



# ADAPTING TO COVID-19

Prison Oversight and Monitoring During a Pandemic

Special Issue

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*The Expert Network on External Prison Oversight and Human Rights 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

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Dear Members,

It is with great pleasure that I introduce this Special Issue of our network newsletter. I first wish to extend my deepest regard to all of you. The business of prison oversight is challenging at the best of times, but this pandemic has forced us to maneuver and adapt in unprecedented ways. External prison oversight is an essential and critical service, and should be treated and operationalized accordingly.

Prisons, and other places of detention, are closed environments where liberties are significantly restricted by the State. Correctional authorities must remain vigilant to prevent and detect human rights abuses, and bring corrective measures when they occur.

We are learning that during a pandemic situation, when access to penal environments is severely or completely limited, it is more important than ever to ensure that external monitoring continues. We must not lapse in our expectation that prison administrations should continue to abide by the principles of transparency, accountability and the least restrictive measures.

In the last Network Newsletter, I announced that we would be launching a special issue looking at the “local impact of COVID-19” on the work of prison oversight. I invited our members to contribute, and the response was overwhelmingly positive. I would like to thank the following authors for their excellent contributions to this issue:

- The team of authors from United Kingdom’s National Preventative Mechanism
- Prof. Sir Malcolm Evans, UN Subcommittee for the Prevention of Torture
- Dr. Elina Steinerte, UN Working Group on Arbitrary Detention
- Mark Kelly, Association for the Prevention of Torture, Council of Europe
- Sara Snell, International Committee of the Red Cross
- Audrey Olivier Muralt, Association for the Prevention of Torture
- Janis Adair, Office of the Inspectorate, New Zealand
- Lic. Mariana Sheehan, Procuración Penitenciaria de la Nación, Argentina
- Jessica Horua & Holly Fredericksen, Inspector of Correctional Services, ACT

## WELCOME

- Eleena Mitchell, Iowa Office of Ombudsman, United States
- Eamon Ryan, Inspector of Custodial Services, Western Australia
- Fiona Rafter, Emily Collett, & Laurie Cullinan, Inspector of Custodial Services, NSW

Since the early days of the COVID-19 pandemic, we have been inundated with information on how prison administrations, justice departments, and organizations responsible for monitoring places of detention can modify their policies and operations to mitigate the impacts of the virus. Indeed, it is a testament to the age of information technology which we are living in, that so much could be shared so rapidly. Consequently, many organizations and individuals have taken it upon themselves to catalogue this deluge of information into shareable content. In the same vein, we have provided a select list of resources that we have found to be both helpful and well maintained, at the end of this document.

Finally, I would like to extend a special thanks to Steven Caruana, *Coordinator of the Australia OPCAT Network*, and Emad Talisman, *Policy and Research Analyst for Canada's Office of the Correctional Investigator*, for their strong leadership and commitment to best practices in external prison oversight. Without their dedication and hard work, this newsletter could not have been possible.

I do hope you find this issue informative and helpful. Please feel free to share it with your colleagues and networks.

With Gratitude,

Ivan Zinger, Correctional Investigator of Canada.

## COVID-19: United Kingdom's National Preventative Mechanism

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**Written in collaboration with:**

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*Chair of the United Kingdom's National Preventative Mechanism; and*

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*Assistant Coordinator, United Kingdom's National Preventative Mechanism.*



The UK National Preventive Mechanism (NPM) is made up of 21 bodies who monitor and inspect places of detention in the UK to prevent torture and ill-treatment for those deprived of their liberty. The NPM was created in 2009 as part of the UK's duties under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Several members of the NPM monitor and inspect prisons in England, Wales, Scotland and Northern Ireland.

### **COVID-19 and Concerns for those Living and Working in Prisons**

The recent coronavirus (COVID-19) outbreak puts prisoners and staff at significant levels of risk. The World Health Organisation, in its [recent guidance](#) on preparing for, preventing and controlling the outbreak of COVID-19 in places of detention, states that “people in prisons and other places of detention are not only likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations”.

UK NPM members who visit prisons have several concerns about the impact of COVID-19 in prison settings. The impossibility of keeping social distance, particularly in overcrowded prisons, puts detainees and staff at high risk of being exposed to the virus. This poses an additional risk for prisoners with underlying health conditions and those in vulnerable categories. The prison environment also increases the likelihood of prisoners

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being isolated or kept in solitary confinement. Other issues related to the impact of COVID-19 on prisons include concerns over the implication of staff shortages on the prison regime. NPM members also have concerns around how prisoners will maintain contact with their families and loved ones in light of new ‘lockdown’ measures which prohibit family and professional visits in to prisons.

The UK NPM notes these and other concerns [in a letter sent to the Secretary of State for Justice in March](#). In this letter, we draw attention to the state’s duty to protect the physical and mental health and well-being of people deprived of their liberty, as set out by the UN Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”) and the Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic issued by the [CPT of the Council of Europe](#).

### **The NPM’s Approach**

The COVID-19 outbreak presents challenges to the organisations tasked with visiting prisons and monitoring outcomes for prisoners. The NPM as a whole and its individual members continue to prioritise efforts to develop approaches to monitoring that ensure they are able to fulfil their statutory functions and [international responsibilities](#) to report on the situation in places of detention and prevent ill-treatment. The NPM and its members are keenly aware of the pressures on detention authorities at this time, and the need not to overburden them while they develop their strategies and responses. NPM members are also aware of the need to uphold the principle of *do no harm* in the midst of this public health crisis: we must not put detainees at risk by spreading the virus through visits; equally we should not put our own staff or volunteers at risk of exposure.

Across the NPM, members are fast developing new approaches to provide preventive monitoring to places of detention. Given the rapidly changing picture in prison settings and the severity of the measures that are being imposed (restriction of family visits, long periods of isolation, limitations on exercise and association), NPM members are looking into how they can monitor the situation using data from a range of sources.

Four NPM members with responsibilities for monitoring and inspecting prisons in England, Wales, Scotland and Northern Ireland provide some detail on how they are continuing to fulfil their statutory role and meet international obligations in the face of the COVID-19 crisis.

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**Her Majesty's Inspectorate of Prisons for England and Wales (HMI Prisons)** [announced](#) on 17 March that all scheduled inspection work to prisons and other places of detention was to be suspended until the end of May 2020, reflecting UK government guidance on social distancing in light of the COVID-19 outbreak. HMI Prisons have since been developing a new approach to visiting prisons to meet its duty to report publicly on treatment and conditions in prisons during this public health emergency.

HMI Prisons have created an adapted visiting methodology for this period involving short scrutiny visits to prisons. These visits are due to last one day and involve two to three inspectors. While HMI Prisons' inspections would normally assess prisons against a wide range of standards called '[Expectations](#)', the new methodology will focus on thematic issues such as safety, care and the basic rights of people in prison. Prisons to be visited will be selected based on information from a range of sources and will be clustered according to themes, such as local prisons or young offender institutions. HMI Prisons has also developed detailed health and safety guidance for inspectors to mitigate as far as possible risks to themselves, detainees and prison staff.

The new model is still being developed but it is envisaged that groups of three visits a week will begin in late April.

The **Independent Monitoring Boards'** statutory duties include visiting prisons and places of immigration detention to monitor and report on conditions and treatment of prisoners and detainees, including taking applications (requests/complaints) from prisoners and detainees. During the COVID-19 pandemic, direct monitoring activity has inevitably been restricted; however, the IMBs have developed remote methods of providing some independent assurance at a time of heightened concern for prisoners and detainees. This depends on local circumstances but includes:

- receiving daily updates from the establishment and being in regular contact with wings;
- participating by telephone in reviews of prisoners or detainees in segregation or separation;
- attending to monitor any serious incidents (such as a large-scale outbreak of violence);
- continuing to deal with applications remotely;
- direct email contact with immigration detainees.



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IMB are exploring methods of direct communication with prisoners, as the situation evolves.

**Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)** has a statutory obligation to inspect and monitor the treatment and conditions of prisoners in Scotland's prisons, court custody units and in prisoner transport vehicles. The combination of regular inspections and weekly monitoring by voluntary independent prisons monitors provides the depth and detail to ensure scrutiny.

With 120 volunteers, HMIPS has taken the difficult decision to suspend site monitoring and postpone full inspections. In the interim HMIPS have reviewed their NPM responsibilities and, basing their strategy on human rights, have developed a remote monitoring framework and implementation plan. HMIPS have also developed a liaison visit risk-based framework for the Chief Inspector and Deputy to visit prisons where they believe the urgency to visit outweighs precautions related to COVID-19.

HMIPS have also written to the Cabinet Secretary for Justice requesting urgent action to reduce the prison population and safeguard the staff and prisoners.

**Criminal Justice Inspection Northern Ireland (CJINI)** have a statutory remit to inspect all four Northern Ireland prisons (two are on the same site) and the Juvenile Justice Centre (JJC). Unannounced prisons/JJC inspections are undertaken each year in CJINI's annual inspection programme. CJINI are not currently scheduled to undertake any inspection fieldwork in the short to medium term however this may change later in the year. Two recent inspections are at report finalisation stage.

CJINI have therefore not been required to make alternative solutions to prison oversight at present. The Chief Inspector has discussed the current situation and changes to prison regime (such as [the release of 200 low risk prisoners](#) and [cessation of visits](#)) with the Director of Reoffending in the Department of Justice and he will keep CJINI updated of any significant changes to prison regimes. The Chief Inspector is planned to visit two of the four prisons and anticipates this will provide an opportunity to speak to prisoners.

## Advice of the Subcommittee on the Prevention of Torture to States Parties and National Preventative Mechanisms relating to the Coronavirus Pandemic (adopted on 25<sup>th</sup> March 2020)

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**By Professor Sir Malcolm Evans KCMG OBE**

*Chair, UN Subcommittee for the Prevention of Torture*

When the UN Subcommittee on Prevention of Torture (the SPT - the UN human rights treaty body established by the Optional Protocol to the UN Convention against Torture) met for a week-long Plenary session in February of this year, the world was a very different place from what it is today. But the first inklings of change were upon us. Part way through that session, we received by email a request for advice from the UK National Preventive Mechanism (NPMs being bodies designated within the OPCAT framework to undertake preventive visiting to places of detention within their own jurisdictions). We were asked to advise on whether places of quarantine fell within the visiting mandate of an NPM. The UK NPM clearly thought that they did – and we agreed. A few days later, at the end of our session, we issued an [‘Advice’ on compulsory quarantine](#) which confirmed that ‘any place where a person is held in quarantine and from which they are not free to leave is a place of deprivation of liberty for the purposes of the OPCAT and so falls within the visiting mandate of an NPM’. However, falling within the mandate is one thing, exercising that mandate is another.

There were two issues here. The first is that under the terms of the OPCAT, ‘Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit’ (OPCAT, Article 41(2)). We understood this to mean that restrictions on visits ‘could only be ... temporary ... and could not prevent visits to the place of quarantine completely. In other words, there would need to be a particular reason why such a visit ought not to take place at a particular point in time, rather than that such visits ought not to take place at all’.

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The second is that under such circumstances the exercise of a visiting mandate would have to respect the fact of quarantine, and this ‘may require adaptations to normal working practices, in the interests of those in quarantine, those undertaking the visit, and the general interest in halting the spread of the illness’. Trying to be a little more helpful, we gave some practical examples – suggesting that ‘may reasonably be conducted by methods which prevent the transmission of infection, and members of the NPM accessing places of quarantine might legitimately be subject to medical checks and other forms of inspection and restriction to ensure the integrity of the quarantine, as would be the case for others servicing the needs of those being detained’. The last part of that sentence is, in effect, code for saying that any restrictions on the work of NPMs must be no greater than those on anyone else.

