



Geneva International Centre *for* Justice

# The Impact of COVID-19 in Latin American Prisons

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NO WAY OUT



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in Latin American Prisons**

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# No Way Out

## The Impact of COVID-19 in Latin American Prisons

### Executive Summary

The Latin American prison system has been the object of international concern for many years. Structural overcrowding, unsanitary living conditions, inadequate food, absence of health attention and systemic violence have turned hundreds of detention facilities across the region into gunpowder barrels. And COVID-19 was the spark.

From Mexico to Chile, riots broke in fear of the novel and dreaded virus. Prisoners wanted to be released, they wanted to see their relatives, they wanted food, medicines and hygiene articles. They wanted their needs to be taken seriously. They did not want to be left for dead.

In the course of 2020, governments approached this challenge in multiple ways. Some granted amnesties and pardons; others relied on the courts to release those inmates who were more at risk; others conducted comprehensive testing; others intensified cleaning, disinfection and medical care; others did all these things; others did none.

It is certain, however, that COVID-19 has rampaged through Latin American prisons. Even with gross underreporting of infections and deaths, and in spite of the initiative showed by several governments, it is clear that the virus took its toll on the lives and health of persons deprived of their liberty. This report will take a look at the steps taken to contain the COVID-19 crisis in Latin America and try to assess their results.

We will also refer to the statements and recommendations made by various international human rights mechanism, both in the United Nations and the Inter-American System, to help governments comply with their international obligations.

The danger has not passed, and thus preventive measures should remain in force. But this challenge also presents us with an opportunity to rethink sentencing and detention policies for the future, to address the structural deficiencies that Latin American prisons have been dragging for decades and which have left their unfortunate inhabitants in such a vulnerable state.

## 1. Introduction

The world is facing an unprecedented crisis. The COVID-19 pandemic has subverted our lives, frozen our plans and crashed our expectations as nothing before in our lifetimes. It has put to the test international cooperation institutions, State response capacity and individual responsibility and self-restraint. There is hardly one aspect of our social or private lives which has been spared from the disrupting action of the virus.

This report will focus on the effects that the pandemic had on the lives and well-being of persons deprived of their liberty in Latin America. Known for their overcrowding, poor sanitary infrastructure and high levels of violence, Latin American detention facilities were expected to become a focus of contagion and mortality, a prediction which was sadly confirmed in the course of 2020.

It is of capital importance for international and non-governmental organizations to insist on full compliance with human rights obligations and urge governments to include imprisoned populations in their public health policies, with consideration to their special needs.

International agencies have called on governments in Latin America to take their human rights commitments to heart and not to relegate the health and well-being of incarcerated persons. They have further issued specific recommendations and guidelines to prevent COVID-19 from decimating inmate populations while at the same time ensuring that human rights will not be trampled in the process.

The following report will enquire on the impact of COVID-19 on Latin American prisons under the lens of applicable human rights standards. We will provide an account of the riots that engulfed several detention centres since March and examine the governmental response in each case. We will also study the sanitary measures enforced by different Latin American countries and their level of success. Then, we will go over the statements made by human rights mechanisms from the OAS and the UN and refer to the specific recommendations they have made to deal with the COVID-19 crisis in prisons. Finally, we will lay down GICJ position on the matter.

## 2. Legal Framework: Basic Human Rights Norms Applicable in Custodial Settings

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (also known as the Nelson Mandela Rules) is the most relevant international human rights document that pertains to the situation of incarcerated persons.

In addition to affirming the general principles of non-discrimination<sup>1</sup> and prohibition of torture and ill-treatment,<sup>2</sup> the Mandela Rules also include specific guidelines on hygiene and healthcare. Prisoners ought to be provided with water and toilet articles ‘as are necessary for

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<sup>1</sup> UNGA Res 70/175 (17 December 2015) *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* UN Doc A/RES/70/175, Rule 2.1.

<sup>2</sup> Ibid. Rule 1.

health and cleanliness.<sup>3</sup> The provision of medical attention, on the other hand, is considered State responsibility, and inmates are entitled to enjoy of the same standard of healthcare available in the community at large.<sup>4</sup>

The state of health of prisoners must be ascertained by a medical professional immediately after their admission.<sup>5</sup> In case they are suspected of having an infectious disease, they should be isolated during the infectious period and adequate treatment should be afforded to them.<sup>6</sup> Prisons should have in place a healthcare service capable of monitoring, protecting and improving inmates' physical and mental condition,<sup>7</sup> and transfers to specialized institutions shall be ensured when necessary.<sup>8</sup>

Furthermore, detention facilities should be spacious and clean, have access to fresh air and natural light, and they should be equipped with water and proper sanitary infrastructure.<sup>9</sup> Inmates must also be allowed to keep contact with the outside world, through correspondence and visits.<sup>10</sup>

Regulations to the same effect are contained in the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (Bangkok Rules).<sup>11</sup> These Rules also command that pregnant and breastfeeding women and young children living with their mothers shall receive medical care according to their special condition.<sup>12</sup> A decision to let a child live with her mother in prison must be based on the former's best interest, and the removal of children must be performed only if adequate arrangements for their care have been made.<sup>13</sup>

In the Inter-American context, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the Inter-American Commission on Human Rights, stress the special position of guarantor assumed by the State with respect to the right to life and personal integrity of incarcerated persons.<sup>14</sup> As such, the authorities should always ensure adequate health attention, both preventive and therapeutic, for people under State custody, taking into account the special needs of vulnerable groups, such as elderly or sick persons, women, children and people living with disabilities.<sup>15</sup>

Moreover, the Principles also prescribe that occupation of a detention facility above its established maximum capacity must be prohibited by law, and will be considered cruel, inhuman

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<sup>3</sup> Ibid. Rule 18.1.

<sup>4</sup> Ibid. Rule 24.1.

<sup>5</sup> Ibid. Rule 30.

<sup>6</sup> Ibid. Rule 30.d.

<sup>7</sup> Ibid. Rule 25.1.

<sup>8</sup> Ibid. Rule 27.1.

<sup>9</sup> Ibid. Rules 12-17.

<sup>10</sup> Rule 48 and 51.

<sup>11</sup> UNGA Res 65/229 (21 December 2010) *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (Bangkok Rules) UN Doc A/RES/65/229, Rules 5, 6 and 26.

<sup>12</sup> Ibid. Rule 48.

<sup>13</sup> Ibid. Rule 52.

<sup>14</sup> IACHR, Resolution 1/08 (13 March 2008) *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle I.

<sup>15</sup> Ibid. Principle X.

and degrading treatment if its results in human rights violations. Legal recourse against overcrowding should be regulated by law or, in the absence of any legislation, remedies should be afforded by the courts.<sup>16</sup>

### **3. Impact of COVID-19 in Latin American Prisons**

By March 2020, the seriousness of the COVID-19 pandemic was widely recognized by governments around the world. The enforcement of lockdowns and travel restrictions in most Latin American countries, coupled with the bleak perspective offered by the situation in Europe, where healthcare systems were collapsing and mortality rates reaching worrying numbers, led public opinion to a state of alarm.

Both governments and prisoners knew that detention facilities were one of the most vulnerable settings for the virus to spread and wreak havoc. Various measures were implemented to try and contain the impending crisis, whereas prisoners -impatient, dissatisfied and distrustful- often resorted to violence to press the authorities into taking heed of their demands.

The sections below provide an overview of the numerous mutinies and riots that shook Latin American prisons since the beginning of the pandemic, the steps taken by several governments to contain the virus and the level of success that they achieved.

This enquiry posed a great methodological challenge. Official data on this matter is often scarce, either because it is not made readily available or because it was never gathered in the first place. For instance, to know how many people contracted COVID-19 in prison it is first necessary for States to conduct regular and comprehensive testing, and then to publish the results. Neither one thing nor the other were performed consistently in Latin America. The quantity and quality of the information available is therefore very disparate. We tried to resort to current official data when it was accessible, and when it was not, we filled the gaps with information from NGOs and the press. It should be noted, however, that this may undermine the accuracy and comparability of data.

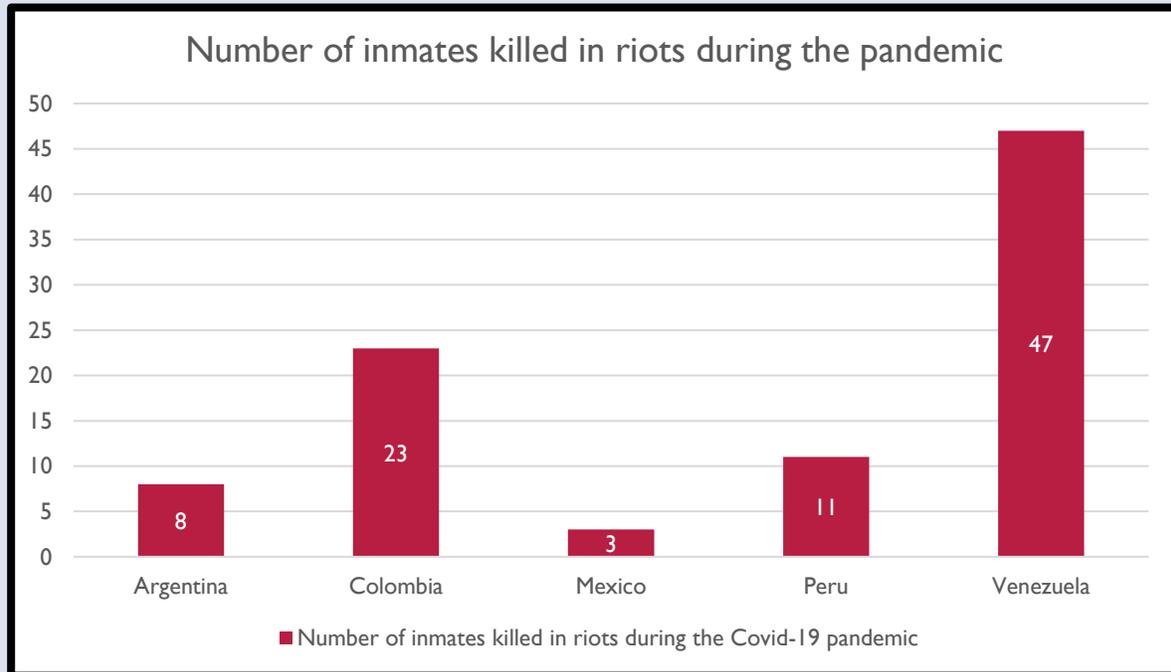
#### **a. Riots and Mutinies in Latin American Prisons during the COVID-19 Pandemic**

News about a novel and dangerous illness reached Latin American prisons in March and were met with fear and uncertainty. Mounting unrest among prisoners, evidenced in the many riots, mutinies and massive breakaways that swept the region's detention facilities since early March, pointed both to the whole fragility of the system as well as to a sense of helplessness in the face of the virus: the belief that, should the disease enter prison grounds, little to nothing would be done by the authorities to contain it, and tragedy would likely ensue.

