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NETWORKS

WORKING TOGETHER

EXTERNAL PRISON OVERSIGHT AND
HUMAN RIGHTS

NEWSLETTER

31 MARCH 2020

This network is committed to bringing together various agencies responsible for external prison oversight to share information and exchange best practices and lessons learned.

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Welcome Message from the Chair



It is with great pleasure that I introduce the *fourth* issue of our Network newsletter.

Dear Members,

We are living in unsettling times. The outbreak of COVID-19 has affected us all in various degrees, and though it feels awkward sending this newsletter at the start of a global pandemic, it seems more necessary now than ever to preserve a semblance of normality in our work of prison oversight.

I recommend visiting the [Canada OPCAT Project](#) where Matthew Pringle is diligently compiling information about the deprivation of liberty during the COVID-19 pandemic. Other helpful sources of synthesized information include:

- [Danish Institute Against Torture](#)
- [Prisonstudies.org](#)
- [Association for the Prevention of Torture](#)

COVID-19: Formal Request to Members

I have been reflecting on how the *Expert Network on External Prison Oversight and Human Rights* could contribute to the global response to COVID-19. As a worldwide network of prison oversight bodies and stakeholders, I suggest that we share and distribute information on what changes jurisdictions are making to their daily operations to ensure continuity in the work of prison oversight.

From my vantage point it seems that most governments and prison authorities are doing everything in their power to restrict access to prisons and places of detention. Although this is a prudent and necessary measure given the public health advisories, there is every reason for us to be concerned about the potential implications for human rights.

I am formally requesting that **all members mandated to carry out external oversight submit a one to two-page summary of the local impact of COVID-19 on your work; the measures you have taken to respond to this crisis; and any learning you wish to share with jurisdictions abroad.** I suggest a [deadline of April 15th, 2020.](#)

WELCOME

Once I have received your submissions, we will compile them into one or more newsletters that will then be shared with the network. To those of you who have already agreed to contribute, thank you! I would also like to thank **Steven Caruana** for his initiative and dedication to procuring articles for this upcoming special issue.

As an example, my office has suspended regular and scheduled institutional visits and most staff are working remotely from home. However, we will maintain an essential level of services and operations, including daily situational monitoring. Our toll-free number and general contact email remain open and operational. Any inmate call or contact will be returned or addressed, with emergency matters taking precedence. As the situation evolves, the Office will consider making emergency institutional visits on a case-by-case basis, taking into consideration directions from health authorities.

Many jurisdictions have already posted updates to their websites. Here are some examples:

- [Office of the Inspectorate, New Zealand](#)
- [Protecteur du Citoyen, Quebec, Canada](#)
- [Ontario Ombudsman, Canada](#)
- [Procuración Penitenciaria de la Nación, Argentina](#)
- [Ombudsman, South Australia](#)
- [Prisons & Probation Ombudsman, United Kingdom](#)
- [Scotland Public Services Ombudsman](#)
- [Prisoner Ombudsman for Northern Ireland](#)
- [HM Chief Inspectorate of Prisons, United Kingdom](#)

Current Newsletter

The **featured topic for the current issue is “Effective Prison Oversight & Independence.”** We are indebted to Tom McGonigle, Peter Boshier, Patricia Gilheaney, Wendy Sinclair-Gieben, and Stephen Sandham for their contributions. We are also pleased to have the **Maldives as our featured jurisdiction!** I would like to extend my sincere appreciation to Mr. Ahmed Mohamed Fulhu, the Maldives’ Commissioner of Prisons and former Prison Ombudsman, for his diligence and cooperation.

Best wishes for a happy, healthy, and safe spring.

Ivan Zinger, Correctional Investigator of Canada.

Custodial Oversight in Northern Ireland



By Tom McGonigle

Inspector, [Criminal Justice Inspection, Northern Ireland](#)

Former Prisoner Ombudsman, Northern Ireland (2013-17)

Northern Ireland is a very small jurisdiction, with only three prisons and a Juvenile Justice Centre. There were 1,590 prisoners on February 21, 2020. However, its political “Troubles”¹ which began in 1968 have meant that many people, including community leaders, spent time in prison and there is a significant level of interest in penal matters.

During the Troubles there was a much larger prison population, but little formal oversight and virtually no published reports. The prisons experienced prolonged protests, hunger strikes, violent deaths of prisoners and staff, and embarrassing escapes. The 1998 Belfast (“Good Friday”) Agreement heralded a considerable reduction in political violence. It set in motion a wide-ranging review of the criminal justice institutions with the aim of improving public confidence. One consequence of that review has been significantly increased levels of oversight of the entire justice system, including prisons.

The Office of the Chief Inspector of Criminal Justice in Northern Ireland (CJI) emerged from the Criminal Justice Review. It became operational in 2004 and was designed to ensure inspection of all aspects of the system, except for the judiciary.

CJI is a small organisation comprising 7.5 inspection staff including the Chief and Deputy Chief Inspectors. Along with 20 other statutory bodies that independently monitor places of detention it is a member of the UK “National Preventive Mechanism,” which supports the *Optional Protocol to the Convention against Torture*.

CJI has statutory authority to investigate and report, but it is not a regulator and does not have power to enforce its recommendations. This means its most effective leverage is through persuasion and the publicity which its published reports can attract. Political disagreement meant Northern Ireland did not have a functioning Executive or Assembly

¹ The Troubles are known internationally as the Northern Ireland conflict.

between February 2017-January 2020. During the hiatus civil servants effectively ran the system and in the absence of political scrutiny they increasingly turned to CJI for independent assessment to help retain public confidence. However, the lack of political accountability also weakened the drive to deliver CJI recommendations.

Operation of the prisons has always been a source of concern, so a considerable amount of CJI's attention is devoted to the Prison Service. It undertakes inspections of individual establishments and also thematic reviews, such as of how the Prison Service manages life-sentenced prisoners and vulnerable people.

The inspection methodology focuses on outcomes for prisoners rather than audit of managerial processes. It is based on four [Healthy Prison tests which assess Safety, Respect, Purposeful Activity and Resettlement](#).

Prison inspections are usually unannounced and take place, on average, once every three years. They are comprehensive exercises, with some 30 Inspectors spending up to a week inside. A detailed survey of prisoners' views is conducted. Its results are benchmarked against previous inspections and against 117 prisons in England & Wales that are comparable in size and function; and they are included in the published report.

