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Impact of COVID-19 on Incarcerated Offenders and Community **Reintegration Challenges in Kenya Prisons**

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ABSTRACT: This article focuses on the impact of COVID-19 on incarcerated offenders and challenges of community reintegration after their release from Kenya prison during COVID-19 period with the aim of giving findings, suggestions and recommendations. This paper explored the status of congestion in prisons and mechanisms that has been put in place to combat COVID-19 pandemic. The methodology is based on Desk review of evaluation reports, new policies on COVID-19, legislative operational documents, and organizational literature that have been used since COVID-19 outbreak with triangulation from other sources of literature such as Journals, government policy document and Google search engine among others. The empirical data traces back to 2nd April, 2020 when over 4000 prisoners were released in Kenya to decongest prisons. Records indicate that, Kenyan prison facilities have a population of 54,000 inmates. This raises the need to explore the impact of COVID-19 on the inmates and reentry facilitation into the community so as to comply with WHO framework on social distancing. Based on this scenario, it can be used to project the rate of recidivism aftermath of COVID-19 based on past literature on what causes recidivism. The paper discusses prison congestion, challenges of special need offenders, and release during the period of COVID-19 pandemic .Additionally, the paper discusses the absence of community integration during the release of the said offenders and related projections anticipated on the number of recidivists increasing during the COVID-19 lockdown. The suggestions, recommendations and conclusion are based on best practices applied in other countries to ease prison congestion. The findings are consistent with the patterns based on comprehensive review of the literature and recommendations are based on best practices that can inform policy formulation and fill in the knowledge

Keywords: Incarceration, Inmates, Prison Offenders, Recidivists, Reintegration

INTRODUCTION

Prison congestion is a global concern, as COVID-19 spreads across Sub-Saharan Africa like a bushfire; the severe overcrowding seen in many prisons is a time looming bombshell in waiting. The correctional facilities globally have been marked as centres of high risks and catastrophe in waiting unless action is taken to combat the spread of COVID-19 (WHO, 2020)¹. The novel COVID-19 outbreak, which began in Wuhan, china in December 2019, has expanded to touch nearly every corner of the globe. Hundreds of thousands of people around the world have been affected and neither Prison has been spared. The World Health Organization has declared COVID-19 a global health pandemic and spread of the virus is a public health emergency of international concern. This paper inculcates the effect of COVID-19 in Kenyan prisons before and after the release of prisoners.

In order to contain the spread of COVID-19, the Kenya government released over 4,000 petty offenders to decongest the prisons, however it should be noted that, most of the Kenyan prisons which were constructed as early as 1911 was intended to accommodate 22,000 prisoners, is now housing more than 54,000 inmates

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¹ WHO, (2020). "Mental Health and Psychosocial Considerations during COVID-19 Outbreak World Health Organization. Retrieved 5 April 2020.1

(Omboto, 2010)². Prison Conditions in Kenya have for a long time been characterized by congestion, poor diet, degrading clothing and bedding, lack of clean water, poor sanitation and infectious diseases amongst other challenges. For example, Industrial Area Prison which is over 107years old is dilapidated and overcrowded, exposing inmates to unhygienic conditions and illness (Osen, 2019)³. In Industrial Area prison for instance, it is common for 12 inmates to share a cell meant for only three people. A room that is supposed to hold 20 people is now containing 45. The congestion and unsanitary conditions of confinement, coupled with inadequate, neglectful, and often punitive responses to medical needs, mean that COVID-19 poses a serious risk in the event of an outbreak. The risks are exacerbated further by the fact that criminalized and incarcerated populations have disproportionately higher rates of serious and chronic illnesses that leave them more vulnerable to viruses, particularly those who are elderly, pregnant, or immune compromised given the general lack of specialists in the health care and proper sanitation in the overcrowded facilities, coupled with shortages medicine and totally inadequate testing of COVID-19 expose prisoners who are disproportionately poor and afflicted with prior conditions that render them vulnerable to the COVID-19.