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<sup>16</sup> Ibid. Principle XVII.

In this section we will delve into the multiple cases of violence that shook Latin America since the beginning of the pandemic.



### i. Argentina

In late March, uprisings in the prisons of Coronda and Las Flores, in the province of Santa Fe, resulted in the death of five inmates. The revolts were prompted by the absence of preventive measures and intended to press the authorities to release prisoners, and hence relieve the facilities' critical overcrowding. Inmates also protested for the lack of adequate food that resulted from the ban on visits.<sup>17</sup> A similar incident, albeit without any casualties, was registered at the same time in a penitentiary facility in Concepción del Uruguay, Entre Rios.<sup>18</sup>

Shortly after, Santa Fe's provincial authorities announced that they were considering the release of 500 to 700 inmates, mostly those who were risk patients or already fulfilled the legal requirements for parole, although the final decision would remain in the hands of the courts.<sup>19</sup>

<sup>17</sup> 'Cinco muertos en motines en cárceles argentinas durante la cuarentena por el coronavirus' El País (Buenos Aires, 25 March 2020) <<https://elpais.com/sociedad/2020-03-25/cinco-muertos-en-motines-en-carceles-argentinas-durante-la-cuarentena-por-el-coronavirus.html>> accessed 8 January 2021.

<sup>18</sup> 'Coronavirus en las cárceles: presos de Concepción del Uruguay incendiaron colchones durante un motín que fue controlado' Clarin (Buenos Aires, 25 March 2020) <[https://www.clarin.com/policiales/coronavirus-carceles-presos-concepcion-uruguay-incendiaron-colchones-motin-controlado\\_0\\_2ruOfVu8u.html](https://www.clarin.com/policiales/coronavirus-carceles-presos-concepcion-uruguay-incendiaron-colchones-motin-controlado_0_2ruOfVu8u.html)> accessed 8 January 2021.

<sup>19</sup> 'Coronavirus: tras los motines serían liberados más de 500 presos en Santa Fe' La Nación (Buenos Aires, 28 March 2020) <<https://www.lanacion.com.ar/seguridad/santa-fe-motines-serian-liberados-mas-500-nid2348438>> accessed 8 January 2021.

In late April, a riot erupted in the Boulogne Sur Mer penitentiary in Mendoza, immediately after the provincial governor stated his opinion against the release of prisoners to reduce the risk of contagion. Some inmates began a hunger strike or sowed their mouths shut to express their discontent.<sup>20</sup> In the Florencio Varela prison, province of Buenos Aires, an inmate was shot dead by penitentiary agents<sup>21</sup> during an uprising that was unleashed by an allegedly fake Whatsapp audio message that circulated among prisoners, warning about an imminent catastrophe if the virus penetrated the facility.

Meanwhile, inmates at the Villa Devoto prison in the city of Buenos Aires revolted after they found that a penitentiary agent had tested positive of COVID-19. After taking control of the premises, prisoners were spotted on the rooftop holding a banner that read, ‘we refuse to die in jail.’<sup>22</sup> The mutiny was resolved with the establishment of a negotiating panel with representatives of the inmates, the courts, the ministry of justice and the penitentiary service.

Unrest continued throughout the year. In May, force was used to suppress an uprising in a detention facility in Corrientes;<sup>23</sup> and in July, a mutiny in Jujuy ended with two dead inmates.<sup>24</sup> As late as November, riots broke in the prisons of Melchor Romero, Florencio Varela, Campana and San Martín, province of Buenos Aires, to protest against the ban on visits. Peace was restored after the government announced the resumption of visitations.<sup>25</sup>

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<sup>20</sup> ‘Coronavirus en Argentina: terminó el motín en una cárcel de Mendoza con la promesa de abrir una mesa de diálogo’ Clarín (Buenos Aires, 27 April 2020) <[https://www.clarin.com/policiales/coronavirus-argentina-motin-carcel-mendoza-reclamo-excarcelaciones-pandemia\\_0\\_1T0quwxj.html](https://www.clarin.com/policiales/coronavirus-argentina-motin-carcel-mendoza-reclamo-excarcelaciones-pandemia_0_1T0quwxj.html)> accessed 8 January 2021.

<sup>21</sup> ‘La autopsia al preso muerto en el motín de Florencio Varela reveló que fue asesinado con una bala de plomo’ Infobae (24 April 2020) <<https://www.infobae.com/sociedad/policiales/2020/04/24/la-autopsia-al-presomuerto-en-el-motin-de-florencio-varela-revelo-que-fue-asesinado-con-una-bala-de-plomo/>> accessed 8 January 2021.

<sup>22</sup> ‘Motín en cárcel argentina por un caso de COVID-19’ El País (Buenos Aires, 25 April 2020) <<https://www.elpais.com.uy/mundo/motin-carcel-argentina-caso-COVID.html>> accessed 8 January 2021.

<sup>23</sup> ‘Coronavirus: Al menos dos penitenciarios heridos por un motín en una cárcel de Corrientes’ El Litoral (12 May 2020) <[https://www.ellitoral.com/index.php/id\\_um/239152-coronavirus-al-menos-dos-penitenciarios-heridos-por-un-motin-en-una-carcel-de-corrientes-se-confirmaron-23-casos-de-COVID19-sucesos.html](https://www.ellitoral.com/index.php/id_um/239152-coronavirus-al-menos-dos-penitenciarios-heridos-por-un-motin-en-una-carcel-de-corrientes-se-confirmaron-23-casos-de-COVID19-sucesos.html)> accessed 8 January 2021.

<sup>24</sup> ‘Presos de una cárcel de Jujuy realizaron un motín por supuestos casos de coronavirus dentro del penal: hubo dos muertos’ Infobae (16 July 2020) <<https://www.infobae.com/sociedad/policiales/2020/07/16/presos-de-una-carcel-de-jujuy-realizan-un-motin-por-supuestos-casos-de-coronavirus-dentro-del-penal/Z>> accessed 8 January 2021.

<sup>25</sup> ‘Cesa motín de presos en Argentina al acordarse visitas en pandemia’ France24 (Buenos Aires, 1 November 2020) <<https://www.france24.com/es/minuto-a-minuto/20201101-cesa-mot%C3%ADn-de-presos-en-argentina-al-acordarse-visitas-en-pandemia>> accessed 8 January 2021.



Inmates on the roof of the Villa Devoto prison in Buenos Aires holding a banner with the phrase “we refuse to die in jail.” (credit La Nación)

## ii. Bolivia

In early April, several inmates at the San Pedro prison (Oruro) were wounded during the suppression of a riot that broke in demand of pardons and better sanitary measures.<sup>26</sup>

In May, an uprising followed the death of two inmates with COVID-19 symptoms in the Palmasola penitentiary in Santa Cruz, the largest in the country.<sup>27</sup> Similar incidents took place in June in the prison of San Roque (Sucre) after the death of a prisoner who was COVID-19 positive,<sup>28</sup> and then in July in the San Sebastián Prison (Cochabamba), after three inmates passed away, also possibly after being infected with the virus. The mutineers climbed to the roofs with black flags in sign of mourning and banged metal objects to make noise in demand of healthcare, medicines and testing.<sup>29</sup> Equally motivated riots were registered at the same time in the prisons

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<sup>26</sup> ‘Varios heridos durante un motín en una cárcel de Bolivia por la falta de medidas contra el coronavirus’ Europa Press (Madrid, 12 April 2020) <<https://www.europapress.es/internacional/noticia-varios-heridos-motin-carcel-bolivia-falta-medidas-contra-coronavirus-20200412233643.html>> accessed 8 January 2021.

<sup>27</sup> ‘Coronavirus en Bolivia: los presos de la cárcel más peligrosa realizan un motín por un posible contagio’ Clarín (Buenos Aires, 11 May 2020) <[https://www.clarin.com/mundo/coronavirus-bolivia-presos-carcel-peligrosa-realizan-motin-posible-contagio\\_0\\_CmuYkZJIs.html](https://www.clarin.com/mundo/coronavirus-bolivia-presos-carcel-peligrosa-realizan-motin-posible-contagio_0_CmuYkZJIs.html)> accessed 8 January 2021.

<sup>28</sup> ‘La Policía interviene el motín en la cárcel; la calma vuelve a San Roque’ Correl del Sure (Sucre, 19 June 2020) <[https://correodelsur.com/seguridad/20200619\\_la-policia-interviene-el-motin-en-la-carcel-la-calma-vuelve-a-san-roque.html](https://correodelsur.com/seguridad/20200619_la-policia-interviene-el-motin-en-la-carcel-la-calma-vuelve-a-san-roque.html)> accessed 8 January 2021.

<sup>29</sup> ‘Motín en una cárcel boliviana por miedo a la COVID-19’ La Vanguardia (29 July 2020)

of San Pedro de Sacaba and San Pablo de Quillacollo. By then, already forty inmates in total had died in different detention facilities across the country.<sup>30</sup>

### iii. Brazil

In March, around 1350 inmates escaped several semi-open detention facilities in the state of São Paulo during protests held against restrictions on visits and furloughs.<sup>31</sup> 517 were later recaptured.<sup>32</sup>

In May, inmates at the Puraquequara penitentiary unit in Manaus took several members of staff hostage in a riot motivated by fear to COVID-19.<sup>33</sup>

### iv. Chile

In late March, riots broke at the Preventive Detention Centre of Puente Alto, Santiago de Chile, after an inmate tested positive of COVID-19. The uprising was suppressed with tear gas and ended with twenty-six prisoners wounded.<sup>34</sup> The government issued pardons for minor offenders who were pregnant, above the age of sixty or suffered from chronic diseases. However, the same facility saw another mutiny in April. By that time, already 68 inmates and 81 penitentiary agents had been infected, while only one nurse and three paramedics were available to care for the centre's population.<sup>35</sup>

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<<https://www.lavanguardia.com/internacional/20200728/482570689818/motin-carcel-boliviana-miedo-coronavirus-presos-tejado-mensajes-consignas-video-seoext.html#:~:text=La%20mayor%C3%ADa%20de%20los%20presos,portando%20carteles%20con%20varias%20consignas>> accessed 8 January 2021.