Emerging findings and draft inspection reports are shared with the Prison Service in order to ensure factual accuracy. The final report is presented to the Minister of Justice, laid before the Northern Ireland Assembly and published along with an accompanying press statement. These reports usually evoke considerable media interest and publication is often followed by an appearance at the Justice Committee, so that politicians can explore the findings with Inspectors and hold the Prison Service publicly to account. Subsequent inspections assess Prison Service performance against the recommendations which they previously accepted.

Being recognised as independent while maintaining collaborative relationships with prison authorities is very important, and especially challenging in this small jurisdiction: most CJI Inspectors have formerly worked in the justice system and they are paid from the public purse. CJI addresses the issue in part by paying for Her Majesty's Inspectorate of Prisons to play a core role in Northern Ireland inspections. This means the prisons' performance is assessed against exactly the same criteria as in England & Wales; and the same reporting style is used.

In addition, two local oversight bodies - the Regulation & Quality Improvement Authority (RQIA) and the Education & Training Inspectorate (ETI) - participate in prison inspections. Very few of their Inspectors have previously worked in Northern Ireland's criminal justice system, and they provide a valuable assessment of the healthcare and education provision for prisoners. The RQIA and ETI also support CJIs oversight of the Juvenile Justice Centre, which held an average of 18 children in custody during 2019.

The Office of the Prisoner Ombudsman for Northern Ireland was set up in 2005 following protests inside Maghaberry Prison and on the streets, as Republican and Loyalist prisoners sought (and ultimately achieved) separation from each other. A review suggested that an Ombudsman's office could *"make a valuable contribution to defusing the tensions which are bound to arise in prisons in Northern Ireland."*

The Office was established to investigate complaints from prisoners and their visitors if they remained dissatisfied with answers provided by the Prison Service's internal complaint process. The Ombudsman is also tasked with investigating deaths in custody. This is especially important as the UK incidence of self-inflicted deaths in custody is over eight times higher than in the general population; and deaths in state care are always a matter of public interest.

Unlike CJI, the Prisoner Ombudsman's Office is not established on a statutory basis. While the power to investigate complaints is set out in legislation, the Ombudsman only has a "standing commission" from the Prison Service's Director-General in relation to deaths in custody. The process for placing the Ombudsman's Office on a statutory footing had progressed through the Northern Ireland Assembly in 2016, but underpinning Regulations were not completed before the Assembly was suspended in 2017.

The Prisoner Ombudsman is a public appointee, accountable directly to the Minister of Justice. The seven Investigators however are civil servants; and finance, personnel and IT functions are provided by the Civil Service. Although this may suggest less independence than CJI - which recruits its staff directly and manages its own corporate functions - the Ombudsman model has never been substantively queried in terms of actual independence and is simpler and cheaper than the CJI structure.

The Prisoner Ombudsman's work is entirely demand-led, which means volumes are unpredictable. During 2013-17 an average of 300 complaints per year were received and investigations commenced into an average of four deaths in custody per year.

Like CJI, the Ombudsman's office believes the most productive way to promote improvement is by working collaboratively. However, it emphasises its independence equally from all parties - from complaining prisoners and the families of deceased prisoners, as well as from the Prison Service.

The Ombudsman's office ensures visible independence by retaining the services of clinical reviewers from other jurisdictions for most Death in Custody investigations. Their specialist assessments are essential and they are often called as expert witnesses to assist at the inquests, which are held after every death in custody in Northern Ireland. Inquests are not held until the Ombudsman's reports are available, reflecting the value which Coroners attach to the detail and analysis they provide.

Draft complaint and Death in Custody reports are shared with all relevant parties, including next of kin, in order to ensure their factual accuracy. This means the facts, analysis and recommendations are shared with everyone who is directly affected.

The Ombudsman's preference is to publish Death in Custody reports in full in order to serve the public interest. However, publication has to be balanced against legal obligations in respect of data protection and privacy, so careful account is taken of next of kin views when considering publication. Most are content to publish, especially when they can have the published version anonymised and/or redacted.

The reports of complaint investigations are not published in order to protect the privacy of the people involved. Instead synopses are included in the Ombudsman's annual report and in the Office's bi-annual magazine for prisoners.

Other oversight bodies that operate in Northern Ireland prisons include Independent Monitoring Boards - lay volunteers who report on the conditions and treatment of prisoners. The International Committee of the Red Cross visits the prisons, as does the European Committee for the Prevention of Torture - they came most recently in 2017. Organisations such as the Probation Service and NGOs do not have an oversight role, but their daily presence in the prisons provides a valuable external perspective.

In summary, there is now a well-established model for prison oversight in Northern Ireland, with CJI and the Prisoner Ombudsman's Office playing central and complementary roles: while CJI undertakes wide-ranging inspections of entire prisons and reports on important penal themes, the Ombudsman's office explores individual cases in depth. The

full range of their published reports can be seen at <http://www.cjini.org/> and <https://niprisonerombudsman.gov.uk/>

Independent Inspections: The New Zealand Experience



By Peter Boshier

Chief Ombudsman, New Zealand

A number of entities provide oversight of New Zealand prisons, including the Office of the Prison Inspectorate (part of the Department of Corrections [Corrections]) and the Minister of Corrections. However, I am charged as [Chief Ombudsman of New Zealand with providing independent oversight](#). While I have a role in investigating prisoner complaints under my general Ombudsman powers, this article describes my role as a National Preventive Mechanism (NPM) examining the treatment and conditions of prisoners from a human rights perspective.

NPM framework

NPMs are established to meet a State's obligations under the United Nations [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT). New Zealand ratified OPCAT in 2008 by way of amendment to the [Crimes of Torture Act 1989](#).

The objective of OPCAT is to establish a system of regular visits by international² and national bodies to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. It emphasises dialogue- building collaborative, trust-based relationships to effect change. Rather than reacting to complaints, it is proactive in visiting all places of detention without awaiting allegations of abuse. Recommendations are made, where appropriate, to improve the conditions of detention and detainee treatment.

I am one of New Zealand's four NPMs (coordinated by the [Human Rights Commission](#)). Prisons are one of the places of detention that I am responsible for monitoring.

