

# Monitoring Prisons in Europe: Understanding Perspectives of People in Prison and Prison Staff

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*Prison monitoring has been promoted by international human rights bodies as a way to support the prevention of torture and ill-treatment in prison. However, there has been very limited examination of the operation of prison-monitoring bodies, especially from the perspective of those most affected by their recommendations: those who live and work in prisons. This article draws on interviews conducted with people living and working in a Scottish and a Norwegian prison to explore how they perceive a long-standing prison-monitoring body, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The article provides an examination of the benefit and utility of CPT recommendations from the point of view of people in prison and prison staff. The study further reveals that the effectiveness of CPT monitoring in prisons may be considered in terms aside from state implementation of recommendations and should include how people in prison see its work, its impact, its power to persuade, and its connection to the outside world. Through taking a prison-centered approach, the article contributes to wider discussions on whether and how human rights frameworks can alter experiences of punishment.*

## INTRODUCTION

Prison monitoring has become a key feature of international human rights norms and practice concerning the prevention of torture and ill-treatment in prisons, with advocates arguing that it is fundamental to ensuring accountability for the operation of prisons (Deitch 2006; Carver and Handley 2016). With the establishment of the

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European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in 1987 and the more recent adoption of the United Nations (UN) Optional Protocol to the Convention against Torture (OPCAT), we see an increasing emphasis on the use of independent forms of oversight to prevent human rights violations in places where rights are particularly vulnerable.<sup>1</sup> While the objective of prison monitoring under international human rights law is to ensure human rights standards are upheld behind the prison walls, the very concept of prison monitoring has until recently faced little exploration or criticism (Cliquennois and Snacken 2018). We know little about how such bodies operate in practice, how their recommendations are received and implemented, and whether they are effective. Indeed, there is no consensus on what constitutes effective prison monitoring (Padfield 2018). The acceptance of recommendations by states and authorities has become a benchmark by which to examine the operation of prison oversight bodies, with little assessment of the views of those most affected by these recommendations—people in prison and staff.

Increasingly, however, researchers seek to define effective prison monitoring—from Nicola Padfield's (2018, 57) call for "complex accountability mechanisms and clearer rules" to Jamie Bennett's (2014) caution against an "audit explosion" to Cormac Behan and Richard Kirkham's (2016, 1) consideration of the impact of "penal culture and power balances." Monitoring bodies have similarly developed an understanding of the essential components that underpin and define the makings of effective monitoring, including operational independence and financial autonomy, a commitment to confidentiality, unfettered access to information, and the ability to carry out visits (UN Subcommittee on Prevention of Torture 2010; Svanidze 2014).<sup>2</sup> However, efforts to give substance to the concept of effective monitoring have thus far not included an analysis of what effective monitoring might look like from the perspective of the prison—that is, those who live and work within its walls. Much of our understanding of how monitoring operates in practice remains at the level of state responses to monitoring bodies—whether, and to what extent, states have implemented OPCAT, for example (Hardwick and Murray 2019; Aizpurua and Rogan 2021) and how states have responded to recommendations of the CPT (Cernko 2014; Daems 2017; Lappi-Seppälä and Koskeniemi 2018; Aizpurua and Rogan 2019).

This absence speaks to a wider lack of analyses of the experience people living and working in places of detention have of human rights protections in places of detention (Murphy and Whitty 2007; Piacentini and Katz 2017; Armstrong 2018). Assessments of human rights monitoring in prisons currently prioritize the voices of state and supranational bodies over those most directly affected by human rights implementation. This institution-centric view of the operation of law is one that law and society scholars have long challenged. Moreover, the lack of attention to the perspectives of people in prison on how human rights bodies work means that our understandings of the experiences of being in prison are also limited. We know little of how a person's "penal consciousness," a term closely related to legal consciousness, is affected or otherwise by the presence or operation of human rights-monitoring bodies (Sexton 2015). While there has been

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1. Optional Protocol to the Convention against Torture, Doc. A/RES/57/199, 18 December 2002.

2. European Prison Rules, Committee of Ministers Recommendation REC(2006)2-rev, 2020.

some analysis of how people in prison conceive of rights in the context of complaints or grievance procedures (Calavita and Jenness 2014; Dâmboeanu, Pricopie, and Thiemann 2020), and evidence of low awareness of rights amongst prisoners (Karamalidou 2017), thus far, scholars have not explored the connections between perspectives on human rights-protecting bodies and legal or penal consciousness.

In response to these absences, this article examines how people living and working in prisons perceive an established, wide-reaching, and long-standing international prison-monitoring body, the CPT. We set out with three main objectives: first, to examine what is effectiveness in prison monitoring from the point of view of those most directly affected by it—people in prison and prison staff. Second, we question how the perspective of people living and working in prison translates into recommendations and the human rights standards that underpin them. Finally, we focus on the interaction of the views of people in prison on prison monitoring and their experiences of being rights holders. Uniquely, this article draws on empirical research conducted in 2019 in one Norwegian and one Scottish prison to examine how people living and working in prisons view the CPT and its recommendations. This is done in two ways: first, by assessing how prisoners and staff perceive recommendations made by the CPT and, second, by exploring how prisoners perceive the CPT more broadly.

## UNDERSTANDING THE WORK OF PRISON-MONITORING BODIES AND HUMAN RIGHTS-BASED RECOMMENDATIONS

Analyzing how people living and working in prisons perceive the work of an international prison-monitoring body speaks to several strands of scholarship. There is a growing body of work exploring how human rights bodies connect with those “on the ground” or those most directly and ultimately affected by their work. Sally Engle Merry (2006, 1), for example, argues that, in order for human rights bodies to be effective, they must be able to translate standards and norms into “local contexts of power and meaning.” Further to this, Julie Fraser (2019) queries the effectiveness of state-centric approaches to domestic implementation of human rights, and Abdullahi An-Na’Im (2016) proposes a shift from a state-centric human rights enforcement paradigm to one that is “people-centered” and, therefore, more accessible and impactful in the local context. Within the direct context of prison, we see limited examination of how staff and people in prison conceive of human rights. This is so, even while there is a well-developed body of research on prisoners’ experiences of imprisonment, rooted in the work of Gresham Sykes (1958) on the pains of imprisonment, which explores the weight, breadth, depth, and tightness of the experience of a prison sentence (Crewe 2011). This work, however, has yet to engage substantively with the interaction between a person’s experience of punishment—what Lori Sexton (2015) calls “penal consciousness”—and their awareness of, or encounters with, bodies established to protect their human rights.

We know little of how or whether the presence or work of human rights-monitoring bodies shapes how people in prison see themselves or their treatment by the state. Neither law and society nor penological scholarship has explored fully how human rights frameworks are actually instantiated in the experience of people

living and working in prisons. Cormac Behan (2006) posits that prisoner perceptions of, and engagement with, rights is contingent on the availability of opportunities to engage in civic participation, though, as Laura Piacentini and Elena Katz (2017) note, we simply know almost nothing of how people in prison experience human rights. Sophie van der Valk, Eva Aizpurua, and Mary Rogan (2021) have found that people in prison may not even be aware of prison-monitoring bodies and may question their authenticity or credibility, with Elizabeth Abati and colleagues (2018) express skepticism about international human rights bodies and their ability to hold states to account.

Going further, Sarah Armstrong (2018) has called upon scholars to question whether human rights norms, often accepted uncritically, actually operate in positive ways in punishment settings. When it comes to prison staff, there has also been an increase in research on how they experience their work (Bennett, Crewe, and Wahidin 2007; Liebling, Price, and Shefer 2011; Arnold 2016) but, correspondingly, limited examination of how oversight bodies are viewed by them. A key exception is the work on prison managers by Bennett (2016), which shows a good deal of skepticism concerning oversight and feelings of being burdened by oversight-related work amongst prison managers. Therese Murphy and Noel Whitty (2007) have also found that prison managers view human rights as “risk”—matters reduced to the level of a target for a report or the source of a threat of litigation. This lack of understanding of how people living and working in prison engage with prison-monitoring bodies has both theoretical and practical consequences. James Scott (1999) writes of the importance of not overlooking or erasing what he calls “*mètis*,” a complex conglomeration of practical experience, know-how, and wisdom, which is a term that “denotes the knowledge that can only come from practical experience,” when seeking to standardize, regulate, or order aspects of social life (Scott 1999, 7). Where there is disconnect between the prison’s *mètis* and the formal actions of prison monitors, the work of those bodies may be both less effective and less legitimate.