<sup>30</sup> 'Motines en cuatro cárceles de Bolivia para exigir asistencia médica para enfrentar el coronavirus' Clarín (Buenos Aires, 27 July 2020) <[https://www.clarin.com/mundo/motines-carceles-bolivia-exigir-asistencia-medica-enfrentar-coronavirus\\_0\\_eYIAMStGM.html](https://www.clarin.com/mundo/motines-carceles-bolivia-exigir-asistencia-medica-enfrentar-coronavirus_0_eYIAMStGM.html)> accessed 8 January 2021.

<sup>31</sup> 'Coronavirus: más de 1.300 presos se fugan de varias cárceles de Brasil tras protestar por las restricciones impuestas para controlar el COVID-19' BBC (17 March 2020) <<https://www.bbc.com/mundo/noticias-america-latina-51922229>> accessed 8 January 2021.

<sup>32</sup> 'Coronavírus no Brasil leva a motins e fugas' Correio da Manhã (18 March 2020) <<https://www.cmjornal.pt/mundo/detalhe/coronavirus-no-brasil-leva-a-motins-e-fugas>> accessed 8 January 2021.

<sup>33</sup> 'Com medo do coronavírus, presos fazem reféns em motim em Manaus' Folha de S.Paulo (2 March 2020) <<https://www1.folha.uol.com.br/cotidiano/2020/05/com-medo-do-coronavirus-presos-fazem-refens-em-motim-em-manauas.shtml>> accessed 8 January 2021.

<sup>34</sup> 'Intento de motín en una cárcel chilena por un contagio de coronavirus deja 26 heridos' SwissInfo (30 March 2020) <<https://www.swissinfo.ch/spa/afp/intento-de-mot%C3%ADn-en-una-c%C3%A1rcel-chilena-por-un-contagio-de-coronavirus-deja-26-heridos/45653162#:~:text=Buscar,Intento%20de%20mot%C3%ADn%20en%20una%20c%C3%A1rcel%20chilena%20por,de%20coronavirus%20deja%2026%20heridos&text=Los%20reos%20de%20una%20c%C3%A1rcel,26%20heridos%20seg%C3%BAn%20autoridades%20locales>> accessed 8 January 2021.

<sup>35</sup> 'Coronavirus en Chile: grave situación en una cárcel, con al menos 149 infectados' Clarín (Buenos Aires, 21 April 2020) <[https://www.clarin.com/mundo/coronavirus-chile-grave-situacion-carcel-149-infectados\\_0\\_oN1LtXMa.html](https://www.clarin.com/mundo/coronavirus-chile-grave-situacion-carcel-149-infectados_0_oN1LtXMa.html)> accessed 8 January 2021.

## v. Colombia

In March, a failed flight attempt in La Modelo detention centre near Bogota ended with twenty-three inmates killed and eighty-three wounded. This was the bloodiest of a series of simultaneous mutinies, which also included the prisons of La Picota and Buen Pastor (Bogota); Cómbita (Boyacá); Picalaña (Ibagué); Jamundí (Valle del Cauca); and Pedregal and Bellavista (Antioquia); all of which were motivated by fear of the virus.<sup>36</sup> Further structural deficiencies, like critical overcrowding, lack of hygiene products and food, insufficient clean water, inadequate medical services and vermin infestations added to the sense of vulnerability and encouraged prisoners to resort to violence in several facilities across the country.<sup>37</sup>

Unrest continued for several weeks, with peaceful protests being held in La Picota and other prisons. Even though the government announced the release of an important contingent of inmates, protestors considered that it was not enough to relieve overcrowding and thus reduce the risk of transmission.<sup>38</sup>

## vi. Mexico

Inmates revolted in a detention facility in the state of Colima to protest the month-long suspension of visits enforced to contain COVID-19.<sup>39</sup> Force was used to suppress it, which resulted in fifteen prisoners wounded and three killed. Notwithstanding this outcome, the authorities informed that restrictions would not be lifted.<sup>40</sup>

## vii. Perú

In April, a string of riots swept across detention facilities in Peru. Two inmates were killed during a revolt in the Pisci prison in Chiclayo.<sup>41</sup> Later, a mutiny in the Castro Castro prison in Lima ended with a toll of nine dead and sixty-seven wounded inmates. The uprising took place after two prisoners with COVID-19 passed away, which prompted inmates to revolt in

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<sup>36</sup> 'Un motín en una cárcel colombiana por el COVID-19 deja 23 presos muertos y 83 heridos' La Vanguardia (Bogota, 23 March 2020) <<https://www.lavanguardia.com/internacional/20200322/4835371710/coronavirus-motin-bogota-muertos-heridos.html>> accessed 8 January 2021.

<sup>37</sup> 'Motines en más de 10 cárceles de Colombia por el hacinamiento y el temor al coronavirus' RTVE (22 March 2020) <<https://www.rtve.es/noticias/20200322/motines-mas-10-carceles-colombianas-hacinamiento-temor-cor/2010560.shtml>> accessed 8 January 2021.

<sup>38</sup> 'A un mes de tragedia en La Modelo, 73 casos de COVID-19 en cárceles' El Tiempo (22 April 2020) <<https://www.eltiempo.com/justicia/investigacion/crece-tension-en-la-picota-y-otras-carceles-por-atencion-al-coronavirus-487314>> accessed 8 January 2021.

<sup>39</sup> 'Motín en cárcel de Colima deja 3 muertos y 15 heridos' Excelsior (12 May 2020) <<https://www.excelsior.com.mx/nacional/motin-en-carcel-de-colima-deja-3-muertos-y-15-heridos/1381543>> accessed 8 January 2021.

<sup>40</sup> 'Restringen visitas en penal de Colima tras motín' Excelsior (13 May 2020) <<https://www.excelsior.com.mx/nacional/restringen-visitas-en-penal-de-colima-tras-motin>> accessed 8 January 2021.

<sup>41</sup> <https://elcomercio.pe/peru/lambayeque/coronavirus-en-peru-violento-motin-en-penal-de-chiclayo-deja-dos-presos-muertos-videos-nnpp-noticia/>> accessed 8 January 2021.

demand of pardons, more testing and better medical care. Overcrowding in this centre is extreme: it holds 5500 inmates in a space meant for 1400.<sup>42</sup>

Another revolt, this time without any casualties, broke in the prison of Huancayo after two COVID-19 positive inmates were reported dead. This facility has a capacity for 680 inmates, though it currently holds 2100.<sup>43</sup> Other incidents were registered in prisons in Chanchamayo,<sup>44</sup> Cachiche,<sup>45</sup> Chorrillos<sup>46</sup> and Arequipa.<sup>47</sup>

The Peruvian government announced that it would pardon 3000 inmates who were above the age of sixty, pregnant or had young children under their care.<sup>48</sup>

### viii. Venezuela

In mid-April, inmates at the Ramo Verde prison in Venezuela revolted when agents from the General Direction of Military Counterintelligence tried to enter the premises without complying with basic measures to prevent the spread of COVID-19.<sup>49</sup>

Prisons in Venezuela are no strangers to the grave humanitarian crisis that is afflicting the country: dramatic overpopulation, critical shortage of food and medical supplies, extreme violence and an overall breakdown of the rule of law were combined with the virus to make the deadliest mutiny that Latin America has seen since the beginning of the pandemic.

In May, an uprising in the Los Llanos Penitentiary Centre in the city of Guanare ended with 47 dead prisoners. Although the authorities initially blamed the mutiny on a failed breakaway attempt, relatives of the inmates claimed that the revolt had begun after the ban on

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<sup>42</sup> 'Motín en cárcel de Perú por coronavirus deja 9 reos muertos' La Jornada (Mexico, 28 April 2020) <<https://www.jornada.com.mx/ultimas/mundo/2020/04/28/motin-en-carcel-de-peru-por-coronavirus-deja-8-reos-muertos-8735.html>> accessed 8 January 2021.

<sup>43</sup> 'Tres muertos deja motín en cárcel de Perú por temor al coronavirus' Deutsche Welle (27 April 2020) <<https://www.dw.com/es/tres-muertos-deja-motin-en-carcel-de-peru-por-temor-al-coronavirus/a-53264928>> accessed 8 January 2021.

<sup>44</sup> 'Chanchamayo: internos del penal Virgen de las Mercedes realizaron motín' El Comercio (Lima, 26 April 2020) <<https://elcomercio.pe/videos/pais/chanchamayo-internos-del-penal-virgen-de-las-mercedes-realizaron-motin-nnav-penal-virgen-de-las-mercedes-motin-coronavirus-en-peru-chanchamayo-noticia/>> accessed 8 January 2021.

<sup>45</sup> 'Presos se amotinan en penal de Cachiche de Ica y exigen que les tome la prueba del coronavirus' El Comercio (Lima, 27 April 2020) <<https://elcomercio.pe/peru/ica/presos-se-amotinan-en-penal-de-cachiche-de-ica-y-exigen-que-les-tome-la-prueba-del-coronavirus-npp-noticia/>> accessed 8 January 2021.

<sup>46</sup> 'Mujeres en una cárcel de Perú protestan por temor al coronavirus' SwissInfo (11 May 2020) <<https://www.swissinfo.ch/spa/afp/mujeres-en-una-carcel-de-peru-por-temor-al-coronavirus/45751038>> accessed 8 January 2021.

<sup>47</sup> 'Arequipa: Inpe restablece el control del penal de Camaná tras registrarse un motín' El Comercio (Lima, 19 May 2020) <<https://elcomercio.pe/peru/arequipa/arequipa-inpe-restablece-el-control-del-penal-de-camana-tras-registrarse-un-motin-npp-noticia/?ref=ecr>> accessed 8 January 2021.

