



Document: Report
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Instructed by: Open Society Justice Initiative, Conectas, and Elas Existem
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**In the Matter of the third party intervention of Open Society Justice
Initiative, Conectas, and Elas Existem**

AFFIDAVIT OF FIONA NI CHINNEIDE

I, Fíona Ní Chinnéide, Executive Director of the Irish Penal Reform Trust, of 1 Green Street, Rotunda, in the County of the City of Dublin, Ireland, aged 18 years and upwards **MAKE OATH** and say as follows:

1. I make this Report for the purpose of outlining my understanding of how the Irish Prison System has managed and approached the public health emergency posed by COVID-19. I make this Affidavit from the published sources listed at paragraph 5 herein save where otherwise appears. I believe these facts to be true to the best of my knowledge, information and belief.

2. Relevant Experience

I have been Executive Director of the Irish Penal Reform Trust in Ireland since 8th April 2019. I have worked with the organisation since March 2009, and previously held the roles of Deputy Director (2014-2019), Communications Manager (2011-2014) and Campaigns & Communications Officer (2009-2011).

3. Irish Penal Reform Trust

Established in 1994 as a charity, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. IPRT publishes a wide range of policy positions and research documents; campaigns across a wide range of penal policy issues; and is established as the leading independent voice in public debate on the Irish penal system. IPRT works towards a national penal policy which is just, humane, evidence-led, and uses prison as a last resort; and a national penal system which protects and promotes human rights and strives to achieve international best practice in its regimes, daily practices and overall culture. The organisation works to achieve these goals through:

- advocacy based on research and evidence-led policies
- carrying out research studies on issues relating to the penal system
- publishing and disseminating a wide range of policy positions

- raising awareness of the work of IPRT and of penal reform issues
- campaigning across key issues
- disseminating the facts and dispelling the myths about prisons and prisoners
- stimulating and providing platforms for inclusive public debate
- organising conferences, lectures series and events
- providing a comprehensive information resource on penal reform issues in Ireland on our website

IPRT has produced the following research relevant to issues raised by the current pandemic and its impact on conditions in prisons in Ireland:

- *Making Rights Real for People with Disabilities in Prisons in Ireland* (2020)
- *Progress in the Penal System: A Framework for Penal Reform* (2019)
- *Progress in the Penal System: A Framework for Penal Reform* (2018)
- *Progress in the Penal System: A Framework for Penal Reform* (2017)
- *Behind the Door: Solitary Confinement in the Irish Penal System* (2018)
- *In Here Time Stands Still: Rights, Needs and Experiences of Older People in Prison* (2016)
- *Monitoring of HIV, HCV, TB in prison: National Monitoring Report on Ireland* (2016)

All of these reports are available online at: <https://www.iprt.ie/iprt-publications/>

4. Instructions Received:

I have been asked to provide a report on the following matters:

- i. information on how the Irish prison system has managed and approached the public health emergency posed by COVID-19 in the form of an report to be attached to the collective amparo that OSJI (together with Mexican partners) is submitting before the Mexican Federal Judiciary regarding local prisons in Mexico.
- ii. OSJI is aiming to file a collective amparo together with Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.
- iii. The aim of this collective amparo lawsuit is to mitigate the effects of the COVID-19 pandemic in the local prison system in the state of Morelos, Mexico. The case seeks the intervention of the judiciary to introduce measures to safeguard the right to life and health of people deprived of liberty and prevent mass casualties. These emergency actions focus on adequate provision of releases, healthcare, sanitary conditions, preventive measures to identify and treat suspected cases and management of death bodies.

5. Sources/ Literature

I have relied on the following sources for this report:

- *Progress in the Penal System: A Framework for Penal Reform* (IPRT, Oct 2019).¹
- Statistical and other data provided and published by the Irish Prison Service.²
- Department of Justice & Equality, ‘Information regarding the Justice Sector COVID-19 plans’, published online.³
- Data and information provided by the Minister for Justice and Equality to the Irish parliament, including information published on the Oireachtas (Irish parliament) website.⁴
- Documents published by the National Public Health Emergency Team (NPHE) COVID-19 Subgroup: Vulnerable People.⁵
- Council of Europe European Committee for the Prevention of Torture (CPT), ‘Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic’.⁶
- World Health Organisation, ‘Preparedness, prevention and control of COVID-19 in prisons and other places of detention’.⁷
- ‘Establishing prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland’⁸ (Journal of Public Health, OUP, 2020)