Therefore, it is imperative to note that crowded prisons and jails cannot realistically implement social distancing; as there is literally no space for social distancing required by WHO, (2020). People in jails and prisons also may not be able to regularly wash their hands, which may promote the spread of disease because the hand sanitizer contains alcohol and is considered contraband due to its high alcohol content according to Boone, et al (2020)⁴. Similarly, The Kenya Prison Act Cap 90⁵ spells the same on anything that has alcohol content. However, many families before COVID-19 could visit their loved ones and buy soap, but with the ban on prison visits, the government has to give more funds to prisons to purchase soap and sanitizers, a move aimed at protecting the Prison population against COVID -19 in the country. The purpose of releasing the over 4000 prisoners, was aimed at achieving the recommended one-meter social distancing within prison facilities as part of the progressive strategies in combating COVID-19 pandemic (NCAJ, 2020)⁶. The fact that Kenya released over 4,500 petty offenders to decongest prison facilities in light of the COVID-19 pandemic, early findings based on literature review indicates that reentry into the community which is normally a thorn in the flesh for some offenders was not adequately addressed. In line with this, this paper outlines the challenges with their reentry to the community and a projection of recidivism rate related before and after COVID-19.

1.1 STATEMENT OF THE PROBLEM

People in prisons, jails, and detention centers are at high risk of infection and have seriously abridged access to health care and hygiene within the facilities. The overcrowded and unsanitary conditions of confinement, coupled with inadequate, neglectful, and often punitive responses to medical needs, mean that COVID-19 poses a serious risk in the event of an outbreak. Prison congestion risks are exacerbated further by the fact that inmates have disproportionately higher exposer of serious and chronic illnesses that leave them more vulnerable to viruses, particularly those who are elderly, pregnant mothers, HIV, and those whose immune system is compromised by other ailments. Reentry into the community after release from prison is key for the community to accept the offender back who has been rehabilitated; however, released offenders are going back to the society that has suffered consequences of COVID-19 which has led to a thousand jobs lost. The lockdown during COVID-19 will affect them psychologically because lockdown can be compared to a prison. It was in view of this background, this paper undertakes to outline the challenges inside prison and community reintegration during COVID-19.

1.3 Objectives

- i. To explore the effects of COVID-19 on prison congestion on incarcerated offenders.
- ii. To assess the challenges facing reentry into community by released prisoners during COVID-19 pandemic and make recommendation.

II. COVID-19 EFFECT ON CORRECTIONAL FACILITIES

• COVID-19 outbreak has affected those inside jails and prisons. The Kenyan courts are now conducting cases via virtual conference, that means offenders, or remandees awaiting trial, hearing might be held for longer than in normal occasion.

² Omboto.J.O (2010) Challenges Facing the Control of Drugs and Substances Use and Abuse in Prisons in Kenya: The case of Kamiti Prison." Unpublished MA Project, University of Nairobi.1080/10509670801992111

³ Boone, Christian; Sharpe, Joshua (March 19, 2020). "No extra soap: Georgia Inmates say Prisons not ready for COVID-19". The Atlanta Journal-Constitution. Retrieved March 21, 2020.

⁴ Osen., (2029). Prison den of Congestion, Likely Contagion. Star magazine, reported on 28th March, 2019. Retrieved on 28th May, 2020 from https://edition.cnn.com/2020/04/02/africa/kenya-courts-on-skype/index.html

⁵ Kenya Prison Act Cap 90. Government of Kenya Printing Press.

⁶ NCAJ, (2020). National Council on the Administration of Justice. Government of Kenya.

- Offenders placed on probation will find it challenging to meet with their supervisors or fulfill
 community supervision requirements due to enforced curfews, quarantines and restriction of
 movements in certain areas in order to prevent the spread of COVID-19
- Banning of prison visitation will be likely to increase isolation and anxiety among the inmates. Prison
 visits are known to offer psychosocial support that means the gap created by COVID-19 will
 immensely affect the special needs offenders especially the elderly offenders suffering from, lifestyle
 diseases, and dementia.
- Similarly, the spread of COVID-19 is a concern also in juvenile detention in Borstal institutions where social distancing can be nearly impossible and medical services are scarce.
- It should be noted that the daily work prison officers, warders are at high risk of getting affected by the spread of the corona virus.

2.2 CONCEPTUAL FRAMEWORK

The conceptual framework is based on Independent variables, Prison congestion, COVID-19 and dependent variable community reintegration. Currently, inside Kenya prisons is accommodating more than the required capacity. However, based on the release of 4000 prisoners during COVID-19 pandemic, it is projected that over 10,000 recidivists will go back to prison due to effects of COVID 19 which has led to job losses. Insufficient reentry intensive preparation which was not provided and harsh life outside prison during COVID-19 period will render the ex-offenders vulnerable to criminality. The conceptual figure is informed by labeling theory by Howard Becker and past studies by Travis; Petersilia among others confirms that lack of employment and availability of drug substances abuse are among the causes of recidivism.

