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Lessons Learned from Prisoner Releases during the COVID-19 Pandemic

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During the first year of the COVID-19 pandemic, governments around the world granted early release to an estimated one million prisoners. While mass prisoner releases are not a new phenomenon — throughout history, governments have freed people in response to health crises, during holidays, or to mark political transitions — the scale, scope and speed of releases during the pandemic were unprecedented. This paper analyzes pandemic prisoner releases, drawing upon qualitative and quantitative data from governments, the United Nations, civil society and legal organizations, and the media.

Introduction

During the first year of the COVID-19 pandemic, governments around the world granted early release to an estimated one million prisoners.¹ While mass prisoner releases are not a new phenomenon — throughout history, governments have freed people in response to health crises, during holidays, or to mark political transitions — the scale, scope and speed of releases during the pandemic were unprecedented.²

This paper analyzes pandemic prisoner releases, drawing upon qualitative and quantitative data from governments, the United Nations, civil society and legal organizations, and the media. It considers how, when, where and why such releases took place, and their impact. While global health and security research often takes a regional approach, and typically focuses on the Global South or the Global North, this paper adopts a more wide-ranging lens, considering trends across multiple parts of the world. We also turn to Canada as a case study, not only because this is where we have been engaged with research, advocacy and policy, but also because it reflects many of the wider global phenomena that we discuss. Our focus is the period between March 2020, when the World Health Organization (WHO) declared a global pandemic, and March 2021. This is for two main reasons: first, releases largely took place in the first year of the pandemic, and second, the availability and quality of data are higher for this period.

It is worth noting that, throughout the pandemic, there have been significant issues with accessing reliable data about these releases. As the United Nations reported, “the statistics on the release of prisoners as a result of COVID-19 were not publicly available” in many places and “the announced number of releases did not always reflect the actual number of prisoners and detainees released.”³ For example, the Correctional Investigator of Canada, Dr. Ivan Zinger, indicated that he did not receive timely information about releases from the federal government, despite multiple requests.⁴ While there are still issues with the evidence from the first year of the pandemic, governments have provided more data for this period compared to later stages, and this data has been scrutinized by experts seeking to hold officials accountable.

¹ UN News, “Impact of COVID-19 ‘heavily felt’ by prisoners globally: UN expert,” March 9, 2021, <https://news.un.org/en/story/2021/03/1086802>; DLA Piper, *A global analysis of prisoner releases in response to COVID-19*, December 2020, 32-33, <https://www.dlapiper.com/en-au/news/2021/03/swift-targeted-action-to-reduce-prison-population-during-covid-19>.

² Katherine Bruce-Lockhart, “How politics have played a big role in the release of prisoners,” *The Conversation*, June 15, 2020, <https://theconversation.com/how-politics-have-played-a-big-role-in-the-release-of-prisoners-139371>; Katherine Bruce-Lockhart, “More than a million prisoners have been released during COVID-19, but it’s not enough,” *The Conversation*, November 9, 2021; Hilary Marland, Clare Anderson and William Murphy, “Coronavirus: a history of pandemics in prison,” *The Conversation*, April 22, 2020, <https://theconversation.com/coronavirus-a-history-of-pandemics-in-prison-136776>; Katherine Bruce-Lockhart, “Prisoner releases in postcolonial Uganda: Power, politics, and the public,” *Incarceration* 3, no. 1 (2022), <https://doi.org/10.1177/26326663211059777>.

³ United Nations Office on Drugs and Crime, “COVID-19 Guidance Note: Emergency release mechanisms for detainees and prisoners during COVID-19: findings and recommendations,” accessed March 9, 2023, https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules/Guidance_Note_ER.pdf.

⁴ Kathleen Harris, “Prisons watchdog in the dark on inmate early release plan to limit spread of COVID-19,” April 22, 2020, <https://www.cbc.ca/news/politics/prison-covid19-blair-zinger-1.5540304>.

Based on the available evidence, we argue that despite the historic nature of these releases and their positive impact on some individuals, the releases were ultimately short-term measures that only benefited certain prisoners. The limited use of these releases was (and is) at odds with the serious and sustained threat of COVID-19 in prison settings. We urge policymakers to develop a systematic and sustained decarceration process to limit the spread of COVID-19 behind bars. This should be done within the context of widespread concerns about the deleterious effects of incarceration more generally and the exploration of alternatives to incarceration.

