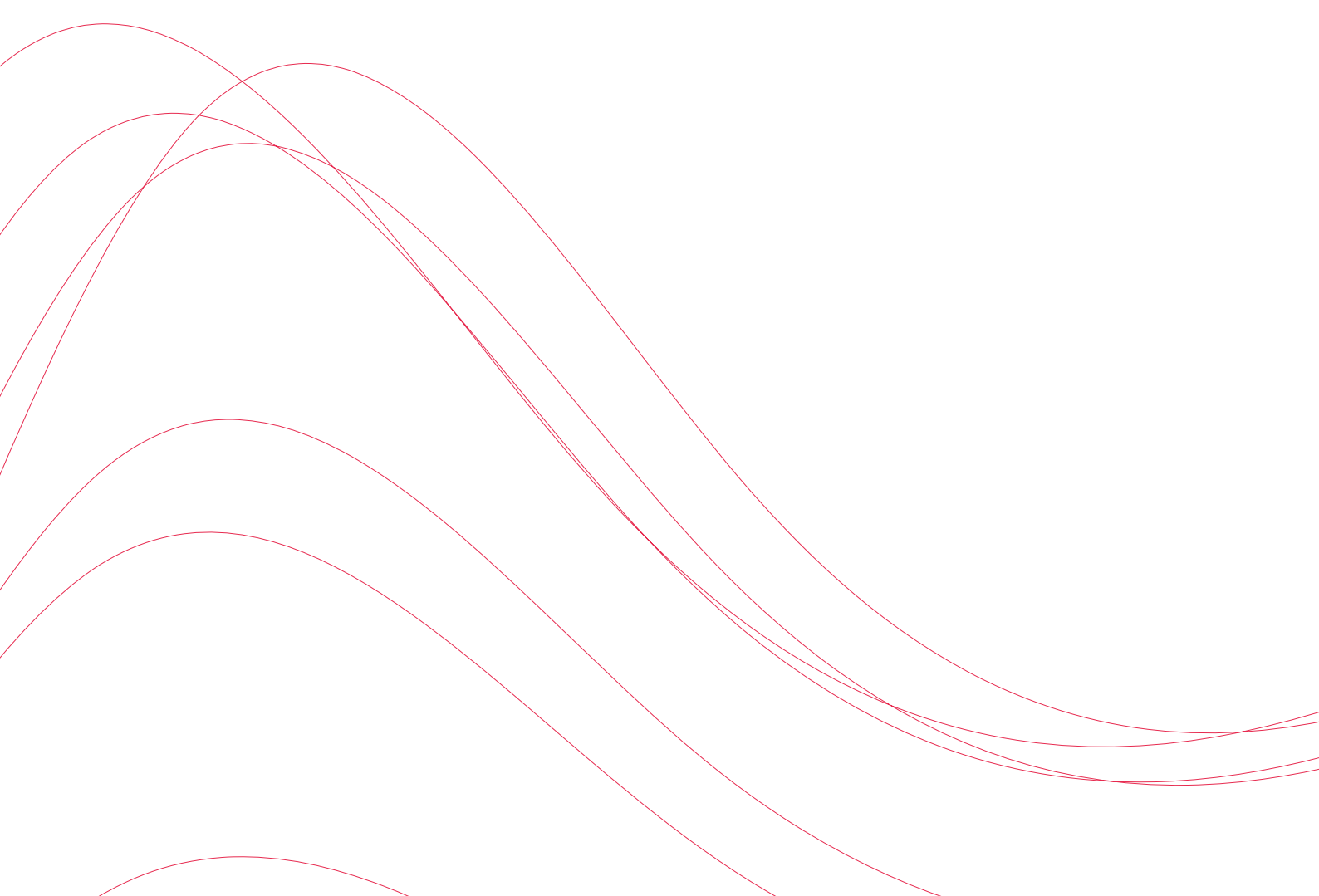
Italy's scheme also received criticism where serious violent offenders were released following an exercise of judicial discretion. In this case, Italian judges released four senior mafia leaders from prison and placed them on home detention on the basis of their poor health.

This resulted in public outcry due to the serious nature of the crimes the prisoners had been convicted of and because, but for the prisoners' ill health, they would not otherwise have been considered eligible for release. Following public pressure, the Italian government amended a provision in their COVID-19 Decrees 28 and 29 of 2020 to clarify that people convicted of mafia or terrorist crimes who were seeking release on the basis of health reasons must follow a stricter release criteria, including the need for a judge to reassess the health condition of the prisoner 15 days

⁴⁰⁶ <https://www.vera.org/downloads/publications/people-in-prison-in-2019.pdf> See further Louisiana Report, Part 3.

