

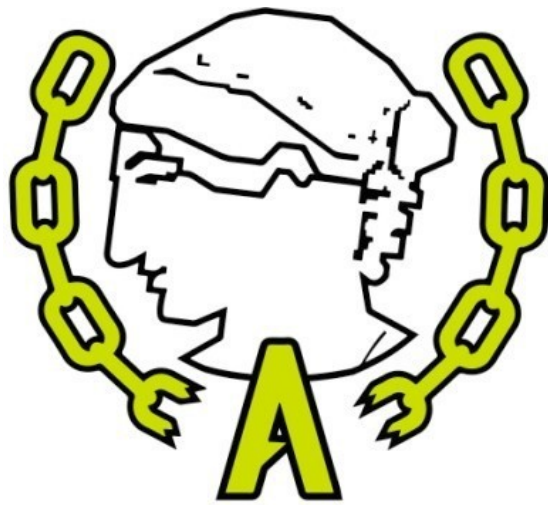
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

TABLE OF CONTENTS

<i>Preface</i> , Susanna Marietti, Alessio Scandurra	7
PART ONE - A PRISON WORLD OVERVIEW with the contribution of the European Prison Observatory and the American Civil Liberties Union	15
BELGIUM - <i>So far, so good? Health and prisons in Belgium during Covid-19 pandemic</i> , Elena Gorgitano, Adriano Martufi	17
BRAZIL - <i>Covid-19 and prisons in Brazil: conditions and challenges</i> , Bruno Rotta Almeida, Elaine Pimentel, Patrick Cacicedo	27
BULGARIA - <i>Covid-19 and the prison system in Bulgaria</i> , Krassimir Kanev	34
FRANCE - <i>The pandemic crisis and opportunities for lasting change in French prisons</i> , Cécile Marcel	40
GERMANY - <i>Covid-19 shows substantial problems in the German prison system</i> , Melanie Schorsch, Christine Graebisch	47
GREECE - <i>Isolation for protection. Facing the Covid-19 pandemic in Greek prisons</i> , Ioanna Drossou, Nikolaos Koulouris, Theodora Pantelidou, Sophia Spyrea	55
HUNGARY - <i>Much ado about nothing. Banning visitation did not prevent the virus spreading into Hungarian penitentiaries</i> , Zsófia Moldova	62
ISRAEL - <i>A matter of absence: the Ministry of Health and Covid-19 in Israel's prisons</i> , Anat Litvin, Dana Moss	68
ITALY - <i>Coronavirus and Italian prisons: a success story?</i> , Federica Brioschi	75
PORTUGAL - <i>The management of Covid-19 in Portuguese prisons</i> , Vera Silva	85
SIERRA LEONE - <i>Covid-19 responses to mitigate the impact of the virus in Sierra Leone's prisons: an overview</i> , Lydia W. Kembabazi, Isabella Cordua	91

SPAIN - <i>Coronavirus management in Spanish and Catalan prisons</i> , Alejandro Forero Cuéllar	99
UNITED KINGDOM - <i>Covid-19 in prisons: the view from England and Wales</i> , Matt Ford	106
UNITED STATES OF AMERICA - <i>United States' failure to respond to the Covid-19 crisis in prisons and jails</i> , Udi Ofer	116
PART TWO - THE PANDEMIC AND PRISON: REFLECTIONS AND INSIGHTS	126
<i>The Covid-19 pandemic: the urgency to rethink the use of pre-trial detention</i> , Laure Baudrihayé-Gérard	128
<i>The Covid-19 pandemic highlights the urgent need to decriminalise petty offences in Sierra Leone and beyond</i> , Isabella Cordua, Joseph Bangura	139
<i>Pandemic and democracy: for a global constitutionalism</i> , Luigi Ferrajoli	151
<i>Assessing strategies to prevent and control Covid-19 in prisons in the initial emergency phase of the pandemic</i> , Matt Ford	160
<i>How the pandemic has aggravated the gendered impacts of drug policies on women who use drugs and incarcerated women for drug offences in Mexico</i> , Corina Giacomello	171
<i>The social revolution of fraternity against the virus of identitarian ideology</i> , Patrizio Gonnella	190
<i>Policy responses to Covid19 in prison. Testing the (in)action of European institutions during the pandemic</i> , Adriano Martufi	198
<i>Health and prison</i> , Aldo Morrone	212
<i>University and prison. A complex but unavoidable (more than ever in time of Covid-19) institutional and cultural interweaving</i> , Iñaki Rivera Beiras	225
<i>Prisons, health and drug control in the time of Covid-19</i> , Gen Sander	242
<i>In the United States, the Coronavirus devastated prisons and jails, exposing the violence and indifference of the country's mass incarceration system</i> , Alice Speri	257
AUTHORS	272