Why Prisoners Were Released

COVID-19 had — and continues to have — a devastating impact in prisons around the world. During the first year of the pandemic, the United Nations reported that 527,000 prisoners were infected across 122 countries — a number that was likely much higher in reality, but obscured by lack of testing and underreporting.⁵ Prisoners were also disproportionately infected compared to the general public. In the United States, for example, the number of COVID-19 cases was 5.5 times higher in prisons than in the wider population in 2020.⁶ During the second wave of the pandemic in Canada, approximately 10 percent of the federal prison population was infected, as opposed to two percent of the public.⁷

Such figures, unfortunately, are not surprising. Prisons — much like long-term care homes and other congregate settings — are ideal vectors for disease transmission due to issues such as overcrowding; insufficient ventilation; inadequate access to medical care, personal protective equipment and vaccines; poor sanitation procedures; and lack of hygiene products. Furthermore, many prisoners have pre-existing health conditions and face additional health risks while incarcerated.⁸

Recognizing the “heightened vulnerability of prisoners and other people deprived of liberty to the COVID-19 pandemic,” the WHO, United Nations Office on Drugs and Crime, UNAIDS (the Joint United Nations Programme on HIV/AIDS), and OHCHR (Office of the United Nations High Commissioner on Human Rights) issued a joint statement on “COVID-19 in prisons and other closed settings” in May 2020.⁹ It urged governments to take action to limit the spread of the virus behind bars, including using “release mechanisms for people at particular risk of COVID-19” and “other people who could be released without compromising public safety.”

⁵ UN News, “Impact of COVID-19.”

⁶ Alexandria Macmadu et al. “COVID-19 and mass incarceration: a call for urgent action,” *The Lancet* 5, no. 11 (2020): E571-E572.

⁷ Kathleen Harris, “COVID-19 hit federal prisons twice as hard in 2nd wave of pandemic, report says,” CBC News, February 23, 2021, <https://www.cbc.ca/news/politics/csc-prisoners-covid19-second-wave-1.5923707>.

⁸ Adelina Iftene, “We must decarcerate across the country, then fix the prison system,” *Policy Options*, April 20, 2020, <https://policyoptions.irpp.org/magazines/april-2020/we-must-decarcerate-across-the-country-then-fix-the-prison-system/>.

⁹ WHO, “UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings,” May 13, 2020, <https://who.int/news/item/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>.

Such releases can be life-saving measures, especially for prisoners who are at heightened risk for COVID-19 due to pre-existing health issues. Reducing the incarcerated population through releases can also lead to lower overall transmission rates in prisons, positively impacting the health of prisoners, prison staff and the public. As Justin Piché, Kevin Walby and Abby Deshman write, “nothing that happens behind bars stays there. People, most notably workers, exit these institutions day-in and day-out, returning home to their families and our communities. As long as sites of confinement such as jails, prisons and penitentiaries continue to have outbreaks, COVID-19 will pose a threat to broader public health.”¹⁰

Global Prisoner Releases: Timing and Trends

Recognizing these benefits, many governments around the world chose to release prisoners in the early stages of the pandemic. The releases happened through a variety of mechanisms, including longstanding clemency legislation and amnesty measures, as well as pandemic-specific emergency actions. Canada, for example, has multiple pre-existing legal paths for freeing prisoners, including the Corrections and Conditional Release Act and the Royal Prerogative of Mercy.¹¹

Across the globe, most releases occurred in the first few months of the pandemic, and primarily impacted prisoners who were considered vulnerable to the virus and/or low risk in terms of public safety. As a result, prisoners with underlying physical and mental health conditions, women, children and elderly prisoners were often considered for release, as were those charged with “minor,” non-violent offences.¹² In Pakistan, for example, the government announced that it would prioritize releasing prisoners who were older than sixty; those with pre-existing medical conditions, physical disabilities and mental illnesses; female prisoners; those who had served three-quarters of their sentence; and juveniles held in pre-trial detention.¹³ The actual number of prisoners released in Pakistan, however, has been limited.¹⁴

Many categories of prisoners were excluded from release schemes based on the nature of their sentence, regardless of their health status. Harm Reduction International, for example, found that approximately 25 percent of states barred prisoners charged with drug-related offences from being released between March and June 2020.¹⁵ Political prisoners were also left out in some states, such as Iran and Turkey. In October 2020, UN High Commissioner for Human Rights Michelle Bachelet urged the Iranian government to free these individuals: “I call for the unconditional release of human rights defenders, lawyers, political prisoners, peaceful protesters and all other individuals deprived of their liberty for expressing their views

¹⁰ Piché, Walby, and Deshman, “There is still a prison pandemic,” *Policy Options*, March 7, 2022.