⁴⁰⁷ <https://www.theguardian.com/society/2020/may/31/prison-release-schemes-close-to-impossible-to-deliver-says-watchdog-coronavirus> See further England and Wales Report, Part 17

⁴⁰⁸ <https://www.bbc.com/news/uk-52334848>. See further England & Wales Report, Part 17.



after the release decision, and then on a monthly basis after that.⁴⁰⁹

Further, Florida (US) reported an incident in April 2020 involving an alleged murder committed by a detainee on early release pending resolution of a low-level, nonviolent drug offence.⁴¹⁰ The prisoner was eligible for release under the terms of the scheme but, in the wake of that incident, officials conceded to significant pressure to limit the number of individuals released through the scheme.⁴¹¹

ADMINISTRATIVELY BURDENSOME AND RESTRICTIVE RELEASE CRITERIA

A few of the schemes were criticized by prisoner advocates as being administratively burdensome, which delayed and complicated prisoner releases, as well as applying too restrictive criteria that limited the accessibility of releases.

For example, the Pennsylvanian (US) temporary reprieve scheme was criticized as being slow and not releasing enough vulnerable prisoners. The initial list of eligibility criteria limited the program to 1,248 prisoners (approximately 4% of the state's prison population); however, after a second review by the Department of Corrections, the list of eligible prisoners decreased

to only 2% of the population. Of that small pool, eligible prisoners reported they waited weeks for any updates on their case. This included prisoners waiting for a meeting with the Pennsylvania Parole Board (a necessary step in the release process), and prisoners who had been approved but were still awaiting release. Other prisoners expressed no knowledge at all of their eligibility for release.⁴¹²

The scheme was also criticized as having overly broad and cumbersome exclusions, including excluding prisoners convicted of "victimless" crimes. The eligibility criteria also failed to include prisoners who had breached parole on technical violations such as drinking or leaving home while on supervision.⁴¹³

Similarly, the Louisiana (US) release program set up by Department of Corrections to consider up to 1,100 prisoners for temporary release was criticized as not releasing enough prisoners. By the time the Department's review panel was suspended in June 2020, less than 600 cases had been reviewed and only 63 prisoners released on medical grounds.⁴¹⁴

Finally, England's End of Custody Temporary Release scheme was criticized as being too complex. After conducting a review, the Independent Advisory Panel on Deaths in Custody described England's scheme as "difficult to understand difficult to explain and almost impossible to implement." The Panel recommended that the program be streamlined and accelerated to facilitate protective measures in facilities and release more prisoners.⁴¹⁵

LOW RECIDIVISM RATES

Despite the criticisms identified above, early anecdotal evidence suggests that recidivism rates for released prisoners have remained relatively low. This is a strong indicator of success in release programs and one that governments readily focus on when considering the longer term application of such schemes.

Jurisdictions in the study which reported low recidivism rates after prisoner releases included:

- Indonesia reported that 106 prisoners reoffended out of approximately 38,000 who were released.⁴¹⁶ While it is unknown whether the Indonesian

⁴⁰⁹ <https://www.nytimes.com/2020/05/13/world/europe/coronavirus-italy-mafia.html> See further Italy Report, Part 4.

⁴¹⁰ <https://www.nytimes.com/2020/04/15/us/florida-inmate-coronavirus-murder.html> [<http://archive.is/sjATD>]. See further Florida Report, Part 3.

⁴¹¹ <https://www.nytimes.com/2020/04/15/us/florida-inmate-coronavirus-murder.html> [<http://archive.is/sjATD>]. See further Florida Report, Part 3.

⁴¹² <https://www.post-gazette.com/news/crime-courts/2020/06/11/Why-Gov-Tom-Wolf-s-big-effort-to-grant-coronavirus-reprieves-to-Pa-inmates-came-up-small/stories/202006110137> See further Pennsylvania Report, Part 17.

⁴¹³ <https://www.post-gazette.com/news/crime-courts/2020/06/11/Why-Gov-Tom-Wolf-s-big-effort-to-grant-coronavirus-reprieves-to-Pa-inmates-came-up-small/stories/202006110137> See further Pennsylvania Report, Part 17.