Recommendations are the primary tool through which human rights-monitoring bodies “speak” and seek to influence practice (Aizpurua and Rogan 2021). They are therefore a critical vector by which human rights monitoring enters the penal space. The emphasis on recommendations is a common feature of all bodies that operate on a preventative basis, including Article 19(b) of the OPCAT. While recommendations are viewed as key features of the work of torture prevention bodies, we have yet to see assessments of how those recommendations are actually received by those most directly affected by them.

The following examination of perspectives on CPT recommendations elucidates areas where recommendations are welcomed and others where there is a mixed view or outright disagreement by prison and government alike. The focus on recommendations offered here is useful to contribute to discussions of what constitutes effective prison monitoring because recommendations issued by the CPT require state responses and are likely to be a locus for impact. Through understanding how people living and working in prison perceive of the CPT and its recommendations, this article raises questions around making recommendations and also contributes to the larger projects of assessing the effectiveness of prison monitoring and how human rights protections meet the experience of those living and working in prison.

## THE CPT

The CPT was established in 1987 by the Council of Europe under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>3</sup> The CPT visits places of detention across Europe to examine the treatment and conditions of persons deprived of liberty. The CPT's mandate is to collaborate with states to prevent treatment and conditions that may lead to violations of the European Convention on Human Rights's (ECHR) prohibition on torture and inhuman and degrading treatment (Bicknell and Evans 2017).<sup>4</sup> In this way, the CPT does not process individual complaints against states, nor is it a judicial body. The objective of CPT in-country visits, which have been carried out since 1989, is to examine treatment and conditions in places where people are deprived of their liberty. CPT observations and recommendations both reflect and contribute to legal debates concerning Article 3 of the ECHR (Morgan and Evans 1999; van Zyl Smit and Snacken 2009).

The CPT visits take two forms—periodic and ad hoc—where the state is made aware of the CPT visit a year in advance but is not provided with specific visit dates (periodic) or given very little notice of a visit (ad hoc). Whereas most member states receive a periodic visit approximately every four to five years, ad hoc visits are carried out when “required in the circumstances.”<sup>5</sup> More recently, the CPT has reduced the number of planned periodic visits in order to undertake more ad hoc or “rapid reaction” visits (CPT 2020). A CPT visit delegation may be comprised of up to ten delegates, inclusive of CPT members, expert assistants, and representatives from the CPT Secretariat, and a visit may take place over a few days or up to a couple of weeks. The forty-seven CPT delegates represent each of the Council of Europe member states and are selected based on “high moral character” and “competence in the field of human rights or having professional experience in the areas covered by this Convention.”<sup>6</sup>

Following a visit to a place of detention, the CPT draws up a report that is transmitted to the respective Council of Europe government.<sup>7</sup> Reports contain three types of observations: comments, requests for information, and recommendations, which are based on visit findings and reviews of national penal policies and practices. The recommendations-making mechanism is central to the work of the CPT, and it is the only type of observation that requires state action (O'Connell, Aizpurua, and Rogan 2021).<sup>8</sup> The CPT uses recommendations to impart on governments a degree of pressure to ensure the protection of human rights standards in prison. However, CPT recommendations are not binding, and, therefore, implementation is wholly reliant on cooperation with national authorities.

Government response reports are submitted to the CPT within six months of receiving a CPT report, and both the CPT and government response reports remain

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3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS no. 126, 1987 (ECPT).

4. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, 213 UNTS 222.

5. ECPT, Art. 7(1).

6. ECPT, Art. 4(2).

7. ECPT, Art. 10.

8. ECPT, Art. 10(1).

confidential unless the state allows the CPT to make the reports public (Bicknell, Evans, and Morgan 2018, 53–54). States may also elect to allow automatic publication of reports. Alongside its visits and corresponding reporting activities, the CPT engages in high-level talks with government officials and can exercise its ability to make a public statement. This may occur under Article 10(2) when a state party “fails to co-operate or refuses to improve the situation in the light of the Committee’s recommendations.” As of November 2021, the CPT carried out 477 visits to countries across Europe, published 437 visit reports, and issued ten public statements. Given the long-standing nature of the CPT, its approach to monitoring has informed the work of other monitoring bodies, including the UN Subcommittee for the Prevention of Torture. The CPT offers a very useful subject for analysis of prison monitoring given its influence and wide geographic reach.

The CPT has long faced an implementation gap (Visschers and Daems 2017). In fact, the CPT commented on this situation in its *Twenty-Fourth General Report*:

[I]t has been obliged to repeat recommendations made in the context of earlier visits, having found no significant improvement or, in some cases, even a worsening of the situation. In the same vein, the responses of some states parties limit themselves to merely invoking the domestic legislative framework, whereas the CPT’s recommendations in question pointed to the need for practical improvements, policy changes or even the amendment of legislation. (CPT 2015, 6)

Compounding the CPT’s challenges with implementation of its recommendations, the CPT does not have a formal supervision mechanism to monitor compliance and implementation of recommendations, which means that the CPT monitors implementation through subsequent visits and its reporting mechanism as well as through high-level talks with government officials.

Research on CPT recommendations to date has focused on state responses to CPT reports. While, in different contexts, the locus of impact may be a particular region or jurisdiction rather than the national government, “state” is meant here as a governmental entity. Eva Aizpurua and Mary Rogan (2019) assess Spanish responses to CPT recommendations to determine trends in government responses to particular themes. Daniela Cernko (2014) incorporates interviews with prison officials to examine German government responses to CPT recommendations. Tom Daems (2017) elaborates efforts to examine state responses to CPT recommendations by devising a response typology to categorize the different ways in which the Belgian government responds to CPT recommendations. By analyzing CPT findings and recommendations in this way, Daems identifies an implementation gap that undermines the work of the CPT. Lappi-Seppälä and Koskeniemi (2018) explore and quantify Nordic state engagement with the CPT and, in doing so, further elaborate on Daem’s typology to categorize state responses to recommendations:

1. Acceptance: the state confirms the recommendation will be implemented or that changes have taken place.

2. Denial/Disagreement: CPT findings are openly questioned and recommendations criticized, the authorities allege the responsibility for the situation is not theirs or the state plays down the seriousness of the issue.
3. Non-compliance: the state does not contest the findings but also does not commit to making changes.
4. Evasion: either the state responds that further investigation is needed, that there is lack of clarity on an issue, provides impartial information, or simply does not provide a response to a recommendation.
5. Information provided: the state provides more information about the situation.

This response typology is referred to later in this article to characterize the ways in which the Norwegian and Scottish governments respond to CPT recommendations. Though valuable, the existing literature primarily assesses state-level activity, with the perspectives of those living and working in prison on the recommendations almost absent. The studies mentioned here contribute a much-needed analysis of CPT effectiveness by examining state responsiveness, but there is no complementary body of research to assess recommendations from the perspectives of people living and working in prison. This article remedies this omission and, in doing so, raises questions around monitoring bodies' approaches to making recommendations and also examines the limitations of assessing effectiveness through a state-centric lens.

## DATA AND METHODS

This article explores the perspectives of the CPT and its recommendations amongst people living and working in prisons in two Council of Europe member state prisons, which were selected for study based on the following criteria: (1) the year in which the prison was visited by the CPT, which was 2018 (recollection ability); (2) the type of CPT visit in 2018—we sought to include one periodic and one ad hoc visit to capture both types of CPT activity; (3) a European Union (EU)/European Economic Area (EEA) country with general population over one hundred thousand; (4) the likelihood of the report publication date enabling timely data collection (within one year of the CPT visit); (5) the language used in the country and CPT reports; and (6) the selection of a prison that accommodated women in order to enable a perspective of men and women in prison.

Given that CPT reports are either automatically published or are only published once they are approved by the state, the country selection criteria prioritized states that had received a visit from the CPT in 2018 and that also opted into automatic publication of CPT reports, thereby allowing for a shorter span of time to pass between the CPT visit and the publication of the report. The CPT visited eighteen countries in 2018 (eight periodic visits; ten ad hoc visits). Of the EU/EEA countries that experienced a periodic visit from the CPT in 2018, Norway and the Czech Republic allowed for the automatic publication of reports. The visit to Norway took place in May/June 2018 and to the Czech Republic in October 2018; Norway was selected for study on the basis that its CPT report would likely be published in advance of the Czech Republic's report (the publication of the Norway report was in January 2019; the publication of the Czech Republic report was in July 2019).