¹¹ Jane Philpott and Kim Pate, “Time running out to protect prisoners and prison staff from calamity,” *Policy Options*, March 31, 2020, <https://policyoptions.irpp.org/magazines/march-2020/time-running-out-to-protect-prisoners-and-prison-staff-from-calamity/>.

¹² Ibid.

¹³ Amnesty International and Justice Project Pakistan, *Prisoners of the Pandemic: The Right to Health and COVID-19 in Pakistan’s Detention Facilities*, December 2020, <https://www.amnesty.org/es/documents/asa33/3422/2020/en/>, 5, 10.

¹⁴ Ibid, 5.

¹⁵ Harm Reduction International, “The Harms of Incarceration,” June 2021, https://hri.global/wp-content/uploads/2022/10/HRI_Briefing_Prisons_June2021_Final1-1.pdf.

or otherwise exercising their rights. It is particularly important to rectify such injustices at a time when COVID-19 is coursing through Iran's prisons."¹⁶ In Turkey, the law authorizing releases left out many political prisoners as well as those in pre-trial detention.¹⁷ As in Iran, the exclusion of the former reflects how political agendas superseded the need for emergency release measures during the pandemic.¹⁸

It is important to note that being "released" from prison had a range of meanings across different states. While the normative assumption is that release equates to freedom, the releases that occurred led to a range of outcomes, including home confinement, release on bail, parole and, in one case, being sent to factories to relieve workforce shortages, reflecting the longstanding entanglement of prisons and capitalist systems.¹⁹ Often, the outcomes of clemency measures were not clearly spelled out in government communications. This was beneficial to governments, who could boast about high release numbers without necessarily freeing many prisoners. Additionally, some releases were only temporary, meaning that prisoners were required to return to prison after COVID-19 emergency measures had been lifted or a pre-determined period had passed.²⁰

Taking these various outcomes into account, it is clear that large-scale prisoner releases were reported in nearly every continent between March 2020 and March 2021. Countries in Asia, Africa and the Middle East enacted the largest-scale clemency measures. The Philippines, for example, where prisons were at more than 500 percent capacity in March 2020, released 82,000 prisoners — mostly those on remand — by October 2020.²¹ Ethiopia reportedly released more than 40,000 prisoners — representing about 36 percent of the total prison population — prioritizing those charged with minor offences, those who had upcoming release dates, "women detainees with children and expectant mothers," and elderly prisoners.²²

¹⁶ United Nations Office of the High Commissioner on Human Rights, "Citing COVID-19 risk, Bachelet calls on Iran to release jailed human rights defenders," October 6, 2020, <https://www.ohchr.org/en/press-releases/2020/10/citing-covid-risk-bachelet-calls-iran-release-jailed-human-rights-defenders>.

¹⁷ Human Rights Watch, "Twenty-Four Rights-Groups Call on Turkey to Release All Those Arbitrarily Detained, Now at Risk of Covid-19," April 17, 2020, <https://www.hrw.org/news/2020/04/17/twenty-four-rights-groups-call-turkey-release-all-those-arbitrarily-detained-now>.

¹⁸ Parisa Hafezi, "Iran temporarily frees 85,000 from jail including political prisoners," Reuters, March 17, 2020, <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners-idUSKBN21410M>; Penal Reform International, *Global Prison Trends 2021*, accessed March 23, 2023, <https://www.penalreform.org/global-prison-trends-2021/releases-in-response-to-covid-19>; BBC News, "Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread," March 3, 2020, <https://www.bbc.com/news/world-middle-east-51723398>.

¹⁹ Suttinee Yuvejwattana and Randy Thanthong-Knight, "Prisoners Put to Work in Thai Factories Desperate for Labor," Bloomberg, March 4, 2021, <https://www.bloomberg.com/news/articles/2021-03-04/prisoners-put-to-work-in-thai-factories-desperate-for-labor>.

²⁰ DLA Piper, *A global analysis of prisoner releases*.

²¹ Edz Dela Cruz, "Double jeopardy: Sick in prison in the time of the pandemic," Philippine Center for Investigative Journalism, April 24, 2022, <https://pcij.org/article/8150/double-jeopardy-sick-in-prison-during-pandemic>; Penal Reform International, "Global Prison Trends 2021," accessed March 9, 2023, <https://www.penalreform.org/global-prison-trends-2021/releases-in-response-to-covid-19/>.