⁴¹⁴ <https://www.prisonpolicy.org/virus/virusresponse.html#state> See further Louisiana Report, Part 3.

⁴¹⁵ <https://www.theguardian.com/society/2020/may/31/prison-release-schemes-close-to-impossible-to-deliver-says-watchdog-coronavirus> See further England and Wales Report, Part 17

⁴¹⁶ www.thejakartapost.com/news/2020/05/13/covid-19-over-100-early-released-prisoners-have-reoffended-police-say.html See further Indonesia Report, Part 17.

government will continue its assimilation and integration release programs post-COVID-19, the government hailed such decongestion programs as a triumph given the low recidivism rates.⁴¹⁷

- In South Africa, only 7 of the 6,791 prisoners who were released on parole breached their parole conditions and were rearrested. This represented 0.1% of the total number of parolees released in response to COVID-19. The majority of the parolees who were rearrested arose out of alleged theft matters.⁴¹⁸
- In Minnesota (US), Hennepin County Chief Public Defender highlighted that there had not been a significant new crime wave after the drastic reduction

in the prison population in the county and for this reason, the release program was considered a success.⁴¹⁹

- In Belgium, local Magistrates reported that if there had been any offences committed by prisoners released under the country's COVID-19 measures, those breaches had been very minor.⁴²⁰
- In France, the Justice Minister praised the success of its COVID-19 release program where certain prisoners who had committed delicts were released early and allowed to serve the remainder of their sentence at home. Save for a few exceptions, the Justice Minister confirmed the prisoners who were released did not commit further offences

requiring reincarceration and accordingly, the program would continue after the public health crisis.⁴²¹

- The one outlier was New York (US), which reported relatively high rates of re-offending. Of the 1,100 prisoners released from Rikers Island prison, 250 were re-arrested (sometimes as many as 2 or 3 times). This raised criticism that the release program implemented by Mayor de Blasio was failing due to such high recidivism rates.⁴²² Nevertheless, the recidivism rate from Rikers prison was still much less than the 53% recidivism rate recorded in New York between 2001 and 2008.⁴²³

⁴¹⁷ www.thejakartapost.com/news/2020/05/13/covid-19-over-100-early-released-prisoners-have-reoffended-police-say.html See further Indonesia Report, Part 17.

⁴¹⁸ <https://www.news24.com/news24/southafrica/news/covid-19-parole-seven-of-the-6-791-inmates-released-have-reoffended-been-arrested-20200717>. See further South Africa Report, Part 17.

⁴¹⁹ <https://spokesman-recorder.com/2020/04/22/hennepin-county-jail-population-cut-by-44-in-light-of-covid-19/> See further Minnesota Report, Part 17.

⁴²⁰ <https://www.lecho.be/economie-politique/belgique/general/les-detenus-en-conge-covid-rentrent-en-prison-ce-mercredi/10233630.html?fbclid=IwARQVfBpl82hRA9SoaETtO-HaEYoEDLnG52H8qRFoUuHRrM5Xq5viSaBMZ38>. See further Belgium Report, Part 17.

⁴²¹ Compte rendu Commission des lois constitutionnelles, de la législation et de l'administration générale de la République, Audition, en visioconférence, de Mme Nicole Belloubet, garde des Sceaux, ministre de la Justice, 14 May 2020, p. 3, www.assemblee-nationale.fr/dyn/15/comptes-rendus/cion_lois/115cion_lois1920062_compte-rendu. See further France Report, Part 16.

⁴²² Eddy Rodriguez, NYC Prisoners Released Early Due to COVID-19 Concerns Were Re-Arrested, Police Say, Newsweek (June 13, 2020), <https://www.newsweek.com/nyc-prisoners-released-early-due-covid-19-concerns-have-been-re-arrested-police-say-1510697>. See further New York Report, Part 17

⁴²³ <https://www.pix11.com/news/coronavirus/mayor-sees-recidivism-among-released-inmates-during-covid-19-pandemic> See further New York Report, Part 17

Part 3 – Conclusion

Conclusion

Addressing prison overcrowding is challenging and requires significant political will and a coordinated response from a broad range of actors including the legislature, judiciary, police, prosecutors, court administration and oversight bodies, as well as society at large.⁴²⁴ It cannot be solved overnight. However, great progress can be made where there is strong leadership from governments, motivated by competing social and economic factors.