² The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

New Zealand prisons

18 Adult (18+ years) prisons

Average capacity of prisons is

606 prisoners

134

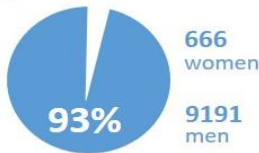
smallest prison

1078

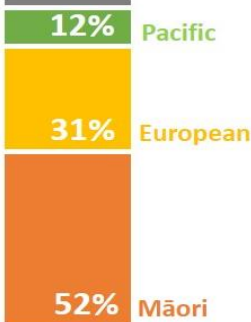
largest prison

Total number of

9857 prisoners



Most prisoners are **Māori**



63%

are sentenced prisoners



Source: December 2019 prison statistics, www.corrections.govt.nz

OPCAT and New Zealand prisons

Reviewing and commenting on legislation, policy, and practice relating to detention is part of my NPM role. However, my key work in this area is OPCAT inspections.

My staff and I visit prisons at any time of day or night to examine the treatment of prisoners and their conditions of detention. We try to visit each prison at least once every four years; sooner if there are issues we are concerned about. We also conduct follow-up visits to see how my recommendations have been implemented. Prison inspections typically last 5-10 days, and include confidential interviews with both staff and prisoners, viewing relevant documentation, and inspecting conditions. A confidential survey is distributed to each prisoner, enquiring about treatment and conditions. Meetings are held with senior staff at the beginning and end of the inspection. Most of my inspections are unannounced, ensuring we see the prison as it usually operates.

A number of criteria and indicators have been developed, based on international and domestic law and jurisprudence, rules such as the [Nelson Mandela Minimum Standards for the Treatment of Prisoners](#), and international best practice. These help guide my staff when they carry out their inspection. Some of the matters we look at include whether prisoners are treated with respect when they arrive at the prison, if their immediate needs and any risks are identified, and if they receive appropriate information about their rights and responsibilities. Others include prisoner safety, access to health care and rehabilitation programmes, and complaints mechanisms.

Following inspections, provisional reports are shared with the prison director and Corrections for comment. Reports are then finalised having regard to that comment. My reports comment on positive treatment and conditions, and recommend remedial action where necessary to improve the treatment and conditions of detainees. I commenced publishing my [prison reports](#) in 2017. Publication signals a level of maturity of OPCAT in prisons, while encouraging public transparency of the positive work and the challenges faced by both prisoners and prisons.

My 2017 report entitled '[A question of restraint: Care and management for prisoners considered to be at risk of suicide and self-harm](#)' highlighted incidences of at-risk prisoners being restrained on 'tie-down' beds over prolonged periods (for example, approximately 16 hours a day for 37 consecutive days).

In my opinion, these cases amounted to cruel, inhuman or degrading treatment and a breach of Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2019 Corrections confirmed that it had removed tie-down beds from all prisons in New Zealand.

Prisoner access to mental health services has been a recurrent [concern](#), and I welcome Corrections' new purpose-built mental health facility at Waikeria Prison. Another significant issue has been the treatment and conditions of our indigenous Māori people, who make up 52 percent of our prison population, despite forming only approximately 17 percent of the general New Zealand [population](#). Corrections has recently launched an initiative [Hokāi Rangi](#) to address this issue. The SPT visited seven New Zealand prisons in 2013, making a number of [recommendations](#) for improvement in these and other areas. Another area of concern raised in a recent prison report was that processes and practices were not suited to the prisoner security classification (Northland Regional Corrections Facility).

Protecting prisoners' human rights

In 2018/19 I made 115 recommendations for improvement in New Zealand prisons and 108 (94 percent) were accepted or partially accepted by Corrections. Although my recommendations are non-binding, the level of acceptance has been excellent. It reflects

94%
recommendations
accepted

not only a positive attitude to my independent oversight but also the commitment of New Zealand prisons to improve respect for human rights.

As an Ombudsman, I am constitutionally independent of government and I have financial autonomy. I am an Officer of Parliament, reporting to and funded by Parliament, not the Government of the day. I also maintain separation between this and my other functions within my organisation. For instance, my OPCAT inspectors are not located in the same part of the organisation as my complaints handling teams. OPCAT records are locked off from other parts of the office, and the OPCAT team and relevant advisors solely manage the inspections and reporting, including logistics.

Being independent from the prison sector means prisoners and staff can speak freely and confidentially to my staff without repercussions. This allows us to gain a comprehensive and accurate understanding of prisoners' treatment and conditions.

The effectiveness of [my OPCAT work](#) relies on establishing a constructive relationship with prisoners, prison staff, and Corrections. My staff and I have worked hard over the years to develop this, and continue to do so. Objective, evidence-based findings, and clear, measurable and impactful recommendations, build the credibility and trust required for such a relationship. While there is much work still to do to protect prisoners' human rights, the OPCAT oversight role has contributed to significant improvements. I look forward to continuing this important work in New Zealand.

Effective Prison Oversight and Independence in Ireland



By Patricia Gilheaney

Inspector of Prisons, Ireland.

University of Limerick School of Law Adjunct Professor

M.Sc. (Executive Leadership)

M.Sc. (Health Services Management)

R.G.N.; R.P.N.



International best practice requires a system of independent monitoring so that transparency and accountability of the prison system can be achieved. This requirement is covered in the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*³. The objectives of inspections are outlined in other international standards and rules such as the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), which states:

“...the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected” (Rule 83.2).

Reports by national and international non-governmental organisations, the findings of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and various decisions of the European Court of Human Rights (ECtHR) show that – even in countries with well-developed and relatively transparent prison systems – the independent monitoring of places of detention is essential to preventing inhuman and unjust prisoner treatment, and to enhancing the quality of detention and prison management. The establishment of independent national monitoring bodies in

³ Office of the High Commissioner for Human Rights (1988). *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29*. Adopted by General Assembly Resolution 43/173 of 9 December 1988. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx> (accessed 26 March 2020).

addition to a government-run inspectorate should not be seen as an expression of distrust towards the quality of governmental control, but as an essential additional guarantee for the prevention of prisoner maltreatment.⁴ The European Prison Rules state, “Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules.”⁵ Accordingly, the Inspector of Prisons Standards for the Inspection of Prisons in Ireland (2009) asserts, “...an independent inspectorate is vital in ensuring that prisoners’ rights are not violated.”