Finally, the Advice stressed that ‘whilst quarantine is imposed for the public benefit it must not result in the ill-treatment of those detained. The role of the NPM is to ensure that all fundamental safeguards are respected, including the right to be informed about the reason for being placed in quarantine, to have a third party notified, to have access to independent legal advice and to be seen by a doctor of one’s own choice’. In other words, whilst the context of quarantine presented special features which need to be respected, the fundamental principles remain unchanged.

One month later and, although the fundamental principles still remain unchanged, the context had changed dramatically. Initially, the concern was that those in quarantine might be the subject of inappropriate treatment which required scrutiny and the medical risk was that posed by those in quarantine to everyone else. This has now been turned on its head: vast numbers of people are, in different degrees, in forms of protective isolation in order to protect themselves from the risks posed by contact with others. But a detained population is a dependent population, members of which cannot decide how to look after themselves in the same way as others are now being asked to do. At the same time, the ability of those responsible for running places of detention is potentially severely compromised due to the same health concerns affecting their staff too. They have an incredibly difficult job on their hands at the best of times – and they are now faced with some of the most challenging situations imaginable. And then there is the practical reality – which is that in some (many?) parts of the world detained populations are living in grossly overcrowded and insanitary conditions in which infectious diseases are already rife and spread with alarming rapidity, and in which medical responses are at best rudimentary and medical capacity hopelessly inadequate.

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The need for the SPT to issue further advice to NPMs operating within the OPCAT framework was clear. The result is its [Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic](#). Whilst there has been in the past week an increasing quantity of guidance being issued, the SPT's Advice has a particular focus on how NPMs should exercise their mandate at this time. To that extent, its latest Advice builds on the basics set out in the earlier Advice to the UK NPM regarding places of quarantine, which is why it is quoted extensively above. The first point to stress is that the work of NPMs must be seen as an 'essential' service' which is to continue during periods of 'lock-down'. This has been expressly acknowledged in some jurisdictions. The SPT is aware of a number of NPMs which have suspended their work – and one of the purposes of the Advice is to make it clear that this is not an appropriate response and it sets out a number of ways in which NPMs might work differently at this time. Some of these concern maintaining contact with those inside places of detention – such as through increased use (and thus increased provision of access to) various forms of electronic communication, secure phone lines, and through contact with families, lawyers, NGOs and others who may have degrees of access. The aim should be to try to gain as rounded an understanding of the situation as possible, even if the more usual forms of confidential face to face contact may not be possible. At the same time, NPMs should be approaching institutions seeking information concerning the measures they are taking and scrutinising them – bearing in mind also the very difficult situation that many of those running places of detention find themselves in.

This really takes us to the heart of the SPT Advice, which is that the NPMs should really place added focus on the extent to which states are responding appropriately to the risks posed by coronavirus (COVID-19) for those deprived of liberty. As a result, a key suggestion is that NPMs should spend more time exploring this with national authorities at this time. To that end, the Advice opens with what is now an increasingly familiar list of possible mitigation measures – familiar in that numerous other international, regional and national bodies have been making similar recommendations.

The first concerns reducing the size of detained populations, particularly where facilities are already overcrowded, or their nature makes the spread of contagious illness more likely. There is considerable scope for this in many countries – and as in so many other walks of life at the moment, exceptional circumstances call for exceptional responses. Indeed, the failure to take such steps may itself give rise to questions given the inability of many state systems to provide appropriate health care or the possibility of appropriate

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means of self-isolation in detention settings. The difficulties of implementing such measures are not to be underestimated – and the risks posed by early and unsupported release are not to be minimised. Nevertheless, the risk to life of those in places of detention is not to be minimised either and such schemes are not to be dismissed out of hand.

Another problem concerns the need to ensure that those who remain in detention are not just ‘locked-up’ until the crisis is over. This is a simplistic – though all too easy – response, even if some have sought to justify it by making completely inappropriate analogies with the home ‘lock-downs’ affecting the general public. It is, then, essential that the minimum requirements for daily outdoor exercise are respected, whilst also taking account of the health-related measures necessary to tackle the spread of the virus. Similar considerations apply as regards to visiting by family and others. The initial response in many detention systems has been to prohibit visiting, but less has been done to mitigate the effects of this and ensure that regular contact can be maintained. (indeed, with stricter internal regimes in operation, there should be enhanced, not reduced, external contact). This too is flagged by the Advice. One issue particularly concerns the SPT: in many detention settings around the world the reality is those in detention are reliant on family, friends or other external bodies for their food, and sometimes even for clean drinking water. It is vital that in such circumstances they remain able to do so. As more and more countries impose restrictions on travel, this is likely to become a greater and greater problem: is travel to take food to a detained relative on any country’s list of ‘essential travel’? If so, I have not seen it...

A final point – communication. It is trite, but vital, that the reasons for the imposition of new restrictions on those in places of detention are fully, and sympathetically, explained. There have already been riots in prisons as a result of the introduction of restrictions on visiting and other measures. Getting this right is already a matter of life and death.

There are no easy answers and in its Advice to NPMs the SPT does not pretend that there are. What there is, is an increasingly long list of valuable suggestions – to which the SPT’s Advice adds – which can inform thinking and inspire innovative thinking on how to achieve a human-rights informed response to a situation that may have been planned for in the abstract but which few ever expected to have to deal with in practice.

In its Advice to both the UK and to NPMs generally, the SPT has indicated that it is proper for NPMs to set aside for now some of the standard expectations of preventive visiting, and to focus on new approaches to the fulfilment of their mandates. It also makes it clear that prevention of ill-treatment requires states and national authorities to radically rethink

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some of their assumptions concerning the use of, and running of places of, detention. The current crisis may, in time, turn out to be a wake-up call to the need for a fundamental reappraisal of the use of detention and to reconsider our responses to a whole host of deep-seated problems within our detention systems.

## Arbitrary Deprivation of Liberty in the Light of Responses to the COVID-19 Outbreak\*

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**By Dr. Elina Steinerte**

*Vice Chair of the UN Working Group on Arbitrary Detention  
Visiting Professor at the Jersey Law Institute*

The past weeks have brought about a profound change in our lives as the spread of Coronavirus (COVID-19) has triggered the adoption of stringent measures by States in an attempt to combat it. There is little doubt that such public health emergency measures are required and in the vast majority of cases, it is difficult to dispute their legitimacy.

Nevertheless, as with any crisis, the present public health emergency holds a potential for abuse of human rights and fundamental freedoms. Be violations the intended or unintended by-product of rapidly introduced measures, such situations call for special vigilance on behalf of the human rights community to ensure that the measures are a proportionate and necessary response to the evolving pandemic and especially that such do not adversely affect the rights of those who are already in vulnerable situations.

People deprived of their liberty, such as prisoners and individuals in other places of deprivation of liberty, have been identified by the World Health Organisation as more vulnerable to COVID-19 than the general population because of the confined conditions in which they live in very close proximity to each other over prolonged periods of time.<sup>1</sup> After all, let us not forget that prisons are not the most spacious places to begin with. Now, as we are all asked to observe social distancing, the hopelessness of this requirement in prisons, especially in over 120 countries worldwide where prisons operate with over 100% of their capacity,<sup>2</sup> becomes plainly obvious. It is therefore not surprising to see numerous powerful and detailed statements issued by various international and regional

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\* The views expressed in the present article are strictly those of the author and do not represent the views of the UN Working Group on Arbitrary Detention (WGAD).

<sup>1</sup> WHO Regional Office for Europe '[Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance 15 March 2020](#)' at p. 1.

<sup>2</sup> Institute for Criminal Policy Research, [World Prison Brief Database](#).



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human rights bodies focusing particularly on the protection of prisoners and prison staff during the pandemic.<sup>3</sup> Such statements have included consideration of whether individuals could be released early from prisons. Indeed, a rising number of States are reviewing their prison populations with the view of releasing detainees so as to reduce the numbers thus fighting the virus.<sup>4</sup> This is not a common step to be taken by States, for the right to personal liberty is not an absolute right and the deprivation of liberty has always been and will remain a legitimate form of State control over those within their jurisdictions. However, closely linked to the right to personal liberty is the freedom from arbitrary deprivation of liberty. And in the prevailing worldwide health emergency, it is particularly pertinent to recall that prohibition of arbitrary deprivation of liberty in international law is absolute.<sup>5</sup> It extends to all types of detention regimes, including detention in the criminal justice framework, administrative detention, detention in the migration context as well as detention in healthcare settings.<sup>6</sup> This means that arbitrary detention can never be justified, including for any reason related to a national emergency, maintaining public security or health and therefore any measure currently put in place to combat the pandemic must respect this absolute prohibition.

The prevailing pandemic gives rise to call for particular attention to three situations in the criminal justice context which may lead to the occurrences of arbitrary detention:

1. **Pre-trial Detention.** Article 9 (3) of the International Covenant on Civil and Political Rights requires that pre-trial detention should only be resorted to in exceptional cases.<sup>7</sup> As the Working Group on Arbitrary Detention (WGAD)

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<sup>3</sup> See, for example, Statement of the UN High Commissioner for Human Rights on 25 March 2020 [Urgent action needed to prevent COVID-19 "rampaging through places of detention"](#); Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms [relating to the Coronavirus Pandemic](#), adopted on 25 March 2020; World Health Organisation Regional Office for Europe 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance 15 March 2020'; Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland [regarding compulsory quarantine for Coronavirus, adopted at its 40th session](#) (10 to 14 February 2020); and the 'Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic issues by the European Committee for the Prevention of Torture' of 20 March 2020 CPT/Inf (2020)13 (19 March 2020).

<sup>4</sup> See, for example, [Up to 4,000 inmates to be temporarily released in England and Wales](#) (5 April, 2020); [Barr to speed releases at federal prisons hard hit by virus](#) (3 April, 2020); [Coronavirus prompts prisoner releases around the world](#) (26 March 2020); [Iran has released 85,000 prisoners in an emergency bid to stop the spread of the coronavirus](#) (17 March 2020).

<sup>5</sup> [A/HRC/22/44](#) at paras 42-43; see also [CCPR/C/GC/35](#) at para 66.

<sup>6</sup> [A/HRC/36/37](#) at para 50.

<sup>7</sup> [A/HRC/19/57](#) at paras 48-58.



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explains,<sup>8</sup> the requirement that "it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement" means that that personal liberty is recognized as a principle and detention as an exception in the interests of justice. Similarly, the Human Rights Committee notes in its General Comment No. 35 (2014), "[D]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime".<sup>9</sup> The reasons justifying pre-trial detention in international law therefore are narrowly construed, aimed at bolstering the requirement of pre-trial detention being an exception.

In the context of the wide range of public health emergency measures that have been introduced to combat the pandemic, the permissible justifications for resorting to pre-trial detention have arguably shrunk further as reasons such as risk of absconding, for example, have become practically impossible in the light of the virtual shut-down of travel worldwide. Moreover, imposing pre-trial detention in the current context means also exposing individuals to a heightened risk of infection by being held in closed facilities which are often overcrowded. The resorting to pre-trial detention currently, therefore, should become even less frequent.

2. **Fair Trial Rights.** The prevailing public health emergency has had a significant adverse impact on criminal justice systems worldwide, as access to courts has been restricted with less judges sitting, fewer legal representatives available and non-urgent court hearings being postponed. Many States are putting measures in place to ensure the remote running of their justice systems via audio and/or video-link, or telephone hearings. These measures have direct impact not only upon those held in pre-trial detention but also those who are awaiting sentencing or undergoing appeals.

The WGAD has always held that detention of a person resulting from a trial during which there was a total or partial non-observance of the international norms

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<sup>8</sup> *Ibid*, at paras 53-56.

<sup>9</sup> [CCPR/C/GC/35](#) at para 38.