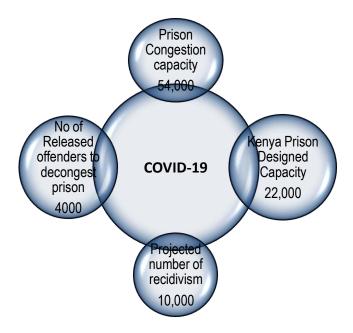


Figure 1: Recidivism Projection Lenses During COVID-19 pandemic

Figure 1, is a conceptual vicious interaction circle of how the rate of recidivism is anticipated to increase during covid-19. The over 4000 offenders released in Kenya on 2nd April, 2020 is just a drop in the Ocean. Reentry programme enhancement during COVID-19 will enable the ex offenders integrate back with fewer problems. However the prison facilities still remains congested.

2.2.1 Labeling theory

• Labeling theory informs the concept of released offenders and those who will re-offend during this COVID-19 period. Labeling theory according to Howard Becker, essentially states that society labels certain behaviors and actions as criminal, but once sanctioned for the delinquent or criminal act, the offender is permanently labeled by society (Travis, 2005)⁷. Once labeled as a criminal, the individual has few legitimate opportunities to reintegrate successfully back into the community instead prisoners released will seek out others with the similar label of social misfit and resort to crime because the offender has identified and internalized the

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⁷ Travis, J. (2005). But they all come back: Facing the challenges of prisoner reentry. Washington, D.C: The Urban Institute Press

label society has bestowed and the result is more crime not less. According to labeling theorists, the blame lies partly with society because society created the label; yet, the individual eventually comes to identify with and accept the label (Omboto 2010). Restoring the offender's identity requires society to re-label the ex-prisoner with a positive, socially acceptable label. Labeling theory has been reported during COVID-19 where those released from prison to decongest prisons are nicknamed "corona".

• Similarly, labeling theory throws weight on how COVID-19 pandemic has spread all over the world complicating matters on combating COVID-19 due to negative labeling. It has been intertwined with conspiracy theory that COVID-19 pandemic is reported labeled it China virus.

III. FINDINGS ON CHALLENGES OF COVID-19 AFTER RELEASE ON COMMUNITY REINTEGRATION

The Kenya prisons service is mandated to carry and promote community programs and initiatives designed to help offenders successfully reenter the community. The purpose is also to prepare the community to accept and receive them and help in any manual jobs they can provide. In view of the 4000 released offenders, it is imperative to note that correctional facilities still have much ground to cover when it comes to preparing offenders' reentry into the community especially during the COVID-19 pandemic. According to Bahr, et al., (2010),8 he suggests planning for community reentry should begin as soon as a person is incarcerated so that reentry is made any time the offenders are released from prison even in emergency cases warranting a release. It is imperative to know what community reintegration is and why it is paramount during this COVID-19 period. Community reintegration refers to the process of reentry into society by persons that have been in prison. Reintegration includes the reinstatement of freedoms not previously had by individuals as a result of being in prison (Travis, 2005). Returning to the community is not a simple task during COVID-19 lockdowns and curfew because; one must reacquaint himself on how to live in the society again. According to Rolle, (2002b)9 this stage is sensitive for a released offender because they might relapse into the life they had before prison as a way to adapt to the changes. With the advent of COVID-19 which has led to job losses, it is reported that the country is already experiencing an increase in social crimes. Hence the reintegration process is not a simple one and based on scientific studies the following challenges will be encountered by the released prisoners during COVID-19. There are numerous challenges for offenders when released from prison during COVID-19.