The Office of the Inspector of Prisons (OIP) is a statutory, independent office established pursuant to Part 5 of the *Prisons Act 2007* (the Act), and the office holder is the Inspector of Prisons. Under Section 31 of the Act, the Inspector of Prisons is obliged to carry out regular inspections of prisons and, for this purpose, may at any time enter any prison or any part of a prison; request and obtain from the Governor a copy of any books, records, other documents, or extracts from such documents; and in the course of an inspection or arising out of an inspection bring any issues of concern to the notice of the Governor of the prison concerned: the Director General of the Irish Prison Service (IPS) and/or the Minister for Justice and Equality, as the Inspector considers appropriate. The Inspector is required to investigate the circumstances surrounding the death of any person in custody and also any death that occurs within one month of receiving a temporary prison release.

The “independence” of the Inspector relates solely to the carrying out of statutory functions. The OIP is an executive office within the Department of Justice and Equality, and all support functions including finance, human resources, information management and estates are provided by the Department. The funding for the OIP is provided by the Department of Justice and Equality, and the Secretary-General of that Department is the accountable officer for the budgetary allocation to the OIP.

The Inspector does not have authority to publish her inspections, investigations, or annual reports. Such reports are submitted to the Minister who is required to lay them before the Houses of the Oireachtas (Parliament) and to publish them. The Minister may omit any matter from the Inspector’s reports if s/he is of the opinion that its disclosure may be

⁴ Council of Europe (2006). *Commentary of Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules.*

⁵ Council of Europe (2006). *European Prison Rules, Rule 92.*

prejudicial to the security of the prison or of the State, or after consultation with the Secretary-General of the Government, that its disclosure would be contrary to the public interest, or may infringe the constitutional rights of any person. Where any matters are omitted, a statement to that effect must be attached to the report concerned on its being laid before each House of the Oireachtas and upon publication. Since my appointment in May 2018, none of my reports have been redacted by the Minister. My predecessors and I have informed the relevant Ministers that legislative amendment is required to strengthen the powers of the Inspector of Prisons to include the authority to publish her reports.

Following my appointment as Inspector of Prisons in May 2018, I commissioned an independent review of the OIP and the subsequent report was completed and submitted to the Minister in December 2018. The independent reviewers noted that the OIP, in support of the Inspector's statutory scrutiny role, had made a considerable positive impact on the Prison System in Ireland. It had published 128 reports including 90 in relation to investigations into Deaths in Custody plus a number of Inspection Reports. However, the initial conclusion from the reviewer's discovery work was that, looking forward, the Inspection and Investigation regime within the existing OIP was not fit for purpose. They were clear that this finding did not detract from the good work done or the dedication of staff. In summary, the findings were as follows:

- Only 3 prisons had been subject to a formal inspection (i.e. a report published) in the last 5 years.
- Half of the prison estate had not been formally inspected at all since the inception of the OIP 10 years ago – it should be noted that all prisons had been visited multiple times in the course of various inspection, investigation, and thematic report activities, but the lack of formal Inspection Reports meant that the necessary openness, transparency, and rigor was not properly evidenced.
- No structured forward-looking programme of [announced and unannounced] inspections – there was insufficient resource within the Office to take on additional work over and above the investigations of Deaths in Custody, which understandably were prioritised.
- No repeatable processes with many ways of working not aligned to recognised international “good practice” – there were some documented processes and

checklists which were not sufficiently robust or comprehensive, and did not provide the basis of a repeatable inspection and investigation regime.

- A legal framework in the Act which lacks clarity and comprehensiveness – the need to formalise the statutory remit, powers, and protections of the Inspector of Prisons (and those to whom his/her authority is appropriately delegated) is an imperative, and it was noted that this was recognised by the previous Inspector and Acting Inspector.
- Insufficient funding in its approved budget to meet its current staffing and resource expenditure – this was an on-going issue with the Office and it was acknowledged that the previous [Acting] Inspector of Prisons had also flagged this matter.

The OIP submitted Business Cases to the Department of Justice and Equality for appropriate resources and for approval to recruit additional staff. Two of the key tenets of an effective prison oversight body are transparency and monitoring. The OIP consulted extensively and set about developing an Inspection Framework that embraces these principles and places prevention of torture, inhuman, and degrading treatment or punishment at the forefront of its activities. The Inspection Framework has been developed and was due to be formally launched by the Minister on 25 March 2020. Unfortunately, this was deferred due to the COVID-19 pandemic.

The Inspection Framework (IF) document clearly sets out for the reader the process that was undertaken to develop the IF. At the outset, the IF is referred to as a *living document*, and a commitment has been made to ensuring that its contents will be continually refreshed and updated in line with any changes in legislation or emerging international good practice. Therefore, the IF will be formally reviewed as required, but no longer than every three years. The IF is based on five Focus Areas, i.e., the major factors which affect and reflect the welfare and human rights of prisoners and others working in and visiting prisons. The five Focus Areas are:

- Safety and Security
- Respect and Dignity
- Health and Wellbeing
- Rehabilitation
- Development and Resettlement

The Dimensions are the overarching and cross-cutting criteria of an inspection. Three dimensions will be used to assess each of the Focus Areas as follows: Outcomes, compliance, and environment. The IF document specifies the assessment ratings (including detailed descriptors) that will be used. On inspection, if an Inspection Team identifies concerns around current performance, or the risk of adverse impact on future performance of such significance and consequence that an immediate intervention to mitigate is required, the Inspector may raise an Immediate Action Notice (IAN). The IF document provides the risk matrix that the Inspection team may use to assist it in its decision-making.

The OIP will carry out four types of inspections: General, thematic, functional, and follow-up. On-site inspections will include prisoner and staff surveys, prisoner and staff interviews, and documentary/record reviews to include medical records and complaints. An important integral component of all inspections will be the Inspector's requirement of the Irish Prison Service to provide an Action Plan (Specific, Measurable, Achievable, Realistic and Time-bound; SMART) to address identified areas for improvement. The OIP will monitor achievement of the specified actions either directly by way of a follow-up inspection, or by relying on self-assessment by the prison service. Monitoring is therefore included as an essential preventative component of the inspection process and not merely an "add on."

The OIP mission is "supporting excellence in both delivery and outcomes in Ireland's prisons through an independent programme of inspections and investigations." Although the statutory provisions underpinning the role and powers of the Inspector of Prisons require significant enhancement, the OIP, in dialogue with the Irish Prison Service, will undertake a comprehensive and systematic programme of inspections of Ireland's prisons, which is focused on independence, transparency, improvement, and prevention.