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relating to the right to a fair trial, is arbitrary<sup>10</sup> and this requirement has not been suspended by the present pandemic. All defendants should still be able to exercise their rights fully and effectively even if they are not physically present in the court and/or are unable to meet with their lawyers in person.<sup>11</sup> Any measures introduced by the States must fully respect these rights.

3. **The Right to Challenge the Legality of Detention.** The right to challenge the lawfulness of detention before a court is a self-standing human right, a peremptory norm of international law which cannot be derogated from<sup>12</sup> and applies to all forms of deprivation of liberty and to all situations of deprivation of liberty.<sup>13</sup> This right applies irrespective of the place of detention or the legal terminology used in legislation and therefore, any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.<sup>14</sup> Consequently this continues to apply during the pandemic including to those who have been subjected to compulsory quarantine<sup>15</sup> or otherwise detained by public health emergency measures.

What, you might ask, is the link between these three situations and independent oversight? The independent bodies charged with an oversight mandate, such as the National Preventive Mechanisms, National Human Rights Commissions as well as State appointed inspectorates and other bodies should be able to continue with their mandate even during the pandemic, as clearly argued by the Subcommittee on the Prevention of Torture<sup>16</sup> and as highlighted by Sir Malcolm D. Evans in the present Special Edition of the Newsletter. Some of these bodies should still be in the position to carry out oversight visits to detention facilities, although not all and perhaps not full visits, while others will find different ways of ensuring oversight. While the prime focus of such oversight bodies usually is the treatment of prisoners and conditions of detention, the WGAD has always emphasized the importance of independent oversight to minimise the occurrence of instances of arbitrary

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<sup>10</sup> [Revised Fact Sheet No. 26. The Working Group on Arbitrary Detention](#), at p. 6-7.

<sup>11</sup> Fair Trials '[Safeguarding The Right To A Fair Trial During The Coronavirus Pandemic: Remote Criminal Justice Proceedings](#)' p. 3.

<sup>12</sup> [A/HRC/22/44](#) at para 49.

<sup>13</sup> [A/HRC/30/37](#) at paras 11 and 47 (a) (b).

<sup>14</sup> *Ibid*, at para 47 (b).

<sup>15</sup> Quarantine places are places of deprivation of liberty as clarified by the SPT: see *supra* note 3, Advice of the Subcommittee on Prevention of Torture to States Parties, at para 10 (5) and Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom, at para 2.

<sup>16</sup> *Supra* note 3, the Subcommittee on Prevention of Torture.

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deprivation of liberty.<sup>17</sup> Indeed, the measures which are aimed at the prevention of torture and other ill-treatment in fact serve the dual purpose of also preventing instances of arbitrary deprivation of liberty. Take any of them: access to a lawyer, interrogation techniques, properly maintained detainee registers or access to family, for example. In as much as all these serve to minimise the risk of torture and ill-treatment, they also minimise the risk of arbitrary deprivation of liberty. If the oversight bodies are able to bear this in mind as they carry out their mandate during the pandemic, the impact of their work could be amplified.

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<sup>17</sup> [A/HRC/39/45/Add.1](#) at para 17 and [A/HRC/39/45/Add.2](#) at paras 16-17.

### Respecting the Human Rights of Detainees during the Coronavirus Pandemic: A New Statement of Principles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

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**By Mark Kelly**

*First Vice-President of the European Committee for the Prevention of Torture, Council of Europe*

The [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT) is the treaty body established by the Council of Europe to, “by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment”.<sup>18</sup> All [47 member States of the Council of Europe](#) are bound by the Convention under which the CPT operates.

Over the past three decades, the CPT has carried out [456 country visits](#) to a very wide range of places of detention, including prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals and social care homes. During their visits, CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They are entitled to interview in private persons deprived of their liberty, and to communicate freely with anyone who can provide relevant information.

Given its frontline monitoring mandate, the CPT is acutely aware of the challenges arising in places of detention as a result of the coronavirus disease (COVID-19) pandemic. In many Council of Europe member States, people whose health may already be compromised are detained in conditions in which “social distancing” is virtually impossible. Living with coronavirus-related restrictions can be difficult enough in one’s own home; in a detention

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<sup>18</sup> Article 1 of the [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#).

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setting, unless very sensitively managed, “lockdown” can degenerate into inhuman and degrading treatment.

As part of its ongoing work to prevent ill-treatment, on 20 March 2020, the CPT issued a new [Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#). The Statement is available in 25 languages, and has been sent directly to the competent authorities of the Council of Europe’s 47 member States. While acknowledging the clear imperative to take firm action to combat COVID-19, the Committee has requested detailed information from member States about the measures being taken to ensure that the human rights of detained persons are respected during this pandemic.

In the CPT’s view, the following ten principles should be respected by all relevant authorities in Council of Europe member States:

- 1) The basic principle must be to **take all possible action to protect the health and safety of all persons deprived of their liberty**. Taking such action also contributes to preserving the health and safety of staff.
- 2) WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of deprivation of liberty.
- 3) Staff availability should be reinforced, and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty.
- 4) Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.
- 5) As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation; reassess the need to continue involuntary placement of psychiatric patients; discharge or

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release to community care, wherever appropriate, residents of social care homes; and refrain, to the maximum extent possible, from detaining migrants.

- 6) As regards the provision of health care, special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for COVID-19 and pathways to intensive care as required. Further, detained persons should receive additional psychological support from staff at this time.
- 7) While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene (including access to hot water and soap) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over-Internet-Protocol communication).
- 8) In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day.
- 9) Fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times. Precautionary measures (such as requiring persons with symptoms to wear protective masks) may be appropriate in some circumstances.

## The International Committee of the Red Cross (ICRC) Multi-Disciplinary Response to COVID-19 in Places of Detention

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**By Sara Snell**

*Prison System Adviser, [International Committee of the Red Cross](#)*

The ICRC aims to secure humane treatment and conditions of detention for all detainees, irrespective of the reasons for their arrest and detention. We have been helping detainees since 1870, traditionally focusing on people held in relation to armed conflict and other situations of violence. We also visit people detained in both criminal and administrative detention, if doing so could improve their treatment and the conditions under which they are being held, including detainees under the jurisdiction of international courts and tribunals, common law detainees, and migrants.

In order for the ICRC to carry out detention visits, we must be given:

- access to all detainees within our field of interest;
- access to all premises and facilities used by and for the detainees;
- authorisation to repeat our visits;
- the possibility to speak freely and in private with the detainees of our choice;
- assurance that the authorities will provide the ICRC with a list of all detainees within our field of interest or authorise us to compile such a list.

During this pandemic, we are having to visit places of detention and/or conduct activities (including remotely) accepting that some of the above-listed visiting practices are temporarily on hold to mitigate the risks to detainees, staff and ICRC visitors, whilst being clear that our visiting methodology remains intact for the future.

The outbreak of a communicable disease presents a particular challenge in places of detention. Staff are vulnerable to infection and can be vectors for its spread as they move between the worlds of detention and the community. If they become ill, they may not realise that they are carriers, they may struggle on, or they may no longer be able to attend their place of work. People deprived of their liberty are especially vulnerable because they

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rely on these staff for almost every aspect of their life. Moreover, they usually live close to other detainees, often in overcrowded, cramped conditions with little fresh air, poor hygiene and inadequate access to health professionals. It is difficult to contain outbreaks in such settings, and unfortunately when the authorities do try to prevent the spread of a virus, the people deprived of liberty with whom the ICRC works often abruptly lose contact with their families and experience further deterioration in their living conditions, freedom of movement, food, water, hygiene and health.

The reality of COVID-19 also places restrictions on the ICRC. It does not stop us from helping people in need, but we have to ensure we adhere to all the precautionary measures which the authorities have put in place as we do so. At its best, the situation has allowed us to capitalise on activities we were already engaged in: supporting the authorities in contingency planning, inter-agency bridge building, reducing overcrowding, medically screening new arrivals, promoting dynamic security, improving access to water and products for hygiene, etc. We have continued this work and adapted it to the situation, supporting additional hygiene measures, such as installing washing stations and distributing soap and other cleaning materials to detainees. Some things which were being advocated for before the pandemic suddenly became possible. For example, where we had been advocating for reducing overcrowding, we engaged again with the authorities in more than 60 countries about the need to reduce inflows and increase outflows in places of detention and action is being taken.

The “do no harm” principle, also fundamental to bioethics and health, remains central and requires that the ICRC avoids harmful effects that could arise from our work as well as contributing to the capacity of other actors to ensure that no harmful effects derive from their actions. Our work involves supporting multiple professions such as health in preventing, and where necessary, correctly handling deaths in custody; forensic staff in relation to the management of the dead; and the police and/or military, in ensuring that if they are called to places of detention in times of crisis they operate within an appropriate framework. In the context of actions in detention during the COVID-19 pandemic, “do no harm” includes doing everything possible not to bring the disease into places where it is not present. Decisions about our activities (to maintain, adjust, postpone, or introduce, and under what conditions) also need to be clearly communicated to and accepted by authorities and detainees, whose acceptance is crucial in view of residual cross-contamination risks.



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The balance has to be found between the expected humanitarian impact of specific activities and the related risks to which ICRC staff, detainees and detention staff are exposed, and are ready to accept, whilst carrying out these activities. A collective, systematic and documented assessment of COVID-19-related risks in each context helps teams have a clearer understanding of the extent of those risks, the best possible measures to prepare and respond to them, and what alternatives might be practicable.

The ICRC has examined each of its activities to see what level of contact with detainees and/or authorities is required. This also promotes a discussion with the authorities we work with about what the WHO guidelines are and how those concerning physical distancing might be enacted in places of detention:

- No contact (e.g. the activity can be done by telephone or e-mail; by delivery of material to the perimeter by ourselves or trusted partners when its proper use is assured; intervention concerning infrastructure outside places of detention; a discussion by telephone or Skype with detainees, which is not the classic “Interview Without Witness” but nevertheless allows them the chance to talk about their situation.)
- Distant contact meaning interaction that respects at least a one metre distance (such as an exchange with authorities or detainees in the open air or repairing infrastructure inside the place of detention under agreed conditions).
- Full contact meaning close interaction (such as a detention doctor seeing/examining an ill detainee, or staff carrying out an “Interview Without Witness” in a cell).

We have looked at what can be done differently, reducing the level of exposure, such as:

- Distributing Red Cross Messages (RCMs) through authorities or trusted detainee leaders
- Offering on line support and guidance to health and other staff in places of detention
- Conducting “Interviews Without Witness” in open areas, under conditions that respect both social distance and privacy.

If the expected humanitarian impact of the activity is of sufficient importance and impact to justify the risk of distant or full contact, we have looked to see:

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- That the delegation has Personal Protective Equipment (PPE) for the ICRC staff who require it because of the nature of their intended action
- The perception (from an acceptance and security perspective) were an ICRC delegate in PPE to enter a place of detention where detainees and/or staff may have none
- What additional training or briefing might help the team to prepare
- What particular follow-up or post-visit measures might be needed
- What information management or reporting needs might be required

We know that the situation is changing daily in places of detention across the world and we are trying to capture critical information in any way we can, from detainees, from their families, from staff and from ministries. This helps both to create meaningful interventions in the here and now, as well as giving a solid basis on which outcomes can be evaluated later.

Monitoring the developing situation includes looking at:

- What specific COVID-19 management measures are being taken in, and in relation to, places of detention by the authorities, how these have been messaged to detainees and their families and how they have reacted
- What information and training detention staff have received about COVID-19 and their responsibilities in relation to the detainees. Whether there are fewer staff than usual because of illness or other restrictions, such as curfews and stopping of public transport
- Whether the supply chain is still working with regard to food, water, hygiene items, medication. How essential services to detainees are being affected and how new supply chains, such as for PPE, can be enabled
- What civil society is saying about the fate of detainees and whether families, NGOs, or other solidarity initiatives have been mobilised
- What national responders can enter places of detention (Ombudsman offices/NPMs, civil protection, the National Red Cross or Red Crescent Societies, etc.), or law enforcement agencies (police, army)

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- Whether there been violence in places of detention and whether this was between detainees, between detainees and staff, or both
- The particularities of the detained populations: those especially vulnerable to COVID-19, as well as foreign nationals, migrants etc.