- Confronted with uncertainty, animosity, and a multitude of personal, social, and legal barriers, most prisoners reentry into what they perceive to be an antagonistic society with a defeatist attitude. If not addressed, this attitude will likely lead to reintegration failure. The impact of COVID-19 on Kenyans is not only causing economic distress but an invisible emotional strain. The global COVID-19 pandemic has brought a loss of liberties. Despite having undergone rehabilitation programmes especially vocational programmes, the released will find it difficult to get even manual jobs despite having undergone rehabilitation. With the economy at a virtual standstill, getting a source of income will be harder than ever during this COVID-19 period. According to ILO, (2020)¹⁰ more than 300,000 job cuts have been lost in Sub- Sahara Africa in informal sector as a result of COVID-19.
- Reintegration programme that have been used to integrate prisoners back to their community will not apply during COVID-19 period as many of the released prisoners will encounter rejection from their family members. While some may find themselves welcomed, many of them will have to squeeze themselves with family members in often small and over-crowded rooms. Offenders released early during COVID-19 means that many prisoners didn't have time to fully prepare for their freedom outside prison mentally and psychologically and this may impact on recidivism. Even though, the release of prisoners from Prison may bring with it the promise of liberty outside prison, however, with Kenya on lockdown because of COVID-19, that has its own psychological impact caused by restrictions in movement. According to Travis (2005) majority of the offenders globally come from low income earners and 80% have housing problem. Similarly, the situation in Kenya is the same, released prisoners return to the same disadvantaged communities they left and are once again confined to low-income shelters that may be submerged in drug and gang activity, which has been linked repeatedly to interpersonal violence and other self-destructive behaviors this, exacerbates the rate of recidivism during COVID-19

⁸ Bahr, S., Harris, L., Fisher, J., & Armstrong, A. (2010). Successful reentry: What differentiates successful and unsuccessful parolees? International Journal of Offender Therapy and Comparative Criminology, 54(5), 667. doi: 10.1177/0306624X09342435

⁹ Rollo, N. (2002b). Secrets of success for inmates facing release. Retrieved November 10, 2007, from the OPEN, Inc. Web site: http://www.openinc.org/files/secrets.pdf

ILO, (2020). International Labour Organization, "COVID-19 causes devastating losses in working hours and employment", 7 April 2020. Available at www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740893/lang--en/index.htm

- Those released from prisons are facing discrimination and social stigma. According to UNICEF (2020)¹¹, states that people are likely to be labeled, stereotyped, discriminated against, treated separately because of real or perceived links with the COVID-19 presumed to have contracted it in prisons. The released prisoners are not the only ones who have been stigmatized as even those who have travelled from Nairobi to the villages, those who have traveled abroad and healthcare professionals. It is anticipated that the stigma meted on the released offenders will be immense. According to UNHCR, (2020)¹², Stigma Across sub-Saharan Africa, attached to the corona virus is so strong that some choose not to seek treatment to avoid facing unbearable hostility. People suspected of having contracted COVID-19 say they are treated like pariahs: singled out at work, in their neighborhoods and even in their homes. To complicate matters further, ex-prisoners face the society-wide stigma of being an ex-convict, which severely limits the number of job opportunities available to them. On an approximation, about 630,000 prisoners globally according to Boone et al (2020), miss employment opportunities as a result of their conviction history. It is important to note that offenders in Kenya in the past faced family rejection, however, community reintegration programme assisted them to be accepted by their families and their respective communities at large. The COVID-19 pandemic has greatly affected the reintegration programs and it is anticipated that most offenders may suffer from being ostracized by their respective communities.
- Absence of counseling in preparation of offender's reentry to the community as reported was as a result of the restrictions put in place to curb the spread of COVID-19. The restrictions meant that the counselors could not offer their services to the prisoners due to fear of contracting corona virus. Counseling to prepare the offenders to adapt to a world outside prison during the COVID-19 period is essential before any release. In order to prepare effectively for community reentry, offenders must embrace the internal and external changes necessary for successful assimilation to survive the containment measures of lockdown and curfews during this COVID-19 Period. According to Rollo (2002b), the ability to adapt and adjust quickly and effectively to new ways of thinking and acting through counseling before they leave prisons enable offenders not to fear change but rather embrace change in order to conform to society's norms and laws. However, this has not been the case due to the fear of contracting COVID-19.
- Notably, the released offenders are returning back to the community when COVID-19 has caused more damage to the economy as there have been massive job losses which has affected the majority of the Kenyans working in the informal sector. These effects will contribute consistently to a cycle of unemployment that will increase the likelihood of future recidivistic criminal behaviors and the intergenerational cycle of criminality for the offenders' children and siblings. According to Petersilia, (2005)¹³ many offenders released to the community are normally compounded with family troubles, housing issues, substance abuse, and a community that is unreceptive to their plight. The probability of recidivism and eventual re-incarceration increases considerably up to 90% of those released end up going back to prison. In this era of COVID-19, similar cases are projected to increase. Already the Kenyan economy has been affected by COVID-19, as a result, many ex-prisoners will be denied employment such as manual jobs like gardening, regrettably, limited to mostly low-wage employment opportunities that make it incredibly difficult, but not impossible, to support themselves and their families.
- Another challenge of community reentry is the offenders' relapsing to drug abuse and alcohol use which influence negatively on the ex-prisoners' ability to remain in the community. According to Langat et al, (2015)¹⁴, more than three quarters of prisoners released annually in Kenyan prisons have an extensive history of substance dependency in a study that was carried out in Kakamega Maximum Prison. It is anticipated that most of them will be remanded back to prison for engaging in new crimes while under the influence of drugs or alcohol. The research has consistently shown that prisoners who participate in treatment programs for substance abuse are less likely to reoffend on release if they engage in activity outside prison that generates income by keeping them busy according to (Travis, & Soomers, 2006)¹⁵ but with the impact of COVID-19 on Kenya economy this will be next to impossible.

