

Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) periodic visit to the UK

Submission from the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison 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 prisoners and their families.

The Prison Reform Trust's main objectives are reducing unnecessary imprisonment and promoting community solutions to crime; and improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

We are delighted to have this opportunity to contribute to the Committee's planning for this important visit, and welcome the fact that the visit will look at prison issues across England and Wales. We attach the most recent version of the "Bromley Briefings" prison factfile which we publish annually as a comprehensive digest of the most significant and up to date facts about imprisonment in the United Kingdom. We would be happy to assist the Committee on any of the subjects covered by the factfile.

However, in the interests of brevity, we have identified 8 broad areas to which we would particularly direct the Committee's attention. These are:

- The unnecessary use of imprisonment generally
- Overcrowding and a significant decline in the quality of life for many prisoners;
- A significant reduction in safety in prisons, including a rise in the number of suicides
- Concerns about the use and conditions of segregation within prisons (solitary confinement)
- Delays in the release of prisoners held on indeterminate sentences
- A failure to implement changes to the way in which female offenders are punished
- Continuing and extreme disproportionality in the imprisonment of people from ethnic minorities
- A failure to implement European Court of Justice rulings in relation to prisoners' right to vote in public elections

The unnecessary use of imprisonment

Since 1993, the prison population in England and Wales has increased by over 90% despite a steady and significant fall in crime. The rise reflects an increase in prison receptions, but in particular an increase in average sentence length. England and Wales remains the country in Western Europe most likely to imprison members of its population, and, in particular, to imprison them on an indefinite basis. Over 12,000 prisoners are held on an indeterminate sentence, more than three times as many as the indeterminate prison populations of France,

Germany and Italy combined. Those serving life sentences for murder now serve an average of 17 years in custody, up from 13 years in 2001.

This remorseless increase in the use of imprisonment represents an unnecessary increase in the pain of imprisonment for both prisoners and their families, and the social harms associated with imprisonment, epitomised by a consistently higher rate of reoffending for those serving sentences in custody compared to those serving sentences in the community. It also represents the principal obstacle to reform of conditions within prisons because it has coincided in recent years with exceptional pressure on public finances and a consequent reduction in spending on prisons. Despite the rise in population, between 2010/11 and 2014/15, the budget for the National Offender Management Service, which includes the delivery of both custodial and non custodial penalties, reduced by nearly 25%. Much of that saving has come from reduced staffing. In public sector prisons, 13,730 fewer staff are looking after 1,200 more prisoners.

Overcrowding and a significant decline in the quality of life for many prisoners

Overcrowding remains an endemic problem within the prison estate in England and Wales. Despite a commitment in principle to work towards the elimination of forced cell sharing in the Government's 2006 response to the inquiry into the death of Zahid Mubarek, no progress has been made – in fact the situation has become a little worse. Currently 70 of the 117 prisons in England and Wales hold more prisoners than they are designed for, with more than a quarter of all prisoners affected across England and Wales. Typically, overcrowding is more severe in the prisons holding unconvicted people remanded from court and those serving short sentences, with over half of the prisoners in those prisons often being forced to share cells designed for one. (UN Standard Minimum Rule 12.1)

Overcrowding is not simply about conditions within the cell, although these are often unacceptable, with two prisoners sharing a toilet within the cell, and eating all of their meals in that space. It also affects the extent to which prisoners can engage in purposeful activity during the day, and spend time out of their cell generally. In the last two years, the levels of purposeful activity and time out of cell have declined, with 20% of prisoners telling inspectors that they spent less than 2 hours a day out of their cell. Levels of purposeful activity were judged to be unacceptable in 75% of the prisons inspected during 2015. (SMR 4.2)

This decline in the quality of life for many prisoners is a direct consequence of the reduced resource available, and the standard "core day" in closed prisons now finishes at 6.30pm on weekdays, and earlier at weekends. In other words, the reduced quality of life is designed to be permanent rather than temporary, despite the obvious detriment to both the quality of staff/prisoner relationships within prisons and to the maintenance of family ties.