<sup>48</sup> 'Perú indultará unos 3.000 reos vulnerables ante pandemia' Deutsche Welle (23 April 2020) <<https://www.dw.com/es/peru-indultar-unos-3000-reos-vulnerables-ante-pandemia/a-53213540>> accessed 8 January 2021.

<sup>49</sup> 'Coronavirus: Motín en penal venezolano por incursión militar' Diario Las Américas (Caracas, 16 April 2020) <<https://www.diariolasamericas.com/coronavirus-motin-penal-venezolano-incursion-militar-n4197145>> accessed 8 January 2021.

visits put inmates at the brink of starvation. Even though it had been agreed that visitors would hand in the food to prison staff, the packages delivered apparently never reached their final recipients. This facility has capacity for 750 inmates, though it currently holds 2500.<sup>50</sup>

Shocking as it is, the staggering death toll of the Los Llanos mutiny is by no means unprecedented. Venezuela's penitentiary system is in a state of undeniable collapse, and casualties in the many revolts that have erupted across the country's detention facilities in the past years can be counted by the hundreds.



Dead inmates lying on the floor of the Los Llanos Penitentiary in Venezuela (credit: La Nación)

### **b. Government Response to COVID-19: Measures and Results**

Fearing that detention facilities would become a hotbed for transmission, swift measures were taken to reduce overpopulation and enhance hygiene and medical attention. However, the magnitude of these measures, as well as their efficacy, varied greatly from one country to the

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<sup>50</sup> 'Incidente en el Cepello de Venezuela: decenas de muertos en una cárcel del oeste del país en medio de la crisis por el coronavirus' BBC (2 May 2020) <<https://www.bbc.com/mundo/noticias-america-latina-52517409>> accessed 8 January 2021; 'Motín en cárcel venezolana fue por falta de alimentos, según diputada opositora' Deutsche Welle (2 May 2020) <<https://www.dw.com/es/mot%C3%ADn-en-c%C3%A1rcel-venezolana-fue-por-falta-de-alimentos-seg%C3%BAAn-diputada-opositora/a-53314898>> accessed 8 January 2021.

other. In the section below we will go over the steps taken by several Latin American countries to avert the COVID-19 crisis in prison and try to establish their success, or lack thereof.

### **i. Argentina**

The *Procuración Penitenciaria de la Nación* (PPN), a national agency in charge of overseeing the proper functioning of federal prisons and ensuring compliance with human rights and national legislation, followed the evolution of COVID-19 in Argentinean federal facilities and reported accordingly throughout the year.

The PPN's seventh report accounted for a total of 415 cases of COVID-19 in federal prisons during 2020. The rate of infections peaked in August, when 123 cases were detected, and went consistently down in the following months, reaching only seven in November.<sup>51</sup>

Furthermore, April saw a sharp reduction in the total number of inmates held in federal facilities, which dropped from 13,971 to 12,459. A decreasing trend continued throughout the year, albeit more slightly, until it achieved a record low of 11,479 in September, and finally climbed to 11,593 in October. By May 2020, federal prisons had ceased to report overcrowding.<sup>52</sup>

A decision issued in April by the Federal Court of Cassation had recommended lower courts to adopt alternative measures to incarceration in the following cases:

- a) Persons in pre-trial detention for non-violent or minor offences;
- b) Individuals convicted for non-violent crimes who were approaching the completion of their sentences;
- c) Convicts sentenced to three years of prison or less; convicts who met the requirements for parole;
- d) Pregnant women or women detained with their children; and
- e) Persons whose age, disability or illness made them particularly vulnerable to COVID-19.

The Court further advised extreme caution when considering the application of these standards to persons detained for serious offences.<sup>53</sup>

Nevertheless, it is not entirely clear how decisive this ruling was in the overall reduction of overcrowding in federal prisons. In May, the Minister of Justice had informed that only 320 federal inmates had been released as part of the efforts to contain the spread of the virus.<sup>54</sup>

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<sup>51</sup> Procuración Penitenciaria de la Nación, *La situación de la población privada de libertad (PPL) ante la emergencia sanitaria por COVID-19. Reporte estadístico N° 17*, 8 <<https://www.ppn.gov.ar/pdf/boletines/ReporteestadisticoPPLCOVID19-7.pdf>> accessed 9 January 2021.

<sup>52</sup> *Ibid.* 1-2

<sup>53</sup> Cámara Federal de Casación Penal, 'Acordada 9/20' (13 March 2020), 10/11.

<sup>54</sup> 'Marcela Losardo: "A mí no me gusta que salgan los asesinos y los violadores a la calle"' Infobae (30 April 2020) <<https://www.infobae.com/politica/2020/04/30/marcela-losardo-a-mi-no-me-gusta-que-salgan-los-asesinos-y-los-violadores-a-la-calle/>> accessed 8 January 2021.

Meanwhile, a survey by the Crime, Institutions and Policies Research Laboratory of Di Tella University found that crime rates dropped substantially during the first months of the pandemic,<sup>55</sup> which may also explain why federal prisons saw such a sharp decrease in the number of incarcerated persons between March and May.

Attempts to reduce overcrowding in the penitentiary system of the province of Buenos Aires, the largest in the country, were met with harsh criticism from the press and quickly thwarted.<sup>56</sup> In May, a decision by the provincial Tribunal of Cassation laying the grounds to reduce the size of the incarcerated population was reversed by the Buenos Aires Supreme Court.<sup>57</sup> According to estimations from the head of the provincial prosecution office, 800 prisoners had been transferred to house arrest until then.<sup>58</sup> Eventually, no more than 2% of the 44,000 inmates held in Buenos Aires prisons were released during the pandemic.<sup>59</sup>

## ii. Bolivia

With an incarcerated population of 19,161 people and an occupancy rate of 363.9%, Bolivian prisons are among the most overcrowded in the world.<sup>60</sup> To ease this dire situation, Presidential Decree N° 4226 was passed in May, granting a general pardon in the following cases:

- a) All inmates above the age of 58;
- b) Persons with chronic or terminal diseases;
- c) Persons with a serious disability;
- d) Pregnant women or women with lactating children; and
- e) Persons who were the sole guardian of a child under the age of six.<sup>61</sup>

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<sup>55</sup> Universidad Torcuato Di Tella, Laboratorio de Investigaciones sobre Crimen, Instituciones y Políticas, *Índice de victimización (IVI)* (June 2020) <file:///C:/Users/Administrador/Downloads/Informe%20Junio%202020%20(1).pdf> accessed 9 January 2021.

<sup>56</sup> 'Las excarcelaciones contra la pandemia impulsan una ola de malestar social en Argentina' El País (Buenos Aires, 1 May 2020) <<https://elpais.com/sociedad/2020-05-01/las-excarcelaciones-contra-la-pandemia-impulsan-una-ola-de-malestar-social-en-argentina.html>> accessed 8 January 2021.

<sup>57</sup> Suprema Corte de Justicia de Buenos Aires, 'Altuve, Carlos Arturo -Fiscal ante el Tribunal de Casación Penal s/ queja en causa N° 102.555 (habeas corpus colectivo y correctivo) y su acumulada N° 102.558 (habeas corpus colectivo y correctivo) del Tribunal de Casación Penal' causa P. 133.682-Q (5 May 2020).

<sup>58</sup> 'Julio Conte Grand, procurador de la Corte Suprema de la provincia de Buenos Aires: "Jamás escuché de la existencia de un plan para liberar presos' La Nación (Buenos Aires, 30 April 2020) <[https://www.lanacion.com.ar/politica/julio-conte-grand-jamas-escuche-existencia-plan-nid2359998?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.lanacion.com.ar/politica/julio-conte-grand-jamas-escuche-existencia-plan-nid2359998?utm_source=dlvr.it&utm_medium=twitter)> accessed 8 January 2021.

<sup>59</sup> Chequeado, *Cuántos presos salieron de las cárceles argentinas por la pandemia y qué pasa en el mundo* <<https://chequeado.com/el-explicador/cuantos-presos-salieron-de-las-carceles-en-la-argentina-y-que-pasa-en-el-mundo/>> accessed 9 January 2021.

<sup>60</sup> World Prison Brief, *World Prison Brief data. Bolivia* <<https://www.prisonstudies.org/country/bolivia>> accessed 9 January 2021.

<sup>61</sup> Bolivia, Decreto Presidencial N° 4226 (4 May 2020), art 2.

Individuals convicted or accused of serious crimes, such as homicide, traffic of arms, rape, kidnapping and corruption, among others, were left out of this measure.<sup>62</sup>

However, the actual impact of this decision was rather limited. By June, only 42 inmates had been released, according to a statement made to the press by the Vice-minister of Citizen Security, who added that 1000 prisoners were expected to benefit from the application of the Decree as well as other measures to relieve overcrowding which were already in force.<sup>63</sup>

Moreover, even though the authorities enforced preventive measures in line with those adopted by other countries in the region, such as banning visitations and intensifying cleaning and disinfection in detention premises,<sup>64</sup> it is difficult to grasp the extent of their success, since Bolivia has the lowest rate of COVID-19 testing in South America.<sup>65</sup> In July, the office of the People's Defender reported at least 159 infected inmates, 188 suspected cases and 40 deceased,<sup>66</sup> though the numbers are thought to be much higher.<sup>67</sup>

### iii. Brazil

With one of the largest incarcerated populations in the world (755,274 people and an occupancy level of 170.7%, according to World Prison Brief),<sup>68</sup> it was imperative for Brazil to take measures to relieve overcrowding in prison. In March, the National Justice Council passed Recommendation 62/2020, according to which it urged lower courts to consider the early release of pregnant women, inmates who were responsible for a child younger than twelve years of age, elderly people, persons with disabilities, indigenous persons, and persons detained in overcrowded facilities which lacked proper health services. It further recommended granting house arrest to anyone serving their sentence under an open or semi-open regime.<sup>69</sup> According to information gathered by the National Justice Council, by June 32,500 inmates had been released in compliance with the guidelines laid down in Recommendation 62/2020.<sup>70</sup>

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<sup>62</sup> Ibid. art 3.

