

Response to the OHCHR Questionnaire with respect to the Human Rights Council resolution 24/16 on “The role of prevention in the promotion and protection of human rights”

by Her Majesty’s Inspectorate of Prisons

1. Her Majesty’s Inspectorate of Prisons (HMI Prisons) is an independent inspectorate based in the United Kingdom whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities, focussing primarily on England and Wales. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted).
2. HMI Prisons coordinates, and is one of the twenty bodies that forms the UK’s National Preventive Mechanism (NPM), established in 2009 in compliance with the UK government’s obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT).
3. HMI Prisons’ response focuses on question (2) (c), which asks for information on any lessons learnt from National Preventive Mechanisms regarding prevention of torture that may also apply to prevention of other human rights violations. Our response focuses on key themes that underpin our preventive approach. Further information about the UK NPM can be found in Annex I.

Preventing ill-treatment through independent inspection

4. In the United Kingdom, a ‘culture’ of inspection and monitoring of public bodies has evolved over a long period of time. The inspection of prisons in its current form grew in response to prison riots and industrial relations tensions in the 1970s. HMI Prisons operates among a number of public bodies with statutory powers to visit, monitor or inspect aspects of detention in the four nations of the United Kingdom, all of which have been designated as part of the UK’s National Preventive Mechanism. Since its designation as part of the UK NPM, HMI Prisons has integrated the principles of OPCAT into its work, placing at the heart of its inspection methodology the notion that human rights abuses should be prevented.
5. By conducting regular,¹ unannounced² inspections, the establishments that are subject to inspection by HMI Prisons operate in the knowledge that they will be inspected without warning. There is a recognised ‘profound cultural effect on behaviour’ from knowing that an inspector may visit at any time.³
6. Inspections take a rigorous approach to identifying the treatment of detainees and the conditions in the places that we inspect. The experience of the detainee is at the heart of

¹ Prisons are inspected at least once every five years, although we expect to inspect most establishments every two to three years. Some high-risk establishments may be inspected more frequently, including those holding children and young people. Other types of custodial sectors have different inspection cycles.

² 90% of inspections are unannounced, with 30 minutes notice

³ National Audit Office, *Inspection: A Comparative Study*, at paragraph 10. <http://www.nao.org.uk/wp-content/uploads/2015/02/Inspection-a-comparative-study.pdf>

inspections. Evidence generated through random sample surveys, observation, reviewing official documentation, discussions with staff and detainees is triangulated and an internal challenge process ensures that all judgements made by inspectors are interrogated.⁴

7. Inspections assess whether outcomes for prisoners are good in a number of areas, with judgements being made according to criteria set out in our published 'Expectations'. Crucial to preventing abuses is the systemic approach we take, examining the systems that influence outcomes for individual prisoners, rather than examining and reporting solely on individual cases.
8. Reports with recommendations are published on all inspections and constructively challenge those responsible for the institutions we inspect. A key feature of an effective inspection process is the timeliness of published reports.⁵ In addition, as well as communicating important judgements about each establishment inspected, their descriptive nature allows us to describe to the wider general public what goes on inside the closed prison environment.
9. The power to conduct unannounced inspections goes hand in hand with the power to make recommendations aimed at improving outcomes for detainees. Such recommendations can relate to routine systemic issues as well as urgent concerns or extreme cases. An established, consistent process for reporting and making recommendations is essential, as well as the ability to raise specific, urgent concerns if warranted.
10. In line with agreed protocols, the bodies that HMI Prisons inspects should produce an initial action plan in response to recommendations two months after publication of the report. This action plan should set out whether the establishment has accepted, partially accepted/accepted in principle or rejected the recommendations, and the consequent action taken or planned. The content of this action plan will be checked and challenged if necessary, and will form part of the intelligence database that the Inspectorate uses to inform subsequent inspections. Inspectors are expected to refer to action plans and other documentary and electronic evidence in order to monitor the establishment's progress and prepare for inspection.
11. The ability to comment on draft legislation and policy – set out as one of the basic powers of an NPM in OPCAT Art. 19 – allows HMI Prisons to bring its inspection evidence to bear in processes that will have a direct impact on the way detainees are treated and governed, with the aim of supporting the development of policy and legislation that will prevent human rights violations from occurring in the future.