ISRAEL - A matter of absence: the Ministry of Health and Covid-19 in Israel's prisons

Anat Litvin¹, Dana Moss²

When the Covid-19 outbreak first arrived in Israel in March 2020, the Israel Prison service (Ips) prevented infection through strict policies, including broad restrictions on the rights of the incarcerated. These included preventing visits, banning therapeutic and leisure activities, and cancelling non-urgent medical treatment by medical specialists. As such, until the beginning of June, there were no infections among inmates. However, as Israel entered its second wave, the number of infected prisoners began to rise and, as to the latest announcement of the Ips Spokesperson's office (October 8), amounts to 64. The number of prisoners held in separation wings because of suspected infection is unclear, as is the number of infected Ips staff.

The health system within Israeli prisons is solely under the responsibility of the Ips, not under the Ministry of health (Moh). As such, it operates without oversight or clear definitions of the services it is required to provide, and without the same standards of the Israeli public healthcare system, leading

to inferior health services for prisoners (N. Michaeli, 2020). During the pandemic, this structural challenge had significant impact: the Moh, which does not see itself as responsible for prison healthcare, did not publish a Covid-19 containment strategy for prison facilities, and barely published any information on developments in prison facilities - a stark contrast to its transparency, including in other closed facilities, such as nursing homes. This lack of public involvement initially raised concerns among civil society organizations regarding the amount of its actual input in setting policy in prison facilities, especially as the Moh did not respond to the request of Physicians for human rights Israel (Phri) — the Israeli human right organization where both authors work — to provide such information. The Ips also operated without transparency, raising concerns of possible disproportionality in the restrictive measures it took and limiting the ability of civil society organizations to respond to concerns about potential violations of prisoners' rights.

1. Severe infringement on rights, little alternatives offered

At the outset of the Covid-19 outbreak, the Ips published very few of the measures it had taken to prevent infection among Israel's 14,000 prisoners, including 5,000 Palestinian prisoners, termed *security prisoners*. These measures were discovered *post-facto*, after a Phri petition to Israel's Supreme court. The Ips's steps became more drastic as the number of Covid-19 patients in Israel rose.

Aside from various measures to maintain hygiene, quarantine wings were prepared for inmates suspected of infection and those found positive with Covid-19. New inmates entering the Ips system were to remain in a separate holding wing for 14 days (Ips Spokesperson's office, April 2) - even though often they were placed together with ones that had arrived earlier, depriving them of effective quarantine. It is unclear whether the Ips carried out regular tests on new inmates prior to their entry into regular wings. Meanwhile, the conditions of quarantine were unclear and civil society organizations received complaints from individual prisoners that access to phones in the wings prepared for Covid-19 patients was limited. According to the prisoners reaching out to Phri, some cells in prison facilities in the South that were to hold confirmed cases lacked air conditioning, particularly problematic during the Israeli summer. Meanwhile, activities which give structure and even purpose to life behind bars, and even provide a meagre income, were cancelled, such as education, rehabilitation, therapy meetings, employment, and religious activities. During this time, however, Phri also received complaints from prisoners

that the various official Ips guidelines for maintaining hygiene, such as wearing masks, weren't implemented by prison staff.

