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Gaol Fever: What COVID-19 tells us about the War on Drugs

Rick Lines, Naomi Burke-Shyne, and Giada Girelli

“In every situation, where a number of people are crowded together, whether in ships, hospitals, or prisons, unless the strictest attention be paid to cleanliness, and to a free ventilation or circulation of air, a fever soon or later breaks out amongst them, of a very contagious nature, and attended with very fatal effects”.¹ So begins the account of Dr James Carmichael Smyth of an outbreak of jail distemper (typhus) in Winchester prison in England in 1780. Over the course of three and half months, 268 Spanish prisoners of war died, with Smyth himself surviving two separate bouts of the disease while caring for the sick men.

The rapid spread of contagion and death among prisoners was not a new phenomenon. The first documented outbreak of ‘gaol fever’ in England took place in Newgate and Ludgate Prison in 1414, resulting in the deaths of 64 prisoners and gaolers.² Almost 50 recorded outbreaks of fever in British prisons predate the Winchester events described by Dr Smyth, resulting in the deaths of thousands.³

Nearly 250 years later, the prisons of the world are struggling to address a new ‘gaol fever’ that threatens to dwarf the impacts of previous historic contagions—COVID-19. With physical distancing core to the COVID-19 response—an impossibility in most places of detention—the health risks of congested prisons have again come to the fore. Poor and overcrowded conditions of detention, coupled with a detainee population that often suffers from multiple health vulnerabilities, have long made prisons susceptible to rapid spread of disease and death. The highly contagious nature of the COVID-19, its global spread, and the worrying levels of mortality associated with it, have therefore raised widespread concern.

The relationship between prison health and public health is well established. In many of the historic cases of gaol fever the contagion spread beyond the prison walls into surrounding towns and villages.⁴ In more recent years, transmission of both HIV and TB has been documented in prisons, raising wider public health concerns about the role of incarceration in sustaining those epidemics.⁵ For this reason, protecting people in detention from the spread of COVID-19 must form an integral element of the global response to the virus.

Adding to this challenge is the fact that there are more people incarcerated in penal institutions around the world than ever before. It is estimated that 10.7 million people are in detention worldwide.⁶ Few, if any, of these institutions are equipped with the type of intensive care facilities needed to treat acute COVID-19 symptoms, and the pressure on overall medical capacity created by the virus means that simply transferring sick detainees to the hospital is not a viable solution.

The emerging prison health crisis highlighted by COVID-19 has wider human rights implications. In late March, the Office of the UN High Commissioner for Human Rights and World Health Organization published joint guidance on people deprived of their liberty during the COVID-19 pandemic, highlighting their unique vulnerabilities and the need for states to continue to provide essential health services, including HIV treatment and harm reduction measures, during the pandemic.⁷

In April, the European Commissioner for Human Rights issued a statement expressing concern that, ‘detention facilities are not adapted to face large-scale epidemics, and the basic protective measures such as social distancing and hygiene rules cannot be observed as easily as outside, exposing prisoners to greater health risks.’⁸

Highlighting the standards established by the European Committee for the Prevention of Torture, the Commissioner stated, ‘the resort to alternatives to deprivation of liberty is imperative in situations of overcrowding and even more so in cases of emergency. Particular consideration should be given to those detainees with underlying health conditions; older persons who do not pose a threat to society; and those who have been charged or convicted for minor or non-violent offences.’⁹

As with society as a whole, the risk of rapid COVID-19 spread among prisoners has prompted governments to respond in unprecedented ways. In the space of just a few weeks, more than 50 countries (see table) have taken steps to reduce prison populations through the release of detainees. In some countries, the numbers are relatively small. However, in others—such as Indonesia, Brazil, Nigeria, Iran, and Turkey—the detainees released, scheduled for release, or diverted to home arrest number in the tens of thousands. While this situation is fast moving, and much of the available information relies on media sources, the total number of detainees to be released to fight the spread of COVID-19 is over 300,000, and is likely to increase.

These actions are welcome and highlight the public health risks of poor and overcrowded prison conditions worldwide. They also call attention to the huge number of people in detention for non-violent offences, and to the punitive policies that drive incarceration generally.