In considering the country that had experienced an ad hoc CPT visit, priority was placed on inclusion of a prison that accommodated women. Lithuania and the United Kingdom (UK) – Scotland visits fulfilled this eligibility criteria. Given the language ability of the researcher and the small population of women in prisons visited by the CPT (fifteen women) in Lithuania, the UK-Scotland was selected for study. In relation to prison selection, Ullersmo Prison in Norway was selected in consultation with the Norwegian Correctional Service, which assisted in establishing which prisons accommodated prisoners with longer sentences and, therefore, more opportunities to engage with people who were in the prison during the CPT visit. Ullersmo Prison was selected based on its relatively large population and because it accommodated people with long sentences, many of whom were foreign nationals. Her Majesty's Prison (HMP) Edinburgh – Ratho Hall, in Scotland, was selected for study because, unlike the other eligible women's prison, HMP Cornton Vale, HMP Edinburgh was not visited by the CPT following the 2018 visit; Cornton Vale received an ad hoc visit in October 2019. As two countries with relatively good histories of cooperation with the CPT, it cannot be said that the experiences related here are transferable to other settings, and we call for further research with a wider geographic spread.

Ullersmo Prison is a medium-security men's prison in Norway accommodating approximately 250 prisoners (Kriminalomsorgen, *n.d.*). The CPT visited Norway between 28 May and 5 June in 2018. Data collection for this case study was carried out over three weeks in May and June 2019, approximately one year after the CPT visit. In-prison research consisted of semi-structured interviews with nineteen people living in prison and eleven prison staff. The second case study prison was HMP Edinburgh in Scotland. The CPT's ad hoc visit to Scotland from 17 to 25 October in 2018, focused in part on the treatment and conditions of women in prison, presenting an opportunity to incorporate within the research the perspectives of people in a women's prison. HMP Edinburgh accommodates approximately one hundred women amongst a population of more than eight hundred men, resulting in operational challenges for prison management (Scottish Prison Service, *n.d.*). The CPT report in respect of Scotland was published in October 2019, allowing for two weeks of data collection in the prison in December 2019. Data collection comprised of semi-structured interviews with eleven people living in Ratho Hall (the women's wing within HMP Edinburgh) and ten members of prison staff.

Research ethics approval was applied for and granted by the Trinity College Dublin Research Ethics Committee. Research access was applied for and granted by the Norwegian Correctional Service and the Scottish Prison Service. As data collection took place at least one year after the CPT's visit, only people who were living and working in the prison during the CPT's visit the year prior were invited to be interviewed. A research liaison point of contact was established in each prison. To establish prisoner eligibility, the first author personally invited all prisoners who had been in the prison at the time of the CPT's visit the previous year. To avoid unnecessary review of files on all people in prison, establishing eligibility was an exercise completed by prison officials who told the researcher which prisoners were identified as eligible.<sup>9</sup> The invitation

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9. It is, of course, a possible limitation of the study that people who were in fact eligible were not so identified to the researcher.

to participate was made in person at least twenty-four hours in advance of the interview. Upon invitation, all of the participants were provided with an information booklet and a volunteer form and envelope; verbal information was also provided to each potential participant. These materials were provided in English and Norwegian to prisoners in Ullersmo Prison and in English to prisoners in HMP Edinburgh. The volunteer forms included an option to select the need for an interpreter, which was availed of on two occasions in Norway. Prisoners either elected to complete the form and immediately return it to the researcher or gave the completed form in the envelope to a prison officer who then gave the forms to the researcher. To complement the in-person invitations, posters were displayed around the prison to provide information on the study and raise awareness of it and the first author's presence. A total of twenty-two women in HMP Edinburgh were invited to be interviewed; eleven of whom participated in an interview. In Norway, thirty prisoners were invited to be interviewed; twenty of whom accepted the invitation, and nineteen of whom participated in an interview.<sup>10</sup>

The eligibility criteria for staff participants was similar to that of prisoners in that they had to have worked in the prison during the CPT's visit. In Ullersmo Prison, information booklets and posters about the research were displayed in staff common areas in both Norwegian and English with contact details provided to arrange for an interview. Staff were also personally invited by the researcher while they were in the prison. In HMP Edinburgh, prison staff working in the women's area of the prison were invited to be interviewed by the researcher; they were provided with written and verbal information at the time of invitation. In both prisons, staff either indicated their intention to participate directly to the researcher or to the research liaison officer, who shared that information with the researcher. Prison management participated in interviews in both prisons. Given the number of participants and the need to ensure confidentiality, details of staff interviewee ranks and grades are not provided.

All interviews took place in the prison, in private rooms (out of the hearing of staff in the case of people in prison, but sometimes not out of sight), and were audio-recorded with the consent of the participant. Interviews with prisoners and staff ranged from thirty minutes to two hours. The nature of the prison regime in HMP Edinburgh was such that interviews could only be conducted in two one-hour and forty-five-minute blocks each day, which in many instances resulted in two interview sessions with each participant. In Ullersmo Prison, prisoners were permitted to move about the prison grounds independently, which allowed for interviews to be completed in one session. The interview schedules for prisoners and staff, which were expert reviewed and pre-tested, were designed to capture the experiences of people who had, and had not, engaged with the CPT during the visit. The prisoner interview schedule included the following thematic areas: (1) demographic information; (2) rights holding as a prisoner; (3) CPT awareness; (4) recommendations; and (5) the CPT's impact. Similarly, the staff interview schedule included the following: (1) background; (2) awareness of the CPT; (3) experience of monitoring; (4) recommendations; and (5) the CPT's impact. Upon completion of the interview, all participants were provided with a debriefing sheet that outlined researcher contact and support service details. In

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10. One of the two participants who sought to avail of an interpreter was not able to engage in an interview because the interpreter declined to provide interpretation services upon meeting the prisoner.

Norway, of the eleven staff who participated in an interview, eight were men and three were women, with six people having worked in the Norwegian Correctional Service for one to fifteen years and five people for more than fifteen years. The average age of people in prison who participated in the study was forty-two, and the time spent living in the prison ranged from one year to four years and four months. Of the nineteen prisoner participants, ten were Norwegian, two were from countries in the EU, and seven were from other countries. In Scotland, of the ten staff who participated in the study, six were men and four were women, with five people having worked in the Scottish Prison Service for one to fifteen years; and five people for more than fifteen years. The average age of the women in prison who participated in an interview was forty-two, all of whom identified as Scottish. The time women had spent in prison ranged from one to eleven years.<sup>11</sup>

Participants were asked about their experience, if any, of engagement with the CPT and were informed about the CPT's mandate and functions. They were asked their opinion about a number of CPT recommendations, some general in nature and some specific to the prison. CPT reports transmitted to Norway and Scotland in the aftermath of the CPT's visits contained many recommendations, and the ones discussed below are a snapshot of the CPT's focus in each prison case study. Finally, to ascertain the value of the CPT, participants were asked about their perceptions of the monitoring body. This exploration of prison perspectives on the CPT's monitoring illustrates how the effectiveness of monitoring can be interpreted in ways aside from state compliance with recommendations.

As will be seen below, in our analysis of the views of the CPT's recommendations, we examine responses of people in prison and prison staff together. This is a novel approach given that studies tend to examine these groups separately. We argue that, for this study, exploring these groups together has value. As the analysis unfolded, we were struck by the perhaps surprising finding that both people in prison and prison staff shared similar views of some of the recommendations. This finding indicates that there are shared experiences of prison life amongst both groups that are worth considering and that merit further research. Where experiences varied, we report on these differences and, in the latter part of the article, focus exclusively on the views that people in prison have of the CPT given that this group are subject to particular human rights protections that the CPT seeks to monitor.

