

Good governance for prisons

**Putting good governance into action during and beyond
the COVID-19 pandemic**



A framework for prison systems

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Introduction

In April 2020, a public affairs and communication officer at the Kenyan judiciary noted that:¹

“On Coronavirus, there’s no pointing fingers among the justice sector players and a common purpose is being achieved. Suppose cases could be tackled with the same unity of purpose? Case backlog in the court system is largely occasioned by lack of cooperation among the justice sector players. If the [Director of Public Prosecutions](DPP), the [Directorate of Criminal Investigations](DCI), the Law Society of Kenya, the Prisons Services, the Executive, and Human Rights Organizations will only pull together as they were forced to do to combat the coronavirus, the justice system will run smoothly. It will be in the interest of Wanjiku [the public] to see the collaboration exhibited by the justice sector players [...] go beyond the efforts to combat coronavirus and be replicated in every effort to deliver justice to Kenyans. If they do so there will be no case backlog, congested police cells, remands and prisons, disobedience of court orders and most importantly, there will be no miscarriage of justice.”

In the early days of the COVID-19 pandemic many countries saw enhanced cooperation and coordination between justice sector actors in an effort to control the spread of COVID-19 in prisons and maintain the core functions of justice systems where possible. While there are many lessons still to be learned on what worked well and what could have been done better, it is clear that the timely and effective collaboration demonstrated between different stakeholders in many countries should – and can – be possible beyond the short-term COVID-19 response and can provide important lessons for longer-term systematic reform.

The COVID-19 response has undoubtedly had a negative impact on prison reform initiatives around the world. The restrictions put in place to respond to the pandemic have also severely and disproportionately impacted prison populations in their access to basic goods, services, and protection of their basic human rights. The pandemic has also had a major impact on the working conditions and well-being of prison staff and exacted a heavy toll on the mental and physical health of both detainees and staff.

Conversely, it is clear that in some instances COVID-19 necessitated, facilitated and accelerated justice sector reform that might otherwise have never happened or taken years to be realised. Such reform is apparent in justice sector good governance more broadly, as explored in more detail in this guide. If sustained throughout and beyond the COVID-19 pandemic, such changes in governance can allow prisons not only to prepare and respond better to future pandemics and other emergency situations, but also to function more effectively on a daily basis, including in relation to protecting the human rights, health and well-being of people in prison, and the working conditions for staff.

The full picture of the impact of COVID-19 and the resultant justice sector response is yet to emerge. In particular, there is still limited research taking into account the first-hand experiences and views of people in prison, their families and staff members. Other implications, yet to become fully apparent, include the longer-term financial impact of the pandemic on the justice sector, accountability for measures taken and the extent to which corruption affected the response. Similarly, whilst measures to reduce prison populations in response to COVID-19 are to be welcomed, more research is needed to determine how early release schemes and alternatives to imprisonment were implemented in practice, their sustainability, and to understand the lived experiences of such measures.²

As in all sectors of society globally, the COVID-19 pandemic laid bare and exacerbated pre-existing problems and weaknesses within the justice sector. Within prisons specifically these included overcrowding, under-resourcing, inadequate health care and poor communication and coordination between relevant agencies. However, the pandemic also presented an opportunity, recognised in many sectors, to build forward better and find new, more progressive ways of working. The pandemic presented challenges born of necessity that could only be dealt with effectively through collective action, built on trust and inclusiveness. The justice sector, often characterised as slow and overly bureaucratic, was now required to act fast, demonstrate flexibility and innovation in response to the pace of the COVID-19 threat. In some cases, it was able to do so effectively and efficiently.

1. ‘Collaboration in justice sector should go beyond combating COVID – 19’, *Kenyan judiciary*, 15 March 2021, [judiciary.go.ke/collaboration-in-justice-sector-should-go-beyond-combating-covid-19](https://www.judiciary.go.ke/collaboration-in-justice-sector-should-go-beyond-combating-covid-19).

2. Penal Reform International, *10-point plan on crisis-ready non-custodial sanctions and measures*, January 2022.

“

The questions faced now by prison systems (and wider justice systems) worldwide is not only how best to restore operations and recoup losses amid an ongoing crisis, but also how to harness progress made in the way the sector functions, ensuring that reform is sustainable in the long term.

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The questions faced now by prison systems (and wider justice systems) worldwide is not only how best to restore operations and recoup losses amid an ongoing crisis, but also how to harness progress made in the way the sector functions, ensuring that reform is sustainable in the long term. The choices have the potential to transform prison management approaches, but these will require a political commitment to reform, moving beyond the immediate imperative of COVID-19 to a more planned, strategic, and formalised approach. The key principles of good governance and lessons learned from COVID-19 included in this guide will help to inform such initiatives moving forward.

This guide is based on research into the COVID-19 justice response around the world, including a particular focus on the responses in Kenya and Kazakhstan. The analysis examines the elements of justice system governance which enabled the sector to react quickly and effectively to the COVID-19 pandemic in prisons as well as the factors which inhibited timely, relevant responses. In doing so, it aims to inform better governance in any future crisis situations, as well as the direction of penal reform more broadly. Different stakeholders and decision makers can act swiftly and work together effectively when needed, without a lengthy overhaul of existing systems and processes.

While the guide deals specifically with prisons, it also considers broader criminal justice decisions which impacted prisons, such as the functioning of court and probation systems, including in relation to the use of alternatives to imprisonment.

The justice sector and principles of good governance

‘Simply put “governance” means: the process of decision-making and the process by which decisions are implemented (or not implemented).’³

There is no universally agreed definition of what constitutes good governance and there have been many attempts to define what its key features should be. The Office of the UN High Commissioner for Human Rights (OHCHR) has noted that [f]rom a human rights perspective [governance] refers primarily to the process whereby public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights’ noting that good governance and human rights are mutually reinforcing.⁴

Furthermore, the UN stipulates that good governance ensures ‘that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society’.

International human rights standards relating to detention are grounded in good governance principles, including the principle of non-discrimination, and it is clear that prison systems which follow a human rights approach to prison management also demonstrate good governance. In turn, good governance facilitates a human rights compliant approach, including in times of crisis. Among others, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) emphasise good governance approaches throughout, including the need for clear policies and regulations, procedures for accountability and good communication and coordination.⁵

Good governance is the cornerstone of effective prison management and a well-functioning justice system, and this sector should be subject to the same standards of accountability and effectiveness as other public sector agencies. In turn, the justice sector plays a crucial role in upholding principles of good governance by upholding the rule of law and holding the state and its representatives to account before the law. It can be measured by eight factors:⁶

- 1. Participation**
- 2. Rule of law**
- 3. Transparency**
- 4. Responsiveness**
- 5. Consensus oriented**
- 6. Equity and inclusiveness**
- 7. Effectiveness and efficiency**
- 8. Accountability**

This guide is organised according to these key principles as they relate to governance within prison systems or within justice systems more broadly when it impacts prisons. The guide provides examples of how the principles have been specifically and successfully applied in response to the COVID-19 pandemic and how they might continue to be applied more effectively towards longer-term and sustainable reform.

3. United Nations Economic and Social Commission for Asia and the Pacific, *What is good governance?*, www.unescap.org/sites/default/files/good-governance.pdf [accessed on 21 January 2022], p.1.

4. ‘What is good governance?’, *United Nations High Commissioner for Human Rights*, www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AboutGoodGovernance.aspx [accessed on 21 January 2022].

5. The full text of each set of rules are available in multiple languages at www.penalreform.org.

6. See note 3, pp.1-3.

A framework for good governance in prison systems



PRINCIPLE 1

Participation

“Prisoner involvement in prison governance can be about creating community, about prisoners having sound and practical ideas to improve life in prison, about proposing these ideas and working hard to implement them. Prisoner involvement can enhance prison regimes by reducing the dependency of dependent prisoners, the alienation of alienated ones, and the ambivalence to authority of most others.”⁷

Participation by both men and women is a key cornerstone of good governance. Effective democracy depends on participation, citizens having a say, but also being heard. In society more generally citizen participation means the right to vote, freedom of assembly and association, freedom of expression and an organised civil society that can represent citizens’ views. For people in detention these rights are sometimes curtailed by virtue of their imprisonment, but this does not take away their right to participate as citizens.

Promoting active citizenship among people in prison ‘is the action of engaging with issues, ideas, people and communities. It has the potential to be an extremely powerful force for good in prisons. Engagement during a sentence can help people prepare to re-enter society, contribute, participate and belong.’⁸ Participation involves building networks, airing opinions, listening to others, and finding compromises – all skills needed for social co-operation. Without the opportunity to participate, it can be extremely difficult for individuals to reintegrate when they are released from prison.

Activities encouraging the participation of people in prison have produced positive results for prison communities and individuals. A 2018 survey of existing active citizenship practice in European prisons found that, where these activities existed, 49 per cent of respondents answered that people in prison improved their team-work skills, with the other top changes

relating to changes in prison itself: implementing detainees’ suggestions and ideas (47.8 per cent), better atmosphere in prison (44.8 per cent), better relations between prison population and staff (43.3 per cent), and less conflicts between detainees (35.8 per cent).⁹

Participation of detained persons can take many forms, including peer support and peer education programmes, forums and consultative councils, detainee organised and led activities, and opinion gathering exercises such as questionnaires and surveys. The level of participation ranges from individuals being informed, consulted, acting as advisors, co-decision makers and, ultimately as initiators and decision makers themselves. Participation means that people in prison are not only involved in matters relating to life in prison¹⁰, but can also be actively involved in public life and matters or decisions affecting their communities.

Successful participatory approaches must also seek to appropriately involve different groups of people in prison and to tackle any challenges they might face in participating. This could include women, people in pre-trial detention, people who use drugs, those with physical or mental health problems, children, foreign nationals, and others who do not speak the majority language of the facility. The Bangkok Rules state that particular efforts should be made to provide childcare facilities or arrangements to ensure that women with children in prison are able to participate in prison activities.¹¹

7. ‘Inmate involvement in prison governance’, US Department of Justice, Office of Justice Programs, 1995, www.ojp.gov/ncjrs/virtual-library/abstracts/inmate-involvement-prison-governance.

8. ‘Active citizenship in prisons’, Prisoners’ Education Trust, www.prisonerseducation.org.uk/what-we-do/policy/active-citizenship-in-prisons [accessed on 21 January 2022].

9. Dorien Brosens, Flore Croux and Liesbeth De Donder, *Prisoners active citizenship: An insight in European prisons*, Participation and Learning in Detention Research Group, 2018, p.28.

10. Council of Europe, European Prison Rules, Appendix to Rec(2006)2. Article 50 states: ‘Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters’.

11. United Nations, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, Rule 42 (2), December 2010.

The CLEAR citizen participation framework

The CLEAR citizen participation framework is a diagnostic tool¹² designed to help local governments and other organisations to better understand public participation at the local level. This tool can be useful to prison administrations in identifying strengths and problems with participation in order to develop policy responses for enhancing stakeholder participation as part of their good governance framework.

The CLEAR framework sets out five key factors affecting citizen participation, noting that participation is most successful where citizens:

Can do

Citizens have the resources, skills and knowledge to participate.

Like to

They have a sense of attachment that reinforces participation.

Enabled to

They are provided with the opportunity for participation.

Asked to

They are involved by official bodies or voluntary groups.

Responded to

They see evidence that their views have been considered.

