Prisoners, prisons, and HIV: time for reform

Prisoners and detainees worldwide have higher burdens of HIV, viral hepatitis, and tuberculosis than the communities from which they come. This disease burden among prisoners has been recognised since the early years of these inter-related pandemics.1 Yet the health needs of prisoners receive little attention from researchers or advocates working to improve responses for these diseases, and scant funding for prevention or treatment interventions. This Lancet Series on HIV and related infections in prisoners1–4 shows that the reasons for this neglect include the very factors that make prisoners and detainees vulnerable to infection and unable to get treatment: unjust and inappropriate laws; underfunded and overcrowded prisons with large numbers of individuals in lengthy pre-trial detention; policing practices that lead to imprisonment with compulsory drug detention centres that provide no evidence-based treatment for substance use disorders; and discriminatory criminal justice systems.1,2 The inter-related epidemics of HIV, viral hepatitis, and tuberculosis in prisoners have been seen as part of broader syndemics, which include mass incarceration without needle and syringe programmes, substance use, and mental disorders.

In the decades long, failed War on Drugs, people who use drugs have been incarcerated in profoundly misguided and harmful approaches to treatable substance use disorders.3 Mass incarceration has destroyed countless individual lives, had lasting negative effects on prisoners’ families and communities, and, in many settings, increased community rates of HIV, tuberculosis, multidrug-resistant tuberculosis, and hepatitis C virus (HCV).3 The threat of incarceration, police harassment, and interference with access to HIV and HCV prevention and treatment services has also had an enormous impact on people who use drugs and other marginalised populations, including sex workers, men who have sex with men, and migrants and refugees. It is past time for a rethink on the uses of incarceration, and on ways of mitigating the effects mass incarceration has had on the overlapping epidemics we all seek to control.

The need for a rethink is especially important because of how the incarcerated population is changing. Although most of the world’s 10·2 million estimated prisoners and detainees are men, women and girls are the fastest growing incarcerated population worldwide.3 The Institute for Criminal Policy Research reported a 50% increase in the number of women and girls incarcerated between 2000 and 2015 to about 700 000 worldwide, 205 000 (29%) of whom were in the USA alone.3 The human, social, and financial costs of mass incarceration in the USA are severe—most especially among communities of colour. Among US women, HIV burdens are also most concentrated among women and girls of colour: in 2014 the rate of new HIV infections was 34·8 per 100 000 people in African American women compared with 1·8 per 100 000 in white women.10

The first task in addressing HIV and related infectious diseases among those incarcerated is to reduce the numbers of people in prison and detention for substance use, sex work, and other non-violent offences. This effort will require policies that send fewer people to prison and reduce the length of sentences. This change can happen only if there is agreement on what prisons—and what imprisonment—are for. Conventionally, incarceration has had four possible goals: retribution (punishment);
deterrence; incapacitation (stopping the prisoner from reoffending while they are in prison); and rehabilitation (reducing the risk that they will reoffend after release). The evidence for each of these goals is much less clear than it is often made out to be.

Legislators often cite public demand for retribution to justify long prison terms with harsh regimes. Yet research shows that they consistently overestimate public demand for harsh treatment and for retribution rather than rehabilitation. The evidence that prisons are a deterrent is complex and subject to different interpretations. Durlauf and Nagin provided a detailed methodological review of the many weaknesses of previous research on deterrence and concluded that what matters to deter crime is the probability of being caught and the certainty of punishment. Greater severity of punishment, such as longer sentences, does not deter those who might offend. Rather, deterence is more sensitive to effective policing through targeting of resources and ensuring that responses are appropriate to specific contexts. Prison terms and felony records can initiate first-time offenders into cycles of poverty, crime, and recidivism and, in many countries, there is no attempt to rehabilitate prisoners. Gendreau and colleagues’ comprehensive review found no evidence that prison sentences reduced reoffending and, in some comparisons, there was evidence that imprisonment increased it. The authors concluded that the sole justifications for prisons were incapacitation and retribution, goals with which few citizens agree.

The scarce evidence to support long periods of incarceration raises the question of why, in some countries, incarceration rates are so high, especially when other countries manage to achieve low crime rates with much lower rates of imprisonment. Several factors have a role. First, in some countries, prisons act, in effect, as a surrogate for mental health services. Second, in some countries the numbers of incarcerated are swollen by many people in detention awaiting trial. They are often detained in facilities that are far worse than standard prisons. As Lilanganee Telisinghe and colleagues point out in their Series paper, pre-trial detention is also a particular challenge for many African correctional systems, often in unsafe, harsh conditions of overcrowding and undernutrition without health services. Third, mass incarceration has been increasingly used for offences related to substance use.

In any global review of mass incarceration, the USA stands out. Presently, nearly one in every 100 Americans is in jail, and in 2012 the USA accounted for 25% of the world’s prisoners (and 29% of all female prisoners) but only 5% of its population. A primary factor was the War on Drugs, which systematically targeted people who use drugs within minority communities, something reflected in the composition of the prison population; in 2010, African Americans were incarcerated six times more, and Hispanics three times more, than non-Hispanic whites.

There is an urgent need for reform on public health and also on moral grounds (panel). 60 years ago, the UN adopted the Standard Minimum Rules for the Treatment of Prisoners. Although not binding, the rules proved useful to prison administrators and monitoring bodies. But they were also a product of another era, a time when the human rights of prisoners were not widely recognised and before the HIV/AIDS epidemic, the War on Drugs, and the high prevalence of mental disorders among prisoners. Bringing the rules up to date, however, was a challenge, because many states were reluctant to subject themselves to more stringent rules that could be used to hold them to account. The new rules, entitled the Nelson Mandela Rules, were finally adopted by the UN Commission on Crime Prevention and Criminal Justice in May, 2015, and approved by the UN General Assembly in December, 2015.

The Nelson Mandela Rules provide benchmarks to achieve meaningful reform in access to health care for those detained. We can, and should, do better to reduce both the numbers of those incarcerated and the length of their sentences, and to improve prevention, treatment, and post-release linkage to care for prison-associated infectious diseases. Meeting community standards of care in correctional settings, especially in low-income and middle-income countries, will require political will, financial investment, and support from medical and humanitarian organisations across the globe, but it can and must be done. Global control of HIV, viral hepatitis, and tuberculosis will not be achieved without addressing the unmet health needs of prisoners.

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