<sup>63</sup> 'A un mes de vigencia de la norma, 42 internos se beneficiaron con el indulto y amnistía' La Razón (4 June 2020) <<https://m.la-razon.com/nacional/2020/06/04/a-un-mes-de-vigencia-de-la-norma-42-internos-se-beneficiaron-con-el-indulto-y-amnistia/>> accessed 8 January 2021.

<sup>64</sup> 'Ordenan fumigar siete centros de penitenciarios' El Diario (Cochabamba, 22 March 2020) <[https://www.eldiario.net/noticias/2020/2020\\_03/nt200322/sociedad.php?n=39&-ordenan-fumigar-siete-centros-de-penitenciarios](https://www.eldiario.net/noticias/2020/2020_03/nt200322/sociedad.php?n=39&-ordenan-fumigar-siete-centros-de-penitenciarios)> accessed 11 January 2021.

<sup>65</sup> Our World in Data, *World map: total tests performed relative to the size of population* <<https://ourworldindata.org/coronavirus-testing#world-map-total-tests-performed-relative-to-the-size-of-population>> accessed 9 January 2021.

<sup>66</sup> Defensoría del Pueblo, *Defensoría del pueblo propone ampliar el alcance del indulto y amnistía para frenar el contagio masivo en cárceles* <<https://www.defensoria.gob.bo/noticias/defensoria-del-pueblo-propone-ampliar-el-alcance-del-indulto-y-amnistia-para-frenar-el-contagio-masivo-en-carceles>> accessed 9 January 2021.

<sup>67</sup> 'Cárceles hacinadas de Bolivia, la otra cara del colapso sanitario' Página 12 (12 August 2020) <<https://www.pagina12.com.ar/284401-carceles-hacinadas-de-bolivia-la-otra-cara-del-colapso-sanit>> accessed 8 January 2021.

<sup>68</sup> World Prison Brief, *World Prison Brief data. Brazil* <<https://www.prisonstudies.org/country/brazil>> accessed 9 January 2021.

<sup>69</sup> Conselho Nacional de Justiça, *Recomendação N° 62* (17 March 2020), art 5.I.

<sup>70</sup> Conselho Nacional de Justiça, *CNJ renova Recomendação n° 62 por mais 90 dias e divulga novos dados*

Notwithstanding these measures, the Centre for Studies and Research on Health Law of the University of São Paulo reported that, by November, 35,000 inmates had contracted COVID-19 and 122 had died, a number that is particularly striking considering that only 8.34% of the incarcerated population has been tested.<sup>71</sup>

#### iv. Chile

The Chilean *Gendarmería* (the penitentiary security force) adopted several measures to help contain the spread of the virus in prison. It suspended visits to detention facilities; ensured a supply of basic hygiene products and protective gear; began to vaccinate inmates against the flu; conducted regular disinfection works; and decided to interrupt transfers between prisons.<sup>72</sup>

In 2019, Chilean prisons held 41.579 persons.<sup>73</sup> Official data provided by the *Gendarmería* shows that, by 26 June 2020, there were 746 infected inmates, of which 429 had already recovered and seven had passed away. Among security guards, 917 had contracted the disease, 464 had achieved recovery and two had died. There is no official data available after June.<sup>74</sup>

A survey by the World Prison Brief indicates that Chilean prisons have an occupancy rate of 100.4%, which means that, even though they are not overcrowded, they are at top capacity.

In April, the Chilean Congress passed Law 21228, replacing prison sentences for house arrest in the following cases:

- a) All inmates older than 75;
- b) Women older than 55 and men older than 60 who had completed half their sentence and had less than 36 months remaining;
- c) Pregnant women or mothers of a child younger than two living with them in detention, who had completed a third of their sentence and had less than 36 months remaining;
- d) Any person who had served a third of her sentence of night detention and had less than 36 months remaining; and

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<<https://www.cnj.jus.br/cnj-renova-recomendacao-n-62-por-mais-90-dias-e-divulga-novos-dados/>> accessed 9 January 2021.

<sup>71</sup> Conectas, *Boletim n. 09. Direitos na pandemia. Mapeamento e análise das normas jurídicas de resposta à COVID-19 no Brasil*, 11-13 <[https://www.conectas.org/wp/wp-content/uploads/2020/11/09boletimCOVID\\_07.pdf](https://www.conectas.org/wp/wp-content/uploads/2020/11/09boletimCOVID_07.pdf)> accessed 9 January 2021.

<sup>72</sup> Gendarmería de Chile, *Medidas con que gendarmería enfrenta al coronavirus* <<https://html.gendarmeria.gob.cl/doc/medidas.pdf>> accessed 9 January 2021.

<sup>73</sup> Gendarmería de Chile, *Boletín Estadístico N° 126. Gendarmería de Chile. Subdirección Técnica*, 7 <[https://html.gendarmeria.gob.cl/doc/estadisticas/n126ene\\_caracteriz2019.pdf](https://html.gendarmeria.gob.cl/doc/estadisticas/n126ene_caracteriz2019.pdf)> accessed 9 January 2021.

<sup>74</sup> Gendarmería de Chile, *Reporte diario de contagios y proceso de vacunación* <<https://www.gendarmeria.gob.cl/corona2020.html>> accessed 9 January 2021.

e) Any person who had completed half of her sentence, had less than 36 months remaining and had been awarded the benefit of controlled parole.

In the last two cases, detention would be substituted for night house arrest.<sup>75</sup> Inmates convicted for kidnapping, homicide, sexual offences, torture, treason, terrorist acts and other serious crimes were excluded.<sup>76</sup> The pardon applied only to convicted prisoners.

According to estimations by the *Gendarmería*, of an approximate 41,000-inmate population (of which 26,000 were convicted and 15,000 in pre-trial detention), 1860 were released by the application of the pardon. This number stands for 4.5% of the total prison population, and 7.15% of all convicts.<sup>77</sup>

In turn, the head of the National Prosecution Office instructed prosecutors to adjust the criteria employed to request pre-trial detention, and hence circumscribe it to grave cases where victims were in danger. In any other case, alternative measures, such as house arrest, ought to be given preference. News reports inform that women who were head of households, older people and first offenders accused of minor offences have mostly benefit from this change of policy.<sup>78</sup> On the other hand, the Office of the Public Defence Attorney submitted 2995 requests of revision of pre-trial detention decisions, of which 913 were granted by the courts by May 2020.<sup>79</sup>

## v. Colombia

Colombian prisons hold a total of 98,033 inmates.<sup>80</sup> Estimations by the Prison Group and the Centre of Studies on Security and Drugs of the University of Los Andes have detected as many as 17,000 infected inmates until November 2020.<sup>81</sup>

To tackle overcrowding, Legislative Decree 546 passed on 14 April 2020 substituted prisons sentences and pre-trial detention for house arrest in the following cases:

- a) All inmates older than 60;
- b) Pregnant women;

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<sup>75</sup> Ley N° 21228, Diario Oficial de la República de Chile, Santiago, Chile 17 April 2020, arts 1-5.

<sup>76</sup> Ibid. art 15.

<sup>77</sup> Gendarmería de Chile, *Efectos de medidas tomadas para descongestión sistema penitenciario. Cifras preliminares* <[https://html.gendarmeria.gob.cl/doc/Cuadro\\_Resumen\\_Prensa.pdf](https://html.gendarmeria.gob.cl/doc/Cuadro_Resumen_Prensa.pdf)> accessed 9 January 2021.

<sup>78</sup> La Tercera, *Ministerio Público ajusta criterios de solicitud de prisiones preventivas ante emergencia del coronavirus en Chile* <<http://www.dpp.cl/resources/upload/files/documento/45666bfd9c92aa8fb09271a435c409bb.pdf>> accessed 9 January 2021.

<sup>79</sup> 'Prisión preventiva en tiempos de pandemia: una oportunidad para reevaluar su uso excesivo' EL Mostrador (5 May 2020) <<https://www.elmostrador.cl/noticias/opinion/2020/05/05/prision-preventiva-en-tiempos-de-pandemia-una-oportunidad-para-reevaluar-su-uso-excesivo/>> accessed 8 January 2021.

<sup>80</sup> World Prison Brief, *World Prison Brief data. Colombia* <<https://www.prisonstudies.org/country/colombia>> accessed 9 January 2021.

<sup>81</sup> 'El balance del coronavirus en las cárceles tras ocho meses de pandemia en Colombia' Infobae (19 November 2020) <<https://www.infobae.com/america/colombia/2020/11/19/el-balance-del-coronavirus-en-las-carceles-tras-ocho-meses-de-pandemia-en-colombia/>> accessed 8 January 2021.

- c) Mothers of children younger than three living with them in prison;
- d) Inmates with cancer, HIV or other serious medical conditions;
- e) Inmates with a physical disability;
- f) Inmates charged or convicted for non-intentional crimes;
- g) Convicts with a prison sentence under five years;
- h) Inmates who had completed 40% of their sentence.<sup>82</sup>

Prisoners convicted for very serious offences, such as homicide, torture, kidnapping and rape, were excluded from the Decree.<sup>83</sup> More than 23.000 inmates were released by the application of this norm, which reduced overcrowding from 52,07% to 23,38%, according to estimations by the National Penitentiary Institute.<sup>84</sup>



Inmates wearing face masks in the courtyard of a prison in Villavicencio, Colombia (credit: El Tiempo).

#### ix. El Salvador

The arrival of the pandemic to El Salvador was met by a battery of abusive measures that had little to do with the need to prevent the spread of the disease. In April, a spike in the number of homicides in the country led the authorities to attempt a crackdown on prisons, where gang leaders were believed to command their criminal organizations, even behind bars. President

<sup>82</sup> Colombia. Decreto Legislativo N° 546 (14 April 2020), art 2.

<sup>83</sup> Ibid. art 6.

<sup>84</sup> 'El COVID-19 provocó una baja de hacinamiento histórica en las cárceles de Colombia' Infobae (10 October 2020) <<https://www.infobae.com/america/colombia/2020/10/11/el-COVID-19-provoco-una-baja-de-hacinamiento-historica-en-las-carceles-de-colombia/>> accessed 8 January 2021.