6. Caveats and Data Deficits

- It is important to note that IPRT does not hold any statutory *rights* of access or inspection of Irish prisons and as Executive Director I do not have any statutory powers in respect of inspection or monitoring. No IPRT staff member has been inside a prison in Ireland since 10 March 2020.
- Over the last eleven years I have visited 11 of Ireland’s 12 prisons, and have built relationships with those working within the prisons on a regular basis, have met and received correspondence from serving prisoners and (as set out above) have overseen the conduct of research into many aspects of the prison system in Ireland.

¹ Available at <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>

² Last accessed 1 June 2020 at <https://www.irishprisons.ie/information-centre/statistics-information/>

³ Available at: http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans

⁴ Last accessed 1 June 2020 at <https://www.oireachtas.ie/en/debates/questions/>

⁵ Last accessed 1 June 2020 at <https://www.gov.ie/en/collection/301f5e-the-national-public-health-emergency-team-nphet-subgroup-vulnerable-/>

⁶ Last accessed 1 June 2020 at https://www.coe.int/en/web/cpt/news-2020/-/asset_publisher/F4MCR6Bvx1tS/content/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty-

⁷ Last accessed 1 June 2020 at http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf

⁸ Last accessed 20 August 2020 at <https://academic.oup.com/jpubhealth/article/42/3/519/5860596>

7. Overview:

- I. As of 26 May 2020, there have been no confirmed cases of COVID-19 among prisoners in Ireland. There were 3,755 prisoners in custody on that date.
- II. Over 100 prisoners had been tested for COVID-19 by 20 May 2020.
- III. As of 20 May 2020, there had been fewer than 50 total confirmed cases of COVID-19 among prison staff since the start of the crisis.
- IV. Decisions to release details of positive tests for COVID-19 are matters for the Chief Medical Officer, the National Public Health Emergency Team and the Health Service Executive (HSE) and not the Irish Prison Service.

8. Situation of Irish prisons in March 2020 when WHO Director-General announced that COVID-19 can be characterized as a pandemic:

- V. On 12 March 2020, there were 4,235 prisoners in custody in Ireland.⁹ This was an increase from 3,999 prisoners in custody at end January 2020. Prison numbers had been increasing since 2017.
- VI. At this level of prison occupancy, closed prisons are overcrowded with people sleeping on mattresses on floors. Published prison capacity figures do not account for reduced spaces due to, for example, the closure of prison wings for refurbishment. To achieve single cell accommodation across the estate, the prison population would need to be reduced to 3,000.
- VII. In January 2020, the Irish Prison Service had increased bed capacity in one of Ireland's two women's prisons by adding 40 beds and 'doubling up' a number of single-occupancy cells, increasing its official capacity from 105 to 146.
- VIII. At end January 2020, when there were 3,999 prisoners in custody, 53% of prisoners had access to a single cell; 35.8% were in double cells; 9.6% were in triple cells; and just under 2% were in 4+ cells.
- IX. At end January 2020, when there were 3,999 prisoners in custody, 43% of prisoners had to use toilets in presence of others.
- X. At end January 2020, 14.5% of the prison population was being held on "restricted regimes", locked up for 19 or more hours per day, predominantly for reasons of safety; of these, the majority (9% of total prison population) were locked up for 21 or more hours per day.

9. Healthcare in Irish prisons:

- XI. Irish prison healthcare services are run by the Irish Prison Service and do not come within the remit of the Department of Health or of the national health service, the

⁹ https://www.irishprisons.ie/wp-content/uploads/documents_pdf/11-March-2020.pdf

Health Service Executive (HSE); prison healthcare services do not come within the inspection remit of the Health Information and Quality Authority.

- XII. An Executive Clinical Lead, a senior medical practitioner with a background in public health, was appointed to the Irish Prison Service in July 2018.
- XIII. An independent prison healthcare needs assessment was initiated in autumn 2019 and due to report by end 2020. This has currently been paused due to the pandemic and health-related safety concerns with accessing interviewees in prison.

