

Prison Reform Trust evidence for the United Nations Committee for the Elimination of Discrimination Against Women (CEDAW) during the United Kingdom's state review – January 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

PRT provides an advice and information service for people in prison, which responded to 6,088 individual enquiries in the 12 months from October 2017 to September 2018, with a rising proportion of enquiries from women in prison. Between April and June 2018, 6% of contact was from women's prisons. Overall in the 12 months up to June 2018 4% of contact was from women's prisons, up from 2 or 3% in previous years following a concerted effort to reach out to women in prison as they are less likely to complain or enquire than their male counterparts.

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Introduction

PRT has a longstanding interest in improving criminal justice outcomes for women and since 2015 our Transforming Lives programme to reduce the unnecessary imprisonment of women in the UK has been supported by the Big Lottery Fund. We welcome the chance to provide evidence to the CEDAW committee. Our submission relates to the experiences of women in detention and in the criminal justice system more generally. Please note that the figures presented in this response relate to England and Wales and not Scotland and Northern Ireland. Where relevant we refer to our publications, copies of which can be found on our website:

www.prisonreformtrust.org.uk/women

There is strong evidence to suggest that the UK authorities are failing in their requirements under the Convention and other international standards of treatment and conditions in prison. Our submission highlights key concerns regarding the over-use of short custodial sentences for women, recognition of domestic abuse as a driver of women's offending, the prosecution of victims of trafficking, the overrepresentation of Black, Asian and minority ethnic women and foreign national

women in prison, the excessive use of remand and short custodial sentences for women, increasing safety concerns in prison and the rising number of women recalled to prison.

Specific needs and characteristics of women in contact with the criminal justice system

Women in prison in the UK have often been victims of much more serious offences than the ones they are accused of committing. More than half (53%) report having experienced emotional, physical or sexual abuse as a child compared to 27% of men.¹ 57% of women report having been victims of domestic violence as adults.² Because many women fear disclosing abuse, both figures are likely to be an underestimate.³ Women can become trapped in a vicious cycle of victimisation and criminal activity. Their situation is often worsened by poverty, substance dependency or poor mental health.⁴

Women are more likely to be sent to prison for a first-time offence; in 2018 22% of women in prison had no previous convictions or cautions compared to 14% of men.⁵ Women's offences are more likely than men's to be prompted by their relationships with 48% of women, compared to only 22% of men, saying that they had committed offences to support someone else's drug use.⁶

The specific needs of women in contact with the criminal justice system in the UK, detailed in the Corston report and studies both before and since and now acknowledged by the UK government, are briefly summarised below and are considered in detail in a number of recent PRT publications (available [here](#)):

- The best interests of children continue to be overlooked in criminal justice decisions concerning the diversion and sentencing of mothers in contact with the criminal justice system, with devastating consequences.⁷ Positive developments include the dissemination of training for judges, magistrates and probation workers using resources developed to raise awareness of the impact of maternal imprisonment.⁸
- David Lammy MP's review of racial bias in the criminal justice system highlighted disparities in police treatment of women and girls from ethnic minorities.⁹ Recent reports by the Prison Reform Trust, Agenda and Women in Prison encourage a focus on the intersectional discrimination experienced

¹ Ministry of Justice (2012) Prisoners' childhood and family backgrounds, London: MoJ

² Data Extracted from OASYS, In Thinking differently about female offenders. Transforming rehabilitation, Guidance Document. MOJ/NOMS 2014

³ Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) Provision for Women offenders in the community London: Fawcett Society

⁴ Janet Loveless (2010) Domestic Violence, Coercion and Duress, Criminal Law Review, pp. 1-3

⁵ Table A1.19 Annual Prison Population 2018, Ministry of Justice (2018) Offender management statistics quarterly: January to March 2018 London: MoJ

⁶ Light, M., Grant, E. and Hopkins, K. (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MOJ

⁷ [Prison Reform Trust \(2018\) What About Me? The impact on children where mothers are involved in the criminal justice system, London: PRT](#)

⁸ [PRT \(2018\) New resources launched to highlight impact of maternal imprisonment on 17,000 children a year, London: PRT](#)

⁹ Lammy, D. (2017) The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system, London: MoJ

by Black, Asian and minority ethnic women and girls in the criminal justice system.¹⁰

- Trauma-informed approaches are needed throughout the criminal justice process given the high levels of experience of abuse amongst women in contact with the criminal justice system.¹¹ Greater attention is also required to ensure the links between abuse and coercion and women's offending are fully taken into account in proceedings.
- As highlighted in recent research by the Prison Reform Trust and Hibiscus Initiatives¹², foreign national women and trafficked women have distinct needs that require a particular approach, not least improvements in the provision of foreign language information and female interpreters. There is a continuing failure to identify victims of trafficking and ensure they are not prosecuted for offences which they were compelled to commit.