With the European Commissioner urging states to reduce overcrowding as a human rights-based response to the pandemic in prisons, the role of punitive drug laws in fuelling this crisis must come under scrutiny. Close to half a million people are incarcerated worldwide for mere drug possession. An additional 1.7 million are incarcerated for other drug offences, many of which are non-violent.¹⁰

Overall, almost one in four people in detention globally is locked up on a drug charge, a figure that excludes a further 450,000 people estimated to be held in overcrowded compulsory drug detention centres in various parts of Asia.¹¹ The geographic diversity of the COVID-19 release schemes points to the excessive use of detention all over the world.

If a blanket release of prisoners is a common response to COVID-19 in so many countries, it begs the question, ‘Why were these individuals in prison in the first place?’ Indeed, a considerable number of prison release schemes specifically target the release of people charged with low-level drug offences.

Much has been written about the role of the drug war, and the incarceration of people who use drugs, in driving the HIV epidemic in prisons worldwide.¹² COVID-19 offers another reminder of how quickly new, frightening public health threats can emerge in the context of mass incarceration.

In his 1857 history of gaol fever in England and Wales, Dr Francis Webb wrote, ‘We know not, perhaps may never know, what the *materies morhi* of typhus may be ; but we do know that it invariably appeared in our prisons when human beings were crowded together, living in their own filth, without air, food, and water, and subjected to every depressing influence.’¹³ Dr Webb’s words describe prison conditions in most countries of the world today, environments that make physical distancing impossible, and the spread of COVID-19 inevitable.

Unravelling the carceral state must be a key goal for both health and human rights advocates, one in which drug policy reform must play a critical role. In Britain, the role of prisons in mass contagions drove legislative reforms that dramatically improved conditions for people in detention, to the point that by the early 1800s gaol fever was ‘entirely stamped out of our prisons, and they ceased to be centres of infection for surrounding districts, and a source of alarm to the nation at large’.¹⁴ The current pandemic must similarly serve as an impetus for states across the world to implement law reforms that address the crisis of prison overcrowding, and the punitive drug laws that drive it.

Only through a radical rethinking of our current approach to drugs, crime, and punishment through the lenses of human rights and public health will we achieve a 21st century solution to an 18th century problem.

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TABLE 1

Country	Criteria/Elements considered	(Expected) impact
PARDON/REMISSION		
Afghanistan	Age (over 55, minors) Offence (not serious) Preexisting conditions Women	10,000 prisoners released
Algeria	Not specified "Drugs" prisoners (not better defined) excluded	N/A
Azerbaijan	Sentence left	200 prisoners released
Bahrain	Not specified "Drugs" prisoners (not better defined) excluded	900 pardoned, including over 150 Bangladeshi detained for drugs
Burkina Faso	Age Preexisting conditions Sentence left (half)	1207 prisoners released
Ethiopia	Sentence (max 3 years for minor crimes) Sentence left (one year) Pregnant women Mothers with children	4011 prisoners released
Germany - North-Rhine Westphalia	Sentence left	1000 releases expected
Ghana	Criminal history (First-time offenders) Sentence left (half) Preexisting conditions Age ("very old")	808 prisoners released
Guyana	Sentence left (3-4 weeks) Drug possession offences Age Preexisting conditions	n/a
Iran	N/A	Almost 10,000 prisoners pardoned
Myanmar	Detained Rohingya	128 prisoners released
Morocco	Age Preexisting conditions Offence (e.g. prisoners convicted of drug trafficking excluded) Sentence served Conduct in prison	5654 prisoners pardoned
Saudi Arabia	Foreign nationals held on non-violent immigration/residency offences Those imprisoned for debt offences	Over 250 prisoners released
Somaliland	Offence ('petty')	574 prisoners pardoned
Togo	N/A	1407 prisoners pardoned

Trinidad & Tobago	Sentence left (<1 year) Imprisoned for failure to pay fines/child maintenance Imprisoned as unable to access bail Offence - incl. possession of <30 gr marijuana , possession of smoking device, marijuana cultivation	380 prisoners considered for release
Tunisia	Sentence left (half)	Around 2000 prisoners released
Turkey	N/A	Up to 45,000 pardons expected
Uganda	Sentence left (1/4) Age (over 60) Breastfeeding prisoners	2000 pardons expected
UK - Northern Ireland	Offence Sentence left (to be released by 30 June)	Less than 300 releases expected
Zimbabwe	Offence (non-violent) Sentence served (1/2, or 1/3 for children) Sentence (<36 months if served half) Age (over 70) if served half sentence	1700 - 5000 releases expected
DIVERSION (home arrest, parole,..) OR SUSPENSION OF SENTENCE		
Albania	Offence (e.g. prisoners convicted of drug trafficking excluded) Sentence left (under three years) Sentence (under five years) Age (>60) Preexisting conditions/chronic illnesses that put life at risk	600 prisoners temporarily released
Argentina	Pregnant women Women with children Age (over 65) Preexisting conditions (incl HIV, TB, kidney disease)	Prisoners routinely released after individualised assessment
Australia (New South Wales)	Offence Age Preexisting conditions/Vulnerability Others, including availability of suitable accommodation Risk assessment	Over 1700 releases expected
Bahrain	Not specified "Drugs" prisoners (not better defined) excluded	890 prisoners given non custodial sentences