10. Planning undertaken by the Irish Prison Service in response to COVID-19:

- XIV. At the end of February 2020, an Emergency Response Planning Team (“ERPT”) was established by the Irish Prison Service, consisting of senior staff in areas including operational; healthcare; and infection control. The ERPT was tasked with identifying and issuing instruction on the necessary actions, with the aim of: blocking the spread of COVID-19 into a prison setting; early detection of any possible case of COVID-19 in a prisoner or staff member; and prevention of the spread of COVID-19, should a case be confirmed. The ERPT conducts ongoing contingency planning and multiple scenario planning.
- XV. On 3 March 2020, the (Irish) National Public Health Emergency Team (NPHE) Vulnerable Groups Subgroup classified prisons as a setting that accommodates vulnerable people in need of specific protections. The term “vulnerable people” is defined as including older people, people with a disability, mental health service users, those with an underlying illness or condition, among others. Membership of the Subgroup includes the Executive Clinical Lead of the Irish Prison Service.
- XVI. The preventative work carried out by the Irish Prison Service has been informed by the advice received from NPHE, and prison specific guidance for the management of COVID-19 issued by the World Health Organisation (WHO) on 15 March 2020 and guidance of the Council of Europe issued on 20 March 2020.
- XVII. The Irish Prison Service has maintained a close working relationship with the Department of Justice & Equality, relevant criminal justice authorities, the National Public Health Emergency Team (NPHE) and the Health Service Executive (HSE).

11. Reduction in the prison population:

- XVIII. In March 2020, the Minister for Justice approved a number of actions to reduce the number of prisoners to support a more effective infection control regime, including greater physical distancing and cocooning. This planned reduction of the prison population saw a decrease in the number in custody from 4,235 on 11 March 2020 to 3,833 on 7 April 2020, a reduction of approximately 400 or 9%.
- XIX. The reduction was achieved through the granting of temporary release (TR) to low risk prisoners who were serving sentences of less than 12 months for non-violent offences. Subsequently, prisoners assessed as low risk who had less than 6 months to serve were also granted temporary release from some prisons. All were risk assessed on a case-by-case basis.

- XX. The Irish Association for Social Integration Opportunities is funded by the Irish Prison Service to provide 12 Resettlement Coordinators in each of the closed prisons. During the COVID-19 pandemic, the Irish Prison Service assigned a further 6 staff to assist with resettlement.
- XXI. Measures introduced by the Minister for Justice also provided for longer periods for prisoners on temporary release (TR) to have to sign in with the Irish Prison Service, in order to reduce footfall in and out of the prisons, and to free up administrative staff should prison officer numbers be reduced due to illness or self-isolation. The sign in requirement was changed from weekly to monthly.
- XXII. The number of prisoners sharing cells was reduced by 146 from 1,892 in January 2020 to 1,746 in April 2020.
- XXIII. On 26 May 2020, numbers have further fallen to 3,755 prisoners in custody. This has been brought about due to the granting of temporary release and a reduced number of committals from the Courts. This represents a reduction of 459 or approximately 11% over the period. Therefore, the occupancy in many prisons has been reduced and this supports infection control and isolation measures.

12. Measures introduced within prisons:

Along with the reduction in the prison population, measures introduced within prisons have included:

- XXIV. Gradual reduction in visits with complete suspension of all physical family visits since 27 March 2020. The Irish Prison Service has introduced video calls as replacement for in-person visits; family members access the calls using Cisco Meeting application from their own smart phone.¹⁰
- XXV. The introduction of a basic health check, including screening questions and taking of temperatures for all persons, including staff, entering prisons since 29 March.
- XXVI. Training for IPS staff and the provision of appropriate Personal Protective Equipment (PPE) across the prison estate.
- XXVII. Quarantining for 14 days of all newly committed prisoners; the Irish Prison Service is currently working with the HSE to put in place a process that will facilitate the testing of all new committals to the prisons at an early stage, and thus will allow for the prisoner to exit quarantine at an earlier stage, provided test results are negative.
- XXVIII. Isolation of suspected case or prisoner with symptoms to prevent the risk of transmission of infection.
- XXIX. Any prisoner who advises staff that they are experiencing symptoms of COVID-19 is assessed by prison healthcare staff who, in line with guidance provided by the

¹⁰ See 'Connecting to Prison Family Video Link' information available here: https://www.irishprisons.ie/wp-content/uploads/documents_pdf/How-To-Guide-for-Family-Video-Link-28-April-2020-1.pdf

NPHE and the HSE and public health authorities, arrange for the prisoner to be isolated and tested, if they meet specific criteria. Some prisoners who do not meet the HSE threshold for COVID-19 testing but are experiencing some symptoms continue to be isolated in line with HSE advice. (Information as of 20 April 2020.)