Legal framework for a gendered approach

Treating women and men equally does not mean that everyone should be treated the same. Where the circumstances and needs of women and men are different, distinct approaches may be required to achieve equitable outcomes and the Equality Act 2010 allows women only or women-specific services. The public sector equality duty requires public services, including those delivered by the private and voluntary sector, to assess and meet the different needs of women and men. However, the House of Commons Justice Select Committee concluded in 2013 that "the duty does not appear to have had the desired impact on the provision of gender specific services, or on broader policy initiatives."

Section 10 of the Offender Rehabilitation Act 2014 amended the Offender Management Act 2007 to give women's services a statutory foothold, placing a duty on the Secretary of State for Justice to ensure that arrangements for supervision or rehabilitation identify specific need and so make appropriate provision for women.

The CEDAW committee has raised concerns about the levels of incarceration of women in the UK for minor offences and recommended the adoption of 'alternative...custodial strategies, including community interventions and services' for women accused of minor offences.¹³ The CEDAW Committee's approach reflects the requirements of the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). The Bangkok Rules require that the distinctive needs of women be recognised, emphasising the importance of providing physical and psychological safety for women, and mandate the provision of diversionary measures and sentencing alternatives, 'taking account of the history of victimisation of many women offenders and their caretaking responsibilities'.

¹⁰ [Prison Reform Trust \(2018\) Counted Out: Black, Asian and Minority Ethnic Women in the Criminal Justice System, London: PRT](#); Agenda and Women in Prison (2016) Double Disadvantage: The experiences of Black, Asian and Minority Ethnic Women in the Criminal Justice System, London: Agenda and Women in Prison

¹¹ [Prison Reform Trust \(2018\) There's a reason we're in trouble – Domestic abuse as a driver to women's offending, London: PRT](#)

¹² [Prison Reform Trust \(2018\) Still No Way Out: Foreign national women and trafficked women in the criminal justice system, London: PRT](#) (summary report); full report available [here](#).

¹³ CEDAW C/GBR/CO/7: Committee on the Elimination of Discrimination Against Women - Concluding observation on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013

The UN Special Rapporteur on Violence Against Women visited the UK in 2014 and raised concerns over the disproportionate number of black and minority ethnic women in prison, the number of women who have been subjected to violence prior to their imprisonment and the number of young women who are incarcerated. In her statement (15 April 2014) at the end of her visit, she called for the development of 'gender-specific sentencing alternatives' and recognition of 'women's histories of victimisation when making decisions about incarceration'.

Over-use of short custodial sentences

The recently published Female Offender Strategy¹⁴ marks a serious attempt by the UK government to take proper account of the vulnerability of many women offenders by endorsing the case for a gender specific approach to women who offend and promoting early intervention, diversion and community solutions rather than custody wherever possible. However, the limited resources allocated to support women's community services and the lack of a timetable to drive progress remain a serious concern. Without sufficient resources, the government's ambitions simply cannot be realised.

The continuing over-use of short custodial sentences for women is widely acknowledged. In 2017, 8,474 women were received into prison in England and Wales either on remand or under sentence¹⁵, and 87% of the sentenced women had been convicted of a non-violent offence (compared to 69% of men).¹⁶ In 2017 48% of women sentenced to prison were there for theft offences.¹⁷ Over three quarters of women sentenced to immediate custody in 2017 were sentenced to less than 12 months¹⁸, many to less than three months, overwhelmingly for minor offences.¹⁹ To address this, PRT is advocating for a presumption against short term prison sentences. There are concerns that prison is being used by magistrates as a place of safety for women.²⁰

In 2017 TV licence evasion accounted for 30% of all prosecutions for women, but only 4% for men. 72% of the 136,550 defendants prosecuted for TV license evasion in that year were women.²¹