The COVID-19 pandemic necessitates participation of the prison population and prison staff, as the pandemic can only be effectively tackled with the cooperation of all, especially in terms of following public health guidance. The most obvious, pragmatic and widely used form of participation was to engage people in prison in the production of facemasks, other personal protective equipment (PPE) and hygiene supplies. This was a common approach in many countries, enabling people in prison to help contain the spread of the virus within the prison itself and to support broader community efforts. In some countries, this led to concerns around forced labour and poor working conditions,¹³ but in many cases these initiatives were beneficial to those in prisons and communities and welcomed by both. Participation and engagement of people in prison must not, however, derogate from the responsibility of the State to provide for the health and well-being of people deprived of their liberty.

In **Kazakhstan**, people in prison usually employed in the production of building materials, metal structures, wood and plastic products and food processing were engaged in the production of reusable masks, protective suits, screens and disinfection corridors at the production facilities. This served the dual purpose of tackling the acute shortage of PPE in the country, whilst also providing people in prison with purposeful work whilst other activities were reduced or suspended. During 2020, people in prison were involved in producing 1.8 million masks, 23,000 protective suits, 3,300 protective screens and 73 disinfection tunnels.¹⁴

Of significant note is the success of COVID-19 peer support and peer education programmes in prisons. This was particularly evident in countries with pre-existing peer support programmes which could quickly be adapted to the context of COVID-19. In Italy, for example, prisoners' committees in each prison helped to disseminate health information, resulting in noted behavioural change.¹⁵

In **Ireland**, a well-established programme where people in prison work as Red Cross volunteers within prisons (Community Based Health and First Aid – CBHFA), first introduced in 2009, has been described as bringing about 'a radical transformation in the management of health related and infection control measures in prisons and has been pivotal to the successful management of COVID-19 in Irish prisons.'¹⁶ As part of the programme, a COVID-19 information video was produced by detainee volunteers based on the most commonly asked questions from their peers to encourage vaccine uptake among the prison population. Following some initial apprehension, by mid-August 2021, all of the prison population (3,822 people) had been offered vaccination, with uptake of about 84 per cent.¹⁷

The CBHFA programme has long demonstrated that people in prison are more likely to take information and advice seriously when delivered by their peers. The peer education and support provided usually ranges from violence-prevention programmes to drug overdose prevention and cancer awareness. Because this network of volunteers was already well established, they were able to learn about COVID-19 infection prevention and control measures and use this knowledge to educate others before the virus began to spread within the prison system. Volunteers have also continued to provide mental health support to their peers throughout the pandemic.¹⁸

12. European Committee on Local and Regional Democracy (CDLR), *C.L.E.A.R tool*, 28 November 2008.

13. See, for example, 'Vulnerable prisoners 'exploited' to make coronavirus masks and hand gel', *The Guardian*, 12 March 2020, www.theguardian.com/global-development/2020/mar/12/vulnerable-prisoners-exploited-to-make-coronavirus-masks-and-hand-gel.

14. Penal Reform International at al., *The Penitentiary System in the New Reality: Report of online forum proceedings in Kazakhstan*, July 2021, p. 89.

15. 'Experience of health professionals, police staff and prisoners in Italy informs WHO COVID-19 guidelines for prisons', World Health Organization Regional Office for Europe, 28 May 2020, www.euro.who.int/en/countries/italy/news/news/2020/5/experience-of-health-professionals-police-staff-and-prisoners-in-italy-informs-who-covid-19-guidelines-for-prisons.

16. 'COVID-19 info video encourages vaccination among prison population', *Irish Red Cross*, www.redcross.ie/covid-19-response/covid-19-info-video-encourages-vaccination-among-prison-population, [accessed on 21 January 2022].

17. Harm Reduction International and Penal Reform International, *COVID-19 vaccinations for prison populations and staff: Report on global scan*, December 2021, p.30.

18. 'CBHFA response to COVID-19', *Irish Red Cross*, www.redcross.ie/national-news/irish-red-cross-responds-to-covid19 [accessed on 21 January 2022].

The speed of the response necessitated by the first wave of COVID-19 will have prevented widespread consultation prior to implementation of measures. Since then, the challenges of conducting research during COVID-19 notwithstanding, prison administrations and other stakeholders have had opportunity to seek the feedback of those directly impacted by COVID-19 restrictive measures and take their experiences and views into consideration for ongoing COVID-19 preventive efforts. The ongoing role of monitoring bodies and existing complaints mechanisms are key to gathering such feedback, but additional efforts can be made to seek feedback on the COVID-19 response specifically. National efforts to analyse trends within existing complaints mechanisms are also to be welcomed.

In **Afghanistan**, a rapid knowledge, attitude and practice assessment of COVID-19 was conducted by NGOs in Kunduz provincial prison early in the pandemic, in April 2020. Interviews were conducted with 15 men and 10 women held in the prison to understand how both pre-trial and convicted persons were impacted by COVID-19 and to assess their understanding of the information provided, safety measures in place, their fears and concerns as well as the impact on their mental health status. This study allowed for an early assessment of detainee trust in COVID-19 information sources, risk perceptions and adherence to COVID-19 restrictions.¹⁹

In **Scotland**, research designed to analyse the views of people in prison about the management of the COVID-19 pandemic within the Scottish Prison Estate used a correspondence participatory action methodology, in lieu of face-to-face interviews, to gather the views of eight research participants about their COVID-19 experiences. The research was designed to consider the extent to which views from people in prison – those at the bottom of the hierarchies of power within prison settings – are able to influence the director of prison policy around the management of COVID-19 and future pandemics.²⁰

Participation as a good governance principle within justice systems should also involve prison staff, service providers, lawyers, the families of those detained and members of the community, including via consultations and feedback. Such initiatives will build trust and confidence in prison administrations and ultimately lead to better functioning prison systems. They can be organised by authorities themselves or by civil society groups.

In **Ireland**, the Irish Penal Reform Trust ran an open survey for people with a family member in prison during COVID-19 to document and understand the experiences of families affected by imprisonment during the COVID-19 pandemic and beyond.²¹ The Office of the Inspector of Prisons in Ireland developed a COVID-19 survey for Irish Prison Service staff to learn about their experiences of working through the pandemic. Issues covered in the survey included communications of COVID-19 policies, COVID-19 prevention measures in place and the quality of staff support available.²²

The Tokyo Rules rightly note that public participation in non-custodial sentencing should be encouraged as it is ‘a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community’, and an opportunity for members of the community to contribute to the protection of their society.²³

The sense of collective responsibility around COVID-19 has facilitated a level of participation amongst people in prison which might otherwise be challenging for prison administrations to achieve as part of formal training and rehabilitation programmes. Similarly, the pandemic and associated lockdowns have fostered a new level of community concern and engagement about the situation inside prisons and the working conditions of prison staff. There are important lessons to be learned from these experiences which could help harness participation in future crisis situations whilst also facilitating more active and sustained engagement of people in prison and others in daily prison life.

Recommendations

PRINCIPLE 1: PARTICIPATION

- **Facilitate the active participation of people in prison in matters affecting prison life.**
- **Encourage peer support and peer education programmes within prisons.**
- **Consider ways in which people in prison can be more involved in public life or decisions affecting their communities.**
- **Conduct consultations and gather feedback from different stakeholders on the way prisons are run, including how the COVID-19 pandemic has been handled.**
- **Consider how lessons learned during COVID-19 can be harnessed for future participatory approaches, including in relation to stakeholder participation and research methodologies.**

19. The Johanitter International Assistance, *Perception Study of Prisoners in Kunduz Provincial Prison*, 25 April 2020.

20. Matthew Maycock and Graeme Dickson, ‘Analysing the views of people in custody about the management of the COVID-19 pandemic in the Scottish Prison Estate’, *International Journal of Prison Health*, Volume 17, Issue 3, 27 January 2021, pp. 320-324.

21. ‘Survey: COVID-19 and Beyond – Families of Prisoners in Ireland’, *Irish Penal Reform Trust*, 22 June 2021, www.iprt.ie/latest-news/survey-covid-19-and-beyond-families-of-prisoners-in-ireland.

22. Office of the Inspector of Prisons, *Questionnaire to Conduct a COVID-19 Survey on Irish Prison Service Staff*, 30 April 2021.

23. United Nations, *United Nations Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, Rule 17, 14 December 1990.

PRINCIPLE 2

Rule of Law

As with the term good governance, the rule of law is a broad concept that has multiple interpretations and applications. In crisis situations the rule of law establishes the structures and processes needed to respond whilst also setting limits on measures taken by authorities. Protection of human rights is a core component of the rule of law, including specific considerations for gender, sociocultural, ethnic and religious concerns.

Infection prevention and control measures taken by prison authorities have, undoubtedly, violated the human rights of people in prison, including the minimum standards set out in the Nelson Mandela Rules and the Bangkok Rules. This has included the minimum requirements for an hour of exercise per day,²⁴ contact with the outside world,²⁵ and limitations on the use of solitary confinement.²⁶ These measures have also impacted the ability of prison authorities to deliver rehabilitative activities, one of the primary purposes of imprisonment.

According to the UN, 'the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.'²⁷

The requirements for good governance and rule of law compliance during public health emergencies include the principle of **legality and legal certainty** - measures should comply with the law and adhere to obligations under international law. The legitimate aim of protecting health and the positive duty to protect the right to life should therefore be balanced against the protection of human rights including, crucially, the absolute prohibition on torture and other-ill treatment. It is also important that measures taken to respond to crisis

situations are formalised. In Kazakhstan, for example, a new internal decree for prison staff was created, requiring them to properly inform detainees of their rights during the pandemic, such as the right to request video calls.

Another key principle of good governance in crisis response is that any measures taken should be **limited to the purpose of responding to the crisis itself**. Concerns have been raised throughout the COVID-19 pandemic that some governments have justified repressive measures on the grounds of preventing the spread of COVID-19 or associated unrest. In justice systems this could include the excessive and unlawful use of force in countering unrest,²⁸ the use of prolonged solitary confinement²⁹ and the imprisonment of government critics under the guise of COVID-19.³⁰

All measures taken should also be limited to what is strictly **necessary and proportionate**, that is limited to the extent strictly required by the exigencies of the situation, in duration, circumstances and scope.³¹ Where emergency restrictions are necessary in prisons, they should be **time-bound and subject to consistent and regular review**. This is important to ensure that all measures continue to be proportionate to the threat posed by COVID-19, last only as long as necessary to protect the health of people in prison, staff and the broader community, and limit the impact on the rights of people in prison and their physical and mental health and well-being.

Good practice in this area can include the avoidance of blanket country-wide measures unless absolutely necessary, including for example partial, rather than full suspension of family visits or reducing the frequency and duration of visits. This can be coupled with infection prevention and control measures and the adaptation of meeting spaces to make them more COVID safe. In some countries, including Austria and

24. United Nations, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, Rule 23 (1), 8 January 2016.

25. Nelson Mandela Rules, Rules 58-63, 119-120; Bangkok Rules, Rules 26-28.

26. Nelson Mandela Rules, Rules 38 (2), 44, 45; Bangkok Rules, Rule 22.

27. 'What is the Rule of Law', United Nations, www.un.org/ruleoflaw/what-is-the-rule-of-law [accessed on 21 January 2022].

28. See Penal Reform International, *Global Prison Trends 2021*, May 2021, pp. 34-35.

29. See Penal Reform International, *Coronavirus: Preventing harm and human rights violations in criminal justice systems*, July 2020.

30. See, for example 'Covid-19 Triggers Wave of Free Speech Abuse', Human Rights Watch, 11 February 2021, www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse.