²² United Nations Office on Drugs and Crime, "To address fears of prisoners from COVID-19 and minimize risk of transmission, UNODC donates medical supplies to Ethiopia's prisons," accessed March 8, 2023, <https://www.unodc.org/unodc/en/frontpage/2020/May/to-address-fears-of-prisoners-from-covid-19-and-minimize-risk-of-transmission--unodc-donates-medical-supplies-to-ethiopia-prisons.html>; United Nations Office on Drugs and Crime, "International partners support authorities in Ethiopia to prevent transmission of COVID-19

Kenya freed approximately 14,000 people, focusing on those who were serving sentences under six months, had six months or fewer left on a long-term sentence, or had bail terms reassessed.²³ In South Africa, the government authorized the release of 19,000 prisoners on parole in May 2020 and released nearly 7,000 by July of that year.²⁴ India freed approximately 14 percent of all prisoners in the first year of the pandemic, but approximately 90 percent were returned to prisons by December 2020.²⁵ Similarly, the Iranian government announced the release of 120,000 prisoners, but the majority of these were short-term releases,²⁶ while Turkey reportedly freed 114,000 prisoners, but many were only released temporarily.²⁷

Significant releases also occurred in Europe and North America (Canada is discussed separately in the next section). In Catalonia (in Spain), Cyprus, France, Norway, Portugal and Slovenia, the number of prisoners released represented more than 15 percent of the total incarcerated population.²⁸ In contrast, England and Wales announced a release scheme in which 4,000 prisoners were eligible, but fewer than 60 — most of them pregnant people — were actually released.²⁹ The United States — the country with the highest rate of incarceration, the highest overall prisoner population, and, at times, the country hardest-hit by the pandemic — carried out releases at the state and federal level. Most significantly, the Justice

in places of detention,” May 8, 2020, <https://www.unodc.org/easternafrika/Stories/supporting-ethiopia-to-prevent-covid19-transmission-in-places-of-detention.html>.

²³ Antony Gitonga, “Over 14,000 prisoners released to decongest prisons,” *The Standard*, accessed March 8, 2023, <https://www.standardmedia.co.ke/rift-valley/article/2001410514/over-14000-inmates-released-to-decongest-prisons>; Mercy Deche and Conrad Bosire, “The Silver Lining in the Covid-19 Cloud: An Appraisal of Accelerated Prison Decongestion in Kenya,” *Victims & Offenders*, <https://doi.org/10.1080/15564884.2020.1827470>.

²⁴ “South Africa to parole 19,000 prisoners to curb coronavirus,” Reuters, May 8, 2020, <https://www.reuters.com/article/us-health-coronavirus-safrica-idUSKBN22K118>; Peter Dube, “Covid-19: South Africa releases 7,000 inmates to decongest prisons,” *Daily Nation*, July 18, 2020, <https://nation.africa/kenya/news/africa/covid-19-south-africa-releases-7-000-inmates-to-decongest-prisons-1900922>.

²⁵ Shadd Maruna, Gillian McNaull, and Nina O’Neill, “The COVID-19 Pandemic and the Future of the Prison,” *Crime and Justice* 51, no. 1 (2022): 72, 87, <https://doi-org.proxy.lib.uwaterloo.ca/10.1086/722434>.

²⁶ Hafezi, “Iran temporarily frees 85,000 from jail”; Penal Reform International, *Global Prison Trends 2021*, accessed March 23, 2023, <https://www.penalreform.org/global-prison-trends-2021/releases-in-response-to-covid-19>; BBC News, “Coronavirus: Iran temporarily frees 54,000 prisoners to combat spread,” March 3, 2020, <https://www.bbc.com/news/world-middle-east-51723398>.

²⁷ Marcelo F. Aebi and Mélanie M. Tiago, “Prisons and Prisoners in Europe in Pandemic Times: An evaluation of the medium-term impact of the COVID-19 on prison populations,” Council of Europe, Université de Lausanne, November 10, 2020, http://www.antonioacasella.eu/nume/Aebi_Tiago_10nov20.pdf; Kareem Fahim, “Turkish dissidents remain jailed as thousands of inmates are released to avoid prison epidemic,” *The Washington Post*, April 22, 2020, https://www.washingtonpost.com/world/middle-east/turkish-dissidents-remain-jailed-as-thousands-of-inmates-are-released-to-avoid-prison-epidemic/2020/04/22/8570e65a-83ea-11ea-81a3-9690c9881111_story.html.