Interview transcripts were thematically coded and analyzed in NVivo using a deductive, semantic approach to thematic analysis (TA). Analysis comprised six phases whereby data was organized, summarized, and interpreted to identify and theorize around themes, their meanings, and broader implications (Braun and Clarke 2006). The flexibility afforded by TA allows for a recursive rather than linear approach to coding and analysis, which was fundamental to developing an understanding of how participants attribute value and respond to the CPT. Following this analysis, research findings were shared with the case study prisons in the form of briefing papers, and, in

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11. More detailed background information has been omitted for reasons of confidentiality.

the case of HMP Edinburgh, the first author prepared an accompanying presentation that was shared with the prisoner population by way of the in-cell prison channel.<sup>12</sup>

## CPT RECOMMENDATIONS FROM THE PERSPECTIVE OF PEOPLE IN PRISON AND STAFF

A key theme to emerge from the data concerned the conflict between certain CPT recommendations and the views of people in prison and prison staff on whether the action suggested was necessary or indeed desirable. As described above, the growing literature on responses to the CPT recommendations focuses on state-level activity. The CPT itself advocates for measuring state implementation of its recommendations as this is one way to explore the effectiveness of monitoring (CPT 2015). However, as this analysis shows, implementation does not necessarily mean that a recommendation is effective, especially in situations where it might not be beneficial or appropriate to implement a CPT recommendation. The following sections explore prisoner and staff responses to CPT recommendations to assess their effectiveness—that is, to determine the implications of CPT recommendations when implemented in the prison. Prisoner and staff responses to CPT recommendations are presented alongside state responses, which are characterized according to the typology set out by Lappi-Seppälä and Koskeniemi (2018) and Daems (2017): agreement; denial/disagreement; non-compliance; evasion; and information provided. The intention of exploring recommendations from the perspective of those living and working in prison is to identify areas where these actors may not agree or may have alternative suggestions in response to CPT recommendations. In instances where there are challenges to the benefit of a CPT recommendation, questions arise about assessing the effectiveness of monitoring through the prism of state compliance.

### CPT Recommendations and a Norwegian Prison

The Norwegian prison system is often heralded as exhibiting a specific “Scandinavian exceptionalism” in its approach to humane imprisonment. However, scholars encourage caution against this conceptualization of Norwegian prisons, instead referring to them as systems of control and pain delivery (Dullum and Ugelvik 2012). The CPT has carried out six visits to Norway since 1993, and while acknowledging the merits of the Norwegian model of imprisonment, the CPT has also been key to advancing reform.

This section introduces two recommendations issued to the Norwegian government following the CPT’s visit to Norway in May and June 2018. These recommendations deal with the practice of medication distribution and the process for conducting strip searches. Through examining the state response alongside prisoner and staff perceptions of these recommendations, it becomes possible to raise questions

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12. The original project included in-prison workshops as a way to share findings with prisoners and staff. Due to COVID-19-related restrictions on travel and visits to prisons, workshops were not feasible, and alternative arrangements were made to ensure in-prison dissemination.

about the effectiveness of CPT recommendations. That is, do people responsible for prisons and those living and working in prison agree with the CPT's approach? If not, what are the implications of the CPT's recommendations, and how could the CPT improve upon its approach? Though this analysis is rooted in specific recommendations for particular prisons, the findings presented here raise broader questions about how the activities of prison-monitoring bodies are grounded.

### *Medication Distribution by Staff*

Ullersmo Prison relies on prison officers to distribute prescription medications to prisoners on the evenings and the weekends because there are no health-care staff available to carry out this duty during these times. The CPT had “misgivings” about this practice and recommended that “prescribed medicines should preferably be distributed in all prisons by qualified health-care staff” (CPT 2018c, 90). The Norwegian government did not agree with this recommendation, which can be characterized as denial/disagreement, according to the typology set out by Lappi-Seppälä and Koskenniemi (2018) and Daems (2017). Instead, it insisted that, in situations where a prisoner is deprived of medicine for safety reasons, prison officers are tasked with providing practical assistance in distributing medication rather than health-care provision. The government explained that officers are trained in this practice, but it conceded that more could be done to coordinate with the health-care authority to assist with officer training (CPT 2019b, 23). While some prisoners had no opinion or did not know about this recommendation, mainly because they had no experience of receiving medication from prison officers, there was general agreement with the recommendation across both the prisoner and prison staff participant cohorts. In fact, all members of staff who participated in the study agreed with this recommendation, which was attributed to them being unaware of the types of medication they were distributing (a confidentiality measure) and therefore being unable to answer questions or respond to problems. One member of staff explained: “Yeah, I hate that practice. I get angry every time I work in the weekends and morning shift and I have to give out medicine because we’re not trained in that area and we’re not quite sure what we’re giving out” (020NOR; staff). Prisoners who agreed with this recommendation largely did so on the same grounds as staff. For example, “I think that’s a good one because I’ve seen first-hand that the guards are not helpful, I guess. If an inmate wants to or needs to change medication, they can’t do that” (014NOR; person in prison [PIP]).

Interestingly, a number of prisoners determined that there were much more important health-care-related issues worth addressing than medication distribution. Long wait times to access treatment were a repeated concern, as one prisoner explained: “They (the CPT) missed for example this long waiting list, they miss it. . . . I don’t care if it’s the officer there (distributing medication)” (005NOR, PIP). Similarly, prisoners expressed frustration with the provision of mental health care in the prison:

I needed psychology. But I write a note, but I didn’t get answer. . . . But I told you, my body no problem. I can get pain, no problem, two months. I can wait for appointment, doctor appointment. But psychology is very difficult because

I need - some night I can't sleep. I had many problems. One month, two months, I was depressed. After I had one nurse, (name removed) she's very good. She helped me. She helped me about that problem I had. Anyway, it's difficult to get psychology. I want to tell this. (015NOR, PIP).

The CPT addressed the need for Ullersmo Prison to recruit an additional full-time psychologist in its report, but it did not commit extensive attention to this issue (CPT 2018c, 43).

In responding to this CPT recommendation, the Norwegian government expressed disagreement with the CPT's critique of the practice of medication distribution, ultimately replying that the task was the responsibility of the national health-care authority and not that of the prison service. However, people living and working in prison largely agreed that doing away with this practice would be of benefit to the prison. The responses to this recommendation indicate the CPT's approach to the practice of medication distribution in the prison would be effective and of benefit to the prison. However, interviews with prisoners revealed that this recommendation does not necessarily address a pressing issue in the prison and that the CPT's attention may have been more beneficial if it was to substantively address access to health-care services in Ullersmo Prison.

These findings provide evidence of the importance of recommendations being grounded in the lived experience of those living and working in prisons. In this case, the CPT's perspective chimed closely with that of staff and prisoners. However, the official state-level response was one of "denial/disagreement," suggesting that those officials who drafted the reply to the CPT were not in agreement with these prison-level perspectives or did not consult them. Here, we see a considerable disconnect between the formal state position and that of those who live out the reality of the circumstances giving rise to the recommendation. This may not be wholly unsurprising, but it shows the importance of close attention to the nuanced position behind a formal response to prison monitoring. However, it is also notable that the matter that the CPT elevated to the status of a recommendation was not the most important issue in the area of health care for people in prison. This suggests the need not only for prison-monitoring bodies to consider their methods for ensuring that matters of the greatest concern are optimal but also for more research into when, why, and how there is a gap between what a monitoring body identifies as a critical issue and what issues those in prisons view as having the highest importance.

### ***Strip Searches***

Strip searching is a significant part of daily life in Ullersmo Prison, whereby prisoners are subjected to searches before and after all visits. The CPT recommended three changes to this practice: (1) that prisoners be informed in advance about the possibility of undressing in stages when considered necessary; (2) that strip searches must only be performed by staff members of the same sex as the prisoner; and (3) that searches be conducted only on the basis of an individual risk assessment (CPT 2018c, 106). The Norwegian government responded to each component of this recommendation,

but it first noted that the practice was performed in compliance with applicable legislation, which requires that searches be performed “in a way that causes least possible embarrassment or humiliation to the prisoner.” That being said, in response to the first recommendation about undressing in stages, the government contended that a “two-stage strip search would create more security challenges”; this response can be characterized as denial/disagreement. The government then reminded the CPT of the underlying purpose of the rules governing strip searches, “which is to maintain security at the prisons” (CPT 2019b, 30–31).

In response to the CPT’s recommendation on same-sex strip searches, the Norwegian government agreed in principle and noted that, in some cases, it would be impossible to guarantee implementation of this recommendation due to issues with staff availability and scheduling. The government further commented that, in the event that a strip search has to be performed by a person of the opposite sex, another person must be present during the search. Given that the Norwegian government’s response does not contest the CPT’s findings but, rather, determines that it is not possible to amend the practice, this response can be characterized as non-compliance. The final component—individual risk assessment as the basis for strip searches—received a denial/disagreement response from the state. It asserted that strip searches can be conducted “as a matter of routine or on a random basis,” meaning that “neither suspicion nor specific grounds are necessary conditions for conducting examinations.” The Norwegian government rejected the CPT’s recommendation in this regard based on its assertion that strip searches “should not be a matter of individual assessment in each individual case, since body searches of prisoners—both routine and random—are a fundamental requirement for maintaining security in Norwegian prisons” (CPT 2019b, 30–31).