Belgium	Offence Conduct in prison Accommodation available outside Sentence (<`10 years)	323 prisoners temporarily released
Brazil	Age Pregnant women Preexisting conditions (incl chronic illnesses, immunisuppressed, respiratory, diabetes, TB, kidney diseases, HIV and coinfections) High-risk of infection Indigenous Detained in institutions with inadequate healthcare Others depending on status	Prisoners routinely released after individualised assessment
Canada - Ontario	Sentence left Low risk of reoffending Offence (non serious)	Over 2000 prisoners released
Colombia	Offence (drug trafficking and organised crimes exluced, among others) Pre-trial detention Sentence served (40%) Sentence (<5 years) Age (over 60) Mothers breastfeeding or with <3 kid inside prison Preexisting conditions (incl. HIV, cancer, kidney disease, Hep B, Hep C, autoimmune disease,..) Persons with physical disabilities Delitos culposos "	4000 releases expected
DRC	Offence	1200 prisoners released
India	Varying	3000 prisoners released, , more expected [Tihar Jail] Up to 11,000 releases expected [Uttar Pradesh] 650 released, 900 more expected [Delhi] 2000 prisoners released [Karnataka]
Indonesia	Sentences left -(1/3 or half for minors) Offence Age Preexisting conditions	5500 prisoners released, 30,000 to 50,000 releases expected
Iran	N/A	75,000 prisoners released
Ireland	Offence (Non-violent) Sentence left ("close to end") Sentence ("short")	Over 200 prisoners released

Israel	Sentence (<4 years) Offence	Around 400 prisoners released
Italy	Sentence left (18 months) Semi-liberty Offence (some excluded) Adequate accommodation available	50 prisoners released, more expected
Netherlands	unclear	Unclear
Sri Lanka	Offence ('minor') Preexisting conditions Sentence served ('better part') Bail denied or imprisoned for failure to pay fine/bail	2961 prisoners released
Thailand	Offence (minor) Conduct in prison Other	8000 prisoners released since October 2019
Turkey	N/A	Up to 45,000 releases expected
UK	Offence Sentence served Pregnant women Women with children in prison 'Low risk' prisoners	Up to 4000 releases expected
USA - Federal	Individualised assessment, including: - Age - Vulnerability to COVID-19 - Security level of facility - Conduct in prison - Offence - Danger posed to the community	unclear
USA - State (incl. New Jersey, Ohio, Pennsylvania)	Individualised assessment changing by state, including: -Serving for violation of probation -Offence ('petty, non-violent') - Sentence served	Over 2000 releases completed or planned
OTHER MEASURE/CONSEQUENCE UNCLEAR		
Bangladesh	Sentence served	Up to 3000 releases expected
Canada - nova Scotia	Pre-trial	70 prisoners released, more expected
Croatia	Preexisting conditions	Delayed start of execution of sentence
Cyprus	n/a	50 releases expected
France	Sentence ('short term')	Delayed start of execution of sentence. Decrease in prison population of 6266 units

Kenya	Offence ('petty') Sentence ('short') Sentence left (< 6 months)	4800 prisoners released through 'expedite procedures'
Libya	Pre-trial Meeting criteria for conditional release	466 prisoners released from "correction and rehabilitation institutions", more expected
Nigeria	Not finalised yet	Up to 52,000 releases expected
Norway	Individualised assessment	unclear
Sudan	N/A	4217 prisoners released
USA - State (incl. California, Kentucky, Maryland, New York, Texas)	Varying by state, including: Offence (minor, incl. drug offences) Sentence left Preexisting conditions Pregnant women Age	Over 12,000 releases completed or planned, more expected