Prisoner releases were few, even if these would have potentially reduced the risk of infection, especially in Israel's prisons, where each person is allocated roughly 3 square meters (Association for civil rights in Israel, 2019), with an overcrowding which renders the Moh's guidelines regarding maintaining distance null and void. In March, the Minister of public security ordered that inmates accused of non-violent crimes who only had a month left until the end of their prison sentence would be released on special leave under condition of complete house arrest. As of May 31, 694 criminal prisoners had been released on leave by virtue of this decision (Ips Spokesperson's office, May 31). However - as emerged in conversations with attorneys who represented prisoners - individual requests filed by defense attorneys to release on temporary leave inmates defined as at high health risk under the Government's Emergency regulations, and to temporarily release on parole inmates for medical reasons, were denied almost without exception, with the Ips claiming that as there have not been cases of infection in prisons there was no health risk.

Among the central steps taken by the Ips was preventing contact with people on the outside. Initially, conjugal visits were cancelled. Following the Emergency regulations, family and lawyer visits to prisons were forbidden, extensions of detention were to be held via videoconference and detainees were to hold consultations with their attorneys by phone. By the end of March, the Ips placed

restrictions on prison visits by official visitors and Red cross representatives (Ips, 2020a), including prior coordination and time limitations, potentially denuding prisoners of critical safeguards.

From the information provided to Phri, it seems as though the alternative solutions provided to prisoners for maintaining family connections during this time of increased anxiety and isolation were insufficient. On April 7, the Ips announced that each inmate (not including Palestinians defined as *security prisoners*) who was eligible for visits would receive a five-minute video call with their immediate family members, in accordance with their visitation rights: once a week for detainees, once a month for convicted prisoners (Ips Spokesperson's office, April 7). Female prisoners, who number only 200, and minors, who number around 70, had already begun receiving video calls two weeks earlier. It was not clear why the frequency of video calls was determined by the minimum visitation rights in the Commissioner's Directive — once a month — and not, at the very least, by the frequency of visits which took place in practice prior to the pandemic, which was often once every two weeks for prisoners (Ips 2020b). Despite the rising anxiety and the increased need for these calls, according to individual prisoners reaching out to Phri, they were significantly shorter than the 30-60 minutes previously provided for face to face visits, and some inmates did not receive any video calls at all.

Meanwhile, Palestinians termed *security prisoners*, for whom phone use is largely forbidden, had even greater need for video calls or other alternatives to face-to-face meetings with lawyers and families (A.

Litvin, N. Michaeli, G. Zelikovitz, 2008). These prisoners were only allowed to connect with their lawyers by phone prior to a Court hearing or after a discussion, which does not allow for reporting violations in real time (Israeli government, 2020). Bi-monthly phone calls by minors to family members were only provided following petitions to the Supreme court by various human rights organizations, including Phri (O. Ziv, 2020). In late May, following the aforementioned petitions, the Ips announced that it allowed Palestinian women and sick Palestinian prisoners to make calls, though their frequency wasn't mentioned. According to the Ips, phone calls were also permitted for individual prisoners prior to the Muslim holiday of Ramadan (Ips Spokesperson's office, April 7).

Following the initial nation-wide containment of Covid-19, prisoner visits gradually resumed at the end of June, with greater restrictions than previously. For Palestinian prisoners, these were to be held according to the opening of border crossings, and coordinated by the Red cross (Ips Spokesperson's office, May 31). These visits, however, did not take place in a continuous manner, after suspected and confirmed cases of infection appeared, and as Israel headed into a second lockdown.

2. Medical services during Covid-19: limited availability and mixed messages

There are no specialists within Ips facilities and services are provided by general practitioners and paramedics employed directly by the Ips, most of whom have only basic training. Secondary

healthcare is provided by specialists in public hospitals or through their visits to prison facilities. The Ips containment strategy therefore posed various challenges for the access of prisoners to healthcare and suspicions arise that alternatives given instead of physical meetings with specialist healthcare workers were insufficient. Outside prisons, secondary medical care in Israel continued to be provided, including by phone and video consultations.