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¹¹ UNICEF, (2020). Social stigma associated with the coronavirus disease (COVID-19). www.unicef.org. Retrieved 5 April 2020

UNHCR, (2020). Operational Information from across the Humanitarian Sector. Retrieved on 28th May,2020 https://www.unhcr.org/coronavirus-covid-19.html

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Langat K.L, Kabaji E., Poipoi M., (2015) "Efficacy of Rehabilitation Programmes on Psychosocial Adjustment of Elderly Male Offenders in Kakamega Male Prison Kenya." The International Journal of Humanities & Social Studies ISSN 2321-9203 Vol 3 Issue 11

Travis, J., & Sommers, A. (2006). *Prisoner reentry: New perspectives foster better health outcomes. Journal of Correctional Healthcare*. 10(3), 14–17. Washington, D.C: The Urban Institute Press.

• There is the challenge of the caregivers to geriatric prisoners who are HIV positive or have AIDS. Some of the released offenders do not have caregivers who will be assisting them. It should be noted that reintegration of these offenders into the society will further burden the healthcare system by increasing healthcare costs and jeopardizes the health workers who are already strained by treatment and isolation of COVID-19 patients. Some where they come from virtually there is nonexistent of a clinic at the local level, particularly in those neighborhoods that are deemed the most disadvantaged by nearby health centers. This alienation and absence of social connectedness with the community is anticipated will affect the released special need offenders (UNODC, 2020)¹⁶. Preparation of family from building and maintenance within one's family is indisputably critical to the ex-prisoner's transition and eventual success in mainstream society (Mellow & Christian, 2008)¹⁷. Spouses can also assist with housing, provide emotional support, serve as financial resources, and generally provide stability; therefore, it is important to regain and strengthen family ties as soon as the convicted offender enters the community, however, according to Petersilia (2005), over 50% of the released prisoners find their spouses have separated, divorced from them with majority having deserted the matrimonial homes, this complicates their reentry back to society with no one to welcome them. That means, family connection is key because family support is a significant factor in reducing or preventing recidivism altogether.

IV. RECOMMENDATIONS

Without compromising public safety, COVID-19 preparedness in prisons should therefore include efforts to reduce the number of new admissions and to accelerate the release of selected categories of prisoners. The recommendations are based on best practices that have been used globally: Kenya can learn what works in terms of mitigation from other countries that have seen spikes in corona virus already.