Characteristics of a preventive approach

12. **Independence.** HM Chief Inspector of Prisons is a crown appointee and must operate independently of those with operational or policy responsibility for the establishments he/she inspects.⁶ The Chief Inspector's independence is a fundamental principle that underpins the role and therefore the ability to prevent abuses. The closed nature of the institutions inspected, the power imbalance between the gaoler and the detainee, and the lack of credibility of the detainee all make the detainee particularly vulnerable to ill treatment or

⁴ See HMI Prisons Inspection Framework at: <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/1.-INSPECTION-FRAMEWORK-April-2014-02.pdf>

⁵ All inspection reports should be finalised and published within 18 weeks of the end of the inspection.

⁶ According to S.5A of the Prison Act 1952 (as amended by S.57 of the Criminal Justice Act 1982), the Chief Inspector of Prisons' responsibilities are to: inspect or arrange for the inspection of prisons and young offender institutions in England and Wales and report to the Secretary of State on the results; in particular, report to the Secretary of State on the treatment of prisoners and conditions in prisons; report on matters connected with prisons in England and Wales and prisoners in them referred to him by the Secretary of State; submit an annual report to be laid before Parliament. This has subsequently been expanded to other areas of detention.

neglect.⁷ The credibility of the institution, its perceived independence and the way in which it acts is of similar importance.

13. **Constructive approach.** While maintaining independence, a cooperative rather than condemnatory method is crucial in a preventive approach as it allows concerns to be raised before violations have happened. Dialogue with different levels of government – policy makers and those with operational responsibilities for the establishments we inspect – must be constructive rather than combative. Effective cooperation with a broad range of national and international stakeholders – through official memoranda of understanding and a range of other arrangements – allows the sharing of information that can shed light on emerging concerns as well as linking efforts between different bodies with powers to support the implementation of recommendations.
14. **Risk monitoring.** HMI Prisons predicateds its inspections on dynamic risk assessment. Such an approach is essential to preventing ill treatment as it ensures the targeting of resources based on need and risk. A minimum frequency for the inspection of all types of establishments, as well as timings based on assessment of risks makes inspections deliberately unpredictable. It requires flexible organisation and deployment of resources.
15. **Systemic approach.** Thematic inspections allow HMI Prisons to focus on cross-cutting or systemic issues (such as life sentence prisoners, or the effectiveness and impact of immigration detention casework⁸), leading to recommendations for improvements that are systemic and/or address the specific needs of certain groups of detainees across the secure estate.
16. **Transparency.** To ensure the transparency of its processes, HMI Prisons publishes its inspection framework (setting out the framework governing the inspection process) as well as its manuals for inspectors on its website.⁹ In addition, the criteria that HMI Prisons applies in its inspections – known as ‘Expectations’ – are published to ensure transparency. HMI Prisons sets its own inspection criteria to ensure independence, and these are based on and referenced against international human rights standards. Consultation of these Expectations with external actors, including those with operational roles in the detention settings they are applied to, leads to constructive dialogue aimed at improving outcomes for detainees. The positive impact that the existence of such known standards has on the actions of those managing places of detention, who will aim to meet these standards before they are inspected, contributes to HMI Prisons’ ability to prevent abuses.¹⁰
17. **Preventing sanctions.** In order to prevent any detainee from suffering reprisals as a result of communicating with inspectors, HMI Prisons has established a protocol with two other statutory bodies working on detention – the Independent Monitoring Boards and the Prisons and Probation Ombudsman – to share information and ensure joint working.¹¹ Although few cases have been reported, this protocol ensures that HMI Prisons takes all actions necessary to prevent and address any future cases. Preventing sanctions to detainees arising from our work is essential to an overall preventive approach.