Our work seeks to build on the cooperation we had before this health crisis and maintain the balance between the short-term emergency response, the mid-term return to the beginnings of normality, and the long-term post-pandemic rebuilding which will be necessary. We seek to do nothing now which will damage our, the authorities', or other responsible actors' ability to secure dignified working conditions for staff and humane treatment and conditions of detention for all detainees in the future.

## What Does Prison Monitoring and Oversight Mean in Times of COVID-19?

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association pour la prévention de la torture  
asociación para la prevención de la tortura  
association for the prevention of torture

**By Audrey Olivier Muralt**

*Deputy Secretary General, Association for the Prevention of Torture (APT)*

In the past few weeks, we have seen how the restrictive measures adopted by most governments to prevent the spread of COVID-19 have impacted the functioning and living conditions within prisons, be it for prison staff, detainees and their relatives, as well as contractors and providers. Independent oversight institutions – including national preventive mechanisms (NPMs) established under the Optional Protocol to the UN Convention against Torture have also been affected by these measures. Today, there are 71 of them in the world, and many of them are asking themselves how they can comply with their monitoring mandate in times of COVID-19. At the Association for the Prevention of Torture (APT), our opinion on these matters has been sought constantly for the past few weeks. We gathered the views of over forty NPMs from all the regions of the world through webinars, to better inform our response. This article shares a few insights from the practice of NPMs, as well as some key practical recommendations. All of them will be further detailed in a practical guidance note addressed to NPMs, which is being currently drafted.

### **Why visiting prisons in times of COVID-19?**

Independent oversight of prisons has never been more important than now, as people in prisons are particularly vulnerable to COVID-19. They live in closed environments, and in conditions that facilitate transmission of diseases, in particular overcrowding. They are also facing greater risks due to other factors, including poor hygiene, poor nutrition or existing diseases. Their living conditions and existing risks factors are often well identified and analysed by NPMs, who have been conducting regular visits to prisons since their

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establishment. Overcrowding, poor hygiene and a lack of access to health within prisons are unfortunately common findings made by NPMs across the globe, with some aggravating factors according to the national context. In its [advice to NPMs and to States parties](#) relating to the coronavirus disease (COVID-19) pandemic, the SPT recalls that “*the potential exposure to the risk of ill-treatment faced by those in places of detention may be heightened as a consequence of such public health measures taken*”. In this context, NPMs have a key role to play to check if and how preventive measures are implemented by detaining authorities to protect staff and detainees, and their impact on living and working conditions in prisons. In the absence of such measures, NPMs can also recommend measures to be taken, on the basis of their expertise.

### **Should NPMs continue visiting prisons under these circumstances?**

The vast majority of NPMs are asking themselves whether they should visit prisons in times of COVID-19 without putting in danger the lives of detainees and staff. There is not one straight answer to this question. That being said, it is crystal clear that the response belongs to the NPMs, and only to them. One of the strongest powers NPMs have is their access to all places of detention, all information and all persons, as provided for by Article 20 of the OPCAT, and in general, in their founding legislation. There is no limitation clause to their powers provided for by the international torture prevention treaty. One clause in the treaty does limit the access to places of detention under “urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited” (see Article 14[2] OPCAT). However, this provision applies only to the international monitoring body, the UN SPT, and not to the NPMs<sup>19</sup>. This means that under no circumstances can detaining authorities prevent NPMs from having access to all relevant information, places and persons, to carry out their mandate. NPMs can only decide whether or not to visit a prison.

International expert bodies – in particular the European Committee for the Prevention of Torture (ECPT) and the United Nations Subcommittee for the Prevention of Torture (SPT) – have encouraged National Preventive Mechanisms to continue their monitoring functions within a context of a global pandemic. In its [recent guidance](#) on prevention and control of COVID-19 in prisons and other places of detention, the World Health

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<sup>19</sup> Article 14 (2) OPCAT reads as follows: “2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.”

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Organisation (WHO) re-affirmed that “bodies of inspection whose mandate is to prevent torture and ill-treatment should have access to all people deprived of their liberty in prisons and other places of detention (including persons in isolation)”. However, both the ECPT and the SPT do recognise that NPMs will have to take into consideration the restrictions imposed on them, in particular social distancing. The ECPT highlights in particular the need for NPMs to “*take every precaution to observe the ‘do no harm’ principle, in particular when dealing with older persons and persons with pre-existing medical conditions*”.

### **Adapting prison visit methodology in times of COVID-19**

A few NPMs have decided to continue visiting prisons in times of COVID-19, including the Italian National Authority for the rights of persons deprived of liberty, the Georgian Public Defender’s Office, and the Chilean National Institute of Human Rights. Their decisions to continue visiting prisons are based on certain parameters. The “do no harm” principle applies at all times and drives their visits. In the case of Georgia, only visits to interview individual detainees are conducted – and they take place with full protection measures for the monitoring team, who interview the detainees through the existing glass barriers in the visiting room. In Italy, the NPM decided to continue visiting prisons due to the riots and incidents of prison violence that took place following the announcement of the restrictive measures to combat COVID-19. In most cases, the monitoring teams can enter prisons with individual protection gears. However, the NPM also expressed its concerns with regards to the shortage of individual protection gear for prison staff, increasing the risks of contamination for themselves, and for detainees. In Chile, the NHRI also visited prisons following riots, and were able to detect inadequate confinement conditions (including overcrowding) of potential COVID-19 patients. Last year, the APT shared a few practical [recommendations](#) for monitoring bodies which conduct visits to places with high prevalence of tuberculosis. We believe that some of these recommendations can also apply for NPMs while they visit prisons in times of COVID-19. Before visiting prisons, NPMs need to adopt precautionary measures, in particular:

- Seeking the advice and expertise of medical health professionals specialised in infection diseases, and liaising with the relevant authorities to follow the instructions.
- Including a healthcare specialist in the visiting team and ensure everyone has received the same briefing ahead of the visit.

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- Using individual protection gears, including surgical masks and gloves, if appropriate.
- Maintain some distance with the person being interviewed, and conduct individual interviews.

However, NPMs should be mindful that some of the precautionary measures, including wearing individual protection gears – when some of the staff don't even have access to some – may affect the “rapport” between the monitor and the person interviewed. It is thus up to the NPM to decide what measure to prioritise to both ensure the safety of its members and ensure a positive relationship with the person interviewed. It is also recommended that staff participating in monitoring visits undergo regular medical examinations and tests. Staff members belonging to the specific group at risks should take particular precautions, and eventually be excluded from participating in some visits. It is of utmost importance that participation in monitoring visits be on a voluntary basis for detention monitors.

### **Monitoring prison without visiting**

The vast majority of NPMs with whom APT interacted, decided to suspend, or postpone their regular programme of visits to prisons, based on the “do no harm principle”. In some countries, there is not enough individual protection gear for medical staff, let alone for NPMs members. In other countries, social distancing is impossible due to the level of overcrowding in places of detention, and hygienic measures are impossible to observe such as regular hand washing due to water and soap shortages, or even lack of sinks. In such circumstances, many NPMs started looking at alternative ways to implement their monitoring mandate, in particular continuing having access to information without having physical access to prisons, detainees and staff.

They developed innovative methodology to continue triangulating the information received. In countries where National Human Rights Institutions perform the role of NPMs, intra-institutional cooperation and exchange of information is strengthened. For instance, in Portugal, the NPM is able to receive individual complaints through the complaints department. In other countries, such as Paraguay, a direct telephone line for complaints was established by the NPM, to receive information from “inside”. Some NPMs also monitor social media to gather information on specific conditions in prisons, such as in the Philippines. They intensify their communication channels with authorities, relatives and other actors who can still have access to detainees, such as teachers and educators. Some

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monitoring bodies have been able to anticipate that physical access to prisons would be restricted in a near future, and have put out posters to prisons explaining how detainees can call them on a direct phone line. Others are communicating with released detainees to get very recent information.

Where possible, NPMs have maximised the use of technologies and their power to have access to any type of information. In the UK, the NPM has been able to access video footages of police detention for instance. Other monitoring bodies in Australia were granted remote access to specific files and registers, and are considering conducting “virtual” visits to prisons. Others are having regular video conference calls, including with the authorities. However, some NPMs have also faced concrete challenges in having access to cameras in closed environments. In South Africa, cameras are in closed circuit, and some of them have were found deficient due to poor maintenance by external providers.

### **Making the best out of the NPM mandate**

The alternative monitoring techniques developed by NPMs in times of COVID-19 demonstrate how essential their work is in such exceptional circumstances. These alternative measures should remain temporary, as physical visits remain an essential tool that NPMs need to be able to perform whenever they deem it necessary. However, visiting places of detention is only one part of the preventive mandate of the NPM.

Most of the NPMs have existed for some years now. They have conducted in-depth visits to prisons and have acquired a body of knowledge on prison conditions, including access to health. On that basis, they can provide concrete recommendations to authorities on preventing and responding appropriately the outbreak in prisons. The short guidelines produced by the NPM of Paraguay for the authorities, show how an NPM can maximise its expertise without necessarily conducting a visit to a place of detention. As the authoritative expert bodies in their respective country, they can leverage their position to increase communication and dialogue with all relevant authorities and bodies, and increase online and remote collaboration and exchange of information with national civil society, unions and associations of families.

NPMs have to increase their vigilance on the impact of legal and policy decisions being made in times of COVID-19. The enforcement of quarantine, confinement, and curfew has sometimes led to excessive use of force by law enforcement and the military, as well as to arrests and detention. Such use of detention is often resorted to without adequate legal or procedural safeguards. For instance, in Peru, up to 40,000 people were reported to be



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detained – even if for a few hours – because of a breach of curfew. These risky practices may have dire consequences on the rights and dignity of those who are most vulnerable before the law. Beyond visits to places of detention, the NPMs act as a deterrent, and have a key role to play in preventing abuse, ill-treatment and possibly torture.

## New Zealand Office of the Inspectorate: COVID-19 Response

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**By Janis Adair**

*Chief Inspector, Office of the Inspectorate, New Zealand*

*Mā te titiro me te whakarongo ka puta mai te māramatanga  
By looking and listening, we will gain insight<sup>20</sup>*

During these unprecedented times, the New Zealand Office of the Inspectorate was proactive and worked at pace to prepare for, and transition to, a new way of working to ensure continuity of service provision. Enhancements were made to our operations to ensure the Inspectorate remained accessible to prisoners. My aim, at all times, has been to demonstrate openness, integrity, a strong desire to build resilience and a best practice approach. I appreciate there is a need to strike the right balance between protecting prisoners from the spread of COVID-19 and ensuring that their rights are not being disproportionately and unnecessarily restricted.

But first, some background.

The Office of the Inspectorate is a critical part of the independent oversight of the New Zealand corrections system, and operates under the Corrections Act 2004 and the Corrections Regulations 2005. It has a team of inspectors who carry out inspections and investigations. The Inspectorate, while part of the Department of Corrections, is operationally independent to ensure objectivity and integrity. Long-established functions of the Inspectorate include the investigation of prisoner complaints that have not been resolved at a lower level, the investigation of all deaths in custody and special investigations, along with other statutory functions. Inspectors also investigate complaints from offenders subject to community sentences.

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<sup>20</sup> Office of the Inspectorate whakataukī – Māori proverb.