31. See, for example Dr. Jean-Pierre Gauci, *Rule of Law and Good Governance Principles for National Responses to Public Health Emergencies*, March 2021.

Spain,³² visits from children for women in prison were prioritised and in others, such as Estonia,³³ some visits, including those from religious representatives, consular officials and lawyers were allowed to continue with testing, hygiene measures and the use of PPE in place. With better understanding of how COVID-19 is spread, any restrictions can also now be based on thorough risk assessments, taking into account the needs of the particular prison population and individual circumstances.

Good practice in the management of COVID-19 in prisons has also included **mitigating the adverse impact of infection prevention and control measures** on detainees and staff, including the disproportionate impact on specific groups. Such measures could include increased time in the open air to compensate for lack of organised activities, increased numbers of telephone and video calls to supplement reduced or restricted family visits, introducing online educational resources to supplement or in lieu of in-person classes and the provision on online or telephone psycho-social support services. The Kenyan NGO, Faraja Foundation for example established an e-counselling service offering psychosocial support to prisoners and prison staff as a support tool through the crisis.³⁴

The move to remote educational and support services, the introduction of mindfulness or relaxation activities and other innovations in mental health care is a significant area, developed during the COVID-19 pandemic, that has potential for longer term reform in prison mental health. These developments should never replace in-person care and services but should be considered as additional tools to tackle the mental health care crisis in prisons during COVID-19 and beyond, with consideration of ethical and confidentiality issues associated with new technologies.³⁵

COVID-19 restrictive measures significantly impacted **timely and effective access to justice**, a basic principle of the rule of law that must be ensured even in times of emergency. This included restrictions on access to lawyers and suspension of court hearings. Where these measures were in place, adjustments and mitigation measures were needed to limit the impact on the rights of people in prison. This included the introduction of audio-visual technology for remote court hearings and finding alternative ways for people in prison to access legal information and engage meaningfully with their

legal representatives. While presenting significant human rights challenges, these practices can also make justice systems more accessible and efficient, ultimately reducing prison populations. In these circumstances it is important that safeguards are in place to ensure the right to legal representation and a fair trial.³⁶

In **Kenya**, for example, the judiciary adopted a virtual court and a paperless court case management system in July 2020 in response to COVID-19. The system sought to ensure that courts could continue to function despite government restrictions on movement and gatherings whilst preventing the spread of COVID-19 within the justice system. This included bail hearings for pre-trial detainees. In Bangladesh, an ordinance of the Supreme Court Reform Committee facilitated expedited hearings through video conferencing facilities leading to the granting of bail to 49,750 adults and 608 children by juvenile courts by July 2020. It has been noted that, while the work of the virtual courts has been largely positive, they were not accessible to all in pre-trial detention, including the poorest members of the community, those living in remote areas and those with no access to legal aid.³⁷

The principle of **non-discrimination** is another key element of the rule of law which needs to be applied equally during times of crisis. As the Nelson Mandela Rules make clear, in order for the principle of non-discrimination to be put into practice, prison administrations should take account of the individual needs of people in prison.³⁸ The Bangkok Rules state that prison administrations should also take into account the distinctive needs of women in prison.³⁹ Crucially, this does not preclude the use of special measures to protect certain groups of people in prison in times of crisis, including in relation to priority access to vaccinations, early release mechanisms or positive measures to mitigate the impact of infection prevention and control measures. When measures taken as a response to COVID-19 or other emergency situations are not enforced fairly, there will be less trust and, correspondingly, less compliance.

As the UN Secretary General has noted, corruption is even more damaging in times of crisis, with COVID-19 'creating new opportunities to exploit weak oversight and inadequate transparency.'⁴⁰ Corruption also threatens public trust in, and the effectiveness of, response mechanisms. While the extent to which

32. EuroPris, *Prison Visits: EuroPris COVID-19 pandemic fact sheet*, 26 May 2020.

33. 'Estonian Prison Service: Prevention Measures in European Prisons against COVID-19', *EuroPris*, 9 November 2020, www.europris.org/estonian-prison-service-ee-covid19.

34. 'Coronavirus and women in detention: A gender-specific approach missing', Olivia Rope for *Penal Reform International*, 4 June 2020, www.penalreform.org/blog/coronavirus-and-women-in-detention-a-gender-specific.

35. See 'Impact of Covid-19 on mental health in prisons and probation', *Council of Europe*, 17 September 2021, www.coe.int/en/web/portal/-/impact-of-covid-19-on-mental-health-in-prisons-and-probation.

36. See, for example 'Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings', *Fair Trials*, 3 April 2020, www.fairtrials.org/news/safeguarding-right-fair-trial-during-coronavirus-pandemic-remote-criminal-justice-proceedings.

37. 'Over 33,000 prisoners get bail, jails free 29,692', *New Age*, 13 June 2020, www.newagebd.net/article/108298/over-33000-prisoners-get-bail-jails-free-29692.

38. Nelson Mandela Rules, Rule 2.

39. Bangkok Rules, Rule 1.

40. UNODC, *Statement on Corruption in the Context of COVID-19*, www.unodc.org/documents/Advocacy-Section/covid-19_corruption_EN.pdf [accessed on 21 January 2022].

corruption has played a part in justice system responses to COVID-19 is not known, it is clear that **anti-corruption** efforts – a cornerstone of good governance – must continue and should be augmented to address this heightened risk.

Good governance in prisons, including during emergencies, also requires **evidence-based decision making and international cooperation**. Measures taken should be based on verifiable evidence which is available and accessible to the public, and subject to expert scrutiny. Such measures will also contribute to public trust in the measures taken. As has been clear throughout the COVID-19 pandemic, it is also important to learn from international experience to best review and adapt responses based on developments and emerging scientific findings. This includes following guidance from international organisations such as the World Health Organization (WHO). The Tokyo Rules also specifically note the benefit of promoting scientific cooperation between countries in the field of non-custodial measures, including research, training, technical assistance and information exchange.⁴¹

Recommendations

PRINCIPLE 2: RULE OF LAW

- **Base measures taken in response to crisis situations on verifiable evidence and lessons learnt from local and international experience.**
- **Ensure that any changes to policy and practice are formalised in writing.**
- **Ensure that all measures taken are proportionate to the threat posed, last only as long as necessary and are subject to regular review.**
- **Put in place sufficient measures to mitigate against the adverse impact of restrictive measures.**
- **Take account of the individual needs of people in prison and apply all policies without discrimination.**

⁴¹. Tokyo Rules, Rule 23.

PRINCIPLE 3

Transparency

‘Transparency in decision making is linked with building broad confidence in government action which in turn offers a significant advantage in achieving higher levels of compliance. In many states with opaque decision-making and a lack of trust in government responses to the pandemic, we see higher rates of infection and a correlation with an increased risk of both outbreaks and political violence.’⁴²

Transparency in good governance requires that decisions taken are formalised and information is freely available and accessible to all those affected, including through public dissemination. The decision-making process itself also needs to be transparent, not only in relation to the decisions being made, but also why they are being made and who is making them.

Access to information for people in prison is a fundamental requirement of good prison management. The Nelson Mandela Rules and the Bangkok Rules make it clear that every person in prison should have information about prison rules and regulations and their rights and obligations.⁴³ It follows that, in times of crisis, people in prison should receive timely, accurate and regular information about any changes in rules and procedures, how this will affect them individually, what measures are in place to mitigate the impact and how they might challenge unfair treatment.

While justice systems need to act quickly to adopt new measures and policies in response to emergencies, it is also important that any changes are formalised, well communicated, and accessible to all. They should not be vague or open to interpretation by justice sector officials. These are crucial safeguards for fair enforcement, oversight, and effective communication. Coherent and consistent messaging can tackle the spread of misinformation and speculation and build confidence and trust.

The COVID-19 pandemic presented some challenges to prison administrations in relation to information provision, particularly where group information sessions and other in-person communication channels were suspended. However, there was also a promising level of flexibility and innovation from prison administrations and other stakeholders in finding alternative ways to communicate in light of the risks of COVID-19. Availability of technology proved useful in this regard but was by no means a prerequisite for successful information provision.

In **Vietnam**, the National Steering Committee for COVID-19 is reported to have invited leading epidemiologists from the National Hospital for Tropical Diseases to talk about COVID-19 and measures to combat the pandemic with all prisons via teleconference. Prison authorities are also reported to have been broadcasting updates about COVID-19, its symptoms and preventive measures taken in prisons via public address systems three times a day.⁴⁴ In Mauritania, a prison radio station was set up with the UN Office on Drugs and Crime (UNODC) support in three prisons to provide regular information on COVID-19 awareness, hygiene and health.⁴⁵ In Hungary, people in prison were regularly informed about changes to contact rules and the current epidemiological situation through individual and small group sessions, closed-circuit television broadcasts, prison radio and on bulletin boards. All cells were equipped with televisions for this purpose.⁴⁶

People in prison always have the right to be kept regularly informed of important items of news from their community.⁴⁷ This requirement must not be forgotten or neglected in times of crisis. At such times, concern amongst people in prison over what is happening to families and friends in the community is likely to be heightened and developments are often fast paced. During COVID-19 and other crisis situations, people in prison may also have reduced face-to-face contact with their families from whom they would usually receive news about their community. During the COVID-19

42. Dr Joelle Grogan and Nyasha Weinberg, *Principles to Uphold the Rule of Law and Good Governance in Public Health Emergencies*, August 2020.

43. Nelson Mandela Rules, Rules 54, 55; Bangkok Rules, Rule 2.

44. ‘Timely action keeps case count in prison in VN at zero, says prison chief’, *Vietnam News*, 7 May 2020, vietnamnews.vn/opinion/716372/timely-action-keeps-case-count-in-prison-in-vn-at-zero-says-prison-chief.html.

45. ‘Impact of COVID-19 ‘heavily felt’ by prisoners globally: UN expert’, *United Nations*, 9 March 2021, news.un.org/en/story/2021/03/1086802.

46. ‘Hungarian Prison Service: Prevention Measures in European Prisons against COVID-19’, *EuroPris*, 8 April 2020, www.europris.org/hungarian-prison-service-hu.

47. Nelson Mandela Rules, Rule 63.

pandemic, some countries such as Estonia⁴⁸ and Poland⁴⁹ increased access to TV, radio and print media for people in prison. This served to mitigate against the reduction in other activities for people in prison, but also ensured that they were regularly informed of COVID-19 developments in their countries and communities.

Transparency and regular flow of accurate information about COVID-19 and measures taken in prisons is also important for prison staff and families of people detained. Some countries developed their public-facing and media communications during COVID-19. For example, the Scottish Prison System's online COVID-19 information hub provides daily updates on numbers of COVID-19 cases, numbers of people self-isolating, and regular updates on visiting procedures.⁵⁰ The website of the Prisons and Probation Service in England and Wales contains a regularly updated, prison-by-prison summary of COVID-19 measures taken, and staff have access to a rolling update on the staff intranet system.⁵¹

In **Kazakhstan**, prison staff who are designated media focal points from prison departments of all 17 regions of the country participated in nine online webinars to ensure tailored awareness-raising for people in prison and transparent communication channels towards the general public during the COVID-19 pandemic. The training was designed to enhance the communication skills of the prison staff and promote openness and transparency in the work of the prison system. The webinars covered issues such as crisis communications, development of high-quality information materials for the media and the role of social media.⁵²

Lack of access to information and transparency of decision making is an ongoing problem in many prison systems and it was clear from the outset of the pandemic that unrest linked to COVID-19 was often triggered by the failure of authorities to provide timely and accurate information about the pandemic and the resulting restrictive measures.⁵³ On the other hand, prisons with good existing information sharing channels were better able to build trust in and compliance with the measures taken, including uptake of COVID-19 vaccination programmes.