There are strong links between women's offending behaviour and their experience of domestic (physical and emotional) abuse, coercive control and sexual abuse. Women who are subjected to domestic abuse may be coerced into offending by their abuser.²² There is an opportunity for the government to amend the Draft Domestic

¹⁴ Ministry of Justice (2018) Female Offender Strategy, London: MoJ

¹⁵ Ministry of Justice (2018) Table 2.1, Prison receptions: January to March 2018, Offender Management statistics quarterly: July to September 2017, London: MoJ J

¹⁶ Ministry of Justice (2018) Court Outcomes by Police Force Area Data Tool, Criminal Justice System statistics quarterly: December 2017, London: MoJ

¹⁷ Ministry of Justice (2018) Court Outcomes by Police Force Area Data Tool, Criminal Justice System statistics quarterly: December 2017, London: MoJ

¹⁸ Ministry of Justice (2018) Court Outcomes by Police Force Area Data Tool, Criminal Justice System statistics quarterly: December 2017, London: MoJ

¹⁹ [Prison Reform Trust \(2018\) response to Strengthening probation, building confidence, London: PRT](#)

²⁰ Oral evidence to the House of Commons Justice Committee, Prison Population 2022: planning for the future, HC483; Tuesday 30 October 2018, Juliet Lyon CBE, Chair of the Independent Advisory Panel on Deaths in Custody, in response to question 368.

²¹ Ministry of Justice (2018) Statistics on Women in the Criminal Justice System 2017, London: Ministry of Justice

²² [Prison Reform Trust \(2017\) "There's a reason we're in trouble": Domestic abuse as a driver to women's offending, London: PRT](#)

Abuse Bill by introducing a statutory defence in relation to offences committed by women subject to coercive relationships.²³

There is a widely recognised, continuing failure to avoid prosecuting and imprisoning women who are victims of trafficking, as highlighted in a recent report published by PRT in partnership with Hibiscus Initiatives.²⁴

One significant driver of women's imprisonment is recall to prison. This has risen exponentially since the introduction of compulsory twelve-month supervision for all those released from prison following a short prison sentence, as part of the UK government's Transforming Rehabilitation reforms to probation services which are now subject to a government consultation.²⁵

The number of women recalled under these new provisions increased by 36% from 2016 to 2017, rising from 726 in 2016 to 986 in 2017.²⁶ PRT is arguing for abolition of the supervision requirement for short-sentenced prisoners.

Excessive use of remand, particularly for young women and girls

Many women who are remanded into custody by the courts do not go on to receive an immediate custodial sentence, particularly young women and girls:²⁷

- In 2017, 69% of 15-17 year old girls remanded into custody by Crown Courts did not go on to receive an immediate custodial sentence. The same is true for 53% of 18-20 year olds, 42% of 21-24 year olds and 37% of those aged 25 and above.
- The same pattern occurs in the Magistrates' Courts, where the majority of women's and girls' cases are heard. 82% of 15-17 year old girls remanded into custody did not receive go on to receive an immediate custodial sentence. The same is true for 80% of 18-20 year olds, 64% of 21-24 year olds and 61% of those aged over 25.

²³ See PRT's recommendations in: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT and accompanying [briefing by the Criminal Bar Association on the defences available for women defendants who are victims/survivors of domestic abuse](#). See the Draft Domestic Abuse Bill and UK government's response to the consultation on domestic abuse, published on 20 January 2019, at: <https://www.gov.uk/government/collections/domestic-abuse-bill>

²⁴ [Prison Reform Trust \(2018\) Still No Way Out](#), London: PRT (summary report) and full report [here](#).

²⁵ <https://www.gov.uk/government/publications/2010-to-2015-government-policy-reoffending-and-rehabilitation/2010-to-2015-government-policy-reoffending-and-rehabilitation> See also: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-2017/transforming-rehabilitation-report-published-17-19/>

²⁶ Ministry of Justice (2018) *Statistics on Women in the Criminal Justice System 2017*, London: Ministry of Justice

²⁷ Ministry of Justice (2018) *Remands at the Crown Court: Pivot Table Analytical Tool for England and Wales 12 months ending December 2013 to 12 months ending December 2017*. London: MoJ and Ministry of Justice (2018) *Remands at the Magistrates Court: Pivot Table Analytical Tool for England and Wales 12 months ending December 2013 to 12 months ending December 2017*. London: MoJ