- XXX. IPRT understands from unpublished information received by word of mouth that testing has so far been confined to suspected cases among staff and prisoners who are symptomatic or who have been in close contact with a confirmed case. Prisoners and prison staff were designated among the priority categories for testing by the Department of Health. (Prior to 25 March 2020.)
- XXXI. A dedicated isolation unit has been created in Cloverhill Prison for a confirmed case among the prisoner population; this unit is currently being used to accommodate symptomatic prisoners who are suspected of having COVID-19. Prisoners continue to be isolated in this unit until cleared from isolation through the COVID-19 testing process. Staff working in this unit wear Personal Protective Equipment (PPE).
- XXXII. “Cocooning” (minimising all interactions with prisoners and staff to protect their health and safety) of approximately 135 prisoners vulnerable to COVID-19, including all prisoners aged 70 years or more and those that are deemed medically vulnerable; prisoners who are vulnerable due to age or underlying health conditions wear gloves and facemasks when exercising.
- XXXIII. Alcohol-free sanitizers have been made available in prisons.
- XXXIV. All prisoners have access to soap, warm water and towels. However, access to showers for those who are in medical isolation or quarantine varies according to the specific prison facilities. For example, the majority of cells in Cloverhill Remand Prison, which holds the highest number of committal quarantines, have no in-cell showers.
- XXXV. Social distancing introduced within prisons, including signage and markings on the floors, and staggered mealtimes; prison staff must also remain in the areas that they are specifically assigned for duty.
- XXXVI. Establishment of a robust contact tracing model, and redeployment of prison staff to contact tracing teams. (See 14 below.)
- XXXVII. Communication with staff and prisoners, including two prison newsletters published weekly (one for prisoners being held in isolation) and regular COVID-19 information leaflets for prisoners and newsletters for staff regarding actions taken; the Irish Red Cross prisoner volunteer programme, which is peer-led, has played a critical role in the communication of health information across the prisoner population.
- XXXVIII. A dedicated phone service has been introduced for prisoners to access chaplains, prison psychologists and addiction counsellors. The Psychology Service is also providing audio resources on physical and mental health for the in-cell Channel on the TV system in some prisons.

- XXXIX. All prison schools, which are run by the Education and Training Boards, have been closed since 13 March (when schools in the community also closed); prison teachers have been working with the Irish Red Cross to get education materials to their students in prison.
- XL. Movement of prisoners around prisons has been restricted, with impacts on out-of-cell and yard time; prison gym facilities for prisoners have remained open, albeit on a reduced schedule, and with strict supervision of the cleaning of gym equipment between use.
- XLI. Prisoners who are isolated for precautionary reasons due to COVID-19 may leave their cells to access services such as psychology services, or to use the prisoner phone system once escorted by staff wearing appropriate PPE. However, prisoners who are displaying symptoms of COVID-19 and are awaiting testing or test results are not permitted to leave their cells.
- XLII. Other measures have included installation of additional TV channels for prisoners in their cells; in-cell phones in some prisons; and a method for the electronic transfer of money to prisoner accounts has been introduced to allow family members to lodge money for prisoners to purchase necessities in the prison tuck shop.

13. Plans to lessen restrictions in prisons:

- XLIII. On 1 May 2020, the Irish Government published the ‘Roadmap for Reopening Society and Business’, which outlines its plans to lessen restrictions in the community due to the COVID-19 pandemic on a phased basis.
- XLIV. As of 27 May, the Irish Prison Service is carrying out a risk assessment to determine when and how the restrictions may be eased in prisons. This risk assessment includes: reviewing the physical access in-reach services provided to the prisons; reviewing how and when physical visits with families may resume; and reviewing regime management plans currently in place, which restrict the movement of prisoners around the prison and impacts on out-of-cell and yard time.