Nayib Bukele informed that strict confinement would be enforced in several detention facilities across the country, without any exercise or access to light or fresh air, and prisoners from different gangs would be kept together in the same cells, all with the aim of preventing communication between each other and with the outside world. Photographs were published in the press of inmates in the prison of Izalco sitting on the floor in their underwear, tightly next to the other, without any social distancing.<sup>85</sup>



Inmates in a Salvadorean prison during a police operation (credit: Los Angeles Times).

## vi. Mexico

According to World Prison Brief, 213,493 people are held in Mexican detention facilities, with an occupancy rate of 96.5%.<sup>86</sup> However, a survey conducted in 2016 by the National Institute of Statistics and Geography found that 45.6% of the incarcerated population in Mexico had shared their cell with at least five people. That number stood for only 4.5% of inmates in federal facilities, but 51.1% of those held in state and municipal centres. In addition, it observed

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<sup>85</sup> "Estarán adentro, en lo oscuro, con sus amigos de la otra pandilla": Bukele aplica mano dura contra los pandilleros encarcelados' Noticias Telemundo (28 April 2020) <<https://www.telemundo.com/noticias/2020/04/27/estaran-adentro-en-lo-oscuro-con-sus-amigos-de-la-otra-pandilla-bukele-aplica-mano-dura-tmna3754167>> accessed 8 January 2021.

<sup>86</sup> World Prison Brief, *World Prison Brief data. Colombia* <<https://www.prisonstudies.org/country/mexico>> accessed 9 January 2021.

that only 40.9% of persons deprived of their liberty had received hygiene products; 96.7% of them were held in federal establishments, and 7.6% in state and municipal facilities.<sup>87</sup> These figures speak of the disparity of resources and infrastructure between both systems.

In March, the Secretaries of Health and Security issued a protocol on steps to be taken to contain the spread of COVID-19 in federal prisons, which included educating inmates, guards and visitors on hygiene habits and social distancing and, eventually, either restricting or suspending visits. It also recommended the creation of an isolation area in every detention facility, where infected inmates could be kept away from healthy ones.<sup>88</sup> The guidelines, however, were criticized for being too superficial.<sup>89</sup>

In April, the Mexican Congress passed an Amnesty Law which ordered the release of anyone convicted or prosecuted for the following crimes:

- a) Abortion;
- b) Drug traffic (as long as the person had been in a situation of extreme poverty or vulnerability, or coerced by a criminal organization);
- c) Non-violent robbery and sedition (as long as nobody had been harmed as a result of those acts).<sup>90</sup>

A special commission would be set up to decide who fell within the scope of this amnesty.<sup>91</sup>

The NGO Legal Assistance for Human Rights (ASILEGAL, *Asistencia Legal por los Derechos Humanos*) estimates that, by January 2021, 3864 inmates have contracted COVID-19, 342 have died from it, whereas 3972 have been released since the pandemic reached the country.<sup>92</sup>

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<sup>87</sup> Comisión Nacional de Derechos Humanos, *Informe especial sobre el estado que guardan las medidas adoptadas en centros penitenciarios para la atención de la emergencia sanitaria generada ante el Virus Sars-Cov2 (COVID-19)*, 2 <file:///C:/Users/Administrador/Downloads/IE\_COVID19\_Penitenciarios%20(1).pdf> accessed 10 January 2021.

<sup>88</sup> Secretaría de Seguridad y Protección Ciudadana, *Protocolo de actuación para la atención de COVID-19 al interior de centros federales de reinserción social (CEFERESOS)* <[https://coronavirus.gob.mx/wp-content/uploads/2020/04/Protocolo\\_De\\_Actuacion\\_COVID-19\\_CEFERESOS.pdf](https://coronavirus.gob.mx/wp-content/uploads/2020/04/Protocolo_De_Actuacion_COVID-19_CEFERESOS.pdf)> accessed 10 January 2021.

<sup>89</sup> ASILEGAL, *Protocolo para la atención de COVID-19 en CEFERESOS, preocupante e incipiente* <<https://asilegal.org.mx/comunicados/protocolo-para-la-atencion-de-COVID-19-en-ceferesos-preocupante-e-incipiente/>> accessed 10 January 2021.

<sup>90</sup> Ley de Amnistía, Diario Oficial de la Federación, Mexico City, United Mexican States, 22 April 2020, art 1.

<sup>91</sup> Ibid. art. 3.

<sup>92</sup> ASILEGAL, *Mapa penitenciario COVID-19* <<https://asilegal.org.mx/mapa-penitenciario-COVID-19/>> accessed 10 January 2021.

## vii. Peru

According to a statement released by the Peruvian Minister of Justice, by August 2020 12,000 inmates had tested positive of COVID-19.<sup>93</sup> Until June, 212 inmates and 15 penitentiary officers had died.<sup>94</sup>

With 96,000 people in detention, the Peruvian prison system has an occupancy rate of 240.3%, making it one of the most overcrowded in the world.<sup>95</sup> Legislative Decree 1459, passed in April with the aim of reducing overcrowding, ordered the release of inmates who, having been convicted for failing to pay alimony, could demonstrate that they had paid their debt in full.<sup>96</sup> The Decree led to the release of 1191 prisoners.<sup>97</sup> Another 1124 were released by Legislative Decree 1513,<sup>98</sup> which ceased pre-trial detention for all inmates who had been arrested for various non-serious offences.<sup>99</sup>

In September, the chief of the National Penitentiary Institute (INPE, for its name in Spanish) informed that Peru had managed to reduce its detained population by 8.1%, decreasing overcrowding from 141% to 122%.<sup>100</sup>

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<sup>93</sup> 'Más de 12,000 internos han dado positivo al COVID-19, informó ministra Ana Neyra' *Gestión* (22 August 2020) <<https://gestion.pe/peru/coronavirus-peru-ministra-ana-neyra-mas-de-12-mil-internos-han-dado-positivo-al-covid-19-nndc-noticia/>> accessed 8 January 2021.

<sup>94</sup> 'Perú registra más de 12.000 casos de la COVID-19 en cárceles' *La Vanguardia* (22 August 2020) <<https://www.lavanguardia.com/vida/20200822/482962279224/peru-registra-mas-de-12000-casos-de-la-covid-19-en-carceles.html>> accessed 8 January 2021.

<sup>95</sup> World Prison Brief, *World Prison Brief data. Peru* <<https://www.prisonstudies.org/country/peru>> accessed 10 January 2021.

<sup>96</sup> Peru, Decreto Legislativo N° 1459, 14 April 2020

<sup>97</sup> 'Perú liberó 1.500 presos por pandemia para aliviar cárceles superpobladas' *Semana* (14 June 2020) <<https://www.semana.com/mundo/articulo/peru-libero-1500-presos-por-pandemia-para-aliviar-superpobladas-carceles/679702/>> accessed 8 January 2021.

<sup>98</sup> 'Jefe del Inpe: población penal se redujo 8.1% para evitar contagios por coronavirus' *Andina* (Lima, 3 September 2020) <<https://andina.pe/Agencia/noticia-jefe-del-inpe-poblacion-penal-se-redujo-81-para-evitar-contagios-coronavirus-812378.aspx>> accessed 8 January 2021.

<sup>99</sup> Peru, Decreto Legislativo N° 1513, 4 June 2020, art. 2.

<sup>100</sup> 'Jefe del Inpe: población penal se redujo 8.1% para evitar contagios por coronavirus' (n98).



Inmates in protective suits assist in the transfer of a sick prisoner to hospital at the Lugarincho prison near Lima (credit VOA News).

#### viii. Venezuela

There is limited official data about the impact of COVID-19 in Venezuelan prisons. Very few deaths and infections have been informed in comparison with other countries in the region, which may be indicative of gross underreporting.<sup>101</sup>

However, information available shows that the pandemic has brought further disruption to a system which was already in a sorry state, multiplying the number of deaths, albeit not from COVID-19, but rather by the aggravation of preexisting deficiencies, such as violence, lack of food and poor medical attention. According to estimations by Insight Crime, between March and August 2020, 287 deaths were reported in Venezuelan prisons, against 137 in the same period of 2019. Only one death was caused by COVID-19, while sixty were related with malnutrition and other treatable diseases (23 in 2019); 51 with riots (31 in 2019); 80 with alleged executions after flight attempts (41 in 2019); and 68 with tuberculosis (21 in 2019).<sup>102</sup> Though we do not have reliable information about the number of inmates who were infected or killed by COVID-19, these figures suggest that the pandemic led to a sharp deterioration in the overall living conditions in prison.

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<sup>101</sup> Insight Crime, *Muertes de presos se duplicaron en Venezuela durante la pandemia* <<https://es.insightcrime.org/noticias/analisis/muertes-de-presos-se-duplicaron-en-venezuela-durante-la-pandemia/>> accessed 10 January 2021; Una ventana a la Libertad, *Informe de los centros de detención preventiva. Primer semestre 2020*, 59 <<https://es.insightcrime.org/noticias/analisis/muertes-de-presos-se-duplicaron-en-venezuela-durante-la-pandemia/>> accessed 10 January 2021.

<sup>102</sup> Insight Crime (n101).

In its report on the state of pre-trial detention centres during the first semester of 2020, the NGO A Window to Liberty (*Una Ventana a la Libertad*) observed that the suspension of visits had severe consequences on the wellbeing of inmates, given that almost all of them depended on visitors to receive medication and food. Although relatives were instructed to bring food which penitentiary agents would then deliver to the assigned recipient, doubts were raised about whether these packages would actually reach their destination.<sup>103</sup>

The report also mentions that cleaning and disinfection was scarce, and in many facilities, it was performed only once during the whole semester.<sup>104</sup> Testing, on the other hand, was only practiced in 16% of all detention facilities.<sup>105</sup>

Furthermore, the general lockdown established by the government brought judicial activity to a halt, thus impeding the timely review of detention measures,<sup>106</sup> although hearings were eventually resumed.<sup>107</sup>

#### **4. Response from International Human Rights Mechanisms**

##### **a. Inter American Human Rights Institutions**

The Inter-American Commission on Human Rights (IACHR) was quick to warn about the pressure that COVID-19 would add to the region's fragile penitentiary system. In a series of press releases issued since March, the Commission addressed the problem of the pandemic and the persons deprived of their liberty, both in general as well as with reference to specific cases of violence that occurred throughout the year.