Programs where prisoners are permanently released can be a highly effective strategy to decongest prisons provided they are implemented in a structured, transparent and ordered manner, applying appropriate eligibility criteria that focus on non-violent and low-level offending prisoners (both convicted and pre-trial) as well as vulnerable prisoners including children, women, the elderly and those with chronic health issues. Release schemes can be appropriately designed to focus on the rehabilitation of prisoners while balancing the safety of the community and ensuring public confidence. They should also involve

intensive, coordinated and effective support to assist prisoners with reintegration after release.

In addition to releasing prisoners, a core component of an effective decongestion strategy is limiting prison admissions. Governments must ensure pre-trial detention is only used as a measure of last resort and review their arrest and prosecution policies to reduce the number of prisoners being newly admitted to detention facilities. Alternatives to full-time custodial sentencing should be introduced for most non-violent offences. Prison terms should be capped for the majority of prisoners to reduce the overall numbers of elderly and persons in situations of vulnerability in custody, as these prisoners face significantly higher risks of contagion, and have a prevalence of chronic diseases which translates into an increase in costs, slowing down the response that the prison system should have to face the pandemic .

The COVID-19 pandemic has demonstrated that governments, when willing, can effectively and swiftly implement prisoner release programs to decongest prisons.

Most countries already have non-custodial alternatives and early release measures in place or, if not, such measures can be developed through new laws and policies. Where governments have facilitated prisoner releases in response to COVID-19, the rates of recidivism have been low and, despite a few initial challenges, the schemes have generally been considered a success. Collectively, the 53 jurisdictions in this report released more than 475,000 convicted prisoners and pre-trial detainees between March and July 2020. Reduction in prisoner populations will also result in savings which may be invested in rehabilitation and reintegration programs and in the public health response to the pandemic.

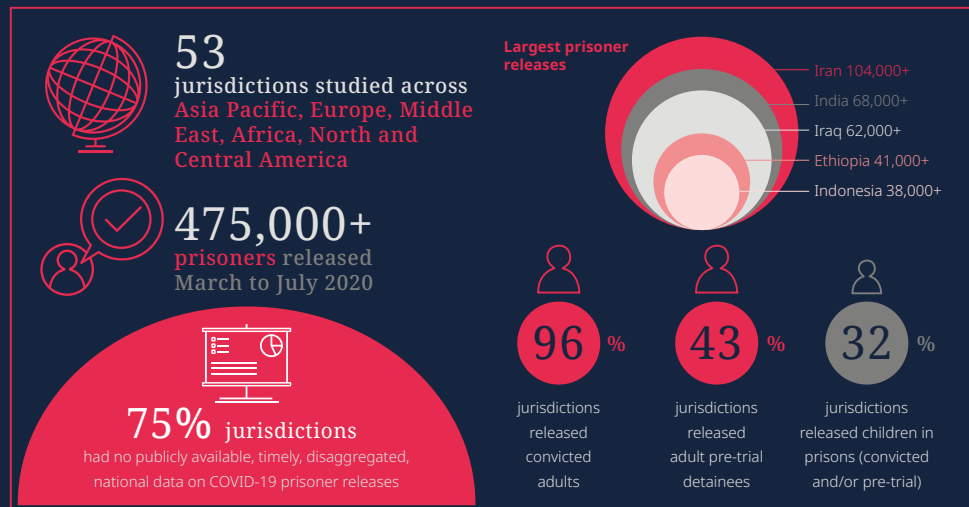
As countries experience repeated waves of COVID-19 infections, decongesting prison systems remains as important as ever. Governments have an opportunity to make significant progress on prison and criminal justice reform and to introduce effective prisoner release programs as a core longer-term strategy to reduce prison overcrowding well beyond the pandemic.

⁴²⁴ Pg iv and 1, Handbook on Strategies to Reduce Overcrowding in Prisons, UNODC, 2013

