

## VIEWPOINT

# Pandemic Treaty Should Include Reporting in Prisons

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On December 1, 2021, the World Health Assembly, meeting in only the second special session since the World Health Organization's (WHO) founding in 1948, agreed to develop a "convention, agreement, or other international instrument" to strengthen pandemic prevention, preparedness, and response.<sup>1</sup> Tedros Ghebreyesus, WHO's director, explained that this decision was made as a result of the "many flaws in the global system to protect people from pandemics," which, although unstated in the WHO press release, necessarily must include the failure to protect those most vulnerable from SARS-CoV-2 infection and ensure their access to care.

At the onset of the COVID-19 pandemic, it was not hard to anticipate that transmission would be exacerbated in places where individuals were in close contact, ventilation systems were inadequate, and the availability of health care and prevention measures was limited. These conditions are all found in locations such as cruise ships, college dormitories, and prisons. Yet, while great effort was taken to prevent transmission in the first two of these settings, the third—prisons—was often overlooked. Despite overcrowding, communal meals, and frequent turnover among detainees and staff, governments' responses to COVID-19 in detention facilities—including jails, prisons, and immigration detention centers—were often limited, and actions taken to reduce risk and cases and deaths in detention were often unreported.

In the United States, since the start of the pandemic, efforts to monitor the impact in prison suggest that, at a minimum, over 600,00 people in detention have been infected.<sup>2</sup> Efforts to monitor COVID-19 infections and deaths globally have had limited funding and been largely unable to overcome the lack of reporting and transparency.<sup>3</sup> But headlines about COVID-19 in detention can be found from around the world: "Prisons Face COVID-19 Catastrophe" in the Democratic Republic of the Congo, "Coronavirus Stalks Cells of Cameroon's Crowded Prisons," "Coronavirus Spreads in Egypt's Al-Qanater Prison," "New COVID-19 Outbreak in Iran's Prisons, Regime's Inaction, and a Looming Catastrophe," and on and on.<sup>4</sup>

WHO presents daily updates of COVID-19 cases in every country in the world.<sup>5</sup> Information on COVID-19 in prisons, by contrast, is voluntarily reported to WHO, and between April 2020 and August

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2021, only 18 member states submitted reports.<sup>6</sup> These reports are unpublished. Although WHO's regional office in Europe proactively sought to establish routine reporting of COVID-19 cases in prisons in the 53 countries in the region, reporting was limited.<sup>7</sup> It is only as we enter the third year of the pandemic that the office is publishing a report on "good practices" in managing COVID-19 in prisons, highlighting examples from mid-2020.<sup>8</sup>

The United Nations Office on Drugs and Crime, which has a mandate to help countries in "building and reforming their prison systems ... in compliance with human rights principles," provides states with a voluntary checklist to assess prison conditions and the treatment of prisoners but has no information on the number of cases or deaths due to COVID-19 in detention worldwide, and scant guidance on the prevention of transmission.<sup>9</sup> By contrast, it has research briefs related to the impact of COVID-19 on organized crime and on trafficking in opiates and methamphetamine.<sup>10</sup>

States have an obligation to ensure medical care for prisoners at least equivalent to that available to the general population.<sup>11</sup> According to the United Nations (UN) Committee on Economic, Social and Cultural Rights, "States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services."<sup>12</sup> The UN Human Rights Committee has stated that governments have a "heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty" because by detaining people, governments "assume responsibility to care for their lives."<sup>13</sup> In the context of the COVID-19 pandemic, UN human rights experts have drawn attention to prison conditions, arguing that "loss of life occurring in custody in unnatural circumstances creates a presumption of arbitrary deprivation of life" and that "the duty to protect life also requires regular monitoring of prisoners' health."<sup>14</sup>

States also have obligations related to transparency, including the publication of information

that can steer policy decision-making on priority steps needed to protect the right to health.

But global implementation of this basic reporting practice has been piecemeal at best. Thailand's Department of Corrections, for example, reported on COVID-19 cases in prisons across the country and in specific facilities—but only after pressure from civil society.<sup>15</sup>

It was foreseeable that detention facilities would be hard hit by COVID-19. It is equally foreseeable that detention facilities will be hard hit the next time there is an airborne pandemic. The critical first step toward holding detention systems accountable and improving detainee health is to ensure visibility of the problem, but international agencies currently do little to encourage such reporting.

As negotiations toward a "pandemic treaty" advance, there will certainly be discussions on disease surveillance and reporting. There should also be discussion on the human rights obligations of states to collect and report data related to cases among those most vulnerable and those in state custody. Data transparency and accuracy are the first steps toward effective responses and fundamental rights protections. UN agencies such as the United Nations Office on Drugs and Crime and WHO, which have the promotion of health and human rights within their mandates, should provide technical assistance and make reporting mandatory and public to ensure transparency and accountability.

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