⁷ See HMI Prisons Submission to the Public Administration Committee on the accountability of quangos and public bodies, April 2014. http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/02/HMIP-response_PASC-committee-quangos-FINAL.pdf

⁸ See: http://www.justiceinspectorates.gov.uk/hmiprison/inspections/?post_type=inspection&s&prison-inspection-type=thematic-reports-and-research#.VP3MlaPp9SM

⁹ See: <http://www.justiceinspectorates.gov.uk/hmiprison/about-our-inspections/#.VP29xqPp9SN>

¹⁰ National Audit Office, paragraph 10

¹¹ Protocol between HMI Prisons, Independent Monitoring Boards, and Prisons and Probation Ombudsman. <http://www.justiceinspectorates.gov.uk/prison/wp-content/uploads/sites/4/2014/02/hmip-imb-ppo-protocol.pdf>

Annex I – NPM factsheets

Available at: http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/5219_NPM_Factsheet_1_Dec_14_v2.pdf and http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/NPM-factsheet2_The-first-five-years-of-the-UK-NPM.pdf)



The first five years of the UK NPM

The UK set up its National Preventive Mechanism (NPM) in March 2009. The NPM aims to prevent torture and ill-treatment in all places of detention, in line with the Optional Protocol to the UN Convention against Torture (OPCAT).

Establishing the NPM

In its first five years, the UK NPM has focused efforts on establishing an effective governance structure and raising awareness among its members and key stakeholders. Progress has been made to:

- *Ensure all places of detention within the UK are subject to independent monitoring*
NPM members' monitoring has expanded to cover court cells, escorts and deportations, medium secure units for children and young people, and 'non-designated' police cells.
- *Establish a common set of Expectations to guide members' efforts under their NPM mandate*
The powers and practices expected of NPM members in performing their monitoring function were set out and agreed by the full NPM membership in 2012.
- *Strengthen governance*
The coordination function, performed by HM Inspectorate of Prisons, and the establishment of a steering group to facilitate decision making and set the strategic direction, has strengthened the effectiveness of the NPM which is now made up of 20 institutional members.
- *Address the specific issues faced by children and young people in detention*
A thematic subgroup now meets regularly to share information and join up efforts towards preventing ill-treatment of children and young people in detention.
- *Build awareness of the UK NPM nationally and internationally*
Training on preventing torture and ill-treatment through monitoring has been delivered by NPM members to numerous lay visiting bodies, professional inspectorates and other stakeholders. Strong relationships for sharing information and expertise have been established with non governmental organisations and many others. The UK NPM has been called on to share its expertise around the world with new NPMs and countries in the process of ratifying OPCAT.

Focusing on detention-related concerns

Bringing together its different skills, expertise and approaches, the UK NPM has sought to focus attention on priority areas of concern relating to detention. This has allowed NPM members to share expertise, develop new

understanding of human rights issues, strengthen their own methodologies, and issue recommendations for further action. It includes:

- *The human rights implications of detention-related practices*
NPM-wide discussions have strengthened understanding of the human rights issues around use of force and restraint, deaths in custody, segregation and mental health.
- *Exposing the issues associated with de facto detention*
Monitoring bodies' ability to understand and tackle *de facto* detention has been refreshed by analysis of existing practices and approaches.
- *Ensuring detainees are not subject to sanctions*
A protocol has been agreed among two NPM members to ensure that no prisoners or detainees are subject to reprisals or sanctions arising from their contact with monitors or visitors, and that actions are taken when such practices are reported.
- *Strengthening recommendations made to authorities*
An analysis of how recommendations are made and followed up has been conducted across the NPM and will contribute to future work.

Commenting on legislation and policy

Many individual NPM members are active in implementing their powers to comment on legislation and policy. Being part of the NPM has encouraged members to submit joint proposals on areas of shared concern or interest, and apply human rights principles to their analysis. These have included comments on:

- the Scottish Government's decision to abolish prison visiting committees because they were not OPCAT-compliant and proposals that their monitoring role be taken up by the Scottish prison inspectorate
- the UK government's proposals to transform the youth custodial estate
- the Scottish Government's proposals to reform policing, successfully calling on the government to use this reform as an opportunity to strengthen custody visiting arrangements
- Home Office proposals around detention of 17-year-olds in custody, resulting in the decision to require an appropriate adult to assist them, and that a person responsible for their welfare is informed
- a range of parliamentary inquiries and bills on topics that include: female offenders; youth justice; the way in which deaths following police contact are investigated; and local authority responsibilities towards children looked after following remand.

Looking ahead: the next five years of the NPM

The UK NPM is using its fifth anniversary to take stock of its work and approaches to date. It will make public the results of its own assessment of the extent to which it is fulfilling its torture prevention mandate and identify ways of strengthening its work over the next five years.