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In early 2017 the Inspectorate was significantly enhanced. It moved from being primarily complaints focused to having a wider mandate, including carrying out inspections of prisons to ensure that prisoners are treated in a fair, safe, secure and humane way. The first round of 18 announced inspections has been completed and the second phase, of follow-up announced and unannounced inspections, has been started (five unannounced inspections have been completed to date). There have been two thematic inspections – one, about the lived experience of older prisoners (aged 65 plus), has been completed, and the other, about inter-prison transfers, has been commenced. The Office of the Inspectorate has also developed and released Inspection Standards to guide the way prisons are inspected.<sup>21</sup> Inspectorate staff numbers were tripled and now include legal, health and communications specialists. Our work aims to be influential, credible and highly persuasive and ultimately supporting Corrections' goals of ensuring public safety and reducing re-offending.

The New Zealand Government moved swiftly to introduce a range of measures to respond to the COVID-19 crisis, culminating with a national lockdown from midnight 25 March 2020 and a State of National Emergency being declared. People were told to stay home, unless they worked in an essential service; schools and most shops were closed, along with bars, restaurants and other places where people congregate. At the time of writing (16 April), New Zealand had recorded 1,401 confirmed cases of COVID-19 and, sadly, nine deaths. The hope is that by going into lockdown at an early stage, New Zealand will avoid the devastating outcomes seen elsewhere.

New Zealand currently has around 10,000 people imprisoned in 18 prisons. Prisons, by their nature, are places where people are in close contact with each other and unable to leave. Given the close confinement, careful measures must be taken to mitigate against the transmission of infection.

The Department of Corrections has introduced measures designed to prevent the introduction and spread of COVID-19 in the prison network. This includes encouraging prisoners to keep two metres apart wherever possible, wash their hands frequently, cough and sneeze into their elbow, let staff know if they are unwell and carry out additional cleaning to keep their cells hygienic. Those aged over 70 years and those vulnerable due

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<sup>21</sup>[https://inspectorate.corrections.govt.nz/news/news\\_items/inspection\\_standards\\_to\\_guide\\_prison\\_inspections](https://inspectorate.corrections.govt.nz/news/news_items/inspection_standards_to_guide_prison_inspections)

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to underlying health conditions have been identified and work is ongoing to ensure their wellbeing.

Any prisoner displaying flu-like symptoms is isolated as a precaution, and people who have been in contact with them identified. All newly received prisoners are managed separately from the existing prison population for their first 14 days. Staff working in prisons have been provided with personal protective equipment.

All private and volunteer visits, release to work activities and other non-essential movements in and out of prison sites have been temporarily suspended. All non-essential industries, such as textiles and carpentry, and face-to-face meetings between prisoners and staff such as case managers, have also been temporarily suspended.

Given the restrictions on visitors, the Department took steps to provide most prisoners with a \$5 phonecard each week to keep in touch with family and friends in the community. The number of telephones in prison units has been increased.

To date, there have been no recorded cases of COVID-19 in prison. The new processes have understandably led to an increase in the length of time prisoners have been spending locked in their cells. Lockup hours have been increased to maintain social distancing between individuals. (Not all prisoners are in cells on their own – currently around 34 percent of the prison population is double bunked. Extensive double bunking was introduced as a response to the prison population growing by almost 30 percent in the mid-2010s, reaching a high of 10,800 in 2017.)

While international human rights law allows for emergency measures to be taken in response to significant threats, these measures must be proportionate to the evaluated risk, necessary and respectful to human dignity.

While minimum entitlements have been maintained, restrictive regimes can have a considerable negative impact on emotional and mental health (which can include anxiety, low mood, panic attacks, overt paranoia, diminished impulse control, hypersensitivity to external stimuli and difficulties with thinking, concentration and memory). The Inspectorate sought information and assurance from the Department about how these concerns are being managed and mitigated. The Deputy Chief Executive Health provided a prompt response.

The Inspectorate was proactive and worked at pace to prepare for, and transition to, Alert Level 4 (lockdown). Staff are now working remotely. During this period of transition,

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service provision was maintained and our operations were enhanced to ensure prisoners continued to have access to the Inspectorate.

One significant and important change is that the Inspectorate is now managing all complaints and issues that come to us, rather than referring individuals back to the established complaints process. There is an imperative to seek early contact and resolution, where possible and appropriate, and to ensure updates are communicated to the prisoner and their family as needed. This allows the Inspectorate to identify any emerging risks and challenges which can then be communicated to the Department so appropriate and timely action can be taken. We have designed a poster for prisoners outlining the new process, which has been distributed to all prisons.

Further, given the importance of communication, I have written an 'open letter' to all prisoners explaining the Inspectorate's role and what we are doing to ensure their fair treatment. I have also written to all Prison Directors to outline our processes.

The number of inspectors available to respond to complaints and issues raised has been doubled, and the Inspectorate moved to a seven day a week operation from the first week of lockdown.

Additionally, my clinical inspectors (who are registered nurses) have contacted all prison health centre managers to explain the change in processes and hear any concerns. This engagement remains ongoing.

The Inspectorate is maintaining oversight of the number and categories of complaints received, not only by us, but within each prison, including a close examination of all complaints connected with COVID-19. This will enable any concerning issues or trends to be identified at pace, and passed to the Department for resolution.

Section 29 of the Corrections Act gives my inspectors the power to visit and inspect any prison and interview any prisoner. While I consider prison visits are critical, it is equally critical that they are carried out safely for all concerned (inspectors, prisoners and prison staff). My office prepared advice for the Chief Executive about how re-entry to the prison network by inspectors could be achieved safely, taking regard of World Health Organisation guidelines and other publicly available advice prepared by the United Nations.<sup>22</sup> While the advice recognises that some temporary restrictions are permissible,

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<sup>22</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>

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the restrictions must still be proportionate, necessary and respectful of human dignity.<sup>23</sup> To this end, prison visits by inspectors will soon be re-commenced supported by a well-considered and risk mitigated plan and well-executed delivery. The resumption of visits is necessary to ensure the rights of people in detention are respected and to ensure they are held in a safe, secure, and humane way.

During these unprecedented times it has been necessary to respond quickly to ensure those held in closed environments are visible to, and heard by, those charged with the responsibility of oversight. This is true also for the family and whanau of those prisoners. Finally, I acknowledge the Chief Executive of Corrections, Jeremy Lightfoot, and his support of my office discharging its core purpose as a critical part in the oversight of Corrections. While this is for us and many others across the world, uncharted territory, we are committed to ensuring that prisoners are treated in a fair, safe, secure and humane way, despite the many challenges we face as a result of the global crises. These principles are, and must always be, non-negotiable.

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<sup>23</sup> Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the coronavirus pandemic (adopted 25 March 2020).

### The Impacts of COVID-19 on the Argentine Prison Emergency

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**By Mariana Sheehan**

*Director of Cooperation and International Affairs,  
Procuración Penitenciaria de la Nación, Argentina*

*Note: This article was translated from Spanish. For the original, please email: [Emad.Talisman@OCI-BEC.gc.ca](mailto:Emad.Talisman@OCI-BEC.gc.ca)*

The global COVID-19 pandemic has created an exceptional scenario. In a brief period of time, the Coronavirus has had an enormous impact on our everyday lives, as much as for the general population as those who are deprived of their freedom. In the Republic of Argentina, it has created an additional aggravating circumstance in the existing emergency situation concerning penitentiary matters in this country. As a result of the increasing population and prison over-crowding in recent years<sup>24</sup>, the emergence of COVID-19 is a real risk to the incarcerated population<sup>25</sup>. Authorities therefore face the challenge of managing the coronavirus in addition to these historical and structural systemic problems.

In the context of this health and prison emergency<sup>26</sup>, the Procuración Penitenciaria de la Nación (PPN) has offered recommendations to the Servicio Penitenciario Federal (SPF) and the Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación (MJSyDDHH), to adopt and action specific measures in all federal prisons.

With the objective of evoking the State's obligations regarding persons deprived of liberty, the PPN recommended that the MJSyDDHH adopt specific health protocols. In order to do so, they suggested their own participation in the drafting of this document. To this end, the

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<sup>24</sup> The Federal Penitentiary Service houses 13,551 inmates, of whom 8,242 are in the metropolitan area and 5,309 in the rest of the country. Its occupancy sits at 106.75% capacity, that is, it is almost 900 more people (6.75%) over capacity. The Buenos Aires Penitentiary Service has 24,000 spaces, and houses 44,706 individuals deprived of liberty in prisons, as well as 4,100 in police stations; and 1,907 are under electronic monitoring, generating a total of 50,703 people deprived of their liberty.

<sup>25</sup> Prison health experts indicate that places with more than 75% occupancy are already difficult to control in the face of an epidemic.

<sup>26</sup> In recent days, several riots broke out demanding health measures. On March 23rd, five deaths were registered in the prisons of Coronda and Las Flores, Province of Santa Fe.

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SPF was tasked with guaranteeing access to adequate medical and mental health care, bearing in mind the special situation of the vulnerability experienced by persons deprived of liberty.

Regarding the development and dissemination of prevention and management plans, the PPN recommended that the MJSyDDHH comply with the "Operational Plan for the preparation and response to COVID-19", approved by the National Ministry of Health. Similarly, it was done with the SPF so that it would adopt a contingency plan. Based on this, the SPF created a crisis committee with the participation of all of its sectors.

The current critical context, the PPN continues to implement mechanisms to mediate possible conflicts that may arise. To do so, it has adapted its project "Let's Try Talking -- Training for a Collaborative Coexistence" to the current circumstances. Through the medium of video conferencing, the team continues to hold meetings on a daily basis. By the same means, they meet twice a week with project facilitators. They also follow up with individuals deprived of their liberty, as well as their families, by telephone.

In an effort to contain the virus in the prison setting and mitigate its effects, the PPN issued a series of recommendations. To this end, it issued an appeal for the consideration of the release of detainees vulnerable to COVID-19. A note was issued to the President of the Federal Chamber of Criminal Cassation to request that criteria be defined for action in the face of the health and penitentiary emergencies, and that alternative measures to incarceration be considered in cases of: convictions for non-violent crimes or crimes of less than 3 years, people who are able to access parole in the short term, transitory or with assistance, people with care obligations over others, especially mothers with children, and people at greater risk to their health, such as older adults and pregnant women. In response, on April 13th the Federal Chamber of Criminal Cassation issued the agreed No. 9/20 in which the courts of the jurisdiction were urged to adopt alternative measures to confinement.

For its part, the Court of Cassation of the Province of Buenos Aires took measures to reduce the number of detainees, prohibiting new entries of people into the system who are in situations of high risk, particularly pregnant women and women who are nursing.

Furthermore, in the last few weeks, there has been a notable increase in requests for house arrest out of fear of contamination.



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Faced with the presentation of a collective *habeas corpus*, the Court of Cassation of the Province of Buenos Aires ordered that this sentence mitigation be ordered for all prisoners housed in the jails of the Province who are at risk for contamination. The target group are those with sentences of less than five years, who are reaching the last third of their sentence and who have access to work and/or transitory exit. These measures are also for older individuals, over 65 years of age who are not convicted of serious crimes, people with respiratory diseases and pregnant women. When the pandemic ends however, and Argentina is out of risk due to coronavirus, the measures will be automatically revoked.

This situation brought with it the problem that in the Province of Buenos Aires there are not enough electronic devices or bracelets for everyone who needs one<sup>27</sup>. Therefore, the Court of Cassation of the Province has empowered judges to decide how this decision should be carried out. This can include a guarantor or a mechanism to involve a family member who is responsible for quarantining in the home of the individual in question.