Transparency was also crucial in relation to measures taken to reduce prison populations, particularly with regards eligibility for early release schemes and the provision of disaggregated data on who was released. Here also the Scottish Prison Service demonstrated good practice by publishing full data on releases considered, vetoed and allowed by facility and disaggregated by age range and gender.⁵⁴ Such measures were also necessary to foster public trust in the release process. Equally important is the publication of data about infections, deaths, testing and vaccinations. Such data is crucial for informed policy making, for monitoring the impact of measures taken and, ultimately for effective infection prevention and control. Disaggregated data on COVID cases is also needed to ensure that at-risk populations are provided with adequate, additional protective measures as required.

COVID-19 communication channels in Kazakhstan

Establishing effective communication channels was an important part of the COVID-19 response in Kazakhstan with call centres and hotlines set up at both central and regional levels for lawyers, families of people in prison and members of monitoring bodies to contact people in prison. Authorities also utilised both traditional and social media to inform people about the COVID-19 situation in prisons, including blogs and participation in television programmes. Infographics communicating the COVID-19 response measures in prisons were created and disseminated online by PRI in Kazakh and Russian languages.⁵⁵ A livestream event on Facebook from the prison service also provided detailed information on the current situation in prisons, and was made available to the public, providing first-hand information to families and friends.⁵⁶

Remote telephone calls or video calls also replaced in-person visits to prisons with 338,994 telephone conversations, 13,188 short video calls and 3,276 long video calls taking place over a five-month period, among a prison population of over 33,000 people. For some people in prison, particularly those held in remote parts of the countries, this presented opportunities to speak with family members that they would not otherwise have had the chance to contact. This increased remote contact between people in prison and their relatives is now expected to continue beyond the pandemic response.

48. European Prison Observatory, *COVID-19: What is happening in European Prisons*, 17 April 2020.

49. 'Central Board of Prison Service (PL)', *EuroPris*, 9 November 2020, www.europris.org/central-board-of-prison-service-pl.

50. 'COVID-19 Information Hub', *Scottish Prison Service*, www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx [accessed on 21 January 2021].

51. 'Her Majesty's Prison and Probation Service (UK): Prevention Measures in European Prisons against COVID-19', *EuroPris*, 26 October 2020, www.europris.org/her-majestys-prison-and-probation-service-uk.

52. 'UNODC in Kazakhstan: Webinars Promote Effective Media Communication of of Prison Administrations during COVID-19', *UNODC*, www.unodc.org/centralasia/en/news/unodc-in-kazakhstan-webinars-promote-effective-media-communication-of-prison-administrations-during-covid-19.html [accessed 21 January 2021].

53. See note 28, pp. 34-35.

54. Scottish Justice Directorate, *Prisoners released early under COVID-19 release: FOI release*, 17 September 2020.

55. The infographics are available at www.penalreform.org/covid-19/resources-related-to-covid-19.

56. Available at www.facebook.com/qajk.kuis/videos/233568691176339.

Justice systems are generally not regarded as open and transparent, and effective communication is a challenge in many systems, particularly when it comes to relaying information to all people in prison. However, with the advent and urgency of COVID-19, some countries have made significant progress in these areas, finding alternative and innovative ways to communicate with people in prison and developing their public-facing and media strategies. Moving forward it will be important to continue this trend and apply lessons learned from innovations into longer term strategies.

Recommendations

PRINCIPLE 3: TRANSPARENCY

- **Ensure that information about prison policies is available and accessible to all, including through public dissemination.**
- **Provide people in prison with timely and accessible information about changes to prison rules and regulations, their rights and obligations and how they can challenge unfair treatment.**
- **Ensure that people in prison have access to news about what is happening in their community, including in times of crisis.**
- **Develop new and innovative means of communicating with people in prison in light of lessons learned during the COVID-19 pandemic.**
- **Continue to improve public-facing and media communications about the situation inside prisons in relation to COVID-19 and beyond.**

PRINCIPLE 4

Responsiveness

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.⁵⁷ At the regional level, the Council of Europe defines responsiveness in relation to good governance as the principle under which ‘[o]bjectives, rules, structures and procedures are adapted to the legitimate expectations and needs of citizens’ and where ‘[public] services are delivered, and requests and complaints are responded to within a reasonable timeframe’.

The ability of justice systems to respond quickly in times of crisis is paramount and it is clear that countries which acted fast to adapt policies and implement preventive strategies were more effective than others in containing the spread of COVID-19. However, urgent decision making needs to be tempered with efforts to ensure responses are appropriate, locally relevant and in line with international human rights standards.

In Kenya, the justice sector was better able to respond to COVID-19 because it adapted a localised approach based on a broader national framework. The local Court Users’ Committees, for example, were instrumental in the pandemic response, with local-level actions adapted to the approaches that worked better for the particular context. The taskforce for coordinating the justice sector response also provided a national framework with guidelines on how to respond, but with each agency involved having its own decision-making power.

Strong leadership, a transparent decision-making process and clear division of responsibilities are key to ensuring a human rights compliant response to COVID-19 and other emergency situations, including the extent to which prison directors and staff are able to make and adapt decisions to fit the local context. A national framework to guide devolved decision making is useful in this context, enabling greater local variation and flexibility whilst ensuring a clear chain of command, consistency in decision making and enabling appropriate oversight.

Measures to reduce prison populations in Kenya

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

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

By 1 April 2021, the review of people convicted of petty offences led to the release from prison of 4,800 people following court hearings mainly conducted via online platforms. It has also been reported that the prison decongestion measures resulted in the reduction of the prison population from 55,000 in March 2020 to 41,119 in August 2020, more than a 25 per cent reduction in the prisoner population with a particularly significant decrease in the numbers of pre-trial detainees.⁵⁸

The rapid response was made possible in Kenya because of the existence of the National Council for the Administration of Justice (NCAJ), a high-level policymaking, implementation and oversight coordinating mechanism composed of State and non-State actors from the justice sector. The NCAJ was established in 2011 ‘to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.’⁵⁹ The NCAJ was able to mobilize quickly in response to COVID-19 and to effectively coordinate communications and the division of responsibilities.

‘The high court has been revising the sentences of the lower courts and people are being released every day. The pandemic has removed a lot of the barriers that stopped this happening before - there is a lot of goodwill among the justice sector at the moment, with everyone working together. I don’t know if it is sustainable, it depends a lot on political will.’⁶⁰

57. ‘UN-ESCAP: What is Good Governance?’, UN-ESCAP, www.gdrc.org/u-gov/escap-governance.htm [accessed on 21 January 2022].

58. Mercy Deche and Conrad Bosire, ‘The Silver Lining in the Covid-19 Cloud: An Appraisal of Accelerated Prison Decongestion in Kenya, Victims & Offenders’, *International Journal of Evidence-based Research, Policy, and Practice*, Volume 15, Issue 7-8, 28 October 2020, p. 921-932.

59. The NCAJ is a high-level policymaking, implementation and oversight coordinating mechanism composed of State and non-State actors from the justice sector, established in 2011 to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.

60. From interview with academic, Kenya, in Institute for Crime & Justice Policy Research, *Keeping COVID out of Prisons: Approaches in Ten Countries*, May 2021.

In **England and Wales**, the Ministry of Justice established an estate wide basis for decision making on easing or reimposing restrictions to support prison directors to make decisions locally but with an evidenced and data driven basis, overseen by national authorities.⁶¹ The Inspectorate of Prisons noted in its 2020-2021 annual report that '[t]he ability to innovate and work under extreme pressure was also seen elsewhere...leaders at some prisons were able to make speedy progress to return to a full regime, within the limitations of public health advice.'⁶²

The ability of justice systems to respond to the threat of COVID-19 within a reasonable timeframe also depended to a large extent on their ability to coordinate and streamline decision making. It has been noted that, in some countries, police, courts and prisons were able to respond faster than other public services because they have extensive experience of dealing with emergencies and well-developed command and control structures that enabled quicker decision making, implementation and reporting.⁶³ However, justice systems are often encumbered by overly bureaucratic procedures and some were accused of being too slow to respond to the pandemic.⁶⁴

The **Kenyan** Probation and Aftercare Service faced significant challenges due to the large numbers of people released from prison in the first wave of the pandemic, which exposed underlying weaknesses in the system related to under-resourcing, administrative and bureaucratic hurdles. The service has, however, been able to continue to provide its services, albeit scaled down, throughout the pandemic. The ability to cope with the influx of new cases related to the mass prison releases was possible largely because the service has previously and regularly dealt with the impact of prison release schemes. The probation service was also able to adapt quickly to the reduction in community service work sites available due to COVID-19 by tasking those on community service orders to prepare and clean the stadiums which were being used for open air trials.

Even where prison systems were able to act quickly to introduce practical infection prevention and control measures, many were slower in identifying and tackling the potential human rights impact and introducing appropriate mitigation measures. In Brazil, for example, a survey carried out in July 2020, found that nearly 70 per cent of families of people in prison had not heard

from their imprisoned relatives since the beginning of the pandemic.⁶⁵ The failure to integrate human rights considerations of people in prison into emergency planning has been evident in other crisis responses⁶⁶ and is symptomatic of systems that have not yet found an appropriate balance between maintaining security and protecting human rights.

Prison and probation systems need to be flexible and innovative to ensure core services can still be provided during times of crisis. Crisis planning should include some built in financial protections and flexibility so that resources can be diverted to crisis response as necessary. Flexibility is also needed in staffing to ensure that prisons and probation services can respond to additional workload and potential staff shortages. This could include systems for managing staff overtime payments and efficient rota systems. Where they have received adequate training and effective oversight mechanisms are in place, staff could also be given more autonomy and responsibility to respond appropriately to the situation in line with local realities.

Responding to the needs of people in prison during a crisis requires a resilient justice system with an adaptable workforce which has received appropriate training, support and encouragement and which will continue to receive the support it needs during the crisis response. The COVID-19 pandemic unfortunately laid bare the deficiencies in many prison systems with regard to staff terms and working conditions. COVID-19 also led to additional staff shortages and pressures on their workloads and employment conditions, with some staff living on site for weeks or months and all facing an increased risk to their own health and that of their families.⁶⁷ However, areas of good practice have emerged, including additional training, psycho-social support, staff buddy systems, relaxation activities and other programmes being made available to prison staff. In Tunisia, organisations with experience in psycho-social support have been able to provide such support to prison staff during COVID-19⁶⁸ whilst In England, an NGO is providing yoga and meditation classes to staff in 12 prisons to help them cope with work stress during COVID-19.⁶⁹

61. HM Prison & Probation Service, *COVID-19: National Framework for Prison Regimes and Services*, August 2021.

62. HM Prison & Probation Service, *Annual Report 2020-21*, 20 July 2021.

63. See, for example, The Chartered Institute of Public Finance and Accounting, *How fit were public services for coronavirus?*, August 2020.

64. See, for example, "I Begged Them to Let Me Die": How Federal Prisons Became Coronavirus Death Traps, *The Marshall Project*, 18 June 2020, www.themarshallproject.org/2020/06/18/i-begged-them-to-let-me-die-how-federal-prisons-became-coronavirus-death-traps.

65. Gabriela Lotta et al., 'The impact of the Covid-19 pandemic on the performance of street level bureaucrats in Brazil', *Rev. Bras. Ciênc. Polít.* Volume 35, 15 September 2020.