²⁸ Aebi and Tiago, “Prisons and Prisoners.”

²⁹ Jamie Crierson, “Coronavirus: only 55 prisoners freed early in England and Wales,” *The Guardian*, May 12, 2020, <https://www.theguardian.com/society/2020/may/12/coronavirus-only-55-prisoners-early-release-england-wales>;

<https://www.hrw.org/news/2020/05/27/covid-19-prisoner-releases-too-few-too-slow>.

Department released 11,000 federal prisoners to home confinement through the CARES Act.³⁰ Most of those released had been held in low- or medium-security institutions, had health complications, or were elderly. There were reports, however, that some prisoners were granted medical parole only to lower the recorded number of COVID-19 deaths in custody, with prisoners dying shortly after they were freed.³¹

Other regions had fewer reported releases. In Australia, states such as New South Wales and Queensland introduced legislation that allowed for early release, but this did not translate into large-scale releases being enacted.³² Pandemic releases in Latin America were also limited, affecting less than five percent of the total incarcerated population.³³ For example, studies done on Brazil indicate that approximately 32,500 prisoners were released or transferred to home arrest — which amounts to 4.6 percent of the prison population — and experts have shown that annual release rates prior to the pandemic were higher.³⁴ Additionally, very few countries in this region made data on releases accessible.³⁵

While there were many limitations with the ways prisoner releases were enacted globally, one of the most encouraging findings of our research is the low recidivism rates among those who were released. The Indonesian government reported that of the 38,000 prisoners freed, only 106 ended up back in prison.³⁶ Similarly, South Africa reported that 0.1 percent of prisoners released on parole had breached their conditions.³⁷ In the United States, the Bureau of Prisons reported that, as of 2022, only 17 (0.15 percent) of the 11,000 prisoners freed under the CARES Act had since been charged with new crimes.³⁸ The American Civil Liberties Union reached similar conclusions in its analysis of jail populations and crime

³⁰ Molly Gill, “Thousands were released from prison during covid. The results are shocking,” *The Washington Post*, September 29, 2022, <https://www.washingtonpost.com/opinions/2022/09/29/prison-release-covid-pandemic-incarceration/>.

³¹ Sarah Betancourt, “Medical parole not always compassionate: Several prisoners offered release hours before death,” *CommonWealth Magazine*, February 4, 2021, <https://commonwealthmagazine.org/criminal-justice/medical-parole-not-always-compassionate/>; Deborah Becker, “2 Mass. Prisoners Hospitalized with COVID-19 Die A Day After Being Granted Medical Parole,” WBUR, December 4, 2020, <https://www.wbur.org/news/2020/11/30/massachusetts-prisoners-coronavirus-medical-parole-deaths>; Lauren Chambers, “Data Show COVID-19 Out Of Control Across Massachusetts Prisons and Jails,” ACLU Massachusetts, Data for Justice Project, accessed March 30, 2023, <https://data.aclum.org/2020/12/22/data-show-covid-19-out-of-control-across-massachusetts-prisons-and-jails/>.

³² Natalia Antolak-Saper, “COVID-19 and Prisoners: The Australian Experience of Early Release,” Centre for Criminology, Faculty of Law Blogs, University of Oxford, June 17, 2020, <https://blogs.law.ox.ac.uk/centres-institutes/centre-criminology/blog/2020/06/covid-19-and-prisoners-australian-experience>; Lindsay Pearce, “People in Prison Still in COVID19 Lockdown,” *Pursuit*, University of Melbourne, March 22, 2022, <https://pursuit.unimelb.edu.au/articles/people-in-prison-still-in-covid-19-lockdown>.

³³ María Luisa Romero, Luisa Stalman and Azul Hidalgo Solá, “The COVID-19 Pandemic and Prison Policy in Latin America,” *The Dialogue: Leadership for the Americas*, Inter-American Dialogue, April 2021, <https://www.thedialogue.org/wp-content/uploads/2021/04/The-Covid-19-Pandemic-and-Prison-Policy-.pdf>.

³⁴ Rodrigo de Oliveira Andrade, “Covid-19: Prisons exposed in Brazil’s crisis,” *The British Medical Journal* 370 (2020): m2884, <https://doi.org/10.1136/bmj.m2883>; Ludmila Ribeiro and Alexandre M.A. Diniz, “The Brazilian Penitentiary System under the Threat of COVID-19,” *Victims & Offenders*, <https://doi.org/10.1080/15564886.2020.1827109>.

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³⁶ DLA Piper, *A global analysis of prisoner releases*, 44-45.