Effective Prison Oversight and Independence in Scotland

By Wendy Sinclair-Gieben,

Her Majesty's Chief Inspector of Prisons, Scotland

Stephen Sandham,

Her Majesty's Deputy Chief Inspector of Prisons, Scotland.



It goes without saying that prison inspection and monitoring bodies should provide important safeguards against breaches of human rights. *How far do they really do so in practice? And how do we measure up in Scotland to the test of demonstrating our independence from the Scottish government and making a difference to policy and practice? I will attempt to answer these questions by briefly describing the challenges we face in Scotland, the resources we can marshal to address them, and the political context in which we manoeuvre.*

It is starkly clear to anyone working in the justice system in Scotland today that the challenges presently facing the Scottish Prison Service (SPS) are enormous. The Scottish prison system is designed to deal with approximately 7,700 prisoners, but for the last 12-18 months it has regularly had more than 8,200 prisoners. Despite the introduction of new legislation to discourage short-term sentences, the evidence so far suggests that these numbers will not decline for at least the next year. This has often left the SPS with 500-700 additional prisoners – the equivalent of a medium sized prison - having to be squeezed into the existing estate. This still contains a number of Victorian prisons that I have officially described as no longer fit for purpose in a modern prison system. The result has been a sustained period of overcrowding, particularly in one antiquated Victorian prison, with the inevitable consequences for prisoners. Single cells have had to be converted into double cells that sometimes breach international standards on space per prisoner. Deeply

regrettable restrictions in regime and purposeful activity have had to be imposed, and prisoners have experienced frustrating delays in accessing the rehabilitation programmes that might assist them to secure progression to more open conditions, or support an application to the Parole Board.

These same pressures of overcrowding have contributed to a worryingly high level of staff sickness amongst Scottish prison staff, which *in turn* has imposed more pressure on the remaining workforce. And the morale of prison staff has not been helped by media scrutiny which is nearly always negative, and not always for justifiable reasons. *On the issue of staffing, I would count two further setbacks:* the retirement of the current visionary Chief Executive, and collective disappointment at the failure to secure staff backing for a plan to professionalise the SPS workforce.

As I write this article, we are just at the start of whatever additional challenges will arise from the coronavirus. We have already seen in Italy the potential consequences of lock downs and restrictions on prison visits. It is obvious what the loss of another 20% or more of prison staff on sick leave could entail: further restrictions on hours out of cells and other activities, and, even worse, the inability of health service staff to cope should the virus spread widely throughout our prisons.

In such situations effective monitoring of the conditions and treatment of prisoners becomes even more important. Are we up to the task here in HMIPS? I would normally have had no hesitation in saying yes, but these are not normal times, and I am acutely aware that our own capacity to monitor effectively will be impacted severely by the coronavirus.

Here's how Her Majesty's Inspectorate of Prisons for Scotland (HMIPS) works. As Chief Inspector I am blessed here with a small but hugely dedicated team of 12 professional staff, and 120 wonderful volunteers who make up our team of Independent Prison Monitors (IPMs). Our IPMs provide a continuous programme of weekly visits by committed enthusiastic volunteers who care passionately about the treatment of prisoners. They hold prison governors to account through a series of quarterly meetings where the governor in charge meets the independent prison monitors, provides a report on what has been happening in the prison, and discusses the latest monitoring findings. Moreover, IPM monitoring reports help inform where we target our inspections, when we carry out a more in-depth assessment of conditions every 3 years or so, and what to focus on during

each inspection. *The IPMs are not merely advisory*: they have a vital role in monitoring the action the prison management commits to making in response to our inspection findings. The two parts of the oversight system inform each other and, working together, provide tighter more effective monitoring of conditions than either part could achieve on its own.

Three other elements *seem to me* fundamental to the effectiveness of our oversight of Scotland's prisons. Firstly, all our inspection and monitoring standards are grounded in human rights thinking. As a member of the UK National Preventive Mechanism, we are committed to doing all within our power to ensure compliance with the Optional Protocol to the Convention against Torture (OPCAT), the Mandela rules, and other international standards on the treatment of prisoners. Secondly, we are able to bring in specialist knowledge and expertise from other scrutiny bodies when we go in to inspect. Thirdly, we have sufficient independence from Government and from the Scottish Prison Service to challenge *policy and practice* when we have a duty to do so, while still enjoying a constructive relationship that promotes shared understanding and recognition of the challenges facing the prison service.

Our inspection and monitoring standards were comprehensively revised three years ago with considerable input from the Scottish Human Rights Commission (SHRC). They are independently appointed by the Scottish Parliament to promote respect for human rights everywhere in Scotland and encourage best practice in relation to their protection. The new standards have a very particular focus on the PANEL principles of Participation, Accountability, Non-discrimination and equality, Empowerment and Legality. That has really challenged our whole inspection and monitoring team to look at prisons through a human rights lens and forced us to think again about the way we pose questions to prisoners and prison staff.

We also take people from the SHRC in with us when we carry out our inspections. Their contribution has proved invaluable, particularly in challenging the SPS and indeed ourselves to think harder about the type of support provided for foreign nationals and other minority groups, and the adequacy of accommodation and other support available for disabled prisoners. We frequently conclude that not enough is being done for all these groups.

We benefit hugely too from the expertise of our other partner scrutiny agencies such as Health Improvement Scotland, Education Scotland, and the Care Inspectorate. Their combined expertise enhances our ability to assess the health, education, and progression services provided for prisoners in a way we simply couldn't do on our own.

By far the most important aspect of our work is maintaining a delicate balance: to provide robust independent external scrutiny, but to do so in a way that maximises the prospects for influencing real change. *Often* it is relatively straightforward to identify and call out what is wrong and needs *to be* improved, but we are all aware of the number of inspection reports and thematic review reports across the world which have been published, sometimes to great applause, only to gather dust on the shelf thereafter.

In order to get anything done in the real world, our messages have to be conveyed with compassion and understanding of the pressures facing others. We need to avoid antagonising the politicians and civil servants from whom we seek change, or fatally undermining the morale of those striving hard at the sharp end of these extraordinary challenges.