- One way to reduce the impact of the virus on jails and prisons, says, is to avoid holding people for petty offenses. Release those offenders who are not a risk to the public from prisons in an effort to decongest the prisons to curb the spread of the virus. People who do not pose great a risk to public safety shouldn't be held in a jail just because they're not able to bail themselves out as keeping them will increase their exposure to COVID-19. Those detained for inability to pay bail, technical parole violations, misdemeanors, should be released.
- Prison staff and health-care professionals working in prisons should be acknowledged as a workforce whose functions are essential to the response to the COVID-19 pandemic. Calls for tailored awareness by raising for prisoners transparent communication channels that will be equally important to prepare the prison population subject to restrictive settings for additional procedures which may be required to protect their health as well as the health of their families and communities.
- Inmates awaiting trial, especially the elderly, and those who have served much of their sentence should get early release. The space freed up should be used to provide more "social distancing," while emergency steps are taken to provide adequate medicine, protective equipment like masks and gloves, and food for the incarcerated.
- Carefully formulated criteria, policy, and processes to select eligible participants for early release is essential by ensuring that eligibility criteria are transparent and fair and to managing public perception and safety concerns. In a time of heightened anxiety for incarcerated populations and their families, a clear communication plan keeps all stakeholders informed.
- The COVID-19 pandemic has greatly increased unemployment. To keep those who underwent rehabilitation programmes, to improve their employment prospects they should be linked to online training or education sites or given capital to begin small scale businesses.
- The Prison Service should rethink their assistance to the released as the transition to the community during the COVID-19 pandemic, both pre- and post-release is characterized by rejection from the community. When preparing for scheduled and early releases, agencies should analyze the options available to them to better their support during the release. This is because there is a stigma outside Prison for those who are released. A study by Datchi, et al (2016)¹⁸, highly recommends intensive preparation for the prisoners before they are reintegrated back to the community.
- Compassionate, as well as pardons or amnesties for carefully selected categories of prisoners whose release would not compromise public safety should be considered in this context. for example, In Ethiopia, the

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 $^{^{16}\} UNODC, (2020). https://www.unodc.org/documents/Advocacy. Section/UNODC_Position_paper_COVID-19_in_prisons. pdf$

¹⁷ Mellow, J., & Christian, J. (2008). *Transitioning offenders to the community: A content analysis of reentry guides.* Journal of Offender Rehabilitation, 47(4), 339. doi:

Datchi, C.C., Barretti, L.M., & Thompson, C.M. (2016). Family services in adult detention centers: Systemic principles for prisoner reentry. *Couple and Family Psychology: Research and Practice*, 5(2), 89.

President granted pardon to more than 4,000 prisoners in an effort to contain the spread of COVID-19, focusing on those with a maximum sentence of three years and those approaching their release.

- The County governments should support the re-entering populations of offenders by allocating funds to expand the programs that assist with the process of re entry back into the community and provision of medication assisted treatment (APA, 2017)¹⁹. This will go a long way in ensuring that those being released as a result of COVID-19 continue receiving vital care even outside the prison setting and from their Counties.
- Amnesty International is also calling authorities to consider early, temporary or conditional release of older prisoners and those with underlying medical conditions, nursing mothers and girls who are in detention with dependent children or who are as emulated by Ethiopia release of over 10,000 prisoners who were about to complete their sentences and those serving a maximum of three-year jail-terms in the face of COVID-19, (UNHCR, 2020)

V. CONCLUSION

The vulnerability in prisons and other detention centres can lead to an explosive outbreak of COVID-19 must be of grave concern to all countries. In addition to their devastating effects on prisoners and those charged with their custody, such outbreaks of COVID-19 inside prison and after release would equally undermine ongoing control efforts by the government to flatten the curve in the community. Additional demands to address the imminent prison outbreak of COVID-19 which pose a threat to already over stretched public health facilities inside prisons and health facilities in the country. Prisons and other detention settings must therefore become an integral part of a national response concern to COVID-19. The confined settings that are inherent in detention and imprisonment must be limited to those individuals for whom there is no alternative, and meaningful support must be provided to people in contact with the criminal justice system during this unprecedented crisis. Concerted and urgent action involving prison administrations and all other relevant sectors of government and society is of the essence. Preventing outbreaks of COVID-19 in prisons, including by taking affirmative steps to reduce prison populations, will be much easier than controlling outbreaks once they have occurred.

The risk of incursion of infection in prisons exists as long as COVID-19 social distance and continuous washing of hands are ignored; the corona virus will continue circulating in the community until a vaccine is discovered. While the level of prevalent infection in the community will likely affect the prisoners inside prisons and those who have been released, before a vaccine is developed, this calls for urgent interventions in correctional facilities such as creating isolation rooms inside prison. Based on the literature, policies, and desktop review, this paper established that prison preparation to create extra isolation rooms was in the process. These are important considerations for policy makers in determining how to lift current restrictions on normal life in the community such as lock down, curfews and other containment interventions but will also be a consideration for prisons going forward for the rest of these years to be considered for funding from Government COVID-19 Fund Kit.

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