³⁷ *Ibid*, 45.

³⁸ Gill, “Thousands were released.”

rates in 29 cities across the country.³⁹ In these cities, nearly every county jail used releases or other decarceration measures, with “no evidence of any spikes in crime in any of the 29 locations.”⁴⁰ Based on this evidence, they argued: “The release of incarcerated people from jails has saved lives both in jails and in the community, all while monthly crime trends were within or below average ranges in every city.”⁴¹ Such findings should allay fears about the potential of early releases to threaten public safety and encourage governments to shift these mechanisms from short-term emergency responses to longer-term decarceration strategies.

Canada: A Case Study

Significant releases also occurred in Canada. Between February and April 2020, there was a 15 percent decrease in the overall prisoner population across the country, which dropped from 37,967 prisoners in February to 32,091 in April.⁴² This was unprecedented: as Statistics Canada reports, “monthly changes of counts of adults in custody rarely exceed 1%.”⁴³ While there is not enough data to determine how much of this reduction was due to early releases, the same report emphasized that “temporary or early release” of prisoners was one of the main steps taken to “reduce the size of the correctional institution population during the COVID-19 pandemic.”⁴⁴

This trend was even more pronounced at the provincial level. Overall, a quarter of adult prisoners held at provincial institutions were released in the first year of the pandemic.⁴⁵ In Ontario, more than 2,300 prisoners were released between March and April 2020, with the prison population going from 8,344 to 6,025.⁴⁶ Nova Scotia’s incarcerated population dropped by more than 40 percent, from 452 people in March to 251 by the end of April.⁴⁷ In this case, there is more data to show the specific role played by early or temporary releases. Following calls from advocacy groups and experts, the courts enacted clemency measures quickly: 41 people were temporarily released by the middle of March, with Chief

³⁹ American Civil Liberties Union, “Decarceration and Crime During COVID-19,” *ACLU Analysis*, July 27, 2020, <https://www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19>.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Statistics Canada, “After an unprecedented decline early in the pandemic, the number of adults in custody rose steadily over the summer and fell again in December 2020,” July 8, 2021, <https://www150.statcan.gc.ca/n1/daily-quotidien/210708/dq210708a-eng.htm>.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ “The pandemic has offered a look at prison reform possibilities,” *Maclean’s*, December 15, 2020, <https://macleans.ca/opinion/the-pandemic-has-offered-a-look-at-prison-reform-possibilities/>.

⁴⁶ CBC News, “More than 2000 inmates released, 6 COVID-19 cases confirmed inside Ontario jails,” April 9, 2020, <https://www.cbc.ca/news/canada/toronto/ontario-jails-coronavirus-1.5527677>.

⁴⁷ Nick Moore and Allan April, “Nova Scotia prisons released 41 per cent of inmates during the pandemic,” CTV News Atlantic, August 13, 2020, <https://atlantic.ctvnews.ca/nova-scotia-prisons-released-41-per-cent-of-inmates-during-pandemic-1.5063557>; Hayley Ryan, “Nova Scotia jail population almost cut in half under COVID-19 measures,” CBC News, April 22, 2020, <https://www.cbc.ca/news/canada/nova-scotia/jail-population-cut-in-half-new-covid-19-measures-1.5541732>.

Judge Pamela Williams keeping a courthouse open one weekend to process an estimated 20 releases.⁴⁸ By May 31, 2020, 322 release orders had been issued for those on remand.⁴⁹ Experts have suggested that the widespread use of clemency measures impacted the low rate of COVID-19 transmission in the province's prisons: by August 2020, only one prisoner had tested positive for COVID.⁵⁰ Similar trends have been reported nationally.⁵¹ Additionally, police data from this period does not indicate an increase in crime rates across the country, suggesting that the releases did not have a negative impact on public safety.⁵² As the Ontario Human Rights Commission stated: "In the justice sector, the evidence is clear that the high risk of COVID-19 spread within crowded institutions and throughout the community vastly outweighs the risk of diversion and release from custody."⁵³

Despite these positive findings, the rate of releases slowed considerably after the first few months of the pandemic, and prison populations began to increase as of September 2020.⁵⁴ This combination, along with new variants, contributed to a steep rise in the number of COVID-19 cases behind bars. While only 829 cases were reported across all prisons in July 2020 — a time when many releases had occurred — more than 7,000 had been reported by March 2021.⁵⁵ Cases increased further with the Omicron variant, which led to outbreaks in 16 federal prisons between December 2021 and January 2022 alone.⁵⁶ By March 2022, researchers estimated that more than 22,000 COVID-19 cases were tied to prisons (including among staff) — a number that has continued to grow.⁵⁷