The Ips announced in early March that medical and therapeutic professionals will continue treatment in full cooperation with the Moh, including through technological means and telemedicine. However, the extent to which this actually took place was unclear. The Ips and the Moh did not respond to Phri's repeated requests to provide information on what services were available and the criteria for receiving services during this time. As a result of Ips restrictions on leaving and entering facilities, individual prisoners appealing to Phri confirmed that there was a roughly 3 months period of a near-total suspension of specialist health services, medical tests and procedures. Meanwhile, the Ips, in response to Phri's petition to the Supreme court, claimed that "consultations with medical specialists will only be given in cases where this is truly necessary, with the approval of the (Ips) district doctor" (Phri v. Ips). However, as Ips doctors, including district doctors, are generalists, this potentially puts the health of inmates at risk during the Covid-19 outbreak.

Mental health services were also harmed during the outbreak, precisely at a time when emotional distress is rising dramatically. The Ips's confusing,

contradictory stance regarding mental health services was revealed in their response to Phri's petition to the Supreme court. The Ips both noted that psychiatric treatment will be provided only in cases of first aid and, simultaneously, that "psychiatric doctors are continuing to meet prisoners and provide treatment in their field as needed" and that tele-psychiatry was possible (Phri v. Ips). This somewhat contradictory response, which did not clarify the scope of psychiatric treatments available and potentially indicated that the Ips sees only emergency psychiatric treatment as necessary, raised concerns that not all prisoners requiring such treatment will indeed receive it.

The Ips promised that social workers, typically the first response to inmate mental health crises, were available as usual and that "it is making efforts to maintain the service offered to inmates as much as possible" (Phri v. Ips). Yet here as well, inmates in different prisons reported to Phri that they had not seen social workers in prisons since the prisons started to operate under the emergency Covid-19 regulations.

Although these services were instituted following the end of the first wave, after the second wave of Covid-19 infections, the Ips published a directive that "the entry of specialists will be possible for the purpose of providing medical treatment to the prisoner, in the absence of the ability to provide medical treatment in a non face-to face meeting" (Ips Spokesperson's office, August 3). Again, the Ips has not been transparent regarding the extent to which it is providing alternatives to face-to-face meetings, including through phone and video calls to specialists, social

workers and other healthcare providers.

3. Ongoing lack of transparency from the Ips and Moh

Contrary to the Moh's transparency with the Israeli public regarding infection, recovery and mortality numbers in the Country, as well as guidelines and recommendations, developments within prison facilities remained opaque.

The Ips — compared to the Moh — has shared information belatedly and on an *ad hoc* basis. Information divulged by the Ips on the suspected and confirmed numbers of staff and inmates was often published several days after the information had been spread, not always accurately, by inmates and sometimes even published in the media. Worryingly, of late, the Ips has not been fully transparent regarding the number of staff infections, even while Phri has received information that they number several dozen, out of roughly 18,000 people that work in the Ips (Ips, 2019). Only at the end of July, did the Ips establish a phone center for families of concerned prisoners to share information regarding developments in Ips facilities.

Information regarding access to secondary healthcare was only provided following Phri appeals to the Ips and a Supreme court petition and even then the information provided was limited and did not answer all of Phri's queries. Initially the Ips did not even publish information regarding the quarantine conditions for inmates who were ill or suspected of having contracted the virus, only providing information to Phri regarding, e.g., access to phone, regular walks etc. following our outreach (Phri v. Ips). Moreover, while the Ips has made numerous references to holding inmates

in quarantine and incoming detainees in separation wards according to Moh guidelines, it is not clear what these guidelines are.

The Moh has referred to prisons in the context Covid-19 only once, recommending that sample tests be conducted in closed facilities, including prisons (I. Efrati 2020). In light of this, Phri and other organizations contacted the Minister of public security and the acting Commissioner of the Ips to demand that they publish morbidity statistics. The number of sample tests carried out, the criteria according to which they are carried out and the extent of the Moh's involvement in providing guidelines for these tests remain unclear.