66. Penal Reform International, *Natural hazards and prisons: Protecting human rights in disaster prevention, response and recovery*, December 2021.

67. See note 28, pp. 36-40.

68. OMCT, *Building our response on COVID-19 and Detention*, www.omct.org/files/2020/04/25784/omct_covid19_prisonsresponse_en.pdf [accessed on 21 January 2021].

69. 'Yoga helps prison officers cope with Covid-19 stress', *The Prison Phoenix Trust*, 2 July 2021, www.theppt.org.uk/2021/07/02/yoga-helps-prison-officers-cope-with-covid-19-stress.

Good governance in prison systems should also include contingency planning for emergency situations which can be quickly operationalised, including in the event of a pandemic. As the WHO has noted, '[c]ontingency planning is essential in ensuring an adequate health response and maintaining secure, safe and humane detention settings...business continuity plans should be in place for ensuring the security and safety functions inherently associated with prisons and other places of detention.'⁷⁰ The US Bureau of Prisons was subject to criticism⁷¹ for its slow response to COVID-19 despite the existence of a pandemic action plan.⁷² Other countries, including Ethiopia, have been criticised for having no contingency plans in place for managing the impact of an infectious disease outbreak.⁷³

In order to respond swiftly in times of crisis, prisons not only need their own contingency plans, but they also need to be included in national emergency response plans. This is crucial to ensure people in prison are not left behind and that responses inside prisons are consistent with national approaches.

The impact of material prison conditions on crisis response

Prison systems are better able to respond to emergencies if they are well-resourced, less crowded and in a good state of repair. In contrast, however, many prison facilities worldwide are in poor condition as a result of years or even decades of neglect, often due to insufficient budget. Many are also understaffed with high levels of staff turnover, whilst some lack basic equipment and other resources. The onset of the COVID-19 pandemic exposed these underlying weaknesses, including underinvestment in and neglect of health services. The impact of prison conditions on the response to COVID-19 has been far-reaching:

- In overcrowded facilities there was a lack of space available to enable newly arrived detainees to quarantine or for the isolation of those with symptoms of COVID-19. Physical distancing measures were also challenging to implement in overcrowded facilities.
- Underinvestment and neglect of prison health services left prison facilities ill-equipped to respond in terms of preventive health care and medical treatment.
- Neglect of prison mental health services left facilities unable to respond to the increased need for mental health support amongst detainees and prison health staff.

- Facilities with inadequate medical facilities, poor sanitation and those lacking nutritious food and adequate clean water are unable to provide for the basic healthcare needs of detainees, increasing their vulnerability to the risks of COVID-19.
- Lack of communication facilities (insufficient telephones, broken phones, lack of IT equipment) and the digital divide (including between urban and rural, rich and poor, men and women) made it difficult to quickly mitigate against the suspension of in-person visits
- Poor record keeping within prison facilities and lack of connectivity also impacted the roll-out of virtual court hearings, early release mechanisms and medical prioritisation.
- Facilities in a state of disrepair, lack of cleanliness and lacking sufficient sanitary facilities were less able to implement sanitation and disinfection measures.
- Prisons lacking basic resources such as cleaning materials were also less able to quickly put in place sufficient protective and preventive measures.

Recommendations

PRINCIPLE 4: RESPONSIVENESS

- **Develop contingency and emergency preparedness plans in order to be able to adapt and respond swiftly in times of emergency.**
- **Ensure that laws, policies and procedures related to crisis response firmly comply with international human rights standards.**
- **Allow some flexibility and adaptability within emergency planning with national oversight to enable local decision making to fit local contexts.**
- **Streamline decision making processes and clarify decision making to enable faster responses.**
- **Provide staff with the training, resources and support they need to be able to function efficiently in times of crisis.**

70. WHO Regional Office for Europe, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 15 March 2020.

71. 'Bureau of Prisons Had a Response Plan for a Pandemic But Delayed Action', *Forbes*, 23 April 2020, www.forbes.com/sites/walterpavlo/2020/04/23/bureau-of-prisons-had-a-response-plan-for-a-pandemic-but-delayed-action/?sh=2e0d839a3d97.

72. Federal Bureau of Prisons, *Pandemic Influenza Plan Module 1: Surveillance and Infection Control*, October 2021.

73. See, for example, Besufekad Mekonnen et al., 'Preparedness and Readiness Against COVID-19 Pandemic in Prison Institutions and Detention Centers in Southwest Ethiopia', *Int J Gen Med*, Volume 14, 2 February 2021.

PRINCIPLE 5

Consensus oriented

Good governance requires mediation of the different interests in society to reach a broad consensus on what is in the best interest of the whole community, how this can be achieved and what is needed for sustainability. Additionally, it is noted that this consensus can only result from 'an understanding of the historical, cultural and social contexts of a given society or community.'⁷⁴

Achieving such consensus in prison emergency response requires not only the participation of people in prison and others directly impacted by imprisonment, but also the input of a broader range of stakeholders, including civil society, non-governmental organisations, health care professionals, legal aid providers, social services, probation agencies and other relevant experts. Consensus is not only needed amongst different national agencies, but also across national, regional and local levels to ensure coordinated action adapted to local contexts.

One of the most important lessons learned from the COVID-19 response in prisons is the importance of multi-sectoral approaches and the need for strong existing coordination and communication mechanisms between the different relevant agencies. Where these were already in place, the ability of prison authorities to respond more effectively was apparent.

In **Australia**, the establishment of effective partnerships, early coordination of representatives from all aspects of the New South Wales correctional system has been attributed as a key factor in keeping the virus out of correctional facilities in New South Wales.⁷⁵ While in Ireland, a strong partnership approach has been credited for the establishment of an effective contact tracing mechanism within the prison system.⁷⁶

All aspects of the COVID-19 response in prisons can benefit from a multi-sectoral approach. From detainee release schemes which require close collaboration with probation and social service agencies, to infection control which cannot be effective without cooperation between the police, prisons, courts and national health agencies, and testing, vaccination and contact tracing programmes which need to be coordinated with local health agencies to ensure that no-one falls through the cracks.

During the COVID-19 response it became clear that justice systems with pre-existing coordination and communication mechanisms between different agencies were able to better respond quickly and efficiently. In Kenya, for example, the swift coordinated justice sector response has been attributed to the existence of the National Council for the Administration of Justice (NCAJ) as a coordination and communication mechanism. A meeting of this body was convened on 15 March 2020 soon after the first COVID-19 case was confirmed in the country, successfully bringing together senior stakeholders, at short notice, to discuss how to combat the spread of the virus within the justice sector in line with guidelines issued by the WHO and the Kenyan Ministry of Health. Participants at that meeting agreed unanimously to immediately scale down court activities throughout the country, to take measures to reduce prison populations and to suspend all justice sector conferences, workshops and trainings.

On a global level, the International Corrections and Prisons Association (ICPA) established the C19 Prisons Taskforce designed to help prisons by supporting the exchange of information between different agencies and providing guidance in the COVID-19 response.⁷⁷ COVID-19 also led to new strategic partnerships in the field of international cooperation and material support for prisons.⁷⁸

74. See note 3.

75. James Blogg et al., 'Lessons learned from keeping NSW's prisons COVID-free', *Int J Prison Health*, 2021, pubmed.ncbi.nlm.nih.gov/33709638.

76. Mattea Clarke et al., 'Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland', *Journal of Public Health*, Volume 42, Issue 3, 3 September 2020, pp. 519-524.

77. 'COVID-19 Prisons Taskforce', *International Corrections & Prisons Association*, icpa.org/projects/taskforces/covid-19-prisons-taskforce.html [accessed 21 January 2021].

78. See, for example, 'COVID-19: ICRC, KOICA sign agreement to support Indonesian prisons', *International Committee of the Red Cross*, 15 October 2020, www.icrc.org/en/document/covid-19-icrc-koica-indonesia-prisons.

EL PACCTO (the Europe Latin America Programme of Assistance against Transnational Organised Crime), an international cooperation programme funded by the European Union that seeks to contribute to security and justice in Latin America, set up a 'COVID-channel' for prison systems in Europe and Latin America to share information and positive and negative experiences on fighting the pandemic within the justice sector. The exchange of information between Europe and Latin America promoted coordination, cooperation, and prevention of COVID-19 with the aim of guaranteeing citizens' health.⁷⁹ This communication channel was particularly useful in the early days of the pandemic when COVID-19 had not yet reached Latin America, enabling security sector officials to learn lessons from the experience in European countries.

An efficient COVID-19 response in prisons firstly requires a consensus in the urgency of the situation, namely a recognition of the increased vulnerability of people in prison to the threat of the pandemic. Where this is not recognised, there is a risk of delayed, inconsistent or poorly coordinated action. The importance of consensus and coordination between different agencies is also particularly acute in relation to the provision of health care, including testing and vaccinations, virtual court hearings, prison release schemes and other prison decongestion measures.

Inter-agency consensus and collaboration is important in any prison release scheme due to the need for continuity of health care, post-release support and community engagement. This became particularly important in the context of the large-scale emergency releases in response to COVID-19, particularly considering the additional pressures and challenges already facing probation and social service agencies due to the pandemic. Rapid coordination between different justice agencies was also necessary to set up processes, procedures, and technology for virtual court hearings, with particular emphasis on due process and fair trial rights.

Transfer of healthcare to Ministry of Health in Kazakhstan

In Kazakhstan, the COVID-19 pandemic acted as a catalyst for the decision to transfer prison health from the Ministry of Interior to the Ministry of Health, an issue that has been under discussion for almost a decade. The Minister of Interior has stated in this regard that this decision 'will allow for wider access to modern methods of medical analysis, diagnosis and treatment and will provide medical workers with independence from the [prison] administration' thus reducing the risk of torture and other ill-treatment.⁸⁰ Under the current schedule, all internal regulations will be adopted by July 2022, with medical services in open prisons and prisons housing women, children and those in pre-trial detention transferred to the Ministry of Health by December 2022 and in all remaining institutions in 2023.

Recommendations

PRINCIPLE 5: CONSENSUS ORIENTED

- **Establish effective national coordination and communication mechanisms to ensure that a consensus-oriented approach is possible.**
- **Build on regional and international cooperation and information sharing platforms to learn from experiences in other countries and share good practice.**
- **Develop closer ties between community health and prison health agencies and consider different models of transitioning the governance of prison health to health ministries.**
- **Develop inter-agency consensus and collaboration in relation to prison release schemes, including the need for continuity of health care, post-release support and community engagement.**
- **Monitor the success of collaborative approaches taken during COVID-19 with a view to building on such approaches in future.**

⁷⁹. 'COVID Channel: Sharing information to save lives', *Elpaccto*, 8 April 2020, www.elpaccto.eu/en/news/covid-channel-sharing-information-to-save-lives.

⁸⁰. Penal Reform International at al., *The Penitentiary System in the New Reality: Report of online forum proceedings in Kazakhstan*, July 2021.

PRINCIPLE 6

Equity and inclusiveness

According to the UN [a] society's well-being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, to have opportunities to improve or maintain their well-being.⁸¹

This characteristic of good governance relates to the principle of participation in that all relevant stakeholders should have the opportunity to express their views and concerns. As the Council of Europe notes in its 12 principles of good governance, '[a]ll voices, including those of the less privileged and most vulnerable, are heard and taken into account in decision-making, including over the allocation of resources.'⁸²

These principles apply equally in prison settings, including in crisis response situations, and are multi-dimensional. Firstly, good governance requires the fair and equitable treatment of all people in prison. In relation to COVID-19 this included assurances of the fair distribution of PPE and other preventive measures, including COVID-19 testing and equitable roll out of COVID-19 vaccination. It also entails equal access to information about COVID-19 and related preventive measures, fair application of measures to mitigate the impact of preventive measures, and opportunities to make suggestions and complaints about the response.