Yet there have been no widespread releases since 2020, despite calls from the Correctional Investigator of Canada and many civil society groups and activists.⁵⁸ For example, the Congress of Aboriginal Peoples called on the Canadian government to "expedite the release of low-risk offenders and people on remand"

⁴⁸ Adelina Iftene, "COVID-19, Human Rights and Public Health in Prisons: A Case Study of Nova Scotia's Experience During the First Wave of the Pandemic," *Dalhousie Law Journal* 44, no. 2 (2021): 11.

⁴⁹ *Ibid.*, 9.

⁵⁰ Adelina Iftene, "COVID-19 Provincially Incarcerated Individuals – A Policy Report," Schulich School of Law, Dalhousie University, August 2020, accessed March 23, 2023, https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1802&context=scholarly_works.

⁵¹ Piché, Walby, and Deshman, "There is still a prison pandemic."

⁵² *Ibid.*

⁵³ Ontario Human Rights Commission, "OHRC statement calling on Ontario's justice sector to fight COVID-19 by keeping prison custody numbers low," May 11, 2021, https://www.ohrc.on.ca/en/news_centre/ohrc-statement-calling-ontario%E2%80%99s-justice-sector-fight-covid-19-keeping-prison-custody-numbers-low.

⁵⁴ *Ibid.*; Andrew Duffy, "Depopulate prisons before Omicron hits, Ottawa criminologist urges," *Saltwire*, December 18, 2021, <https://www.saltwire.com/nova-scotia/news/depopulate-prisons-before-omicron-hits-ottawa-criminologist-urges-100672265>; Statistics Canada, "After an unprecedented decline."

⁵⁵ Prison Pandemic Partnership, "Update on COVID-19 and prison settings: Increased crowding behind bars, outbreaks with new COVID-19 variants, most prisoners remain unvaccinated," accessed March 30, 2023, <https://ccla.org/wp-content/uploads/2021/06/2021-03-19-Prison-COVID-report-FINAL-REVISED.pdf>.

⁵⁶ Sarah Smellie, "Calls grow for inmate releases as COVID-19 cases climb in Canada's jails and prisons," *Global News*, January 4, 2022, <https://globalnews.ca/news/8487449/covid-19-jails-prisons-inmate-release>.

⁵⁷ Piché, Walby, and Deshman, "There is still a prison pandemic."

⁵⁸ Congress of Aboriginal Peoples, "CAP Calls on Minister of Public Safety to release inmates due to increased COVID-19 risks," January 11, 2022, https://abo-peoples.org/press_releases/cap-calls-on-minister-of-public-safety-to-release-inmates-due-to-increased-covid-19-risks/; Harris, "Covid-19 hit federal prisons twice as hard"; Piché,

and drew attention to the risks for Indigenous prisoners, who make up nearly one-third of Canada's prison population — a situation tied to settler colonialism and systemic racism.⁵⁹ As the Ontario Human Rights Commission has pointed out, the heightened risks of contracting COVID-19 behind bars “are borne most heavily by Human Rights Code-protected groups that are disproportionately policed and imprisoned, such as Black and Indigenous persons.”⁶⁰

Canadian government agencies, on the whole, have shown an unwillingness to use releases as a long-term measure to address both the acute risks of COVID-19 and longstanding issues of systemic racism in prisons, which have been exacerbated by the pandemic. Unfortunately, this lack of political will is not surprising, and reflects wider trends. Governments worldwide have consistently neglected prisoners' health due to longstanding ideas that they are less “deserving” of rights than the general population. This stigma has been evident throughout the COVID-19 pandemic, including in Canada, with Ontario Premier Doug Ford arguing that “the most dangerous criminals in our country” should not be prioritized for vaccines, a sentiment echoed by then-Conservative leader Erin O'Toole, who stated “not one criminal should be vaccinated ahead of any vulnerable Canadian or frontline health worker.”⁶¹

The vaccine rollout in prisons was slow: many prisoners did not receive access to vaccines until much later than the general public, with some having to wait until May 2021.⁶² This was at odds with the National Advisory Committee on Immunization's recommendation, which, recognizing the heightened vulnerability of the incarcerated population, indicated that they should be prioritized in Stage 2 of the vaccine rollout, alongside groups such as frontline essential workers and adults over the age of sixty.⁶³ The delay in vaccinating prisoners in Canada was also not in line with the UN's Nelson Mandela Rules, which state: “Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”⁶⁴

⁵⁹ Congress of Aboriginal Peoples, “CAP Calls on Minister of Public Safety.”