Further to other issues, the PPN also recommended the SPF and the MJSyDDHH approve a budget item in order to acquire cleaning services custodial spaces and to strengthen the delivery of food and hygiene products to each person deprived of their liberty. They also requested the guarantee of that all living units will have a supply of running water. For this aspect, the SPF made informational posters on effective hygiene techniques which were made available to all prison units for widespread dissemination of information on how to prevent COVID-19.

Regarding the preparation of the facilities and procedures to house people who have been infected with the virus, the PPN requested the SPF send updated information regarding the situation of each penitentiary under its jurisdiction. In this sense, the SPF, through the health sectors of each unit/complex, prepared a report of the detainees who belong to an identified risk group. Furthermore, they drafted a protocol for the classification of suspected cases and established isolation sectors for these individuals.

One positive experience that has occurred during this time is the one that took place in Unit 42 of Florencio Varela, Province of Buenos Aires, where the detainees created and built, together with penitentiary agents, disinfection cabins for use by agents who work in

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<sup>27</sup> The Province of Buenos Aires has a stock of 2,000 anklets, which are all in use. A purchase of 3,000 more was made, but has not yet been received.

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direct contact with those deprived of liberty within the prison<sup>28</sup>. Discussions regarding the construction of these structures originated in meetings of the Buenos Aires provincial Ministry of Justice and Human Rights, that took place in the prisons and in which the authorities of the different pavilions participated.

The impact of the pandemic on the prison population has been of such magnitude that the detainees themselves have requested the suspension of the visitation regime <sup>29</sup> . Understanding that this situation requires alternative compensation strategies, the PPN recommended to the SPF promote communication channels between persons deprived of liberty and their families. These recommendations were made in accordance with the United Nations Nelson Mandela Rules in order to ensure that isolation does not result in *de facto* solitary confinement.

To this end, the PPN suggested the use of cell phones during the suspension of visits, although there is still no news on their implementation. However, a protocol for video conferences was formalized so that people deprived of liberty can connect with their family.

Finally, we must point out that the COVID-19 pandemic also affected the daily operation of the PPN itself. In this sense, a special work regime was established to guarantee the coverage of the tasks that it carries out and thus preserve the access of detained persons to the attention of their rights and specific needs.

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<sup>28</sup> It is a metallic structure one meter wide and long and 2.10 meters high, covered with nylon and that has a disinfectant liquid sprayer on top.

<sup>29</sup> Nearly 85% of the prison population decided not to receive visits from their relatives over the next few weeks.

# Monitoring Prisons in the Australian Capital Territory during the COVID-19 Pandemic

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**By Jessica Horua,**

*A/g Deputy Inspector of Correctional Services,  
ACT; and*

**Holly Fredericksen,**

*Assistant Inspector of Correctional Services, ACT.*

The role of the ACT Inspector of Correctional Services was established under the [Inspector of Correctional Services Act 2017 \(ACT\)](#) (ICS Act) in response to an independent inquiry into the tragic death of an Aboriginal man in the ACT's jail. Neil McAllister was appointed as the first Inspector in March 2018. The Inspector has oversight of adult corrections, and in December 2019 this expanded to youth detention. The Inspector has two other staff members that make up the Office.

The legislation to establish the ACT Office of the Inspector of Correctional Services (ACT OICS) was drafted to reflect the requirements and expectations around the establishment of a national preventative mechanism (NPM) under the *Optional Protocol to the Convention against Torture* (OPCAT). This means that ACT OICS has all the powers and guarantees required in OPCAT, such as the right to access places of detention at any time, the power to speak with detainees and staff, and the right to access documents including registers. However, ACT OICS has not yet been formally designated as an NPM.

The ACT has only one adult prison, the Alexander Maconochie Centre (AMC), that opened in 2009 and currently has a population of about 430 detainees. It houses remanded and convicted male and female detainees of all security classifications. There is also one youth detention centre, Bimberi Youth Justice Centre, that has 40 beds but usually has a population of around 10 to 15 young people. ACT OICS also has oversight of the Court Transport Unit (CTU), including court cells, and other places where a detainee could be escorted.

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Under the ICS Act, the AMC and Bimberi must be reviewed at least every two years. Similarly to other inspectorates, ACT OICS has adopted the Healthy Prison Test for these whole-of-centre reviews and this forms the basis of the [ACT Standards for Adult Correctional Services](#) published by the Inspector. These Standards set out our criteria for inspections and those specific to youth detention are currently being developed. The first [Healthy Prison Review of the AMC](#) was conducted last year and the first review of Bimberi is scheduled for the end of this year.

The ACT OICS must also conduct a review of a 'correctional service' every two years. The first of these was a review on [The care and management of remandees at the Alexander Maconochie Centre](#) in 2018, and we are currently working on a review of the CTU as our second thematic review. The ACT OICS also reviews 'critical incidents' that occur at ACT correctional centres. These are defined in the ICS Act to include, for example, a death in custody, serious assault or an escape. So far, all of the [critical incidents reviews](#) we have conducted have been of assaults resulting in hospitalisation.

### **The Impact of COVID-19 on ACT Corrections**

The ACT had its first confirmed case of COVID-19 on 12 March 2020. As of 7 April 2020, the ACT has 96 confirmed cases and two deaths from COVID-19. The ACT has a population of around 400,000 people.

As in other jurisdictions, the AMC began limiting movements in and out of the centre as cases of COVID-19 were confirmed in Australia. On 22 March 2020, ACT Corrective Services stopped social visits to the AMC and less than a week later began using Zoom software on tablets to conduct virtual visits. 15 detainees can do this at one time and so detainees are being allowed a single one-hour video visit per week. As of 7 April 2020, there have been no confirmed cases of COVID-19 in the AMC, though eleven detainees have been tested.

Bimberi is the responsibility of the Community Services Directorate (CSD). The Inspector has requested updates from CSD about Bimberi's operations and contingency plans during the COVID-19 pandemic, but we have not yet received a response.

On 2 April 2020, legislation was passed in the ACT to extend the period for which a declaration of emergency can be made in relation to the AMC and Bimberi. This allows restrictions on work or activities at the centre; access in, or to or from, the centres; and communications between detainees and anyone else. The declaration of emergency must

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be reviewed every 28 days and advice provided to the relevant Minister on the measures being undertaken under the declaration.

### **Practical Challenges with Monitoring During the COVID-19 Pandemic**

#### ***1. Conducting reviews***

The Inspector decided to suspend ACT OICS' visits to the AMC, Bimberi and the CTU from 17 March 2020. ACT OICS still has a right of access to these places under the ICS Act, but made this decision to mitigate the risk of ACT OICS staff introducing the virus into these centres.

Fortunately, most of the onsite aspects of the current review of the CTU had already occurred. However, some interviews with staff and stakeholders have been postponed. ACT OICS is working through which of these can be done via phone or audio-visual links (AVL). In addition, the operation of the ACT courts has undergone significant change in response to the COVID- 19 pandemic so that they are mostly using AVL and phones for court appearances. This means that very few, if any, detainees from the AMC and Bimberi are being transported to the court cells. Therefore, site visits at this time would not give an accurate representation of the usual running of the CTU.

What is presenting a challenge to ACT OICS' monitoring is the delays in receiving data and information from ACT Corrective Services. It is understandable that they have been prioritising pandemic planning, and so ACT OICS will continue communication with ACT Corrective Services about revised timeframes for receiving the information and data required for the CTU review.

We are also mindful that we may need to adapt our processes for reviewing critical incidents. Should a critical incident occur that required a full review (as opposed to a 'desktop review'), ACT OICS would consider whether it was appropriate and safe to meet detainees and staff in person or whether we could use AVL or phone. One consideration in this decision would be whether using AVL or telephone would afford adequate privacy to detainees or staff. While the ICS Act offers protection against 'detrimental action' for anyone who discloses information to ACT OICS, this may not be sufficient to encourage detainees and staff to speak openly to us if they are concerned others may overhear.

### ***2. Tabling reports and monitoring the implementation of recommendations***

In the ACT, there have been changes to how the ACT Legislative Assembly will operate during the pandemic. Sitting periods have been reduced from three days to one day for the remainder of 2020. ACT OICS is required to table reports of reviews in the Legislative Assembly. The Speaker must present the reports to the Legislative Assembly within five sitting days of receiving the report. With only four sitting days remaining in 2020 it is unlikely that we will be able to publicly release any reports until 2021.

The ACT OICS had planned to begin monitoring the implementation of the recommendations made in the 2019 Healthy Prison Review of the AMC. The tabling of the government response to this review has been delayed and we anticipate that the timeframes they provide for implementation will also now be revised. The ACT OICS will remotely monitor some of the recommendations but anticipate delays in receiving information to contribute to this.

### ***3. Monitoring responses to COVID-19***

We are fortunate to be in regular communication with the numerous other oversight agencies in the ACT. To ensure coordination and to prevent duplication regarding monitoring the response of detention places to COVID-19, the Inspector is setting up a reference group with representatives from these agencies. This will provide a coordinated channel of communication and information sharing. This group can also share information provided to them by detainees, staff, detainees' family and friends and other stakeholders. Detainees can contact many of these agencies, including ACT OICS, directly via phone and email. This group's aim is preventive in that any potentially harmful practices can be raised immediately with the responsible government agency.

The ACT OICS is also monitoring the measures being put in place in prisons in other Australian jurisdictions and in comparable countries. Briefing notes on this are available on our [website](#) and are updated regularly. This allows ACT OICS to compare the ACT's response and identify some creative measures that have been put in place in other jurisdictions.

In conclusion, ACT OICS is very aware that restrictions put in place in correctional centres in response to COVID-19 could lead to significantly reduced independent oversight. We are working to ensure we continue to receive information from a range of sources about the conditions and treatment of detainees and staff in the detention places under our

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jurisdiction, despite not visiting at present. We also find it very valuable to be part of networks such as this to learn from the experiences of other monitoring bodies as we all adapt to working in these challenging conditions.

## Iowa Office of Ombudsman: COVID-19 Impact on Our Work

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Dedicated to Making  
Good Government Better

**By Eleena Mitchell**

*Assistant Ombudsman for Corrections, Iowa Office of Ombudsman, United States*

The COVID-19 pandemic is affecting the way we all do business. Before I share some of the changes we have made, I will first share a brief overview of our office.

The Iowa Office of Ombudsman was established in 1970. The Iowa Ombudsman has broad jurisdiction to review citizen's complaints of most Iowa state and local government agencies, the exceptions from our review are the governor's office, the legislature and the courts. Though authority to investigate complaints about prisons, jails, parole and community correctional supervision had been part of our office's jurisdiction since its inception, it was in 1974 that the legislature amended the statute specifically mandating the Ombudsman employ a specialist whose primary responsibility is to investigate complaints related to correctional agencies.

In addition to the Ombudsman, our office has a legal counsel, 12 assistant ombudsmen and two clerical staff. Iowa's population is approximately 3.1 million. In fiscal year 2019, we had a record high of 5,406 contacts, 45% of which were corrections-related. For perspective, Iowa has nine prisons with a total population of about 8,500 inmates. There are over 78,000 individuals on field or residential supervision under the Department of Corrections. Iowa also has 96 jails that range in size from six beds to 1,000 beds.

We opened 273 corrections-related cases for March 1 thru April 14, 2020. These cases include jails, prisons, work release, parole and probation complaints or inquiries. For the same period last year, we opened 265 cases.



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Beginning March 16, the Ombudsman had half of our staff begin working at home in an attempt to implement social distancing standards. Since March 23, 2020, we have had only one staff member and the Ombudsman who still report to the office; all others are working from home. Prior to this, a work from home schedule was not available.

The Ombudsman is answering all incoming calls. Her focus has been confirming that agencies, especially prisons, are following through with what they have told us they are going to do to mitigate the spread of COVID-19. She also provides inmates and their families with information that is available to the public about the measures prisons have taken and calms anxious individuals.