The principle of equity and inclusiveness also links closely to the need for individualised treatment within prison facilities and in relation to alternatives to detention as set out the Mandela Rules, the Bangkok Rules and the Tokyo Rules.⁸³ In many ways the COVID-19 pandemic required prison administrations to think more about the needs of individuals and to consider specific vulnerabilities, including in relation to physical and mental health, vulnerability to infection, access to services, cell allocation, contact with families and lawyers, and eligibility for early release. It is clear that prison systems that already had good systems and record keeping in place for individualised treatment

were better placed to quickly identify those in need of special measures or protections during the pandemic. In others, the introduction of COVID-19 specific services, such as remote video-conferencing, served to balance out some existing inequalities. For example, in Fiji, the introduction of video-conferencing facilities enabled some people in prison, particularly those from remote areas, to speak to their family members for the first time in many years.⁸⁴

In the early days of the COVID-19 pandemic, many people in prison felt excluded from the mainstream COVID-19 response and levels of fear and anxiety were high. Alongside the need for a fair and equitable response to COVID-19 within prisons, good governance would also ensure that people in prison do not feel excluded or marginalised from broader efforts to tackle COVID-19 within the community. Not only should there be equity in the COVID-19 response within prisons, including for the most vulnerable, but efforts must also be made to ensure people in prisons have the same access to COVID-19 response measures as those in the community, including in relation to access to information, prevention and protection and availability of healthcare, testing and vaccination. These principles equally apply to prison staff.

Equity and inclusiveness in relation to COVID-19 or other emergency measures also entails the fair and equitable treatment of all categories of people within prisons, including minority groups and those in situations of vulnerability. This could include women, people with mental health issues, older people in prison, foreign nationals, racial and ethnic minority groups. The COVID-19 pandemic exposed and exacerbated existing inequalities within and between prison systems with disparities apparent not only in the COVID-19 infections, mirroring inequalities within communities more broadly,⁸⁵ but also in the application of prevention and mitigation measures, health care and prison decongestion measures.

81. See note 3.

82. '12 Principles of Good Governance', *Council of Europe*, www.coe.int/en/web/good-governance/12-principles [accessed 21 January 2021].

83. Nelson Mandela Rules, Rules 2 (2), 89 and 91-94; Bangkok Rules 40 and 41; Tokyo Rules, Rules 2.3 and 3.2.

84. 'Digital Services provide prisoners with access to justice during the COVID-19 pandemic', *UNDP Pacific Office in Fiji*, 25 June 2020.

85. See, for example, 'The origins of Covid-19's racial disparities lie in America's prisons', Annalisa Merelli for *Quartz*, 14 June 2021, www.qz.com/2019954/overcrowded-prisons-help-explain-us-covid-19-racial-inequality.

In the USA, concerns were raised that people in prison in rural areas would be harder hit due to the lack of rural health care resources, recent closures of local hospitals and because incarceration rates are higher in smaller cities and rural counties with fewer COVID-19 decarceration efforts in place.⁸⁶ In Australia it has been noted that Aboriginal and Torres Strait Islander people in prison are at greater risk from COVID-19 because they suffer higher rates of existing chronic health issues than non-Indigenous people.⁸⁷

In other countries it has been noted that women were disproportionately impacted by COVID-19 restrictive measures or were not given equal access to mitigation measures. In the Philippines, for instance, it was reported that IT facilities were allocated to those housed in male dormitories, but only one telephone was made available for more than 1,000 women imprisoned in the Manila City Jail.⁸⁸

While many prison systems did put additional measures in place to counter the adverse impact of COVID-19 on certain groups of people in prison, including additional telephone calls for women with children and ongoing consular access for foreign nationals, concerns have also been raised that not enough was done in some facilities to recognise or tackle the impact of restrictions on specific groups. For example, in Australia concerns have been raised about the particular impact of lockdowns on people with cognitive or psychosocial disabilities.⁸⁹ The rise in self-harm amongst women in prison during COVID-19 has been raised as a particular issue of concern in England and Wales.⁹⁰

Equity in the COVID-19 response also requires that prison management and staff follow the established rules for tackling the spread of the virus in the same way they expect detainees to. In some countries detainees raised concerns, for example, about prison staff who failed to wear masks or follow physical distancing measures. To effectively tackle the pandemic and other emergencies and as with all aspects of prison management, it is important that officials lead by example, model good behaviour and face consequences if they do not do so. Any perception of double standards, as in the community more broadly, will likely lead to non-compliance and active resistance to emergency response measures.

Introduction of harm reduction services in Kenyan prisons

The shortcomings of harm reduction services in prisons in Kenya was urgently spotlighted during the COVID-19 pandemic because people who use drugs would normally be taken to a methadone clinic outside the prison but could no longer do so due to movement restrictions and fear of spreading the virus, putting their continuity of treatment in jeopardy.

Working with the prison administration, the judicial system and UNODC, local NGO the Muslim Education and Welfare Association (MEWA) successfully lobbied for the introduction of a Medication Assisted Therapy (MAT) clinic inside Shimo La Tewa prison with the support of other local civil society organisations. MEWA also highlighted the economic, safety and health benefits of setting up a clinic within the prison.

The clinic was set up within one month of the first COVID-19 case being confirmed in Kenya, the result of fast moving and coordinated work between community groups and public officials, facilitated by the trust that had been built up between these actors over a number of years. In March 2021, the clinic was supporting 214 people (89 women and 125 men).⁹¹

Moving forward it will be important to analyse information and data from the COVID-19 response in prisons to tackle any disparities in the roll out of prevention and mitigation measures and understand which groups were most affected by the pandemic and why. This would include, for example the impact of the digital and financial divide on detainees' ability to remain in contact with their families, disparities in the COVID-19 response between urban and rural areas, between men and women, and any adverse impacts of minority groups. In order to achieve this, data collection needs to be improved and publicly disseminated. This is particularly important in light of concerns about the lack of disaggregated data. In the USA, for example, attempts to gather information on the ethnicity of people in prisons tested for, diagnosed with or that died as a result of COVID-19 revealed that forty-three prison agencies, including the Federal Bureau of Prisons could not or would not provide this information.⁹²

86. 'COVID-19 Imperils People in Rural Jails', Jacob Kang-Brown and Jasmine Heiss for Vera Institute of Justice, 1 April 2020, www.vera.org/blog/covid-19-1/covid-19-imperils-people-in-rural-jails.

87. 'Explainer: Prisons and COVID-19', Human Rights Law Centre, www.hrlc.org.au/prisons-and-covid19.

88. See note 34.

89. 'Solitary Confinement must not be used as a response to COVID-19: Royal Commission told', Human Rights Law Centre, www.hrlc.org.au/news/2020/3/31/solitary-confinement-must-not-be-used-as-response-to-covid-19-royal-commission-told [accessed 21 January 2021].

90. 'Coronavirus (Covid-19): The impact on prisons: Government Responses to the Committee's Fourth Report of Session 2019-20', UK Parliament, www.publications.parliament.uk/pa/cm5801/cmselect/cmjust/1065/106502.htm [accessed 21 January 2021].

91. International Drug Policy Consortium et al., 'Prisons and COVID-19: Lessons from an ongoing crisis', March 2021.

92. 'Is COVID-19 Falling Harder on Black Prisoners? Officials Won't Tell Us', The Marshall Project, 28 May 2020, www.themarshallproject.org/2020/05/28/is-covid-19-falling-harder-on-black-prisoners-officials-won-t-tell-us.

Equity and inclusiveness in vaccination roll out

People in prison and people working in prisons should be given a high priority for vaccination to uphold their right to equitable access to healthcare and support public health efforts to stop the spread of the virus. In Ireland, for example, following criticism of the pace of vaccine rollout in the prison system, people in prison are now treated as a 'difficult to reach group' meaning that instead of offering the vaccine according to age or medical vulnerability, the entire population of each prison is vaccinated in one go, with a single dose vaccine. Uptake of vaccination is reported to have been high.⁹³

Despite widespread acknowledgement of the risk of COVID-19 in prisons, it has become clear that 'scientific consensus was not translating into people in prison featuring on priority [vaccination] schedules.'⁹⁴ A 2021 review of COVID-19 vaccination plans by PRI and Harm Reduction International in 177 countries found that some level of priority was explicitly applied to people in prison in only 51 countries, and to prison staff in 66 countries.⁹⁵ For example, in September 2021, it was reported that in New South Wales, Australia, only 21 per cent of people in state run adult prisons were fully vaccinated, with 42 per cent having received at least one dose. This compared to vaccination rates in the general population of 35 per cent fully vaccinated and 65 per cent having received at least one dose.⁹⁶

While high levels of vaccine hesitancy and refusal have been reported in some countries' prisons, it is important to understand why this may be the case, including pre-existing levels of mistrust between people in prison and authorities, levels of information available to people in prison about COVID-19 and the vaccinations, and the extent to which people in prison feel that they have been treated fairly and equitably throughout the pandemic.

Good governance and measures to reduce prison populations

The process for reducing prison populations through early release mechanisms or measures to reduce new admissions is an important test of good governance in the COVID-19 response. In many countries authorities moved swiftly in their efforts to decongest prisons and

these moves were largely welcomed, but the legal basis for the releases in some countries was unclear.⁹⁷ Other concerns have been expressed relating directly to good governance principles, providing important lessons for the future.

Much of the available data related to detainee release schemes was not disaggregated, with few countries specifying, for example, how many women were included in the releases, raising concerns over equity. One study concluded that of 53 jurisdictions, only a quarter published up-to-date disaggregated statistics on releases from prison.⁹⁸ The exclusion of those convicted of drug-related crimes in some countries is likely to have indirectly impacted women. In the USA, concerns were raised about racial disparities in early release schemes.⁹⁹

The sustainability of the emergency measures to decongest prisons is also a concern, with prison populations in some countries on the increase again with new arrests or the return to prison of those released temporarily. It has also been noted that some countries did not have adequate systems in place to effectively administer the decongestion schemes, provide support for those released or monitor the impact of the decongestion measures. This was particularly apparent where prisons did not already have good coordination with probation, social service and other post-release support agencies.

The decision-making process on reducing prison populations varied and included, for example, presidential pardons, conditional release schemes, temporary release schemes, sentence reductions and suspended sentences. Some countries utilised existing mechanisms which allowed for the early release of detainees, allowing for expediency, whilst others put in place new measures in specific response to COVID-19.

Some release initiatives were automatic based on sentence length, type of crime committed or personal situation and did not involve any decision-making body, whilst others were determined on a case-by-case basis, some involving parole board type bodies or hybrid committees established specifically to respond to COVID-19. In some places there were judiciary-driven initiatives to review sentences.

93. 'Inmates being vaccinated on a prison-by-prison basis', Conor Gallagher for *The Irish Times*, 17 June 2021, www.irishtimes.com/news/crime-and-law/inmates-being-vaccinated-on-a-prison-by-prison-basis-1.459521.

94. 'Covid-19 in prisons: why prioritising staff and prison populations for vaccination matters', Gabrielle Beaudry et al for *Penal Reform International*, 18 February 2021, www.penalreform.org/blog/covid-19-in-prisons-why-prioritising-staff-and.