Unlike the previous recommendation, whereby the CPT, people in prison, and prison staff were in agreement, the CPT is somewhat at odds with both the state and the perspective of staff and people in prison concerning the practice of strip searching, though there is nuance here also. With respect to the first element of the recommendation to undress in stages, prisoners and staff agreed that this practice was beneficial. In some cases, participants explained that this suggested change was already being practiced in the prison. One member of staff commented: “Yeah, changing. First the shirt, undershirt, then the trousers, . . . not total naked anymore” (018NOR, staff). People living in the prison noticed recent changes to this practice and attributed the changes to the CPT: “So this, last thing you said, they have recently started to do. Some of them have asked them to take this on and keep this off” (011NOR, PIP). Another prisoner commented: “For sure they didn’t think about it themselves. 100% sure they didn’t wake up one day, ah I think we will do this search. They got it from (the CPT) for sure” (007NOR, PIP).

The issue of same-sex searches received similar agreement, with prisoners and staff noting that in the event that a woman is present during the strip search of a male prisoner she turns her back as necessary. Notably, one staff member remarked that this recommendation is not as easily implemented as might be expected because it is not always clear that a prisoner would prefer a same-sex strip search. The staff member explained: “Sometimes they want women, because they have been abused by men, or they don’t like young men, or something like for their pride” (031NOR, staff). This person also

commented on experiences of strip searches for transgender people in prison, which were illustrative of the challenges associated with this recommendation.

In regard to the final recommendation—to conduct strip searches only on the basis of an individual risk assessment—there was widespread consensus amongst prisoners and staff that the CPT’s approach would not be of benefit to the prison. Many prisoners pointed out the complications that such a practice would create within the prison environment and culture. These included prisoners feeling targeted for being “risky” and therefore being treated unfairly as well as challenges with prisoners bullying each other to bring in paraphernalia and drugs. Prison staff shared the same concerns: “I don’t think it’s practical and I think you would get pressure against inmates who don’t deserve to get that pressure. Because the system out here, we have our things and the inmates have their system, so I think that would, especially the weaker people are low risk and (will) be under more pressure to do it for them” (018NOR, staff). Those prisoners who did agree with this recommendation did so on the grounds that they wanted to see drugs removed from the prison. However, they also acknowledged that strip searching is not effective at stopping drugs from entering the prison: “Because, when you are in, you learn about how things come in. And everybody knows the strip search, everybody knows how to avoid. And those things, they can’t do nothing about anyway” (014NOR, PIP).

When asked about preferable alternative methods for selecting prisoners to undergo a strip search, prisoners either responded that no one should be subjected to this practice or that people should be randomly selected: “Yeah, random. So you go and nobody know if I tell you that you are weak (and) I tell you to bring it in. I don’t know if you’re going to get catch or not, you know? So, it’s random” (009NOR, PIP). Prisoners who disagreed with the CPT’s recommendations on how best to conduct strip searches did so on the basis that they did not agree with or challenged the utility of the practice of strip searching; the recommendations were therefore a non-starter for these participants. Any effort to improve the process was not of value to them as they disagreed fundamentally with the practice itself:

I don’t agree with anything. I mean, we are here for doing time and we are not here to be humiliated by these fucking uniformed pricks. And, as long as you behave due to the regulation, it shouldn’t be necessary. (023NOR, PIP)

I would say this, how I told you, I would ask them straight, show me how many, things you found last month, one paper and show me how many people you strip searched and how many things you found. And then you have to ask yourself, where is the security in all of this. (011NOR, PIP)

The analysis presented here raises important questions about the utility of the suggested changes concerning strip searching as well as concerning how recommendations are formulated. With this three-part recommendation on strip searching, it is apparent that the CPT’s findings on this point may not sufficiently account for prison dynamics, resulting in a recommendation that if implemented could cause harm to prisoners rather than help them. The CPT’s methodology for developing recommendations remains

somewhat unclear; this research suggests the need to examine closely what people in prison think about a proposed recommendation.

The CPT's standards on the practice of strip searches are reflective of general prison rule standards (Daems 2014, 81). However, if the Norwegian government were to accept the CPT's individual risk assessment recommendation, the prison environment would be changed significantly, possibly for the worse. There is limited understanding of the policy-making process by which human rights standards are created. By following the consensus position within human rights norms concerning strip searches, the CPT has suggested changes that would not be welcomed by many of those most acutely affected by such intrusive practices. Further research is necessary to see how widely this perspective is shared, but this research raises questions about the empirical basis for some human rights recommendations—specifically, are they drawn up in a sufficiently inclusive or practice-informed manner? We see a considerable disconnect here between human rights standards as drawn up by elite actors and those with lived experience. As Patrick Ewick and Susan Sibley (1998) and, in the penal context specifically, Lori Sexton (2015, 18) have shown, law is not a “fixed, remote entity that influences society in unidirectional ways.” This insight is apt to describe interactions between human rights protections, a monitoring body tasked with assessing the implementation of those protections, and people in prison.

These findings also speak to the work of Piacentini and Katz (2017, 2018) by providing a rare examination of how prisoners feel about their rights in one of the most sensitive areas of penal experience, indicating a discordance between formal rights protections and their views. More fundamentally, they lend credence to Armstrong's (2018, 411) position that human rights structures can, perhaps unintentionally, enhance the grip of penal power: “[N]ow that such frameworks and standards have taken hold and come to be the means of understanding good penal policy and practice, it is timely to consider their productive capacity.” To this statement, we can add the need for specific engagement between drafters of human rights standards and the experience of those who experience strip searching. Kitty Calavita and Valerie Jenness (2014) further describe people in prison and staff speaking different languages or speaking past each other when it comes to the understanding of rights. We can now add that outside agencies tasked with supporting human rights promotion in prison may also be speaking across these discourses, introducing concepts, strategies, and suggestions that may not align with the needs of those people they seek to protect. This phenomenon of “unintended consequences,” of course, is not limited to prisons, though there are multiple examples of court interventions in poor prison conditions ultimately cementing the presence of those regimes (Schoenfeld 2010; Guetzkow and Schoon 2015).

This finding also provides further evidence of the need for nuance in understanding effectiveness in prison monitoring. Here, the implementation of this particular recommendation might be viewed as a success in terms of state compliance, but the effects of such a change in practice may not provide the best outcome. By incorporating the perspectives of prisoners and prison staff to examine the CPT recommendations, it therefore becomes clear that state implementation of recommendations is not necessarily a strong indicator of the effectiveness of monitoring, and other ways of examining effectiveness that may include the perspectives of whether changes would have improved, or have improved, the lived reality of penal practice are also needed.

## CPT Recommendations and a Scottish Prison

The CPT has visited Scotland on seven occasions since its first visit in 1994. The 2018 visit was especially informative because the CPT focused on the treatment and conditions of women—a necessary task given long-standing critique of the approach of the Scottish Prison Service to the imprisonment of people in women’s prisons (Corston 2007). This section examines two CPT recommendations, addressing equal access to activities and admission screening for gender-based violence, in order to determine how the Scottish government and people living and working in HMP Edinburgh respond to, and perceive of, their benefit.

### *Equal Access to Activities*

In the prison selected as a research site in Scotland—HMP Edinburgh—women comprise a minority population amongst a larger male prisoner demographic; access to resources is therefore a challenge that disproportionately impacts women. To address this, the CPT recommended an “increase (in) the places available for work and purposeful activities for all categories of women prisoners at Edinburgh Prison to ensure that all women prisoners can benefit from these on an equal basis to male prisoners” (CPT 2018b, 102). The government responded in what can be categorized as agreement by conceding that the number of prisoner categories in the prison makes it difficult to provide equality in all aspects of the prison regime but that efforts were being made to offer additional programs to women. Further, the response acknowledged that “the Unit Manager for Ratho Hall has been tasked with increasing provision using creative approaches” (CPT 2019c, 62–63).

As might be expected, prisoners and staff agreed with the CPT’s recommendation to increase access to activities for women. Women living in HMP Edinburgh expressed frustration at the lack of access to work and activities and the compound effect this had on women’s confidence and their financial situation in the prison:

Totally agree. There’s no work for the lasses. There’s not much education. The guys get it all. It’s literally them that get . . . because they say it’s a man’s jail, they come first and they take priority over everything. So, the lasses do, like there’s only two work parties, woodwork and cards. (029SCOT, PIP)

(Give) other people jobs to get out of their room and feel better. Helps their confidence, motivation—there’s not a lot of jobs for us. (020SCOT, PIP)

And it would help girls with their money because a lot of girls don’t get people putting money in for them so they only have their small cell wage. (022SCOT, PIP)

A number of staff, however, expressed mixed feelings about what implementation of this recommendation would actually look like. One staff member responded: “We can’t get the males out to work that need to go out to work, let alone getting the females.