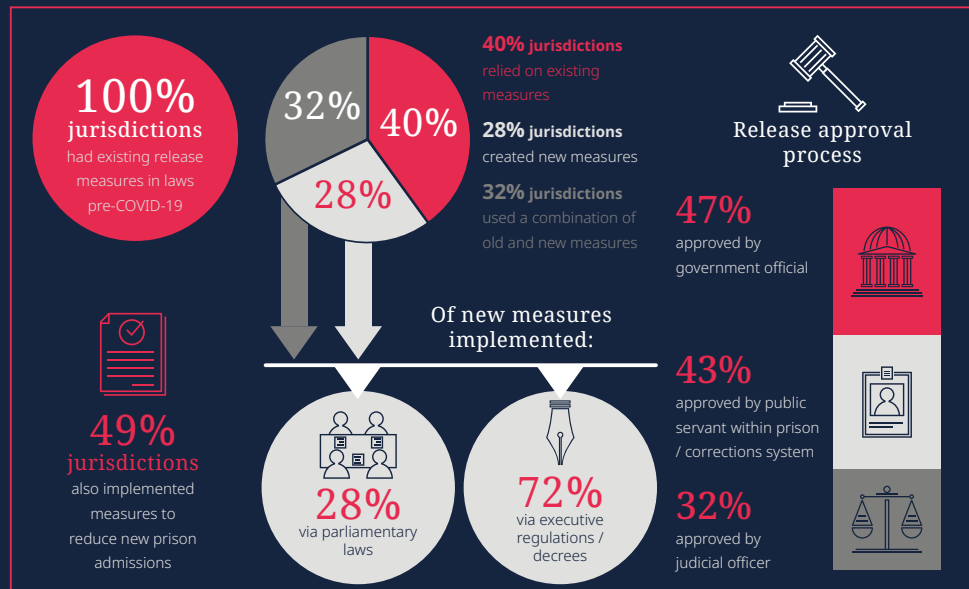
Annexure A – Infographic summary of key findings

Global Analysis of COVID-19 Prisoner Releases

TOTAL PRISONER RELEASES ACROSS JURISDICTIONS



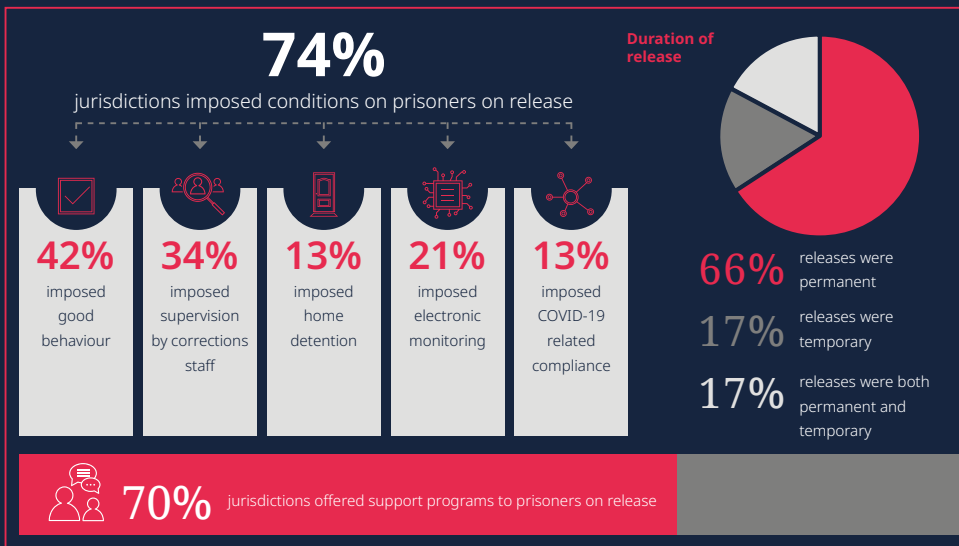
PRISONER RELEASE MEASURES USED BY JURISDICTIONS



CRITERIA USED BY JURISDICTIONS TO GRANT PRISONER RELEASES



RELEASE CONDITIONS IMPOSED BY JURISDICTIONS



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Annexure B – Research Questionnaire

1. Prisoner population pre-COVID-19

Please provide an overview of the prison landscape in the jurisdiction. For example, set out the number of prisons in the jurisdiction, total prisoner numbers pre-COVID-19 and the level of overcrowding in prisons. Where available, please provide a breakdown of those prisoners who have been convicted and those on remand. Please also provide statistics on the number of juvenile prisoners (both convicted and on remand).

2. Use of alternative sentencing measures pre-COVID-19

Please provide an overview of the alternative sentencing measures to full-time custody (ie imprisonment) available in the jurisdiction. For example, set out any available information in relation to measures around periodic detention, mandatory anger management/ drug/alcohol courses, bootcamps, reporting obligations, parole/probation conditions, good behavior bonds, electronic monitoring, home detention etc, and the uptake of these measures. Please consider alternative sentencing measures for both adults and juveniles.