For HMIPS, maintaining independence from Government is not easy – our funding comes from the Scottish Government, and we are technically Scottish Government employees. *Without funding from the Scottish Government, we would not exist as an organisation and there would be little or no scrutiny of Scottish prisons at all. At the same time, HMIPS partly relies on the willingness of SPS to offer people on secondment to us. Without a few secondees from SPS, to work alongside our core HMIPS team, we would struggle to keep up to date with SPS policies, guidance, and processes.* Moreover, in our experience secondees from the SPS very quickly turn from 'poacher to gamekeeper' and frequently know better than anyone else where the bodies are hidden or when inspectors aren't being given the full story. For our part, we are encouraged that the SPS recognises the value that a secondment to HMIPS can have for individuals with potential and aspirations to go higher. We hope it will be seen as an integral part of career development programmes for governor grades.

Does all this mean our ability to criticise Government or the SPS is fatally compromised? Definitely not, but we do think carefully when drafting our reports how they will be received. We try to balance the identification of issues that need to be addressed with praise for good practice, and for the often outstanding efforts of staff at all levels of the SPS in extremely difficult circumstances. We always provide an opportunity for the SPS and the

NHS to comment on our draft reports, so any factual inaccuracies can be corrected before publication, and we will adjust our assessment scores and accompanying narrative where persuaded by additional evidence. Moreover, while some might see the symbiotic nature of our relationship with the Scottish Government as a weakness, in my experience it does allow ready access to key decision makers within the Scottish Government and to Scottish Ministers themselves. It is also unquestionably the case that our recent reports and evidence to the Scottish Parliament's different committees, along with inspection reports still in draft, have been a major influence in decisions by the Scottish Government to increase funding for the SPS and further energised action by the SPS to modernise the prison estate. *Finally, we fully recognise that we have some way to go to achieve the lofty ambition set out in our strategic plan: to be recognised globally as at the leading edge of good practice in the scrutiny of prisons.* Nevertheless, I am sure you will agree with me that it is always good to aim high!

Featured Jurisdiction: Maldives

The Republic of Maldives is a small island nation situated in the Southern Indian Ocean, an archipelago scattered in a formation of atolls consisting of 1,190 coral islands and hundreds of sandbanks. There are only 200 inhabited islands, with more than a hundred developed as resorts, agricultural farms, and industrial centres for industries such as fish canning and boat building.



The political system of the country is based on a multi-party system and the three main powers – the Executive, Judiciary, and Parliament – operate separately. Executive power is bestowed on the President, while the legislative power is vested on the People’s Parliament. The Judicial power lies in the courts and the criminal justice system follows the *Penal Code of the Maldives*, a statute formulated in harmony with both Islamic Shari’ah and International Human Rights Standards.

There are four prisons and one detention centre in the Maldives and they operate under the Maldives Correctional Service. This institution was established under the *Prison and Parole Act* as the correctional service for sentenced and remanded persons.

For More Information:

[*Penal Code \(2004\)*](#)

[*Human Rights Commission Act \(2006\)*](#)

[*The Constitution of the Republic of Maldives \(2008\)*](#)

Prison and Parole Act (2013)

[*The National Integrity Commission Act \(2015\)*](#)

SELECTED CONTRIBUTION: MALDIVES

The Maldives Correctional Service



By Ahmed Mohamed Fulhu
Commissioner of Prisons,
Maldives Correctional Service.

The Maldives Correctional Service is the main institution for prisoners, including those on remand. The Correctional Service operates four prisons and one expatriate detention centre⁶. Maafushi Prison is the Central Prison, housing the majority of the prison population along with maximum security and female prisoners. The remaining prisons hold minimum to medium security prisoners while Asseyri Prison also holds juveniles. The

Law mandates that individuals incarcerated for less severe crimes⁷ be granted the opportunity for parole after they have fulfilled certain requirements, i.e., rehabilitation programmes. Eligible individuals are granted parole through the Parole Board, an independent board representing various fields such as law enforcement, government



Maafushi Prison



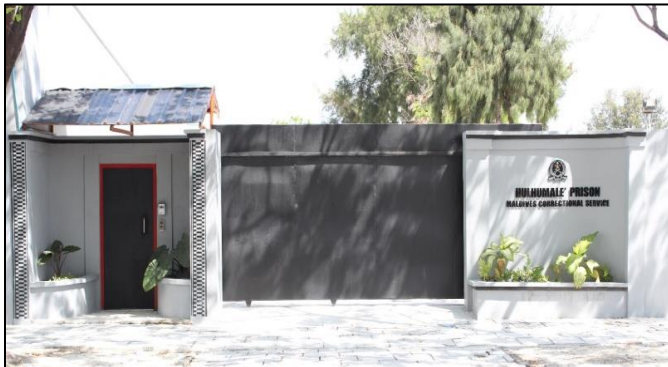
Asseyri Prison

⁶ Male' Prison, Maafushi Prison, Asseyri Prison, Hulhumale' Prison and Hulhumale' Detention Centre.

⁷ Those imprisoned for crimes such as murder, child abuse, rape, are not eligible for parole.

SELECTED CONTRIBUTION: MALDIVES

institutions, medical professionals as well as an NGO. People can also be granted clemency by the President of Maldives.



Hulhumale' Prison



Male' Prison

Prison Oversight Mechanisms in Maldives

There are three main oversight bodies that monitor the Maldives prison system: The Inspector of Correctional Service, the Human Rights Commission of the Maldives / National Preventive Mechanism (NPM), and the National Integrity Commission. In addition, certain committees of the People's Parliament as well as international agencies and organisations such as the UN Subcommittee on Prevention of Torture (SPT), perform various oversight functions.

The Inspector of Correctional Service (ICS) works independently from the Maldives Correctional Service, and reports directly to the Minister of Home Affairs. As per the *Prison and Parole Act*, some of the Inspector's responsibilities include making certain that prison structure(s) are sound and in line with regulations; those incarcerated or remanded are provided with basic necessities and services; and to independently listen to complaints of torture in prisons, investigate issues, and report to the Minister. In that capacity, the Inspector and his or her team can access the prisons and detention centres at any time after informing the Director of the institution. They will then inspect the material conditions, complaints of torture or ill-treatment, and so forth.