⁶⁰ Ontario Human Rights Commission, “OHRC statement.”

⁶¹ Kerrisa Wilson, “Ontario premier slams feds over pilot program that will start inoculating inmates with COVID-19 vaccine,” CTV News, January 6, 2021, <https://toronto.ctvnews.ca/ontario-premier-slams-feds-over-pilot-program-that-will-start-inoculating-inmates-with-covid-19-vaccine-1.5256016>.

⁶² Valerie Ouellet and public, CBC analysis finds,” CBC, June 16, 2021, <https://www.cbc.ca/news/canada/covid-vaccinations-in-jails-1.6066293>; Catherine Cervin, “Justice required: vaccination rates in Canadian prisons,” *Canadian Family Physician* 67, no. 3 (2021): 215.

⁶³ Government of Canada, National Advisory Committee on Immunization, “Guidance on the prioritization of key populations for COVID-19 immunization,” February 12, 2021, <https://www.canada.ca/en/public-health/services/immunization/national-advisory-committee-on-immunization-naci/guidance-prioritization-key-populations-covid-19-vaccination.html>.

⁶⁴ United Nations Office on Drugs and Crime, “The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),” 8, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

Policy Recommendations and Conclusions

The available evidence makes clear that governments around the world have used prisoner releases as a short-term, limited response to the pandemic rather than a sustained strategy for protecting the health of prisoners, prison staff and their wider communities. This is despite the ongoing health risks of COVID-19; evidence that releases were not leading to increased crime rates and were helping to limit the transmission of the virus behind bars; and calls for decarceration from health experts, civil society organizations and activists within and beyond prisons.⁶⁵ Instead, many governments turned to other measures to try to limit the spread of COVID-19 in prisons, including the use of lockdowns and solitary confinement, which have had devastating impacts on prisoners' mental and physical well-being.⁶⁶

What lessons can be drawn from the pandemic releases? Below, we outline several key policy priorities for governments around the world:

- 1) **Continue releasing prisoners:** Prisoners remain highly vulnerable to COVID-19, especially as new variants emerge. Many prisons around the world are overcrowded, compounding this risk. Governments should continue to carry out early releases of prisoners to safeguard their health and that of prison staff and communities. More resources need to be made available to individuals after they are freed, as one-third of countries who carried out releases in the first year of the pandemic did not indicate any post-release support.⁶⁷
- 2) **Use other mechanisms to limit the incarcerated population:** Along with releasing prisoners, governments should use diversion measures that limit who is imprisoned in the first place. During the pandemic, the Ontario Human Rights Commission, for example, recommended that police issue “warnings or cautions” rather than charging people for minor and non-violent offences, and make wider use of pre-charge diversion programs in which criminal charges are not pursued, with people instead directed to community programs or counselling.⁶⁸
- 3) **Prioritize the health of people behind bars:** Governments need to devote more funding and resources to protect the physical and mental health of prisoners who are not released, including making personal protective equipment, medical care, and vaccines accessible.
- 4) **Make data on releases and the impact of COVID-19 on prisons more widely available:** Governments need to provide timely, accurate and publicly available data on release figures, as well as COVID-19 rates behind bars.
- 5) **Move from short-term releases to sustainable decarceration strategies:** Decarceration measures should not be limited to times of health crises or other emergencies such as extreme weather. Instead, they should be one of several mechanisms to address longstanding systemic inequities and move away from the use of incarceration altogether.

⁶⁵ Vicki Chartrand, “Abolition in the land known as Canada in the wake of COVID-19,” *Current Issues in Criminal Justice* 33, no. 1 (2021): 1-6.

⁶⁶ Piché, Walby, and Deshman, “There is still a prison pandemic.”

⁶⁷ DLA Piper, 16, 2021, <https://www.dlapiper.com/en/canada/news/2021/03/swift-targeted-action-to-reduce-prison-population-during-covid-19>.

⁶⁸ Ontario Human Rights Commission, “OHRC statement.”

Ultimately, the historic releases of prisoners during the first year of the COVID-19 pandemic demonstrate that governments can reduce incarcerated populations in a safe and efficient manner when there is the political will to do so. Moving forward, governments should learn from the lessons of the pandemic releases while also working to implement more sustained decarceration strategies.





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