The Commission first urged States to reduce overcrowding and adopt appropriate health measures to mitigate the spread of the virus in prison, in line with its duty to guarantee the safety and well-being of persons under their custody. It also expressed concern for the episodes of violence prompted by the lack of protective measures inside detention facilities.<sup>108</sup>

The Commission swiftly noticed how measures to contain the expansion of the pandemic could clash with human rights norms, and urged States to take these obligations to heart when devising their sanitary policies. Although it admitted that restrictions to the full

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<sup>103</sup> Una ventana a la Libertad, 63 (n101).

<sup>104</sup> Ibid. 69.

<sup>105</sup> Ibid. 71.

<sup>106</sup> Ibid. 60.

<sup>107</sup> See Una Ventana a la Libertad, *Portuguesa: Tribunales otorgan 95 libertades en el marco de la pandemia por COVID-19* <<http://unaventanaalalibertad.org/alertas/portuguesa-tribunales-otorgan-95-libertades-en-el-marco-de-la-pandemia-por-COVID-19/>> accessed 10 January 2021.

<sup>108</sup> IACHR, *The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic* (31 March 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/066.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/066.asp)> accessed 10 January 2021.

enjoyment of certain human rights might be justified, it requested them to be necessary and proportionate, time-bound and limited.<sup>109</sup>

In April, the Commission condemned the measures taken by the Salvadorian president and called on the government to respect the human rights of detained persons in El Salvador, noting in particular the risk that such measures entailed for inmates' health.<sup>110</sup>

A few days later, the Commission addressed the violent riots that had engulfed Peruvian prisons in previous weeks, where sixteen inmates had been killed, and urged the State to reduce the prison population prevent the spread of the virus and hence discourage further outbreaks of violence.<sup>111</sup> Later in May, the Commission called on the Venezuela government to conduct an investigation on the deadly mutiny in the Los Llanos prison.<sup>112</sup>

Concern continued throughout the year. In August, the Commission warned against the risk posed by COVID-19 on the health and lives of inmates in Brazilian prisons, known for their alarming overcrowding, deplorable sanitary conditions and precarious medical care. It noted with concern how infection and mortality rates in prison were much higher than in society at large and how most facilities reported a shortage of medical personnel.<sup>113</sup>

In September, it urged States once again to do their best to reduce overpopulation and equip detention facilities with protective gear and medical supplies and personnel. Although it acknowledged the efforts made by many countries to ease overcrowding, it still regretted the high morbidity rates among inmates and the lack of testing, which might have led to significant underreporting of cases. It also urged governments to allow family members to bring inmates food and hygiene products and to enable virtual communication between them while visits remained restricted.<sup>114</sup>

In resolution 1/20, entitled *Pandemic and Human Rights in the Americas*, the Commission provided some guidelines on the steps to be taken to face the COVID-19 crisis with a human rights perspective.<sup>115</sup> With regards to persons deprived of their liberty, the resolution urges States

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<sup>109</sup> IACHR, *IACHR Calls on the OAS States to Ensure That the Emergency Measures They Adopt to Address the COVID-19 Pandemic Are Compatible with Their International Obligations* (17 April 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/076.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/076.asp)> accessed 10 January 2021.

<sup>110</sup> IACHR, *IACHR Calls on El Salvador to Protect the Rights of Individuals Who are Deprived of Liberty* (29 April 2020) <[https://www.oas.org/en/iachr/media\\_center/PReleases/2020/093.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/093.asp)> accessed 10 January 2021.

<sup>111</sup> IACHR, *IACHR Condemns Violence in Peruvian Prisons* (8 May 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/107.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/107.asp)> accessed 10 January 2021.

<sup>112</sup> IACHR, *IACHR Stresses Call for Thorough Investigation into the Deaths of 47 Inmates on May 1 at the "Cepello" Penitentiary in Venezuela* (18 May 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/116.asp](http://www.oas.org/en/iachr/media_center/PReleases/2020/116.asp)> accessed 10 January 2021.

<sup>113</sup> IACHR, *IACHR Expresses Concern over the Situation of People Deprived of Their Freedom in Brazil during the COVID-19 Pandemic* (8 August 2020) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2020/195.asp#:~:text=August%20%2C%202020&text=Washington%2C%20D.C.%20%2D%20The%20Inter%2D,from%20the%20COVID%2D19%20pandemic](http://www.oas.org/en/iachr/media_center/PReleases/2020/195.asp#:~:text=August%20%2C%202020&text=Washington%2C%20D.C.%20%2D%20The%20Inter%2D,from%20the%20COVID%2D19%20pandemic)> accessed 10 January 2021.

<sup>114</sup> IACHR, *IACHR concerned about specific risks faced by Persons Deprived of Liberty in the Americas during the COVID-19 pandemic* (9 September 2020) <[https://www.oas.org/en/iachr/media\\_center/PReleases/2020/212.asp#:~:text=The%20IACHR%20has%20particularly%20stressed,release%20issued%20on%20March%2031](https://www.oas.org/en/iachr/media_center/PReleases/2020/212.asp#:~:text=The%20IACHR%20has%20particularly%20stressed,release%20issued%20on%20March%2031)> accessed 10 January 2021.

<sup>115</sup> IACHR, Resolution No 1/2020 (10 April 2020), *Pandemic and Human Rights in the Americas*.

to reduce overcrowding in detention facilities by reassessing cases of pre-trial detention, enforcing alternative measures to incarceration and releasing inmates who would be highly vulnerable to contagion, namely older persons, pregnant or lactating women.<sup>116</sup> The Commission advises governments to apply more rigorous conditions when assessing the release of persons convicted for gross human rights violations or crimes against humanity.<sup>117</sup> It recommends the adaptation of detention conditions in terms of food, sanitation and quarantine measures to prevent the spread of the virus and to ensure the availability of medical care.<sup>118</sup> Finally, it calls on governments to make sure that limitations on visits, recreation and educational activities are enforced only after a strict analysis on proportionality.<sup>119</sup>

The Inter-American Court of Human Rights (IACtHR) also urged governments to consider their special role of guarantor with regards to persons deprived of their liberty and implement alternative measures to incarceration to reduce overcrowding in detention centres.<sup>120</sup>

#### **b. United Nations Mandates and Agencies**

In late March, the United Nations High Commissioner for Human Rights, Michelle Bachelet, released a message urging governments around the world to take appropriate measures to protect the lives and health of people who were detained in closed institutions, like prisons, migrant detention facilities and psychiatric hospitals. She stressed that overcrowding, deplorable hygienic conditions and lack of medical attention were common in many detention centres, making social distancing and self-isolation impossible. Mrs. Bachelet called on governments to relieve overcrowding by releasing inmates, especially those who were sick, of older age or less dangerous. She also reminded that sanitary measures could not infringe the basic human rights of inmates, such as access to food, water, medical care and legal assistance, and the prohibition of ill-treatment. She highlighted that, even though it might be necessary to suspend visitations to prevent the spread of the virus, this had to be implemented in a transparent manner and communicated to the inmates, avoiding a sudden interruption of contact with the outside world which could only aggravate an already distressing situation. She recommended alternative measures to compensate these restrictions, such as allowing videoconferences and email, and extending the right to use telephones.<sup>121</sup>

At the same time, the Inter-Agency Standing Committee (in particular, the Office of the High Commissioner for Human Rights and the World Health Organization) issued the *Interim*

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<sup>116</sup> Ibid. para 45.

<sup>117</sup> Ibid. para 46.

<sup>118</sup> Ibid. para 47.

<sup>119</sup> Ibid. para 48.

<sup>120</sup> IACtHR, Declaración de la Corte Interamericana de Derechos Humanos 1/20 (9 April 2020) *COVID-19 y derechos humanos: los problemas y desafíos deben ser abordados con perspectiva de derechos humanos y respetando las obligaciones internacionales*, 2.

<sup>121</sup> OHCHR, *Urgent action needed to prevent COVID-19 “rampaging through places of detention” – Bachelet* (Geneva, 25 March 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745>> accessed 10 January 2021.

*Guidance on COVID-19: Focus on Persons Deprived of Their Liberty.* This guidelines advice governments to analyze the situation in detention facilities, determine the availability of health services in accordance with the needs of vulnerable persons and assess, given the high risk of contagion in closed spaces, whether it continues to be necessary and proportionate to maintain detention measures.<sup>122</sup>

The document recommends the release of children, elderly and sick people, minor offenders, inmates with an imminent release date, and those detained for offences not recognized by international law. It further urges to limit pre-trial detention and consider non-custodial alternatives.<sup>123</sup>

Moreover, it states that the standard of healthcare in detention contexts should be comparable to that available in the community, and advices for hygiene products to be offered at no cost. With respect COVID-19, the guidelines indicate that urgent and specialized medical care should always be provided, with special consideration for the need of elderly or sick people. Positive cases should be isolated in dignified conditions and steps should be taken to minimize the stigma against them. In addition, mental health support should also be secured. Decisions on allocation of medical resources must always be guided by human rights and clinical standards.<sup>124</sup>

When adopting measures to prevent outbreaks in detention centres, States must not restrict the right to have recourse to a court of law to decide on the lawfulness of an arrest. Inmates should remain free to see their legal counsellors confidentially. Should visitations be suspended, videoconference or other means of communication must be arranged by the administration, without interfering with the inmates' rights to family and private life. The authorities must have consideration for the inmates' families and avoid increasing feelings of anxiety. Quarantine and isolation measures must be reasonable, transparent and time-limited, without leading to solitary confinement.<sup>125</sup>

In May, the Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, addressed the conditions of prisons in the Americas specifically. Mr. Colville warned about the rapid spread of COVID-19 in detention facilities across the region and observed how fear of contagion and lack of essential services, such as provision of food due to the termination of visits, had led to riots in many countries. The Spokesperson made specific reference to the deadly mutinies in Venezuela, Peru and Colombia, and urged States to use force in compliance with the principles of legality, necessity, proportionality and non-discrimination, and discharge a proper investigation on the matter. He also expressed concern about the measures applied in Salvadorian prisons. which could amount to cruel, inhuman and degrading treatment.<sup>126</sup>

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<sup>122</sup> Inter-Agency Standing Committee (IASC) Secretariat (OHCHR and WHO), *Interim Guidance : COVID-19: Focus on Persons Deprived of their Liberty* (27 March 2020), 2.