4. Conclusion

Israel is in the middle of its second wave and in the midst of a second national lock-down and developments within prison facilities are still marked by a lack of transparency both from the side of the Moh and the Ips. Over the years, the Moh has repeatedly claimed that it does not have "neither the authority nor the means to intervene in the inmate health care system" (N. Michaeli, 2020, p. 78), and it is unclear to what extent Ips restrictions during the Covid-19 outbreak have resulted specifically from public health considerations, as opposed to, e.g., financial limitations, security needs, etc. Going forward into the first winter of the Covid-19 outbreak, it is critical that the Moh share its guidelines *vis a vis* public health needs in prison facilities, and the Ips act with greater transparency, to enable critical discussion and responses by civil society actors and ensure that the right of health of prisoners is protected.

Notes

¹ **Anat Litvin:** joined PHRI (Pshysicians for Human Rights Israel) in 1999 and has been heading the Prisoners' Department, which directly assists 120 prisoners per year, since 2003.

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Bibliography

Association for civil rights in Israel (2019), *Density in prisons and detention centers in Israel*, https://www.acri.org.il/post/_171 (accessed 3 April 2020).

Efrati Idan (2020), *Staff from the Ministry of Health: Corona testing in nursing homes and prisons should be expanded* <https://www.haaretz.co.il/health/corona/premium-1.8727252> (accessed 3 April 2020).

Ips (2019), *Annual Report*, https://www.gov.il/he/departments/publications/reports/2019_report (accessed 1 July 2020).

Ips (2020a), *Official visitors to the prisons office 03.04.00 - Special guidelines for the emergency situation period regarding the coordination of official visitors' visits*.

Ips (2020b), *Prison commission Ordinance 04.42.00, 1.08.01*, <https://www.gov.il/BlobFolder/policy/044200/he/%D7%A4%D7%A7%D7%95%D7%93%D7%AA%20%D7%A0%D7%A6%D7%99%D7%91%D7%95%D7%AA%20%D7%9E%D7%A1%D7%A4%D7%A8%2004.42.00%20%D7%A1%D7%93%D7%A8%D7%99%20%D7%91%D7%99%D7%A7%D7%95%D7%A8%20%D7%90%D7%A6%D7%9C%20%D7%90%D7%A1%D7%99>

[%D7%A8%D7%99%D7%9D.pdf](#) (accessed 4 June 2020).

Ips Spokesperson's office (2020), *Consolidated Spokesperson's statements regarding prevention of entry of coronavirus into Ips facilities*, https://www.gov.il/he/departments/news/duver_info (accessed 11 October 2020).

Israeli government (2020), *Emergency regulations (preventing the entry of visitors and lawyers to places of detention and prisons)*, https://www.gov.il/he/Departments/policies/dec4894_2020 (accessed 8 October 2020).

Litvin Anat, Michaeli Niv, Zelikovitz Gila (2008), *Oversight and Transparency in the Israeli Penal System* https://www.phr.org.il/wp-content/uploads/2017/02/PHRI_Report_Oversight-of-Israeli-Prisons_2008.pdf (accessed 8 October 2020).

Michaeli Niv (2020), *Health remanded to custody. The future of the prison healthcare system in Israel* https://www.phr.org.il/wp-content/uploads/2020/04/3736_imprisoned_Eng_digital.pdf (accessed 21/04/2020).

Ministry of health (2020), *Guidelines for reducing exposure in the face of corona outbreaks in a long-term hospital setting* <https://govextra.gov.il/media/18071/elderly-care-reducing-exposure-outpatient-setting.pdf> (accessed 7 June 2020).

Supreme court (2020), *Physicians for human rights Israel v. Israeli prison service*, 2279/20.

Ziv Oren (2020), <https://www.972mag.com/palestinian-prisoners-minors-phone-calls/> (accessed 24 September 2020).