The Human Rights Commission of the Maldives (HRCM) was established on December 10, 2003. The responsibilities of HRCM include investigating complaints of human rights

SELECTED CONTRIBUTION: MALDIVES

violations; aiding or abetting violations by state or a private agency; and providing counsel on the measures best suited to such matters. They also investigate complaints from wronged parties and complaints submitted on their behalf by persons or organisations, and take proper action. The Maldivian government deemed HRCM as the National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture* (OPCAT) in December 2007, and hence is the second oversight body. Subsequently, HRCM has a designated department solely for NPM functions. In this capacity, HRCM has the legal right to access prisons and detention centre(s) to monitor treatment, conditions, and administration in order to protect individuals deprived of freedom against torture and other cruel, inhuman or degrading treatment or punishment. Following the ratification of the *Anti-Torture Act*, an Anti-Torture Section was formed at HRCM on March 23, 2014 for the sole purpose of investigating torture cases that are lodged at HRCM or identified by the HRCM.

Established on October 15, 2015, the third oversight body is the National Integrity Commission (NIC); an independent legal institution that oversees law enforcement agencies and their employees including the Maldives Correctional Service and the Maldives Police Service. NIC primarily investigates unlawful acts of law enforcement agencies and their employees. NIC can investigate an agency/employee at its own discretion, or if any party (including the Minister in charge of the law enforcement agency) submits a complaint regarding an act that may be believed unlawful is or has been committed. In this capacity, NIC can investigate prisons, detention centres, and police custody. In cases where NIC believes that criminal charges should be pressed against the accused, NIC forwards the cases to the Maldives Police Service or the Prosecutor General's Office for proceedings. The NIC also work towards formulating, amending, and revising policies to strengthen the functions of law enforcement agencies at a national level, and execute these national-level policies by advising state agencies, monitoring compliance, and evaluating effectiveness. In addition, NIC also conducts discussions, seminars, and other such programmes to educate and create awareness among the employees of law enforcement agencies.

There are several challenges in prison management and inspection which restrict the effectiveness of oversight bodies. One challenge is the lack of professional and technical capacity in the field of prison inspection. The shortage of technical expertise restricts the ICS team from performing optimally, which might result in delays for inspections, investigations, and reporting. Moreover, the investigation of individual complaints logged

SELECTED CONTRIBUTION: MALDIVES

at ICS requires the input of medical professionals, a field of expertise the ICS lacks. This challenges ICS's ability to close cases.

Another notable challenge is the body of overarching laws and regulations, which contradict each other in certain aspects, such as the *Human Rights Act* and the *Prison and Parole Act*. In situations where parties conflict on the application of these laws, both parties can be legally in the right and, therefore, reach an impasse.

Finally, though Maldives is a small nation, the scattered nature of its geography greatly restricts the mobility of the respective investigative teams – especially during bad weather as scheduled ferry and speedboat rides can get cancelled. Having to rely on public transportation due to the dispersion of prisons as well as the corresponding budgetary issues, are also challenges. These sorts of challenges stretch resources including staff, hindering frequent inspection visits and so forth.

Conclusion

To conclude, there are three main oversight bodies that monitor the prison system in Maldives, along with certain committees of the People's Parliament and international agencies and organisations that perform oversight functions. Each of the three main oversight bodies work independently from the authority that manages prisons and detention centres and can legally investigate such things as prison conditions and complaints of torture and ill-treatment. There are, however, several challenges in prison management and inspection hindering the effectiveness of oversight bodies. There is a need to expend the capacity of professionals in the inspection field for the oversight bodies to function optimally. In order for oversight bodies to fully-function as per their mandate and exercise their powers, certain contradicting laws need to be amended to complement each other. The challenges pertaining to the mobility of investigative teams can be overcome through innovative measures, such as monitoring mechanisms placed within prisons. For instance, CCTV monitoring needs to be further strengthened in order to collect evidence in alleged cases of torture or ill treatment. Further, the complaint mechanism within prisons needs to be more accessible, so that inmates are allowed to report or file a complaint without any hesitance.

Academic Articles

Feeley, M. and Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology*, 30(4).

Abstract

The new penology argues that an important new language of penology is emerging. This new language, which has its counterparts in other areas of the law as well, shifts focus away from the traditional concerns of the criminal law and criminology, which have focused on the individual, and redirects it to actuarial consideration of aggregates. This shift has a number of important implications: It facilitates development of a vision or model of a new type of criminal process that embraces increased reliance on imprisonment and that merges concerns for surveillance and custody, that shifts away from a concern with punishing individuals to managing aggregates of dangerous groups, and that affects the training and practice of criminologists. [[Link to Article](#)]

Iftene, A. (2020). The bad, the ugly, and the horrible: What I learned about humanity by doing prison research. *Dalhousie Law Journal*, 43(1).

Abstract

Every Canadian academic conducting research with humans must submit an ethics application with their university's Research Ethics Board. One of the key questions in that application inquired into the level of vulnerability of the interviewees. Filling in that question, I had to check nearly every box: the interviewees were incarcerated, old, under-educated, poor, Indigenous or other racial minorities, and likely had mental and physical disabilities. However, it was not until I met John that I understood what all those boxes actually meant. They were signalling that I was entering a universe of extreme marginalization—the universe of the forgotten. I learned then what we, as a society, look like at our worst, when no one watches, when there is no money to be made and no votes to be gained. Entering this universe has allowed me to identify some broader socio-legal issues, applicable across prison demographics, from gaps in prison health care and punitive carceral responses to health needs, to substantive and procedural access to justice

SELECTED ACADEMIC ARTICLES

for violations of rights in prisons and the role of health care and access to justice in achieving the rehabilitative and reintegration goals of sentencing. [[Link to Article](#)]

Kline, B., LaChance, J., Smith, L., and Glarza, L. (2020). Safe alternatives to segregation initiative: Findings and recommendations for the Utah Department of Corrections. *Vera Institute of Justice*.

Abstract

In December 2016, with funding from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Vera partnered with Utah Department of Corrections (UDC) as a part of the Safe Alternatives to Segregation Initiative. Since beginning its segregation work—in 2010—Vera has partnered with 16 corrections agencies on the local and state levels to assess their policies and practices, analyze related outcomes, and provide recommendations for safely reducing the use of segregation in their jails or prisons. The goal of Vera’s partnership with UDC was to assess how the department used segregation, to provide recommendations to safely reduce its use, and to assist with implementation planning. Vera gained insight into the department’s use of segregation with a mixed methods research design (using more than one method of data collection). This report presents the findings from Vera’s assessment— using data from January 2015 through November 2016 as well as policy reviews, focus groups, and site visits from February 2017 through December 2017—recommendations for reform, and an overview of reform efforts UDC has made over the last few years. [[Link to Article](#)]

PRISON OMBUDS...IN THE NEWS!