3. Prisoner population after COVID-19 measures

Please describe the change in prisoner population after COVID-19 measures. Please set out the total number/percentage of prisoners that have been released. If you have the breakdown by of the data by different categories including those convicted and remandees, please also include the data.

4. Use of alternative sentencing measures after COVID-19

Please describe any changes in the availability or uptake of alternative sentencing measures in the jurisdiction following COVID-19 measures. If you have the breakdown by of the data by different categories including those convicted and remandees, by measures, etc please also include the data. Please consider alternative sentencing measures for both adults and juveniles.

5. Legal basis of release and decision-making authority

Please set out the legislative/ executive/administrative basis on which the prisoners are released. For example, did Parliament approve a new law? Did the president issue a presidential pardon? Did the government declare an amnesty? Was a form of executive order or decree issued by a local prison authority or local government? Was an order made by the Judiciary or Judicial Commission?

In the context of explaining the basis for the release of prisoners, please also state the decision-making body who authorizes the release. This might be the president, Parliament, Ministry of Justice, individual prison wardens/ corrections staff, judge etc.

6. Prisoners released according to the type of offence

Please describe the categories of prisoners who have been released according to the nature of the offence they have been convicted of. For example, prisoners may have been released where they have been convicted of non-violent crimes (eg

drug offences, petty theft, traffic etc), low level offences (eg misdemeanors, third degree felonies, summary offences), technical violations of parole/probation orders, prisoners who are unable to post cash bail etc.

Please also list all categories of prisoners who are excluded from release according to the type of the offence they committed. For example, prisoners who committed rape and another sexual assaults, offences against children, family violence or serious violence including murder and manslaughter, political offences, drug related offences, national security offences/war crimes, fraud/ corruption etc.

7. Prisoners released according to nature or status of sentence

Please describe the categories of prisoners who have been released according to the nature or status of the sentence they received. For example, prisoners who are close to commencing parole/probation, prisoners close to the end of their sentence, prisoners who have already served a majority of their sentence, prisoners with a total sentence less than a fixed number of years, prisoners who are on work sentences/ in open prisons, prisoners who are on weekend release sentences.

8. Prisoners released according to their vulnerability

Please describe the categories of prisoners who have been released according to a particular vulnerability/personal characteristics. For example, prisoners who have poor health/chronic illness, are pregnant, are nursing/breastfeeding,

are mothers of young children, are elderly/over a certain age, particular ethnicity etc. Please highlight if a prisoner is required to possess two or more vulnerabilities in combination.

9. Any other criteria relevant to prisoners' release

Please describe any other requirements that were required for a prisoner to be released. For example, did the prisoner need to demonstrate they had a place to live on release, financial support, family support etc.

10. Pre-trial detainees and criteria for release

Please describe the categories of pre-trial detainees who have been released. This may be a blanket release of all pre-trial detainees or they could be released according to the nature of the offence they are charged with or some other characteristic.

11. Temporary or permanent release of prisoners

Please describe whether prisoners are released permanently (ie the prisoners will not return to custody) or released temporarily (ie the prisoners will return to custody after the COVID-19 measures cease). If the release is temporary, please specify the period of the release.

Please specify whether the approach is different for prisoners who have been convicted vs pre-trial detainees.

12. Conditions attached to release

Please describe any conditions/ measures attached to the release of the prisoner. This may include

bail, reporting obligations, parole/ probation conditions, good behavior, electronic monitoring, home detention etc. Please specify any time periods for the conditions. Please also specify whether the measures differ for prisoners who have been convicted vs pre-trial detainees.

13. Administrative process for release

Please describe the administrative process required for release (if any). For example, was there a court application or similar judicial hearing required to approve the release or was there a decision made by the prison warden officials to grant the prisoner release where eligible? Is it the responsibility of individual prisoners to request/apply for release or was it an automated process?

Please also specify whether there were any COVID-19 quarantine measures placed on the prisoner on release.

14. Support measures available to prisoners on release

Please describe all support services provided by the government to prisoners on their release to assist them with re-integration eg support with healthcare, housing, employment, social support, counselling. Please specify whether these were existing services or new services put in place following the COVID 19 release measures. Please include both services provided and run by the government, as well as those services funded by the government but run by NGOs. Please also specify if the support programs are different for prisoners who have been convicted vs pre-trial detainees.