Community solutions to women's offending

Out of court disposals can provide the police with a simple, swift and proportionate response to women's low-risk offending. However the proportion of women dealt with by out of court disposals is small and continues to decrease. 55,740 women were given cautions in 2007 and only 16,727 in 2017, an 70% decrease in ten years.²⁸

Community sentences allow women to maintain community ties, employment and accommodation whilst reducing the disruption to their families and children. However, the use of community sentences decreased by 42% from 2010 to 2017.²⁹ Research shows that 55.8% of women released from prison reoffend within a year compared to 26% of those sentenced to a community order.³⁰

Women's centres offer a holistic approach to female resettlement, providing a wraparound service and can support women who have had contact with the criminal justice system move away from offending. They can provide effective support programmes for those at risk of offending and play a vital role in reducing women's reoffending, offering safe, non-stigmatising settings for women to address issues that can drive their offending such as substance abuse or accessing support with violent relationships.³¹ However central allocation of resources remains inadequate to support the existing service provision and to fill the many gaps across the country where women specific support is not available.

Deaths and self-harm in custody

As for men, safety is an increasing worry in women's prisons. 94 women have died in prison since the 2007 publication of the Corston report; 2016 was the worst year on record with 22 deaths in women's prisons.³² INQUEST's recent research identifies serious safety failures inside prisons in relation to self-harm and suicide management and inadequate healthcare provision. It also highlights the lack of action on recommendations arising from post-death investigations and inquests and puts forward a series of recommendations to close women's prisons by redirecting resources from criminal justice to community-based services.

The latest statistics show a rate of 498 self-harm incidents per 1,000 in men's prisons (with incidents up 20% from the previous year) compared to a rate of 2,366 incidents per 1,000 in women's prisons (an increase of 24% in the number of incidents from the previous year).³³

In the 12 months to June 2018, the number of self-harm incidents per self-harming man increased from 3.4 in the previous year to 3.7, while self-harm prevalence

²⁸ Ministry of Justice (2018) Out of Court Disposals data tool, Criminal Justice System statistics quarterly: December 2017, MoJ: London

²⁹ Ministry of Justice (2018) Court Outcomes by Police Force Area Data Tool, Criminal Justice System statistics quarterly: December 2017, London: MoJ

³⁰ Hedderman, C. and Jolliffe, D. (2015) 'The impact of prison for women on the edge: paying the price for wrong decisions', *Victims and Offenders: An international journal of evidence-based research, policy and practice*. 10 (2), pp.152-178.

³¹ Radcliffe, P. and Hunter, G. (2013) *The Development and Impact of Community Services for Women Offenders: An Evaluation*, London: ICPR. Available at www.icpr.org.uk/media/34025/ReportNuffieldfinal.pdf [accessed 21 March 2018].

³² INQUEST (2018) *Still dying on the inside: Examining deaths in women's prisons*, London; INQUEST

³³ Ministry of Justice (2018) *Safety in custody statistics, England and Wales: Deaths in prison custody to September 2018. Assaults and self-harm to June 2018*, London: MoJ

among women increased from 6.6 in the previous year to 7.6 incidents per self-harming individual.³⁴

Strip-searching remains a concern, with a recent inspectorate report highlighting the over-use of strip-searching in HMP & YOI Peterborough for example.³⁵

Women in Scotland

Following publication of the Commission of Women Offenders in 2012 there was a commitment to build a new national prison for women in Inverclyde. This decision was overturned in 2015 and plans are now underway for a small national prison for 80 women to be built alongside five Community Custody Units that will house 100 women. The new small national prison and the first two Community Custody Units is expected to open in late 2020.

We understand the Scottish Government hopes to reduce the women prison population to 230 by 2020. The extension of the presumption against short term sentences from 3 months to 12 months is to be introduced in 2019. If this is successful there is potential for the prison population to be reduced significantly. In 2016/17, 91% of prison sentences imposed on women were up to 12 months or less³⁶. The Scottish Government has also invested an additional £1.5 million per year to develop alternatives to custody for women including early intervention, diversion from prosecution and supervised bail. We have seen a number of dedicated services developed for women who offend across Scotland.

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³⁴ Ibid.

³⁵ HM Inspectorate of Prisons (2018) Report on an unannounced inspection of HMP & YOI Peterborough (Women), London: HMIP

³⁶ Table 10b, The Scottish Government (2018) Criminal proceedings in Scotland 2016–17, Edinburgh: The Scottish Government