Our productivity and effectiveness have not changed significantly even though all but two of our office's staff are working at home. Our office has access to the Iowa Department of Correction's (DOC) database. This database contains most all the records for individuals who are currently – or have been - incarcerated or on community supervision. It contains information such as parole records, disciplinary, criminal charges, banking, property, housing, movement, transfer, security threat group, searches, visitation, keep separates, etc. All of our staff are able to remotely access this database from home. Having access to this database allows staff to get answers to many questions without having to even contact corrections staff. During this pandemic, it is even more important to utilize our time and the time of corrections officials efficiently as everyone has additional duties and interruptions related to mitigation efforts. We continue to e-mail or call prison and jail administrators as needed.

Two staff in our office also have access to DOC's medical database. It contains all the physical and mental health information for inmates. A high percentage of the complaints we receive are medically-related, so this database is valuable for analyzing a complaint before making an inquiry with the agency. We do not have remote access to this database, so the one assistant is reporting to the office to handle medical complaints. Access to this database will be critical if we need to review the medical files of COVID-19 infected offenders.

Our medical specialist has always been proactive in sharing relevant prison/jail health articles and information with correctional administrators, which she continues to do so. She has spoken with jail administrators and correctional managers about social distancing, staggering meal times, virus mitigation efforts in regard to off-grounds work crews and the importance of having soap and cleaning supplies available.

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We have also made a change in regard to complaints from families of an incarcerated individual. Previously, when a family member or third-party called with an inmate complaint, we would ask them to have the aggrieved inmate contact us before we would consider making an inquiry. The exception was if the complaint involved an emergent health or safety issue. We have loosened this criterion if the complaint is virus-related.

Our small office's case numbers do not allow for regular site visits to prisons, work release facilities or jail, though we have statutory authority to enter premises if we determine its necessary for our investigation. If there comes a time during the pandemic when we feel we need to enter a prison or jail, we would take the same precautions as correctional staff do daily.

Previous to the pandemic, we did not have an on-line complaint form, but we have recently instituted one and it seems to be working quite well. These complaints, along with letters and e-mails we receive, are scanned into our case management system and assigned to the assistants working from home.

Of the cases we have opened March 1 thru April 14, 2020, 87 were virus-related, many of which – as noted earlier – involve quelling anxiety among offenders and family. So far, we have not received any complaints that we believe warrant a major investigation. There has been only one report of a positive COVID-19 test in the prisons and that person is a prison employee. We are also aware of one probationer who resides in his own home, who has tested positive.

Agencies have proactively shared their action plans with us. If we get a complaint about an agency for which we do not have their plan, we simply request it and it is forwarded to us. We have found that the agencies have been receptive to our suggestions on improving their COVID-19 mitigation plans.

In summary, other than working from home, we have made very few changes to office operations in response to COVID-19. The changes we have made have not impacted our response time or the quality of our work.

I do hope you found some part of this useful as we remain committed to serving our communities during this unstable and uncertain time. Be safe.

## The Inspector of Custodial Services in Western Australia: Oversight in a Time of Crisis

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**By Eamon Ryan**

*Inspector of Custodial Services, Western Australia*

The Office of the Inspector of Custodial Services (OICS) commenced operation in 2000 as an independent statutory agency responsible for inspecting and reporting on the performance and practices in Western Australia's (WA) prisons. This included a strong and proactive focus on the rights of people in custody. In 2003

our jurisdiction was extended to detention centres for young people.

One of the key features of OICS is our independence, enshrined in legislation, from the administration of prisons and other places of detention. We have an independent budget, our own resources and staff, and we determine our operating approach and methodology.

The Inspector reports directly to the WA Parliament, where all inspection reports and most review reports are tabled and publicly available. We are expressly distinguished from individual complaints agencies (such as the Ombudsman), focusing instead on systemic issues with a preventative mindset.

### **OBJECTIVES**

OICS works towards improving the transparency and accountability of the custodial system in WA. This includes: having published inspection standards for custodial environments; working with agencies to improve outcomes; achieving efficiencies and best practice in the system; and working to reduce risks for individuals in custody and the system overall.

We adopt a preventive methodology, focused on continuous improvement and achieving better outcomes for prisoners and detainees. We believe this leads to more lasting change and reduces risk, rather than working in a more reactive or complaint / problem-driven way.

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### JURISDICTION

Required to Report At Least Every 3 Years	No Jurisdiction
Prisons (including work camps)	Community corrections
Juvenile detention centres	Secure mental health facilities
Court custody centres	Federal facilities
Certain police lockups (that form part of court custody centres)	Other 'closed' places (e.g. for mentally impaired accused or secure aged care)
	All other police lockups (approx. 98%)

As one of the two nominated NPM bodies for WA, it is anticipated that OICS jurisdiction will require extension to include an additional number of police lockups.

### POWERS

The powers of the Inspector are wide-ranging and prescribed in the *Inspector of Custodial Services Act 2003*. These include the right of unfettered access to sites, people and documents. Penalties apply for hindrance of the Inspector or staff exercising the Inspector's functions, and for the victimisation of those providing us with assistance or information.

Each place of custody must be inspected and reported upon *at least* once every three years. It may be more often, at the Inspector's discretion. Inspections may be announced or unannounced.

### WHAT WE DO

#### *Inspections & Liaison*

OICS uses a methodology of 'continuous inspection', rather than relying on a snapshot via the mandated three yearly inspection schedule. This allows us to assess performance, build positive relationships with facilities and ensure the rights and proper treatment of people in custody. This methodology involves a regime of monitoring and liaison with each

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place of detention via multiple site visits each year. These visits allow our inspection staff to have up-to-date knowledge and understanding of the current situation in each facility, and this substantially contributes towards the planning, analysis and deliberations of our formal inspections. This process has the additional benefit of our role and staff becoming well known to prisoners, detainees and their families.

Our mandated inspections must occur at least once every three years, with reports tabled in Parliament. These are conducted by a team of permanent staff, as well as subject matter experts contracted from time to time to assist. The formal inspection process includes the analysis of documents and data, surveys of prisoners and staff, forums with community groups and service providers, on site observation and interaction, prisoner and staff focus groups, meetings with staff and management, and departmental briefings. Publicly available inspection standards, developed by OICS, are used as a basis for this work.

An inspection report is drafted and provided to the department and other relevant parties to ensure procedural fairness. This allows parties to challenge findings, provide further evidence and respond to proposed recommendations. Submissions received are assessed by the Inspector and may be taken into consideration in the final report. The final report is then lodged with Parliament and tabled.

### *Reviews*

The Inspector also has review powers to examine discrete aspects of custodial services and the experience of individuals or groups of people in custody. This is independent of the need to inspect each place of custody. Multiple sources of information are analysed to derive and validate findings. These include academic and professional reviews, evidence from other jurisdictions, and data from the department's offender management databases. We also use other departmental documents (such as evaluations, strategic plans, budget papers, and business cases), as well as advice from stakeholders and service providers.

Unlike inspection reports, there is no requirement for reviews to be tabled in Parliament and made public, but the Inspector has the discretion to do so. For reasons of transparency, accountability and system improvement, our practice is that review reports will be tabled in Parliament and published unless there are exceptional reasons not to do so, such as safety, privacy or security.

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### *Independent Visitor Service*

OICS is responsible for operating the independent prison and detention centre visitor (IV) service in WA. IVs are appointed by the Minister to each prison and are required to visit at least once every three months, in practice they visit monthly. They provide us with written reports on issues, concerns and complaints received. We receive around 100 such reports each year. The Inspector may ask the Department to respond to these reports and uses this information to inform the continuous inspection and liaison process as well as formal inspections.

### *Community Outreach*

Our Community Liaison Officer (CLO) provides a highly valued cultural context in working alongside our staff with people in the community. The CLO helps us to engage with culturally diverse prisoners, community organisations and families. The CLO also provides us with invaluable advice on cultural issues and protocols.

### **OVERSIGHT IN A TIME OF CRISIS**

The outline provided above of our functions, powers and practices shows the high level of activity and interaction we undertake within places of detention. Our inspections team, independent visitors and community outreach activities rely on regular interaction with interest groups, departmental staff, and service providers, and physical presence in WA's custodial facilities to ensure we are accessible to prisoners and detainees.

The emergence of COVID-19 and the official measures taken to combat its spread presents a challenge to our 'normal' way of doing business. Not only do we owe a duty of care to our own employees and volunteers, but also not to cause harm to those who live and work in places of detention. Many individuals in prisons, detention centres and lockups are in higher risk categories to the effects of COVID-19. A significant proportion of WA's detained population have histories of poor health, high levels of comorbidity, and are Aboriginal prisoners from remote regional locations.

Under the principle of 'do no harm' we have been acutely aware of the risks of our staff or volunteers being carriers of the virus into custodial environments. Additionally, strict travel restrictions exist within WA which impact on access to many facilities in remote regional areas.

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We have, in the short term, adjusted our methodology for formal mandated inspections, and our strategy of ‘continuous inspection’. This is a fine balancing of risks.

Our methodology of continuous inspection has placed us in a good position to be able to more confidently monitor places of detention during this challenging time. This is because our staff have a strong knowledge and contemporary understanding of the situation in each facility and strong professional relationships with frontline managers and staff.

While the Inspector retains the right to enter and inspect any facility at any time, we have chosen to only exercise this when evidence indicates problems may be present. Our staff are actively monitoring facilities on a ‘distance’ basis. This includes:

- Receiving daily reports and briefings from the department’s leaders, for each facility covering: its health status; staffing levels and allocation; incident reports; any changes to regular daily routine; and intelligence reports
- Formal regular telephone briefings from the Superintendent or other senior leaders at each facility
- Formal regular telephone briefings from prison support workers, and other staff whose primary role is care and wellbeing of prisoners
- Daily monitoring of the department’s prisoner data base for each facility
- Contact with prisoners, their families and representative organisations.

In WA prisons and detention centre, social visits have been stopped, while official visits remain open. We have had feedback across the system that this was welcomed by some prisoners and their families as they felt a greater sense of safety from the virus with limited face-to-face contact. The counter is also true that there has been a level of unhappiness with this situation. To improve contact with friends and family, telephone calls and postage stamps are now free for prisoners, and electronic video visits are being trialed or extended at many sites.

We have, since the commencement of COVID-19 restrictions, begun an inspection of a regional prison on a ‘remote’ basis. Much of the methodology remains the same; document requests, surveys of staff and prisoners, interviews of community groups and contractors have all been completed. Information from over a dozen monitoring and liaison visits to the facility in the past three years is also being analysed. Staff are currently undertaking telephone interviews with prison staff and managers. At the completion of this phase of

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the inspection, an assessment will be made of how to proceed. This will, of course, be inclusive of the prevailing medical advice related to the pandemic and any other restrictions at the relevant time.

Pressures within the system may increase the longer that pandemic restrictions continue. There is a need for balance between managing risks and ensuring the rights of prisoners and detainees are maintained. Should specific issues arise, then subject to risk assessment, inspection visits to facilities will be considered and undertaken as required.



### Responding to COVID-19: Maintaining Oversight and Minimising Risk (New South Wales)

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**By Fiona Rafter**

*Inspector of Custodial Services, New South Wales*

**Emily Collett**

*Senior Inspection & Research Officer*

**Laurie Cullinan**

*Senior Inspection & Research Officer*

The Inspector of Custodial Services (ICS) provides independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody. The [Inspector of Custodial Services Act 2012 \(NSW\)](#) outlines the functions of the Inspector and provides that the Inspector must inspect each custodial centre once every five years and every youth justice centre once every three years. The Inspector reports directly to the NSW Parliament. The Inspector also oversees 94 Official Visitors.

The NSW custodial system consists of 40 correctional centres and 6 youth justice centres, as well as a number of residential facilities, court cell complexes and transport vehicles, all of which fall within the jurisdiction of the Inspector. These custodial centres are located across rural, regional and metropolitan NSW.