15. Release of children in prisons and detention centers

Please set out any specific measures to release children in conflict with the law where they have been convicted or are on remand in either adult prisons or youth detention centers.

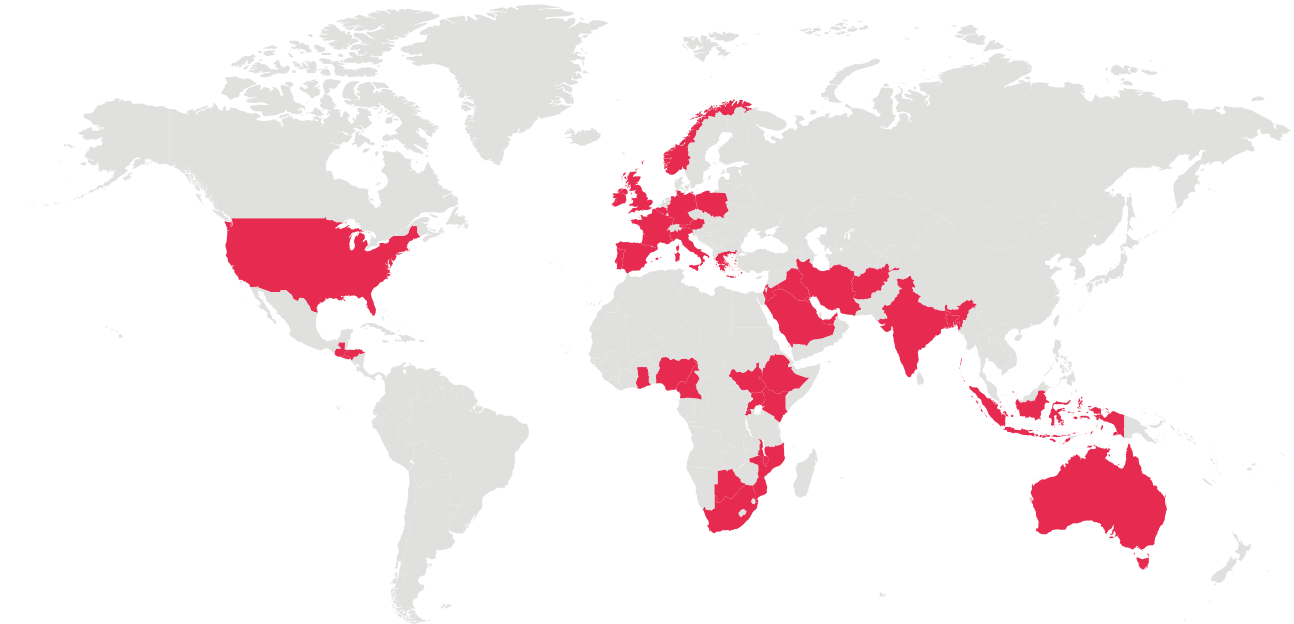
Please include the criteria for determining which children are eligible for release, the nature of the offence committed, whether the release is temporary or permanent, conditions attached to release, the administrative process for releasing the child, and whether any special support services are available to children on release.

16. Mechanisms to reduce new prison admissions

Please describe all mechanisms used to reduce new prison admissions. For example, ceasing enforcement of certain sentences, increased use of bail of certain types of offences, waiving/lifting of warrants for violations for bail/parole/probation/ community service violations, suspension of prosecutions for certain types of crimes, postponement of custody sentences, increased use of citations and release/charge sheets/ summons, reduction in arrests by police, judicial discretion etc.

Please describe the time period during which these measures are in place.

Annexure C – Jurisdictions included in study



Asia Pacific

New South Wales
Australia
Bangladesh
India
Indonesia

Europe

Austria
Belgium
England and Wales
France
Germany
Greece
Ireland
Italy
Norway
Poland
Portugal
Scotland
Spain

Middle East

Bahrain
Iran
Iraq
Jordan
Kuwait
Lebanon
Saudi Arabia
United Arab Emirates

Africa

Botswana
Cameroon
Ethiopia
Ghana
Kenya
Malawi
Mozambique
Nigeria
Rwanda
South Africa
South Sudan
Uganda

North America

Alabama, US
California, US
Colorado, US
Florida, US
Louisiana, US
Maryland, US
Minnesota, US
Nevada, US
New York, US
Oklahoma, US
Ohio, US
Pennsylvania, US
Texas, US
Utah, US
Washington, US

Central America

El Salvador
Guatemala
Honduras