95. Harm Reduction International and Penal Reform International, *COVID-19 vaccinations for prison populations and staff: Report on global scan*, December 2021, pp.5-6.

96. 'Australia: Prisoners Denied Vaccine Access', *Human Rights Watch*, 1 September 2021, www.hrw.org/news/2021/09/02/australia-prisoners-denied-vaccine-access.

97. DLA Piper, *A global analysis of prisoner releases in response to COVID-19*, December 2020.

98. *Ibid.*

99. See, for example 'Prisons remain crowded while early releases exacerbate racial inequity', Cyrus J. O'Brien for *Restore Justice*, 15 June 2021, www.restorejustice.org/early-releases-exacerbate-racial-inequity.

A study by DLA Piper found that, of 53 jurisdictions, 47 per cent required approval for release by a government official, while 43 per cent relied on release approval by a senior official within the prisons or corrections administration, noting that:

“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.”¹⁰⁰

Recommendations

PRINCIPLE 6: EQUITY AND INCLUSIVENESS

- **Ensure good record keeping on individual assessments and classifications to enable swift and appropriate responses during times of crisis and beyond.**
- **Analyse and evaluate the COVID-19 response, including available data, to identify any issues around inequality in the measures taken.**
- **Conduct research to assess the impact of restrictive measures on particular groups of people in prison.**
- **Roll out COVID-19 prevention and response measures fairly and equally to all people in prison.**
- **Ensure that individual needs are taken into account in the COVID-19 response and that progress made on individualised assessments continues beyond the pandemic.**

¹⁰⁰. See note 97.

PRINCIPLE 7

Effectiveness and efficiency

Effectiveness and efficiency means that 'processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.'¹⁰¹ The Council of Europe also highlights effectiveness and efficiency as a key principle of good governance, stating that results should meet agreed objectives and that the best possible use should be made of available resources.¹⁰²

Justice systems with overly bureaucratic procedures and decision-making processes were not well placed to respond efficiently to COVID-19. Bureaucracy has been blamed for a failure to control the spread of COVID-19 in prisons some countries.¹⁰³ In England and Wales a prison release scheme was criticised as being too bureaucratic and restrictive, with measures including the electronic tagging of all those released adding to the delays 'at a time when speed and efficiency is of the essence and saving life is the purpose'.¹⁰⁴

However, in other countries, new procedures were introduced in specific response to COVID-19 bypassing existing bureaucratic procedures and enabling faster responses. This included expedited release mechanisms and introducing faster communication mechanisms.¹⁰⁵ In Austria for example faster communication and information exchange was made possible through the establishment of a COVID-19 specific multi-sectoral taskforce.¹⁰⁶ The speed and effectiveness of mechanisms set up to respond to COVID-19 provide important lessons for future penal reform initiatives. As in the community more broadly, it has become clear that organizational agility is needed to respond to COVID-19 and other emergency situations.¹⁰⁷ Local approaches to the pandemic in prisons also proved to be more effective and efficient than a purely national

approach, allowing for faster, more relevant responses. It is however important that this should be combined with national oversight and coordination.

The financial and human resources available to justice systems are critical in times of emergency. This includes available physical resources such as IT and communication facilities, emergency response equipment, medical supplies, cleaning and sanitary materials. In the context of COVID-19 and other emergencies, the availability of physical space is also critical. Where prison wings or entire facilities were needed as temporary quarantine facilities, this exacerbated overcrowding and security concerns in prisons which were already operating above capacity. Flexibility within prison budgets was important to allow management and staff to shift financial resources to the COVID-19 response where necessary.

Many prison systems around the world are under-resourced but were able to respond to COVID-19 by making the best use of the resources available to them and identifying pragmatic, low-cost solutions, including cooperation with external agencies and making use of community resources. Existing partnerships with local civil society organisations or private enterprises through rehabilitation programmes allowed faster community support coordination. Other pragmatic approaches included initiatives to reduce prison overcrowding and prioritising the health of the more vulnerable groups of the prison population, the training of detainees to assist with hygiene protocols and their engagement in the production of hygiene items.

Staff are the most important resource in a prison system and those prisons with a stable, well-trained, and flexible workforce were better able to adapt to the pandemic and respond effectively. Good performance management systems allow prison managers to recognize the competencies of their staff, meet training needs and best utilise the skills available

¹⁰¹. See note 3.

¹⁰². See note 82.

¹⁰³. See, for example 'Serial killer, respected guard and many others killed by COVID-19 surge in California prisons', *Los Angeles Times*, 13 January 2021, www.latimes.com/california/story/2021-01-13/california-prisons-slammed-covid-19-deaths.

¹⁰⁴. Letter on behalf of Howard League for Penal Reform and Prison Reform Trust, 17 April 2020, www.prisonreformtrust.org.uk/Portals/0/Documents/Letters/Letter%20before%20claim%20HL%20PRT%20coronavirus%20judicial%20review.pdf.

¹⁰⁵. See note 48.

¹⁰⁶. *Ibid.*

¹⁰⁷. 'Why Organizational Agility is Key to Defeating the Coronavirus', *Forbes*, 5 April 2020, www.forbes.com/sites/stevedenning/2020/04/05/why-organizational-agility-is-key-to-defeating-the-coronavirus/?sh=1ab4165b68ad.

to adapt to needs and challenges emerging from emergency situations. This flexibility and adaptability must however be met with adherence to decent staff working terms and conditions.

Dynamic security approaches are a feature of prison good governance which can aid COVID-19 and other emergency response in multiple ways. Firstly, dynamic security approaches to prison management allow staff to get to know the individual needs of people in prison and identify their particular needs, including vulnerabilities to COVID-19 or, for example, mental health support needs arising from the COVID-19 response. It is also generally acknowledged that dynamic security creates a more positive climate in prisons, fosters cooperation and establishes trust between detainees and staff, enabling better communication and coordination, all essential elements of effective emergency response.

Prisons with existing rehabilitation programmes were also better placed to respond to COVID-19, not only due to infrastructure and equipment availability and coordination with external agencies, but also because detainees who are engaged in constructive, purposeful activities are more prepared to cooperate with and trust prison authorities. In the Windhoek Correctional Facility in Namibia, a soap production rehabilitation facility, newly launched and supported by UNODC had already facilitated access to better hygiene within the facility and was able to begin producing hand sanitizer in response to COVID-19 and actively promote good sanitation.¹⁰⁸

While the pandemic inhibited rehabilitation programmes in many prison facilities, some made efforts to ensure programmes could continue. In Otero county prison, New Mexico, USA, authorities enabled rehabilitation programmes to keep going despite the significant challenges presented by COVID-19. Authorities determined this was necessary in order to aid the continued reintegration into society of people in prison, but also in recognition of the fact that continuity in rehabilitation programming would help them to cope with the stress of the pandemic.¹⁰⁹

Supporting those released from prison in Kazakhstan

While there was not a significant specific COVID-19 related prison release scheme in Kazakhstan, authorities did need to put in place additional measures to support those whose release date was due or those who were scheduled to be transferred, particularly in relation to transportation.

These releases or transfers were complicated by a nationwide quarantine, with checkpoints set up and road, rail and air travel suspended. Special procedures were established to ensure that those released could reach their permanent place of residence, temporary residence with a family member or at a resocialisation centre. In total authorities transferred more than 2,000 people from prison during the national quarantine period.

Effective and efficient responses also need to be sustainable in terms of future crisis preparedness and response. Authorities should consider the long-term impact of measures taken on individuals, systems, and budgets. In the best-case scenario, good practice measures introduced as emergency response could contribute to overall improvements to prison systems in the longer term. Conversely it is important that measures having a negative impact on the rights and wellbeing of those in detention do not become entrenched in future policy.

COVID-19 as a catalyst for reform in Kenya

It been noted that although Kenya also had existing constitutional, legal and policy frameworks to facilitate prison decongestion, including a well-established diversion programme to allow cases to be diverted at an early stage, there had been little progress in reducing the prison population prior to COVID-19, and that the pandemic provided an opportunity to put these frameworks to the test, with lessons being learned along the way:

*'While it has taken a crisis to activate de-congestion measures in the prisons, the constitutional, legal, and policy gains should be identified and consolidated for longer-term action. After all, prison de-congestion is and should indeed be a long-term issue that is based on constitutional, legal, and policy foundations that go beyond a public health potential.'*¹¹⁰

The organisation of prison health services for effective and efficient crisis response

Prisons which did not already have well-functioning health systems struggled to respond effectively to the COVID-19 pandemic, whilst continuing to provide ongoing healthcare, and will have similar difficulties responding well to other health emergency situations. The WHO has identified the building blocks of well-functioning health systems which apply equally to prisons. These include leadership and governance which ensures 'strategic policy frameworks exist

¹⁰⁸ With UNODC support, Namibia prisoner rehabilitation project helps stop COVID-19 spread, UNODC, 20 April 2020, www.unodc.org/dohadeclaration/en/news/2020/04/with-unodc-support-namibia-prisoner-rehabilitation-project-helps-stop-covid-19-spread.html.

¹⁰⁹ 'Rehabilitation Programs Continue at Otero | Despite COVID-19 Challenges, Management and Training Corporation, 5 October 2020, www.mtctrains.com/corrections/rehabilitation-programs-continue-at-otero-i-despite-covid-19-challenges.

¹¹⁰ Mercy Deche and Conrad Bosire, 'The Silver Lining in the Covid-19 Cloud: An Appraisal of Accelerated Prison Decongestion in Kenya', *Victims & Offenders*, 28 October 2020.

and are combined with effective oversight, coalition building, regulation, attention to system-design and accountability.¹¹¹

The United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) has laid out the qualities that public health and health care facilities, goods and services should meet.¹¹² These are useful in framing good governance approaches to prison health and can guide authorities in their prison health planning and resourcing. Prison systems that have adopted these qualities in their health care approaches will be better equipped to respond in times of emergency.

- **Availability:** facilities, services and goods have to be available in sufficient quantity, including the underlying determinants of health, such as safe and potable drinking-water as well as adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel and essential drugs.
- **Accessibility:** facilities, services and goods and health-related information have to be physically and economically accessible (affordable) without discrimination, especially to vulnerable or marginalized populations.
- **Acceptability:** facilities, services and goods must respect medical ethics, respect confidentiality and improve the health status of those concerned.
- **Quality:** facilities, services and goods must be scientifically and medically appropriate and of good quality which, according to the Committee, requires (among other things) skilled health care staff, scientifically approved and unexpired drugs and equipment, safe and potable water and adequate sanitation.

Prison health systems should be well equipped to deal not only with physical health problems but also mental health needs. During times of emergency, the mental health of people in prison needs to be supported as much as their physical health and this can only be achieved if prison mental health services are already well resourced and well-functioning. As with all health services, this requires close coordination and cooperation between justice agencies and national health services. A recent scoping review of mental health in prison through the COVID-19 pandemic

found that fear of COVID-19, the impact of isolation, discontinuation of prison visits and reduced mental health services were all likely to have an adverse effect on the mental well-being of imprisoned people.¹¹³

Under the principle of equivalence of care, people in prison are entitled to receive the same standard of healthcare as is provided in the community¹¹⁴ and this is no less true in a pandemic or other emergency situation. During COVID-19 prison healthcare systems must also be able to continue to provide ongoing and emergency non-pandemic health care. The Nelson Mandela Rules¹¹⁵ state that prison healthcare services should be organised in close relationship to the general public health administration in a way that ensures continuity of treatment and care. The most effective way of doing this is to assign responsibility for prison health care to the national health authority.