<sup>123</sup> Ibid. 3

<sup>124</sup> Ibid. 4.

<sup>125</sup> Ibid. 5.

<sup>126</sup> Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, *Press briefing note on Americas*

He then exhorted governments to ensure adequate sanitary conditions in detention facilities, provide healthcare, testing and protective gear. Also, he called on the authorities to ensure a minimum of personal contact of inmates with their families, to secure access to food and water, to keep prisoners adequately informed on the evolution of the disease inside each facility and to place infected prisoners in non-punitive quarantine where they could receive medical attention.<sup>127</sup>

He recommended the release of pregnant women, sick, disabled and older inmates, but also relieve overcrowding by reducing pre-trial detention and considering the release of prisoners who committed minor offenses.<sup>128</sup>

Moreover, the *Joint Statement on COVID-19 in Prisons and Other Closed Settings* issued in May by the United Nations Office on Drugs and Crime, the World Health Organization, UNAIDS and the OHCHR also stressed the need to reduce overcrowding, provide healthcare which is comparable to that available in the community, and maintain medical services for those inmates who were already under treatment for a different ailment. Restrictions should be necessary, well-founded, proportionate and non-arbitrary, and enhanced telecommunication should be ensured if visits were limited. Finally, cases of COVID-19 in closed settings must be always notified to the health authorities.<sup>129</sup>

Another joint statement issued in June by the UN Committee against Torture, the UN Subcommittee on Prevention of Torture, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture made similar remarks.<sup>130</sup>

Meanwhile, in July the Subcommittee on Prevention of Torture urged for the role of domestic monitoring bodies, known as National Preventive Mechanisms (NPM), to be strengthened given the difficulties faced by the Subcommittee to discharge its mandate due to restrictions on international travel. The Subcommittee also regretted that some countries, like Brazil, were obstructing the work of NPMs.<sup>131</sup>

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, Agnes Callamard, declared that the unsanitary living conditions present in many prisons combined with the transmission of COVID-19 could amount to a “humanitarian crisis,” insofar as widespread

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*Prison conditions* (Geneva, 5 May 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25864&LangID=E>> accessed 10 January 2021.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings (13 May 2020) <<https://www.who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>> accessed 10 January 2021.

<sup>130</sup> UN Committee against Torture, the UN Subcommittee on Prevention of Torture, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture, *COVID-19 exacerbates the risk of ill-treatment and torture worldwide – UN experts* (Geneva, 26 June 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25995&LangID=E>> accessed 10 January 2021.

<sup>131</sup> Ibid.

contagion among prison population would likely lead to disproportionately high mortality rates. She urged governments to act before a rise in casualties, to use the pandemic as an opportunity to rethink detention policies rather than let it become a “collective death sentence.” She recommended the release of all prisoners whose arrest had been illegal, to avoid detention as a sanction for lockdown related infractions, to reduce prison population by considering alternative sentencing for minor offences, reduce pre-trial detention, and ensure the provision of health services, complete information, protective equipment and testing.<sup>132</sup>

## 5. GICJ Position

GICJ supports the efforts undertaken by human rights institutions both within the United Nations and the Organization of American States and commends the steps taken by many governments in the Latin American region to contain the spread of COVID-19 in detention facilities and improve sanitary and overall living conditions for persons held in them. The response, however, has not been fully effective, nor all countries have acted with the necessary promptness and determination to avert this threat. As the world continues to deal with the pandemic, it is as important as ever to maintain the current measures in force and keep advancing to reduce the risk of morbidity and mortality from COVID-19 in prison.

GICJ urges governments to observe and continue to observe the following recommendations when dealing with COVID-19 in detention centres.

### a. Recommendations

Both UN and Inter-American legal documents lay down the duty of States to guarantee the well-being of persons under their custody. It is their responsibility to ensure that detention facilities are clean and spacious, that comprehensive medical care is afforded to all inmates and that adequate food and hygiene items are provided to them, to maintain their health and dignity.

Therefore, the recommendations listed below constitute the minimum human rights standard that States should observe with regards COVID-19 in custodial settings:

1. Testing: Regular testing should be conducted on both prison population and personnel. Infected inmates, as well as suspected cases, should be isolated during the infection period. New prisoners admitted into a detention facility must be tested as a matter of routine until the end of the pandemic.
2. Hygiene: Face masks and other hygiene products must be distributed among inmates free of charge, and cleaning and disinfection of detention premises must be reinforced.

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<sup>132</sup> Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, *COVID-19 and Protection of right to life in places of detention* <[https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch\\_2\\_PlacesofDetention.pdf](https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf)> accessed 10 January 2021.

3. Quarantine: Isolation should be conducted in a dignified, non-discriminatory and non-punitive manner. Hence, inmates kept in isolation must have access to food, fresh air, exercise and, should they need it, health attention.
4. Healthcare: Lockdown measures should not cause the interruption of medical treatment for inmates with preexistent conditions. Prisoners with COVID-19 who develop serious symptoms should receive appropriate medical care, including transfer to civil hospitals, without expense.
5. Visits: Although the suspension of visits may be justified as an emergency measure, it should be weighed against the emotional harm that it causes to both inmates and their loved ones and enforced only when other less restrictive measures would be ineffective. Furthermore, this decision should be reviewed periodically and maintained only if it is strictly necessary under the current sanitary situation. Palliative measures, such as facilitating virtual communications, should be applied as long as the suspension of visits remains in force. Lastly, States must guarantee that the interruption of visitations does not affect the delivery of food, medicines and other indispensable items.
6. Overpopulation: States should continue to enforce aggressive measures to reduce overcrowding in prisons. Such policies should not stop until detention facilities cease to report overcrowding.
7. Riots and institutional violence: States should strive to maintain the peace inside detention centres and use force in accordance with the principles of necessity and proportionality. Penitentiary authorities should keep inmates and their families informed on the sanitary situation inside prisons. Information should be communicated in a clear, truthful and periodic fashion, to build trust between prisoners and the administration. Prompt, independent and impartial investigations should be discharged *ex officio* after every episode of violence in order to establish the administrative and criminal responsibility of State officials

#### **b. International Responsibility**

If States find themselves unable to contain the spread of the virus due to pre-existing structural deficiencies, such as overcrowding, inadequate healthcare and insufficient supply of food and cleaning products, they would still be internationally responsible for the violation of the right to life and the prohibition of cruel, inhuman and degrading treatment with regards to inmates who fall ill or die as a result of the virus. The fact that the pandemic has put their resources and operational capacity under additional strain does not exempt them from responsibility if their inability to respond to the crisis is rooted in their ongoing failure to adjust their criminal and penitentiary policies to basic human rights norms.

Should a State be found internationally responsible for human rights violations in this regard, then the standard consequences of international responsibility should follow:

1. Restitution: States should endeavor to restore sick prisoners to their full state of health.
2. Compensation: Monetary reparations should be offered, either to the prisoner or her next of kin, if the former is diseased.
3. Guarantees of non-repetition: Concrete and effective measures should be put in place to eliminate (or at least minimize) the risk posed by COVID-19 to the lives and health of persons held in detention facilities.

### **c. Lessons for the Future**

Now that vaccination against the virus is commencing and the end of the pandemic may be in sight, we should begin to focus on the lessons that this unprecedented crisis will leave us for the future. Though they are many and concern many aspects of our lives, we will focus on one: the need for a thorough reform of criminal and penitentiary policies.

Most Latin American governments shared the concern of international human rights institutions and acknowledged the potential for catastrophe that the pandemic posed for people living behind bars. Most of them recognized that their detention facilities were overcrowded and that medical care was wanting, and they endeavored to remedy these wrongs. Their success, however, is unclear. For many Latin American countries, the penetration of COVID-19 in prisons confronted them with a new crisis inside an old crisis. Unfortunately, resources and time were not enough to resolve both simultaneously. Measures to ease overpopulation, which could have been welcome in less urgent circumstances, did not stop transmissions from growing at an alarming pace.

Thus, it is crucial for States to continue the policy of reducing prison populations. Steps to decrease overcrowding, including substitution of arrest for non-custodial measures and limitations on the use of pre-trial detention, should remain in force, if not intensified, until occupation of prisons drops below their capacity, and should be thereafter maintained to prevent a surge in incarceration rates.

It is essential to understand that in Latin American prisons, the pandemic did not just cause a crisis, but also revealed one. Vaccination will end the COVID-19 crisis. The crisis of overpopulation, institutional violence, malnutrition and insalubrity will continue. In a brief period of time, many governments managed to achieve a considerable reduction in the number of incarcerated persons without any of the feared consequences of a soft hand on crime. Efforts should be made to convince the public that lowering the amount of people in detention is safe and cost-effective, as well as humane.

GICJ strongly encourages Latin American governments to engage in a sensible, prompt and sustained reform of their penitentiary system, and thus bring it permanently in line with international human rights standards.

# Geneva International Centre *for* Justice (GICJ)

**GICJ** is an independent, non-profit, international non-governmental organization dedicated to the promotion and reinforcement of commitments to the principles and norms of human rights. GICJ is headquartered in Geneva, Switzerland and is governed by the Swiss Civil Code and its statutes. Basing its work on the rules and principles of International Law, International Humanitarian Law and International Human Rights Law, GICJ observes and documents human rights violations and seeks justice for their victims through all legal means available.

**Mission:** GICJ's mission is to improve lives by tackling violations and all forms of violence and degrading or inhumane treatment through the strengthening of respect for human rights; reinforcing the independence of lawyers and judiciaries; consolidating the principles of equity and non-discrimination; ensuring rule of law is upheld; promoting a culture of awareness on human rights; and combating impunity.

**Work:** GICJ has been tackling issues of justice and accountability since it was established. The United Nations and corresponding human rights mechanisms are pivotal to our work. GICJ participates extensively with these mechanisms, in particular the Human Rights Council (HRC) and the Universal Periodic Review (UPR).

**Network:** GICJ maintains a partnership with various NGOs, lawyers and a vast civil society network around the world. Through these channels, GICJ is able to receive documentation and evidence of human rights violations and abuses as they occur in several countries. GICJ continues to bring this information to the attention of relevant UN bodies in order to gain justice for all victims.

# Geneva International Centre *for* Justice

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