Prison Ombuds...in the News!

NOORA MOHAMED



New inspector appointed to Maldives Correctional Service. [[Mariyam Malso, The Edition, Feb. 17, 2020](#)]

MARK HAASE



First independent prison investigator hired after office was defunded in 2003. [[Ryan Raiche, KSTP News, Jan. 2, 2020](#)]

MAURO PALMA



More than 2,800 migrants repatriated in 2019, Italy's prison ombudsman. [[ANSA, INFOMigrants, July 1, 2019](#)]

PETER CLARKE



London's Pentonville prison lambasted by inspectors. [[Robert Wright, Financial Times, Mar. 12, 2020](#)]

LESLEY CARROLL



Post-custody deaths in Northern Ireland to be investigated. [[Niall McCracken, BBC News, Dec. 11, 2019](#)]

IVAN ZINGER



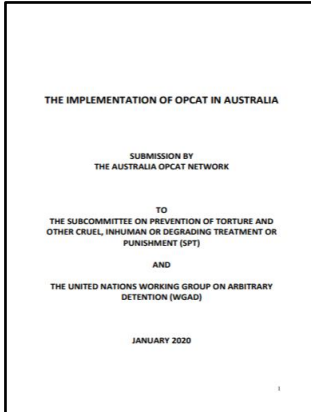
Prison watchdog decries 'Indigenization' of Canada's correctional system. [[Canadian Press, CTV News, January 21, 2020](#)]

Events

- Howard League Conference / ~~Mar. 2020~~ (postponed to 2021) / [Details](#)
- CBA Criminal Justice Conference / ~~April 2020~~ (postponed) / [Details](#)
- 3rd Int. Correctional Research Symposium / ~~May 2020~~ (postponed) / [Details](#)
- Int. Conference on Human Rights & Human Security / June 2020 / [Details](#)
- Thinking Beyond Bars (ISRCL) / ~~July 2020~~ (postponed) / [Details](#)
- Int. Conference on Justice and Criminal Law / July 2020 / [Details](#)
- Experiencing Prison: 7th Global Inclusive Interdisciplinary Conf. / July 2020 / [Details](#)
- Forum on Criminal Justice / Oct. 2020 / [Details](#)
- ICPA 22nd AGM and Conference / Oct. 2020 / [Details](#)
- American Correctional Association / August 2020 / [Details](#)
- Academy of Criminal Justice Sciences / April 2021 / [Details](#)

*Due to the **COVID-19 pandemic**, many conferences scheduled for 2020 have been postponed. Please check conference websites regularly for updates.*

New Publications!



[The Implementation of OPCAT in Australia](#) (Jan. 2020)

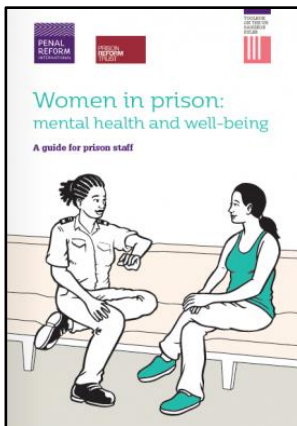
The Australia OPCAT Network

“At the end of January 2020, the Australia OPCAT network published a comprehensive report focusing on key issues related to Australia’s implementation of its obligations under the OPCAT.” [\[Source\]](#)

[Coronavirus: Healthcare and Human Rights of People in Prison](#) (March 2020)

Penal Reform International

“PRI briefing note issued on 16 March 2020 on the situation of the outbreak of a novel form of Coronavirus (COVID-19) and prevention measures in prisons and wider impacts of responses to governments on people in criminal justice systems.” [\[Source\]](#)

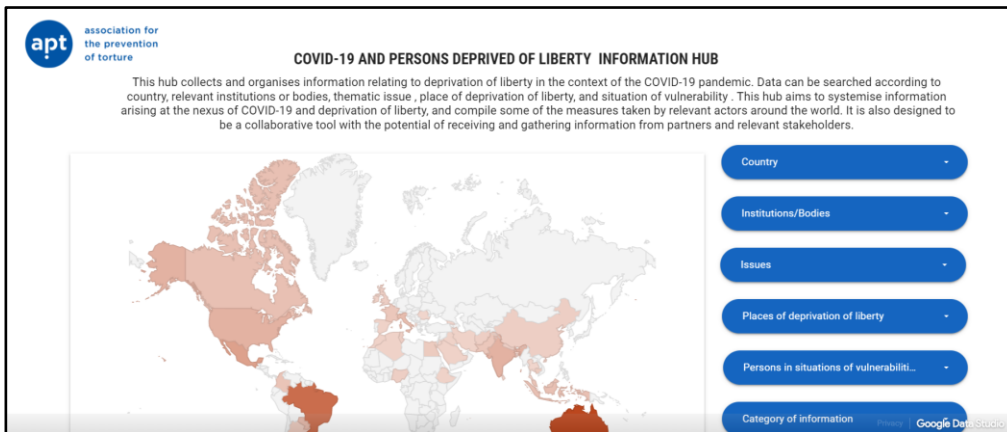


[Women in prison: Mental health and well-being – a guide for prison staff](#) (2020)

Penal Reform International & Prison Reform Trust

“...a guide for prison and probation staff to help them understand how prison life can affect a person’s mental health, with a focus on women. The guide aims to break down the stigma and discrimination attached to poor mental health, especially for women in prison.” [\[Source\]](#)

NEW PUBLICATIONS



[COVID-19 and Persons Deprived of Liberty Information Hub](#) (March 2020)

Association for the Prevention of Torture

“This hub collects and organises information relating to deprivation of liberty in the context of the COVID-19 pandemic. ... This hub aims to systemise information arising at the nexus of COVID-19 and deprivation of liberty, and compile some of the measures taken by relevant actors around the world.” [\[Source\]](#)

[Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance](#)

(March 2020)

World Health Organization

“The guidance provides useful information to staff and health care providers working in prisons, and to prison authorities. It explains how to prevent and address a potential disease outbreak and stresses important human rights elements that must be respected in the response to COVID-19 in prisons and other places of detention. Access to information and adequate health care provision, including for mental disorders, are essential aspects in preserving human rights in such places.” [\[Source\]](#)