So, the balance seems to be yeah, we'll all be the same, we'll all be locked up. That's the equality, yeah, which is not really where we want to go. Yeah, you're all equal, you're all locked up" (003SCOT, staff).

With this CPT recommendation, the best of intentions are clear: the CPT would like to see women's access to activities be improved. However, an unintended consequence of this recommendation, if it were to be implemented with the goal of achieving formal equality, may be a decrease of access to activities for more prisoners at HMP Edinburgh. While prisoners and prison staff, and government alike, largely agreed with this CPT recommendation, they also exercised caution in how it would be implemented—that is, equality cannot be the objective because the consequence would be detrimental. Here, we see the importance of both understanding and acknowledging the views of prison staff when formulating recommendations. Understanding the practical constraints on action could enhance monitoring bodies' approaches to dialogue with the authorities. That said, however, the blame for reducing overall human rights standards in response to a recommendation cannot be laid at the foot of the CPT. There are multiple examples internationally of legal cases taken to vindicate rights having the perverse consequence of reducing rights protection, with Malcolm Feeley and Van Swearingen (2004, 466) arguing that prison litigation in the United States has resulted in the bureaucratization of prisons and the enhancement of penal authority. While there is no evidence that the Scottish prison authorities would reduce, or have reduced, access to activities for men in HMP Edinburgh in order to ensure equality of treatment—something the CPT would likely find highly problematic—the reaction to this recommendation indicates the importance of careful attention to how the actions of rights-protecting bodies can be responded to in ways that do not promote their aims.

### **Admission Screening**

All women in HMP Edinburgh are first admitted into the Scottish Prison System through Cornton Vale and Grampian prisons. As a result, all people living in the women's wing of HMP Edinburgh had experienced the admissions process at one of these prisons. The CPT noted inadequacies in the admissions process and recommended that it be further developed "to take into account the vulnerabilities of women prisoners." To do this, the CPT recommended the admission screening process be amended to "include a history of any sexual abuse and other gender-based violence" as a means to "inform care plans and prevent re-traumatization" (CPT 2018b, 86, 116). In its response, which can be characterized as agreement, the Scottish government noted ongoing efforts of the prison service to provide support to women upon admission as well as to include questions on "sexual abuse" and "gender-based violence" within the screening process (CPT 2019c, 130).

However, prisoners and prison staff had mixed opinions about the utility and value of this recommendation because they were unsure if the admission screening process is the right time and place to address these issues. This was, in part, because prisoners may experience a sort of "entry shock" upon admission to prison and may not feel prepared to discuss sensitive issues at that time (Wright, Crewe, and Hulley 2017, 231). Prisoners and staff noted on several occasions that it may be more appropriate to discuss abuse and

violence at a different time, when newly admitted prisoners may feel more comfortable. Some prisoners expressed the idea that the topics of sexual abuse and violence should be handled by someone aside from a prison officer or a fellow prisoner. However, all interviewed prisoners agreed that, despite the challenges of time and place, this recommendation was worthwhile if amended to address these problems. For example, one prisoner explained: “If I first came into prison and on reception they said, ‘Have you been abused? Have you been in an abusive relationship?’ I’d be like, ‘Wait a minute, who are you? Why are you asking me that? Why? What’s it got to do with you?’ But, it should be somewhere. I think it should be somewhere” (027SCOT, PIP).

Interestingly, a small number of prison staff were the only participants to completely disagree with this recommendation. This was because, as also noted by prisoners with mixed opinions, these prison officers thought they might not be best suited to undertake this responsibility:

I don’t think there’s enough people with the relative experience to actually get that across to the prisoners and to take that information in. . . . Imagine if you’ve just come into prison, I’m the first face you see, and I go, “have you had any other previous sexual assaults? Have you been, were you sexually assaulted when you were younger?” Nah, sorry, but that’s not for me. (008SCOT, staff)

One member of prison management suggested that the CPT might advocate a different approach to avoid asking newly admitted women overly sensitive questions: “Rather than screening as such for that sort of traumatising we should develop a process that just says - let’s assume that everybody’s had some sort of abuse in their past - and then that sort of means that we’re not retraumatising people by some of that process” (005SCOT, staff). The point made here is fundamental because it suggests a deeper examination of systemic problems of traumatization within the prison context, something that this CPT recommendation does not address.

The CPT has increasingly adopted this recommendation as a standard by which it examines prison admission screening processes for women. In fact, the CPT recommended similar changes to prison admission processes in Northern Ireland (CPT 2017), the Czech Republic, Romania (CPT 2018a, 2018d), and Denmark (CPT 2019a). However, interviews with people living and working in HMP Edinburgh – Ratho Hall reveal problems with executing this recommendation as it is currently articulated. Further, given the challenges associated with unmet need for mental health-care provision in prisons (Forrester et al. 2018), a recommendation such as this, if implemented, may lead to unintended negative consequences and traumatization for which there is no available, or lacking, treatment and care.

This finding provides further evidence of the importance of taking into account the perspective of people in prison and staff when creating recommendations and human rights standards. These products of elite actors require careful consideration of how they are to be implemented in practice. As such, the deliberations of those creating these human rights instruments would benefit from including the views of the groups included in this research. By contributing a novel approach that is inclusive of the views of people in prison and prison staff to assess the CPT recommendations, this research also problematizes the idea that the simple implementation of a

recommendation means monitoring is effective. In some situations, implementation may even cause challenges for the prison, as illustrated with the two examples above. Stand-alone assessments of state responsiveness to CPT recommendations may not always be suitable to determine the effectiveness of the CPT's human rights monitoring, especially because they do not sufficiently capture the realities of what it is like to live and work in prison. However, as the next section indicates, the recommendation-making activities of the CPT is not the only locus of interest when exploring the views of people in prison and prison staff on its work.

## ASSESSING THE VALUE OF CPT PRISON OVERSIGHT FROM THE PERSPECTIVE OF PRISONERS

Given that the CPT has carried out its monitoring and reporting activities for more than three decades, there is an overdue need to understand how prisoners perceive the value of the CPT. The CPT's engagement with people living in prison is limited to data collection-related interactions, and prisoners are not likely to be provided with the CPT's reports and recommendations. As will be seen, for prisoners, the effectiveness of CPT monitoring is not necessarily attributed to its recommendation-making ability but, rather, is very much related to a less tangible matter—the very existence of the body.

Scholarship on the work of oversight bodies tends to emphasize the attributes of independence (Steinerte 2014), free access and confidentiality of discussions (UN Subcommittee on Prevention of Torture 2010; Svanidze 2014), but much of this work is drawn from legal analysis or the practical experience of monitoring bodies themselves.<sup>13</sup> A recent study in the Irish context indicates that perhaps these elements of effective prison monitoring may not hold as much value for prisoners as one may think. When asked to select three criteria for good prison inspection, only 36.4 percent of 508 prisoners surveyed across three Irish prisons identified confidentiality as a component of strong inspection. Independence was considered essential to only 29.5 percent of participants, whereas 40 percent of participants considered the surprise nature of inspection visits to be valuable (van der Valk, Aizpurua, and Rogan 2021). Interestingly, for the purposes of this research, recommendation making also received a low “ranking,” with only 25 percent of participants selecting this component as a contributing factor to good oversight. While, on the one hand, these figures may indicate prisoners attribute little value to the function of prison monitoring, it may also be reflective of a fairly positive situation in Ireland; these numbers may be very different in other countries.

People in prison have seemingly low expectations of monitoring bodies, particularly in their capacity to upend the ways in which the prison functions and treats people in its care. However, the present study suggests that they nonetheless do attribute value to CPT monitoring. An analysis of the interviews identified three ways in which prisoners articulated the value of the CPT's monitoring:

- its impact on the prison environment during a CPT visit;
- the power to persuade relevant power brokers; and
- the connection it provides to the “outside” world.

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13. European Prison Rules.

Interviews with prisoners in Norway and Scotland revealed that the value of the CPT's prison monitoring is not only conceptualized in terms of the capacity for monitoring bodies to affect change through implementation of recommendations. This is also encapsulated quite clearly by a person living in Ullersmo Prison in Norway: "I don't know if it was waste of time, because I haven't seen any changes, . . . but at the same time, it is good because the more people that talk, the more information they get about how things are" (025NOR, PIP).