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Introducing the UK's National Preventive Mechanism

What is a National Preventive Mechanism?

A National Preventive Mechanism (NPM) is one or more designated bodies that monitor the treatment and conditions of those people who have been deprived of their liberty. The aim of an NPM is to prevent torture and other cruel, inhuman or degrading treatment or punishment from taking place.

The mandate for an NPM comes from the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), a human rights treaty drafted by States who wanted to ensure stronger protections for detainees. Central to OPCAT is the idea that a system of regular, independent visits to places of detention can serve as an important safeguard against abuses, and prevent torture and ill-treatment in places that by their very nature fall outside the public gaze.

States that ratify OPCAT must establish an NPM. There are now 55 NPMs formally in existence around the world.

Specific requirements of an NPM

To comply with OPCAT, NPMs must have certain powers. These include the power to:

- inspect *all* places of detention
- access all information relating to detainees
- interview detainees in private
- choose where to visit and who to speak to
- make recommendations based on human rights norms to relevant authorities
- make proposals and observations on existing or draft legislation

What does the UK NPM do?

The UK signed up to OPCAT in 2003 and in so doing, expressed its commitment to prevent torture and ill treatment in places of detention.

The UK's National Preventive Mechanism was formally designated in 2009 and is now made up of 20 organisations whose official functions include monitoring and inspecting places of detention. Across the UK, different detention settings are visited or inspected by different NPM members. The UK NPM is coordinated by HM Inspectorate of Prisons and a steering group, made up of representatives from NPM members in the four nations, guides decision-making.

DETENTION SETTING	JURISDICTION			
	ENGLAND	WALES	SCOTLAND	NORTHERN IRELAND
PRISONS	HM Inspectorate of Prisons (HMI Prisons) with Care Quality Commission (CQC) and Ofsted	HMI Prisons with Healthcare Inspectorate Wales (HIW)	HM Inspectorate of Prisons for Scotland (HMIPS) with Care Inspectorate (CI)	Criminal Justice Inspectorate Northern Ireland (CJINI) and HMI Prisons with Regulation and Quality Improvement Authority (RQIA)
	Independent Monitoring Boards (IMB)	IMB		IMB Northern Ireland
POLICE CUSTODY	HM Inspectorate of Constabulary (HMIC) and HMIP		HM Inspectorate of Constabulary for Scotland	CJINI with RQIA
	Independent Custody Visiting Association (ICVA)		Independent Custody Visitors Scotland	Northern Ireland Policing Board Independent Custody Visiting Scheme
COURT CUSTODY	HMI Prisons and Lay Observers		HMIPS	CJINI
CHILDREN IN SECURE ACCOMMODATION	Ofsted (jointly with HMI Prisons in relation to secure training centres)	Care and Social Services Inspectorate Wales (CSSIW)	CI	RQIA
				CJINI
CHILDREN (all settings)	Office of the Children's Commissioner (OCC)			
DETENTION UNDER MENTAL HEALTH LAW	CQC	HIW	Mental Welfare Commission for Scotland (MWCS)	RQIA
DEPRIVATION OF LIBERTY AND OTHER SAFEGUARDS IN HEALTH AND SOCIAL CARE	CQC	HIW	CI and MWCS	RQIA
		CSSIW		
IMMIGRATION DETENTION	HMI Prisons			
	IMB			
MILITARY DETENTION	HMIP and ICVA			
CUSTOMS CUSTODY FACILITIES	HMIC and HMI Prisons and HMICS			

What difference does being part of the NPM make?

Being part of the NPM brings both recognition and responsibilities. NPM members' powers to inspect, monitor and visit places of detention are formally recognised as part of the UK's efforts to prevent torture and ill-treatment. At the same time, NPM members have the responsibility to ensure that their working practices are consistent with standards for preventive monitoring established by OPCAT.

In addition to individual members' preventive monitoring, the UK NPM as a coordinated body focuses attention on crucial detention-related issues, promoting coherent analysis and responses to them. The NPM produces an annual report of its activities. It is scrutinised by official UN human rights bodies and non-governmental organisations to ensure that it is fulfilling its OPCAT mandate.

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