Health ministries are best placed to provide for healthcare service and be accountable for health care services in prisons as part of a whole of government approach to prison health. The WHO has noted that transferring responsibility for prison health to health ministries and clearly dividing roles between the ministry in charge of prisons and the health ministry is 'the most effective and efficient arrangement to achieve sustainable high standards in both prison security and prison health.'¹¹⁶

The benefits of this arrangement became increasingly apparent during the COVID-19 response in terms of communication, coordination, resourcing and information provision. In Italy for example, it has been noted that the prison health system was better positioned to tackle COVID-19 because prison health care falls under the responsibility of the Ministry of Health, allowing prison health workers to easily exchange information about outbreaks with the colleagues in community hospitals.¹¹⁷ The COVID-19 pandemic also led to a greater recognition of the correlation between prison health and public health.

There are different models of transitioning the governance of prison health to health ministries, including 'mixed models with shared responsibilities, with room for specific local arrangements according to the particularities of the health-care system, culture and socioeconomic background of the country.'¹¹⁸

111. World Health Organisation, *Everybody's Business: Strengthening Health Systems to Improve Health Outcomes*, 2007.

112. UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, 11 August 2000.

113. Luke Johnson et al., 'Scoping review of mental health in prisons through the COVID-19 pandemic', *BMJ Open*, 2021, pubmed.ncbi.nlm.nih.gov/33986064.

114. Nelson Mandela Rules, Rule 24 and Bangkok Rules, Rule 10 (1).

115. Nelson Mandela Rules, Rule 24(2).

116. UNODC and WHO Regional Office for Europe, *Good governance for prison health in the 21st century*, 2013.

117. 'Experience of health professionals, police staff and prisoners in Italy informs WHO COVID-19 guidelines for prisons', *WHO Regional Office for Europe*, 28 May 2020, www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2020/5/experience-of-health-professionals.-police-staff-and-prisoners-in-italy-informs-who-covid-19-guidelines-for-prisons.

118. WHO Regional Office for Europe, *Organizational Models of Prison Health*, 2020.

Where full transfer of responsibility to health ministries is not feasible, public health policies can still be modelled in prison systems through working in close partnership with public health agencies, health care and community services.

Since 2016, prison health services in **Finland** have been provided by the Unit for Prisoners' Health Services (VTH), an independent entity under the Finnish Institute for Health and Welfare (THL), a department of the Ministry of Social Affairs and Health. VTH is an autonomous body with its own budget, rules and procedures but THL has a legal responsibility to ensure that VTH meets its goals and operates according to the law and to support its performance and efficiency. It has been noted that since 2016, the perception is that the quality of health care in prisons has greatly improved, 'mainly because the principle of equivalence has finally been properly implemented' and that cooperation between VTH and the Criminal Sanctions Agency is good because 'both parties respect each other's area of expertise and decision making.'¹¹⁹ In response to COVID-19 the Finnish Criminal Sanctions Agency established a preparedness team which was able to work in close cooperation with VTH to monitor and coordinate the COVID-19 situation.

Recommendations

PRINCIPLE 7: EFFECTIVENESS AND EFFICIENCY

- **Ensure sufficient organisational agility to enable prison systems to respond quickly and efficiently in times of crisis whilst being able to maintain core functions effectively.**
- **Harness efforts made during the COVID-19 pandemic to reduce slow bureaucratic procedures and enable faster, more efficient responses.**
- **Ensure that justice systems have sufficient financial, human and physical resources to respond to emergencies.**
- **Allow flexibility in budgets to allow resources to be shifted as needed in times of crisis, whilst also continuing to identify and plan for pragmatic, low-cost solutions.**
- **Continue to build partnerships with communities, civil society organisations and private enterprises.**

119. Ibid.

PRINCIPLE 8

Accountability

Justice systems should be held accountable to those who are affected by their decisions and actions, including during times of emergency. Accountability frameworks differ from one country and establishment to another but must follow the rule of law, be transparent and remain free from corruption. The media also has an important part to play in promoting accountability and transparency within the COVID-19 response.

Accountability and oversight mechanisms can be both internal and external. They are responsible for looking at the success and failure of laws, policies, processes and their implementation, including in relation to the legitimacy, proportionality and timeframe of measures applied. Where mistakes or inadequacies are identified, changes should be made to improve decision making and performance in the future.

Such mechanisms include parliamentary scrutiny and judicial review, requiring an independent judiciary and parliamentary bodies free from external interference. They also include internal prison inspections and external monitoring from national preventive mechanisms, ombuds bodies, national human rights institutions (NHRIs) and NGOs. Accountability measures also include requests and complaints procedures for detainees and other stakeholders. The ability of all people in prison to raise concerns and ask questions is particularly important during times of emergency. Any person accused of human rights violations, breaking the rules or misuse of powers linked to the emergency must be held to account.

Mechanisms to ensure accountability should be in place for crisis planning and preparedness and should be active during and throughout a crisis response. All actions taken should also be subject to a thorough review following the emergency to identify weaknesses, efficacy, levels of compliance and to improve future responses. Most prison systems will already have accountability processes in place which can be utilised, but it can also be useful to set up accountability mechanisms specific to the particular crisis situation.

The COVID-19 crisis has, in some cases, shone a light on deficiencies and weaknesses in prison oversight and accountability processes and provided important lessons for future planning.

It is important that justice systems are included in any national COVID-19 oversight initiatives, including in relation to the allocation of financial resources and the prevention of corruption. It is equally important that authorities cooperate with independent monitoring bodies to overcome the challenges of effective prison monitoring during crisis situations. One way that monitoring bodies have overcome the challenges of prison access during the pandemic was through dedicated avenues for collecting COVID specific responses.

In the **USA**, the Department of Justice (DoJ) set up an anonymous online survey of Federal Bureau of Prisons staff perceptions of how the bureau was managing the COVID-19 response, resulting in an interactive dashboard allowing users to view survey responses by individual institutions.¹²⁰ The availability of international oversight mechanisms is also critical. In June 2020 more than 200 organizations in Brazil submitted a complaint to the UN and the Organization of American States (OAS) against the management of COVID-19 in Brazilian prisons.¹²¹

Effective accountability requires that authorities are prepared to learn from previous experiences, reform and adapt accordingly. It is also useful for authorities to learn lessons and adapt responses based on international good practice and using evidence-based approaches. In Kazakhstan, for example, authorities showed flexibility and willingness to successfully collaborate with PRI in their pandemic response and communication plans.

Reliable data and other information is key for creating evidence-based policies. The WHO COVID-19 prison surveillance protocol is a tool to help countries and prison authorities to gather and report information related to COVID-19.¹²² The protocol establishes

120. 'DOJ OIG Releases Interactive Survey Results on Staff Perceptions of the Federal Bureau of Prisons' Management of the Coronavirus Disease 2019 Pandemic', *US Department of Justice*, oig.justice.gov/news/doj-oig-releases-interactive-survey-results-staff-perceptions-federal-bureau-prisons [accessed 21 January 2021].

121. 'Covid-19: Brazil denounced in UN and OAS over imminent "catastrophe" in prisons', *Conectas*, 23 June 2020, www.conectas.org/en/noticias/covid-19-brazil-denounced-in-un-and-oas-over-imminent-catastrophe-in-prisons.

122. WHO Regional Office for Europe, *WHO COVID-19 Prison Surveillance Protocol*, 2021.

principles and definitions to better monitor the evolution of COVID-19-related epidemiological data in prisons and other places of detention and to report the main measures adopted to prevent, control and manage the spread of the disease. This includes country specific bulletins that allow countries to benchmark their practices and improve policy responses. The system establishes standards of reporting while allowing countries to adapt approaches to local conditions.

Civil society initiatives can also play an important role in sharing information and developing best practice approaches. In Canada, the Prison Pandemic Partnership is a research initiative set up to track the spread of COVID-19 in prisons, efforts to reduce prison populations and institutional measures to tackle the pandemic.¹²³ Justice Project Pakistan has put together a live global map tracking all reported cases of people in prison testing positive and those reported to have died from COVID-19 across the world.¹²⁴

Recommendations

PRINCIPLE 8: ACCOUNTABILITY

- **Cooperate with and facilitate the work of monitoring bodies to ensure continuity of both internal and external inspections during times of crisis.**
- **Give due consideration to all findings and recommendations of monitoring reports and act as necessary to make changes.**
- **Make sure that all people in prison are able to make requests and complaints including during times of crisis.**
- **Ensure that justice systems are included in any national COVID-19 monitoring and oversight initiatives.**
- **Be prepared to learn from experiences and adapt accordingly for longer-term strategic and sustainable reform.**

¹²³. 'Prison Pandemic Partnership and CPEP are tracking the impacts of COVID-19 in Canadian prisons, *Ottawa Criminology Blog*, 21 January 2021, www.uottawacrm.ca/news-and-events/2021/1/21/prison-pandemic-partnership-is-tracking-the-impact-of-covid-19-in-canadian-prisons.

¹²⁴. 'COVID-19 and Prisoners', *Justice Project Pakistan*, www.jpp.org.pk/covid19-prisoners [accessed on 21 January 2022].

Conclusion

Good governance in times of emergency is not just a matter of delivering good outcomes, it is equally about the means of achieving these outcomes. The eight principles of good governance summarised above can all be seen as part of a broader prison management approach which prioritises the rights of those in prison and incorporates dynamic security techniques. These principles should always be central to prison management but become more pressing during times of emergency.

As the ongoing COVID-19 pandemic unfolds, it is crucial for justice systems to reflect closely on lessons learned, adapt approaches as needed, maintain any positive changes and identify those that were less effective. These learnings must incorporate the lived experiences of people in prison and their families. Good practice in the COVID-19 response in prisons has emerged in all regions of the world and now is the time to take stock and to consider how they can be incorporated into broader prison reform strategies.

Perhaps most strikingly, the ability of justice systems to respond fairly, swiftly and efficiently when required provides valuable insights for future justice reform. This was most apparent in prison release schemes which appear to have had no discernible effect on public safety. Where this was possible during times of emergency, the obvious question is how this can be replicated when the emergency subsides in order to achieve sustained reductions in prison populations.

Where countries moved quickly to contain the spread of COVID-19 in prisons, it was often due to the recognition of the connection between prison health and public health – the risk that a rapid spread of COVID-19 in prisons would inevitably have major implications in the community more broadly. This recognition of the continuum between public life and prison life is a key element of good prison management but is rarely acknowledged. It is imperative that the link remains on the agenda moving forward. COVID-19 could also mark a shift in public perceptions of imprisonment with a heightened awareness of prisons conditions, the impact on mental health and increased empathy about the situation of those detained.

If used correctly, the lessons learned from the COVID-19 response could mark a turning point in good governance of prisons around the world. As the World Justice Project has pointed out in considering the twin crises of public health and the rule of law during COVID-19, '[a]midst the turmoil, identifying promising approaches to these challenges can help guide an effective recovery process and assist in building back better rule-of-law-based societies.'¹²⁵

125. 'The Twin Crises of Public Health and the Rule of Law', *World Justice Project*, 20 October 2020, www.worldjusticeproject.org/news/twin-crises-public-health-and-rule-law-0.

About Penal Reform International

Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. We work to promote criminal justice systems that uphold human rights for all and do no harm. We run practical human rights programmes and support reforms that make criminal justice fair and effective. Our primary objectives are to secure trials that are impartial, sentencing practices that are proportionate and promote social rehabilitation, and humane conditions of detention where alternatives to imprisonment are not possible. We work through country missions, regional hubs, remote coordination, and through partners.

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