A significant reduction in safety in prisons, including a rise in the number of suicides

In 2014, 243 people died in prisons in England and Wales, the highest number on record. 84 of those deaths were self inflicted, reversing a trend towards lower suicide rates established over the previous 7 years. Rates of self harm have also climbed steeply. The propensity to suicide and self harm within the prison population is well known, reflecting both pre-existing

levels of mental illness and disorder, and the inherent stresses of being sent to prison. But the rise in both self harm and suicide has coincided with the very significant reduction in staff resources and the impoverishment of prison regimes mentioned earlier. In our judgement, it is likely that those changes have made the prison experience harsher while reducing the capacity of staff to identify and respond to signs of distress.

The sharp increase in deaths from natural causes (more than doubled since 2000) reflects a startling increase in the population of older people within prison. They now represent the fastest growing section of the prison population, as sentence lengths have increased, indeterminate sentence prisoners have struggled to be granted conditional release, and the prosecution of historic sex offences has grown.

Violence has also increased sharply, with a 35% rise in serious assaults during 2014/15. Similarly, incidents of serious indiscipline, including hostage taking and incidents requiring the deployment of specialist staff trained in riot control, have increased as the resources available to prisons have declined. More than half the prisons inspected in 2014/15 were found to have inadequate safety levels. According to Article 3, states are obliged to prevent torture, or inhumane or degrading treatment. The concept of degrading treatment encompasses any victimisation which arouses feelings of fear, anguish and inferiority, being debased or humiliated. The UN SMR contain a duty to maintain prison safety. The levels of serious assaults in recent years demonstrate that the UK is failing to fulfil the duty of effective safeguarding of people in custody (Reference SMR 1; 38.1).

Concerns about the use and conditions of segregation within prisons (solitary confinement)

The Prison Reform Trust has recently published a major research study into the use of segregation within England and Wales ("Deep Custody", co-authored by Sharon Shalev and Kimmitt Edgar). That report is attached. It concludes that, despite much good practice, segregation continues to be used both excessively and inappropriately, and that conditions for those in segregation fall below the minimum standards required by the United Nations SMR and the Prison Service's own policies. In particular, prisoners in segregation are routinely denied access to adequate levels of constructive activity and time in the open air. (Reference SMR 23.1)

Procedures to assess the harm caused to prisoners as a consequence of segregation often do not operate effectively to influence decisions to impose or end segregation, resulting in the involuntary segregation of prisoners who should not be, and the safeguards designed to provide independent oversight of segregation, also fail to command the confidence of prisoners. (SMR46)

Delays in the release of prisoners held on indeterminate sentences

The use of indeterminate prison sentences has grown exponentially. There are currently over 12,000 prisoners who do not know if or when they will be released, compared to less than 4000 in 1998. This increase reflects both a broadening of the scope of offences for which an indeterminate sentence is available and a significant increase in the length of time routinely served in custody before release on life licence. Legislation which drove part of the increase by requiring automatic indeterminate sentences for a second qualifying offence (the IPP sentence) was amended in 2012, effectively abolishing the sentence, but over 4500 IPP prisoners remain in custody. Over 3500 of those prisoners have passed the minimum period set by the court as the requirement for punishment (the "tariff period"), and their release is dependent entirely on passing a risk assessment to the satisfaction of the independent Parole Board. In the worst cases, prisoners have already served up to eight years longer

than the period set for punishment. This reflects a systemic failure to provide the sentence planning, interventions and post release support needed to facilitate safe and timely releases.

There is currently no comprehensive or co-ordinated strategy to deal with the manifest injustice of individuals being held for many years beyond the point at which they could reasonably have expected to be released had sufficient attention being given to the requirements of risk reduction and post release support. The abolition of the IPP sentence explicitly recognised the inherent unfairness that it had produced, but no provision was made to deal effectively with those who continue to serve the sentence, and could do so for many years to come.

A failure to implement changes to the way in which female offenders are punished

In 2007, the “Corston Report” set out a comprehensive strategy for reforming the way that female offenders were treated. It reflected the historic over-use of imprisonment for women. Its reasoning has been largely accepted by successive governments, but nearly ten years on, too little has changed. Although a small minority of the prison population, women continue to be sent to prison in circumstances where male offenders are not. Over 80% are sent to prison for non-violent offending. They are twice as likely as men to have been the victim of emotional, physical or sexual abuse, and more than twice as likely to have no previous convictions before being sent to prison. They are more than twice as likely to have attempted suicide at some point in their life. It is estimated that two thirds of women in prison have childcare responsibilities.