14. Contact tracing:

On 23 June 2020, details of prison-led contact tracing to prevent outbreaks of COVID-19 in prisons in Ireland were published by Oxford University:

- XLV. The IPS National Infection Control Team, in collaboration with the National Quality Improvement (QI) team and Health Service Executive (HSE) in Ireland, implemented a programme to develop and train in-prison contact tracing teams (CTTs), with the aim of preventing and controlling outbreaks. CTTs were run by prison staff with experience of working with detainees, prison IT systems and CCTV. Protocols for undertaking contact tracing for both detainee and staff cases of COVID-19 were established. The aim of this programme was to enable the IPS to assist public health in the early identification of people that may have been exposed to COVID-19 and take action to prevent onward transmission.

- XLVI. All 12 prisons and the two support agencies, Operational Support Group (OSG) and Prison Service Escort Corp (PSEC), within the IPS now have fully functional in-prison CTTs. Every CTT has responded to at least one case of highly probable or confirmed COVID-19, undertaken contact tracing and instigated quarantine of contacts.
- XLVII. The Irish Prison Service concludes that a partnership approach with development of prison-led CTTs can provide an effective mechanism for contact tracing of COVID-19 cases within the prison setting.

15 Recent developments:

- XLVIII. On 24 June 2020, the Irish Prison Service announced that physical family visits would recommence from 20 July 2020. Visits are limited to one visitor for one 15-minute visit every two weeks; video visits take place on alternate weeks or where it is chosen instead of a physical visit. Physical visits take place behind screens, face-masks must be worn, and social distancing must be observed. From 17 August 2020, one child aged under 18 may accompany the adult visitor.
- XLIX. On 20 July 2020, the Office of the Inspector of Prisons published a briefing on the experiences of prisoners who were ‘cocooning’. It found that measures to protect the physical health of prisoners for reasons of age or chronic health conditions came at a “significant cost” to the mental health and wellbeing of those people subject to special measures conditions. The briefing includes a number of recommendations to maximise the dignity and autonomy of such prisoners, and highlights the need to promote social contact, exercise and communication around healthcare.

16 Summary:

- L. As of 26 May 2020, there had been no confirmed case of COVID-19 among prisoners in Ireland. On that date, the number of confirmed cases of the coronavirus diagnosed in the Republic of Ireland was 24,735, with an overall death toll of 1,615.
- LI. The success in keeping COVID-19 out of Irish prisons to date can be ascribed to public health-led preventive planning and action by the Irish Prison Service and the Department of Justice & Equality, as detailed above; this includes the reduction of the prison population by more than 10% since the start of March 2020.
- LII. The Minister for Justice has stated that actions taken by the Irish Prison Service are consistent with the prison specific guidance for the management of COVID-19 issued by the World Health Organisation (WHO).
- LIII. The Irish Penal Reform Trust (IPRT) has long-campaigned for: a reduction in prison numbers; single-cell accommodation as standard across the prison estate; access to toilets in private for all prisoners; for prison healthcare services to come within the remit of the national health service (HSE); family video-calls; access to e-learning; and more. We hope that positive reforms introduced in response to the COVID-19 crisis will be retained in future.

LIV. Nevertheless, public health-led restrictions introduced in prisons in response to the COVID-19 pandemic have had significant impact on prisoners' rights and regimes and made prison conditions very harsh; therefore, it is vital that such restrictions are now eased in line with national health guidance on residential and care settings in the community.

17. Assessment of effectiveness of measures introduced in Ireland:

LV. It is my opinion that early planning and preventive actions taken by the Department of Justice & Equality and the Irish Prison Service, including the structured release of more than 450 prisoners, has been effective in controlling the risk of an outbreak of COVID-19 among the prisoner population in Ireland.

LVI. This opinion is based solely on information provided by the State; there are no published independent inspection or monitoring reports available.

Declaration:

I, Fíona Ní Chinnéide, DECLARE THAT:

I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged. I confirm that I have complied with and will continue to comply with that duty.

I confirm that I have not entered into any arrangement of payment of fees.

I know of no conflict of interest of any kind, other than any that I have disclosed in my report.

I do not consider that any interest that I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

I have shown the sources of all information I have used.

I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.

I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.

I understand that:

- a) my report will form the evidence to be given under oath or affirmation;
- b) the court may at any stage direct a discussion to take place between experts;
- c) the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;
- d) I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.
- e) I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.

STATEMENT OF TRUTH

I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.

SWORN by the said Fíona Ni Chinnéide, Executive Director,
at

21st of August 2020