NSW has the largest proportion of confirmed COVID-19 cases in Australia. According to the [Department of Health](#), as at 9 April 2020, there were 2,773 confirmed cases of COVID-19 in NSW and 6,052 confirmed cases across Australia. At the time of writing there were no confirmed cases of COVID-19 among the prisoners and young people detained in NSW. The only confirmed case among staff is a health care worker diagnosed on 28 March 2020.

#### **Impact of COVID-19 on the Inspector of Custodial Services**

In response to the COVID-19 pandemic, we have developed an [ICS COVID-19 plan](#) that outlines how the ICS will continue to carry out the Inspector's functions. The 'do no harm'

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principle underpins the plan and our approach to our oversight role at this time. We are seeking to find a balance between minimising the risk of COVID-19 to ICS staff and those working and held in NSW custodial centres while continuing to provide oversight of conditions and treatment and guidance on best practice.

### ***In-person visits and inspections***

The ICS has temporarily postponed scheduled visits and inspections and has not conducted any in-person visits or inspections since 12 March 2020. However, we retain the right to visit or inspect NSW custodial centres at our discretion. The necessity of visits will be assessed on a case-by-case basis. Protocols that reflect current health advice on preventing the transmission of COVID-19 guide ICS staff on the safe conduct of any visits that may need to take place.

In recognition of the importance of independent monitoring and oversight at this time, the ICS is exempt from recent legislative amendments enabling the [Commissioner of Corrective Services NSW](#) (Commissioner) and the [Secretary of the Department of Communities and Justice](#) to prohibit or restrict visits to correctional centres and youth justice centres, respectively. Of note, these amendments also provide for the early release of prisoners at the discretion of the [Commissioner](#). This is supported by the ICS.

### ***Maintaining oversight remotely***

In this context, we have developed alternative approaches to inspections and visits. For example, an inspection of Oberon Correctional Centre, scheduled to take place in late March, was conducted remotely using technology (see the case study below). We will also be arranging meetings with senior staff from individual custodial centres while we are not undertaking our regular program of onsite visits.

Our oversight role during this period includes scrutiny of the response of relevant agencies to COVID-19. We are liaising closely with Corrective Services NSW, Youth Justice NSW and the Justice Health & Forensic Mental Health Network regarding the development, implementation of their response to COVID-19. This includes mechanisms to prevent the introduction and spread of COVID-19, and management of suspected and confirmed cases of COVID-19 within NSW custodial centres.

Work is also being undertaken to develop guidance on the elements of an efficient response to the risks posed by COVID-19 that does not place undue, additional restrictions on prisoners and young people. Articulating what constitutes a best practice

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approach in the context of the NSW custodial system is not only important for analysing the effectiveness of the approaches that are implemented, but for the prevention of harms that could arise as a result of COVID-19.

Review of complaints received by Official Visitors and data and documents provided by relevant agencies will help us maintain an up-to-date understanding of the conditions and treatment within NSW custodial centres and identify areas requiring further examination.

To support this work we have designated four specific roles within the ICS as part of our COVID-19 plan – Liaison, Planning and Advice, Monitoring, and Response.

### ***The Official Visitor Program***

The impact of the COVID-19 pandemic has restricted the ability of Official Visitors in NSW to attend facilities and undertake their role in a conventional face-to-face manner. Consequently, we have developed an Official Visitor Program COVID-19 plan (see Appendix A of the ICS COVID-19 plan) outlining how services will be maintained. Changes to the Official Visitor Program will help ensure that Official Visitors can continue to provide support to prisoners and young people while minimising risks to their own health and that of prisoners, young people and custodial centre staff.

Importantly, Official Visitors will continue to visit custodial centres, as required by legislation. Official Visitors attending custodial centres will focus primarily on examining the physical infrastructure, with particular attention given to places quarantining or isolating prisoners or young people. A dedicated phone line and mail system has also been created, to enable prisoners and young people to make enquiries and complaints with Official Visitors directly, and allow Official Visitors to act in their role remotely.

#### **A Case Study: COVID-19 and the Inspection of Oberon Correctional Centre**

Oberon Correctional Centre (Oberon CC) is remotely situated in the Blue Mountains region, 210 kilometres west of Sydney. It is a small minimum security correctional centre that accommodates approximately 140 sentenced prisoners. It holds two distinct cohorts; young adults aged 18 to 25 undertaking a program for young offenders, and older prisoners working in Oberon CC and in the local community in preparation for release.

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An inspection of Oberon CC was scheduled to occur over three days in late March 2020. With the increasing spread of COVID-19 in the community and its potential impact if introduced into a correctional centre, we decided to proceed with the inspection without going onsite. It should be noted that members of the inspection team were familiar with Oberon CC and a pre-inspection liaison visit had been conducted in January 2020.

### ***A modified inspection methodology***

Staff and prisoners were interviewed via a confidential line established by the ICS with a private Telecommunications Company. Prisoners were given an information and consent form to sign before being interviewed and/or filmed. The signed consent forms were emailed to the ICS. Prisoners were provided with a private space for their interviews.

There were 135 prisoners at the time of inspection. We conducted individual interviews with approximately 20% of the prisoner population selected from prisoner committee representatives and convenience sampling. Convenience sampling is a non-probability sampling method using data from a population that is conveniently available to participate in a study (see *Encyclopaedia of Survey Research Methods* (2008), edited by Paul J Lavrakas). It was thought that the random selection of prisoners may fail to capture a representative sample of the different prisoner cohorts at Oberon CC. The convenience sample had regard to various factors including: age group (young adult v older age group); employment areas; accommodation unit and new admissions/recent transports.

We also requested that Oberon CC provide footage of operations such as admissions, head counts, lock-ins, classification reviews, and programs and photographs of accommodation units and segregation areas.

### ***Initial reflections?***

The inspection methodology employed for Oberon CC was developed within a very short time frame, in response to an urgent and rapidly evolving situation. We have identified a number of positive aspects of the approach taken, including:

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- Interviews – The private telephone line, with individual interviews conducted in a private space, allowed considerable depth of information from prisoners and staff.
- Logistics – We needed to add an additional day to the inspection schedule and this was easier to accommodate than if the inspection team had travelled to a remote location.
- Methodology – The prisoners interviewed were chosen from all demographics, accommodation and operational areas. This ensured a cross-section of prisoner experiences and views were captured.

However, the Oberon CC inspection was not without challenges, including:

- Logistics – The ICS inspection team were working remotely from each other from home, relying on teleconference facilities to communicate with each other and the Oberon CC.
- Methodology – General observation of activity and operations was not possible, nor the unscheduled or opportunistic discussions with staff and prisoners that normally occur while spending time onsite.
- Observation – Analyses of the video footage won't be without issue. It should however be possible to address any shortcomings with requests for additional recording. A follow up site visit to Oberon will be necessary to complete the inspection.

### ***Future Directions***

This exercise showed it is possible for some inspection work to continue during the COVID-19 pandemic, albeit on a case-by-case basis having regard to the size, security classification and complexity of a correctional centre. The inspection also showed that offsite inspection work can involve much more than the analyses of documentation and records concerning the management and operations of the correctional centre. While this is not a replacement for independent observation onsite, it may complement the inspection process. Expanding offsite inspection work could open up the onsite inspection component to allow for more targeted observations and follow up with staff and prisoners.

### Resources

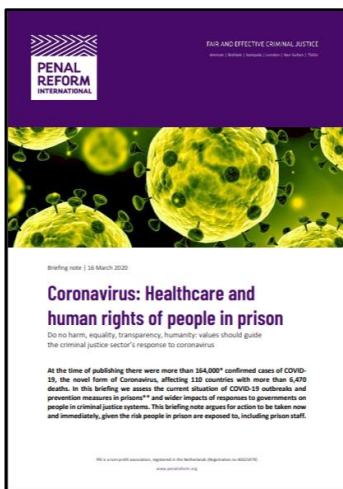
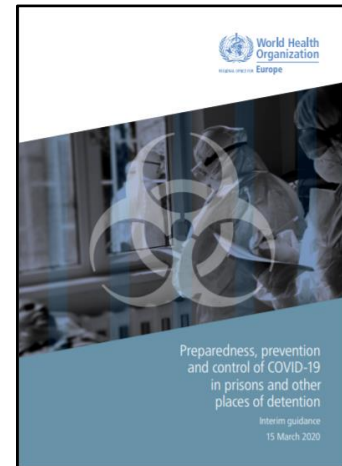
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#### [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance](#)

(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](#)]

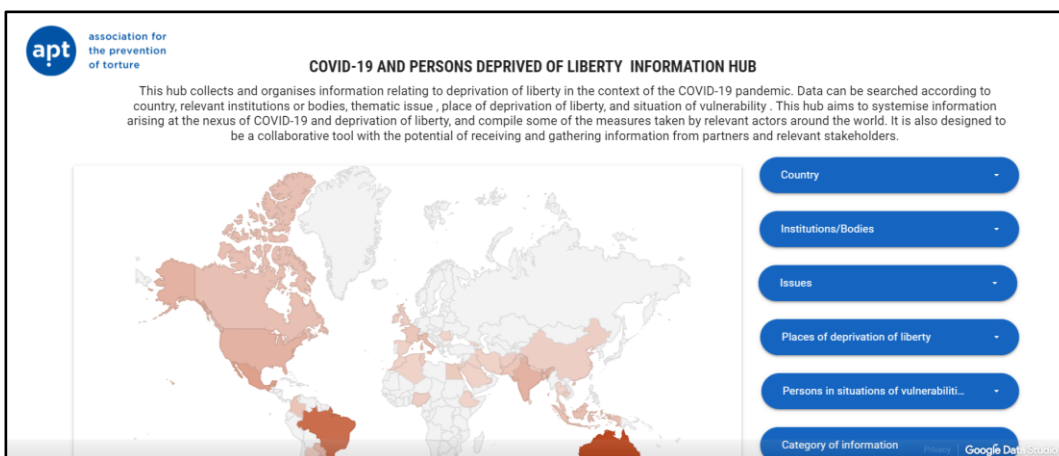


#### [Coronavirus: Healthcare and Human Rights of People in Prison](#) (March 2020)

*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](#)]

## HELPFUL RESOURCES



### [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.” [\[Source\]](#)



### [Synthesis of Global Guidance and Recommendations: How to Prevent and Manage COVID-19 in Prisons](#) (March 26, 2020)

*DIGNITY, Danish Institute Against Torture*

“...a synthesis of recommendations issued by a variety of international organizations on the prevention and control of COVID-19 in prisons.” [\[Source\]](#)

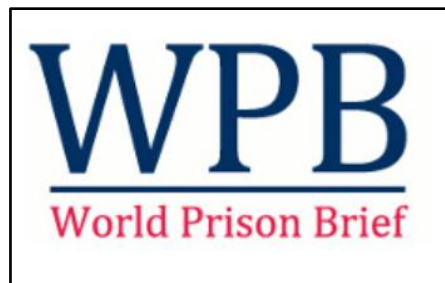
## HELPFUL RESOURCES

### [News on COVID-19 and Prisons](#)

**(Last update: April 17<sup>th</sup>)**

*World Prison Brief @ Prisonstudies.org*

An “evergreen” compilation of news articles, guidance and other resources from around the world on COVID-19 and prisons.



### [COVID-19: Deprivation of Liberty Information Corner](#)

**(Last update: April 17<sup>th</sup>)**

*Canada OPCAT Project*

“...rapidly emerging information about deprivation of liberty in the context of the seemingly ever worsening global health situation resulting from the [COVID-19 virus](#). In doing so, we have attempted to compile in one spot information from both Canada and abroad.”

[\[Source\]](#)