### The Value of the Visit

The CPT's visits to prisons are shrouded in a certain mystique, with accounts of the visit methodology, approach, and impact limited to descriptive overviews of the CPT's visit mandate (Evans and Morgan 1998; Morgan and Evans 1999; Bicknell, Evans, and Morgan 2018). However, interviews with people living in Ullersmo Prison and HMP Edinburgh revealed that a visit by the CPT, which it considers to be a method of data collection, holds considerable value for people in prison. This can be attributed to the changes that the prison makes in response to the presence of the CPT's delegation. Even for people in prison who had no knowledge of the CPT prior to the interview, there was a sense that because monitoring bodies can visit at any time, prison management performs in a corresponding way. As one person living in Ullersmo Prison said, "just that they know they can be monitored, that's a real impact. . . . Even if you are not able to visit so often . . . they know it can happen and then they will be sharper" (007NOR, PIP). This is exacerbated when the CPT is actually in the prison. While prisoners suggest monitoring bodies cannot capture the "real prison" because of perceived prison efforts to "hide" or "cover up" problematic issues, this process of "hiding" may be of benefit to people in prison. As a woman living in HMP Edinburgh explained, "Even though they're putting on a front for you coming, that front getting put on and the jail getting a wee bit of a scrub down before you come, is making it a wee bit cleaner for the folk that are there" (021SCOT, PIP).

However, other people expressed frustration with how the prison "hides" problems in response to monitoring. For instance, a young woman in HMP Edinburgh stated: "It's a big show like, what the fuck is going on, is somebody coming? Aye, stuff has to be put on to make us look better when it has never been done day-to-day, it's just only done for the inspectors coming in" (026SCOT, PIP). A number of prisoners in Ullersmo Prison explained that the international perception of Norwegian prisons as being progressive penal institutions may obfuscate ongoing issues within the individual prisons. For example, a foreign national prisoner in Ullersmo Prison explained: "Actually many European prison they have more bad condition . . . when they (the CPT) come, for example, and see a new building like hotel, for example, they miss the point" (005NOR, PIP).

People in prison placed value on the short-term changes prompted by the expectation of or presence of a monitoring body. While this suggests a certain superficiality or fleeting nature to the value of visits, having a cleaner place in which to live, for example, is not something to be underestimated. This limited view, however, may also highlight the prison's inability to enact sustainable change and question its ability to deal with the underlying factors that led to the problem in the first place. As one participant

put it: “My reaction to it (the CPT) was like when all the inspectors come. It’ll change for a couple of days, but then as soon as they’re away it’ll go back to normal” (024SCOT, PIP).

### The Power to Persuade

The value of CPT monitoring for prisoners is also tied to the capacity of the CPT to influence relevant power brokers, whether that may be through the CPT’s dialogue with government and prison authorities or in the ways in which CPT standards can be used as comparators across European states (CPT 1992). A general skepticism around government implementation of the CPT recommendations emerged from interview analysis but was often accompanied by a hope that the CPT may be able to wield its power on behalf of people in prison. Given that prisoners are a minority group that are often contrasted with the “good” side of society—that is, law-abiding citizens—it is nearly impossible for people in prison to be heard, let alone persuade people to make changes. A person living in Ullersmo Prison referred to the CPT as a “voice outside this minor group” that has the power to persuade based on its acceptance by society (023NOR, PIP). In this way, the concern of the prisoner is translated by the CPT from what was previously considered to be unacceptable, “bad,” or invisible to a more bureaucratic, professionalized, “human rights speak”—something much more palatable as a vehicle for persuasion (Calavita and Jenness 2014, 88). Though not speaking about the CPT specifically, a woman in HMP Edinburgh explained how this translation process is of benefit:

Because, a lot of us have got things that we’d love to change in the jail. And obviously we talk amongst ourselves about it, but nothing ever gets done, . . . we’d have people like yourself and that come in and we’d have these interviews. Then as you say, you can look at it and say, right, this is what the prisoners think, so it can get out. (020SCOT, PIP)

The CPT’s powers of persuasion also lie in its ability to standardize best practice in terms of imprisonment. When asked if they considered national or international oversight to be more influential, people in prison responded in a variety of ways. Some indicated that local actors, such as independent monitoring bodies, ombudsmen, and inspection bodies, have a closer understanding of the prison culture and societal perceptions of imprisonment and therefore perceived of them as more likely to be effective influencers. However, others commented on the norm-making ability of the CPT and the potential for this to influence governments to act in accordance with CPT-sanctioned human rights standards. Reflecting on the question of the impact of the CPT on the Scottish Prison Service, a woman in HMP Edinburgh commented: “I’m hoping that they start looking at all the prisons round the world and going, ‘right, why is it so different from here to Norway?’” (027SCOT, PIP). A prisoner in Ullersmo Prison, who had the experience of being imprisoned in other European countries, reflected on the CPT’s power to persuade based on its European nature and concluded:

“I think that it is good for the rest of Europe too, they also see the standard in Norway. . . . But you have to see all Europe, they have to see Norway, Sweden, Denmark, and Romania you know, they have to see all to see the balance you know” (008NOR, PIP). Another person in Ullersmo Prison shared a similar thought:

What the CPT is doing is good because all prisons are not the same. . . . So, there is different prisons like in Italy, in other parts of Europe that don't follow the same example as this place. . . . They could inspire other prisons to tell them to follow the example of Ullersmo Prison because everyone gets their human rights here. (032NOR, PIP)

This idea was also expressed by a woman in HMP Edinburgh: “I think other countries could see how other jails are all run and work together. What works in one jail might not work in another, but tweaking things and getting ideas from each other to make it all run a better place” (029SCOT, PIP).

The value of the CPT is in many ways derived from its role as a cross-national standard bearer, by which it is possible to compare treatment and conditions in prisons across Europe and ultimately persuade governments to improve their approaches to imprisonment. The ability of an international body to adopt a broad and comparative perspective was also something people thought to be positive, ultimately translating into a push for states with poorer conditions to achieve a higher standard. The diverse nature of prison regimes and national prison standards across Europe poses challenges for the creation of regional human rights instruments and their acceptability across a wide range of states. While this is so, participants in this study considered that meeting this challenge is a valuable endeavor and one that, in their view, ultimately leads to an overall uplift of standards.

### A Connection to the “Outside” World and Feeling Worthy

Given the secluded nature of life behind prison walls, opportunities for people in prison to engage with the outside world are limited. This means that, aside from visits with family, friends, and legal representation and communications with monitoring bodies, prisoners have few opportunities to share concerns and seek assistance outside the confines of the prison. This reality results in prisoners often feeling disengaged from society (Bosworth et al. 2005). The connection that the CPT's monitoring affords prisoners with the outside world is both tangible and abstract. People invited to interview with the CPT during a visit to a prison are offered an opportunity to share their experiences with someone who is perceived to have power to persuade external actors. Such an interaction could have considerable value, as asserted by men in Ullersmo Prison:

Yeah it's a good idea. [They] show to us and here is democracy. [The CPT] can ask the inmates inside the prison what's going on here. I think it's a very good idea that they have to come from outside here to speak with every single inmate. (028NOR, PIP)

I think that if it wasn't for these organisations, it would be no freedom for prisoners. I am sure. . . . If you give the power to people without any higher organ to control, then of course it gets a lot worse. (011NOR, PIP)

While participants expressed a degree of skepticism about the ability of the CPT to change the prison, there was considerable consensus that the value of the CPT may simply be the fact that it exists in the first place. A number of women in prison in Scotland captured this sentiment when considering what the CPT meant to them:

Everybody thinks when you're stuck in here, you're just left in here. But it's good to know that somebody's actually out there fighting for a wee bit of something for you, you know what I mean? . . . It's good to know that somebody's actually thinking about the people that are living in here no matter what. (028SCOT, PIP)

I think it's great. I think it's great there's people out there fighting for us. Because sometimes we feel alone, we don't know. (027SCOT, PIP)

Oh good, there's somebody out there that's actually caring enough to do something. (025SCOT, PIP)

For a man in Ullersmo Prison, the value of the CPT was that the monitoring body is comprised of individual people who take their time to check on the treatment of people in prison: "I can believe them because they took their time about me, about people. I can believe these people because they come here. [They] are far away, [they] are in [their] home, [they] get stress, [they] get depress, you know? So I can believe them (015NOR, PIP). The existence of the CPT provides a possibility for change that may defy skepticism; with prisoners simultaneously doubting the CPT's ability to change the prison while also expressing hope that the prison may change for the better, if not for themselves, for the people who will come after them:

I hope something will happen but I have done my time. (016NOR, PIP)

Maybe not helping for me but helping for next. (008NOR, PIP)

Not for me, for everyone. (022SCOT, PIP)

The system or nothing change in one day, they take many years. It's not for me for example. (005NOR, PIP)

As noted above, few studies have examined how people in prison view their position as right holders. Amongst those that exist, we see a complex picture. In a study of prisons in the Netherlands and England, Anastasia Karamalidou (2017) found that, while people in prison articulated their own humanity and personhood and were aware of the substance of some human rights, they were uncertain if they were entitled to

exercise them in law. Calavita and Jenness (2014) found that participants were strongly attached to the concept of fairness but felt that they had to translate their feelings of being wronged into a complaint or grievance that complied with the technical and bureaucratic requirements of the complaints procedure. Legal discourse, in their analysis, becomes an arena for yet another power struggle, with people in prison lacking the power to shape their problems into acceptable forms of complaint. The present study, however, indicates that the presence of the CPT does something to rebalance this situation, having the clout and the technical know-how to make a case for the rights of people in prison. In this case, having a mandate that goes across borders was viewed as important and something that enhanced the CPT's credibility.

Nevertheless, it cannot be said that the existence of the CPT resulted in a long-term or deeply embedded feeling of having dignity or worth in the eyes of the law for participants in the prisons in this study or that the work of the CPT fundamentally altered their "penal consciousness" and experience of punishment (Sexton 2015). However, in places where opportunities to affirm one's status as a person worthy of notice and deserving of protection under law are very rare, the findings here that people in prison felt some value in having an outside body take an interest in them and the conditions in which they lived should not be taken lightly.

This aspect of the value of the CPT, as perceived by prisoners, is in many ways connected to the lack of agency—that is, the ability to negotiate power—that people living in prison experience as a result of their detainment (Bosworth 1999). Prisoners are limited in their ability to negotiate power with state institutions, which means that the CPT's value for prisoners lies in its ability to engage with institutions and negotiate on their behalf, albeit indirectly. The CPT does this as a connection to the outside world and through its power to persuade. As such, not only does the presence of the CPT shape, in limited ways, the penal consciousness of those in prison who reflect on its work, but the experiences of being in prison also shape their views of the CPT. As shown above, feelings of disenfranchisement, alienation from society, and profound distance from the notion of human rights protection provide the context in which people talk about a rights-protecting body. The CPT is framed by participants in prison as a minor bulwark of the kind described by Malcolm Feeley and Edward Rubin (1998) against a system that strips a person of rights, a small alleviation of the "tightness" of penal regimes (Crewe 2011, 522). It is also notable that, as argued by Ashley Rubin (2017, 656; internal citations omitted) "prisoners can only use the language of rights in speaking their grievances where the language of rights is part of a larger cultural toolkit." In this study, speaking of the CPT was not framed in rights language but, rather, in ways of fighting for freedom or caring about what happens to people "no matter what," suggesting responses that are shaped by an experience of not feeling protected as rights holders in prisons.

The ways in which the CPT's value is articulated by people in prison also offer additional approaches for considering what might constitute effective prison monitoring and a reminder of the need to consider the experience of a CPT visit itself in such analysis. It is also important not to overlook perceptions about the ability of the CPT to translate concerns to powerbrokers and to serve as a source of engagement for an oft forgotten population. This finding also points to a strong need to ensure that

people in prison are aware of the existence of prison monitoring. While awareness is a key component in ensuring that people in prison can have a meaningful interaction with such a body, increasing awareness of human rights-monitoring bodies like the CPT may play some role in how people in prison perceive of themselves as holders of rights, which, of course, is heavily counterbalanced by the often dehumanizing reality of prison life.

## CONCLUSION

It is tempting to focus on measuring the implementation of recommendations when analyzing the performance of human rights-protecting bodies. While it is axiomatic that implementation depends on the response of the state, focusing on state responses only may cloud our understanding of what effectiveness is. The present study has shown that, in some cases, implementation of recommendations may not be something welcomed by people living and working in prison and, indeed, may be viewed as something that could be of detriment if introduced. When the CPT engages with states to promote implementation of the CPT's standards and recommendations, it is taking part in a process of legitimacy making, whereby states that adopt the CPT recommendations are deemed to be compliant with human rights standards. In circumstances where a recommendation conflicts with prisoners' own views of what is in their interests, difficult questions arise about whether implementation is always the desirable standard by which to judge recommendations. The present study illustrates the need to conceptualize effectiveness in ways that center the perspective of those most affected by recommendations: those living and working in prison. It also shows the need to include these groups in the formation of the standards that form the basis for recommendations. We also advocate for more research in contexts with very different relationships with the CPT and different prison standards in order to assess how recommendation making works in other settings.

By solely focusing on the state response to determine the effectiveness of prison monitoring, we may obfuscate the ways in which monitoring bodies have the potential to legitimize and validate practices that warrant more critique (Karamalidou 2017; Piacentini and Katz 2017; Armstrong 2018; Mehozay 2018). This research therefore raises questions in the longer term as to what the repercussions may be of a prison-monitoring body legitimizing a practice by establishing its limits. While the case of strip searching in Norway was one instance, when coupled with the view that matters of central importance to people in prison did not result in recommendations, we argue that there must be careful attention paid by monitoring bodies to ensure that their activities do not inadvertently operate to legitimate the extension of penal power. More fundamentally, reflection is required to assess how prison-monitoring bodies may offer a veneer of credibility, or, to put it another way, a "stamp of approval," for the use of penal power, therefore undermining efforts to dismantle or challenge this power.

This study also suggests that the ways in which recommendations are arrived at, and the human right standards that underpin them, need review. We see evidence of

issues that were of high salience to people in prison not becoming the subject of recommendations, while other issues are. As such, we advocate for monitoring bodies to reflect on their processes by which they ensure that recommendations are grounded in the lived experience of people in prison and to assess if what was found in this study is more widespread. Specifically, we suggest that a process of triangulation should be considered such that the proposed recommendations receive some input from people in prison. We also advocate for a new focus on the experiences of people in prison and staff in the creation of human rights standards, something also called for by Bronwyn Naylor (2014). While we have seen calls for stronger powers for prison inspection and monitoring bodies (Rogan 2019), what is needed from the evidence of this study is the resources and interest to engage closely with the experience of people in prison. Anne Owers (2007) has written of the “virtual prison,” a place that exists on paper in the minds of penal administrators and that may bear no reality to the day-to-day reality of what is happening. Perhaps what we are seeing here is a similar virtual reality—what human rights standards, and their creators, consider to be a negative experience in prison, which does not necessarily align with what people in prison actually feel or think. In this way, we see another example of laws operating without a firm grounding in the experience of those they are stated to protect.

Scott’s (1999) use of the concept of “*mètis*” is useful here. This form of knowledge and practical experience can be overridden, ignored, or destroyed by standardization projects that seek to bring about order in social life. In this domain, efforts to bring order and legibility to the challenging business of establishing consensus about prison conditions, however well intentioned, may become disconnected from the practical experience of being in prison. Scott (1999, 328) speaks of the value of “learning beyond the book,” which is not so dissimilar from law and society insights; in the current context, the book—human rights standards, the formal training of the people who make up the CPT’s delegations, and their professional experience in their work—must not override the practical know-how of those for whom prison is an everyday experience. As Scott argues, we must work to create *mètis*-friendly institutions, including prison-monitoring bodies.

The third contribution of this study suggests, however, that an important value of prison monitoring is somewhat intangible—its simple existence. This is not to suggest that knowing about an international monitoring body and its mandate to promote human rights compliance transforms penal consciousness (Sexton 2015), nor that it relieves the pains of imprisonment (Sykes 1958). While the impact on a person in prison knowing a human rights-monitoring body is seeking better conditions for people in prison should not be overstated, the value of a connection to notions of having dignity that is worthy of protection, as contested a term as that may be (Simon 2021), should not be overlooked. As Alison Liebling (2011, 534) reminds us, “as vulnerable and dependent creatures, human beings depend on acknowledgement (recognition) and justice as a condition of human flourishing.” The work of Armstrong (2018) is a stark and timely warning of the negative effects of some human rights practices and activities; yet an alternative situation, where no prison monitoring exists, is a troubling prospect, despite its limitations.

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