The Corston report recommended that women should more often be punished in the community, with access to a network of women’s centres providing a range of assistance relevant to the problems that often lead to incarceration. Where custody was justified, the report recommended that it should be delivered in small local secure institutions.

The overall picture for women offenders remains much as it was in 2007. The very recent closure of HMP Holloway, Europe’s largest prison for women, is welcome but has not signalled a determination to reduce the use of imprisonment for women, with the bringing back into use of a mothballed prison on the outskirts of London. Similarly, a welcome statutory requirement for new “Community Rehabilitation Companies” to provide services explicitly geared to the needs of women has not as yet resulted in either a change in provision or different sentencing practice. Indeed, the principal concern as a result of the changes to the probation service which created these new companies is that existing provision for women may have been damaged as a consequence of aggressive pricing in the competition to win contracts from the government.

Conditions in women’s prisons have undergone some improvement, and rates of self harm, though still high by comparison with men, fell for several years up to 2014. The overall population of women has also fallen slightly from a high point in 2012 but still stands at nearly 4000, around double its level in 1995. There remains a pressing need to improve community provision for women, to reduce the disproportionate use of imprisonment and to re-design the remaining custodial estate to improve the ability of women in prison to retain family ties and prepare for release.

The Prison Reform Trust is leading a three year programme designed to reduce the imprisonment of women across the UK, building on its very lengthy history of research and advocacy in this area. Most recently, we have published two reports: Brighter Futures, in 2014, designed to raise awareness among providers and commissioners; and Sentencing of

Mothers, in November 2015, examining the challenge of ensuring more appropriate and consistent sentencing. Both are attached.

Continuing and extreme disproportionality in the imprisonment of people from ethnic minorities

Minority ethnic people continue to be very significantly over-represented in the prison system. Around 1 in 4 of the prison population comes from an ethnic minority, compared to only 1 in 10 of the general population. Black prisoners form nearly half of that minority within prisons. This appears to reflect accumulated marginal discrimination at every stage of the criminal justice process, but results in a noticeable imbalance at the culmination of that process in custody. Within prisons, prisoners from ethnic minorities appear to suffer unequal treatment, over-represented in disciplinary proceedings and incidents involving the use of force. *Deep Custody* found that black prisoners were more likely to be segregated than white prisoners, and more likely to be segregated for longer periods. Prisoners from minority ethnic groups also consistently report lower satisfaction levels in inspectorate surveys compared to white prisoners. Research conducted by the Prison Reform Trust in 2010 found that 49 of 71 ethnic minority prisoners interviewed said they had experienced racism in the previous 6 months, but two thirds also said that they did not submit a complaint about it.

We are concerned that the attention given to this issue has reduced in recent years, even though over-representation and consistent indicators of unequal treatment within prisons have not. There may be a number of reasons for this decline, including severe cuts in staff resources, a broadening of anti-discrimination legislation, and a straightforward lessening of political interest. But systematic discrimination on the grounds of ethnicity within both the criminal justice system generally and prisons in particular appears to be firmly entrenched despite many years of attempts to eradicate it. (SMR 2.1)

A failure to implement European Court of Justice rulings in relation to prisoners' right to vote in public elections

Prisoners serving a custodial sentence do not have the right to vote in any elections under UK law. This ban is set out in Section 3 of the Representation of the People Act 1983.

On 6 October 2005, in the case of *Hirst v United Kingdom (No 2)*, the European Court of Human Rights (ECtHR) ruled that the UK's current ban on all serving prisoners from voting, as defined by the 1983 Act, contravenes Article 3 of Protocol No 1 of the European Convention on Human Rights, which provides that signatory states should "hold free elections ... under conditions which will ensure the free expression of the opinion of the people". This judgment set off a political debate which has largely focused on the constitutional issues raised by the judgment, in particular: the UK's relationship with the ECtHR; reform of the Human Rights Act 1998; and the importance of parliamentary sovereignty. *Hirst (No 2)* is regarded by some as an example of the ECtHR overstepping its proper role and encroaching upon Parliament's legislative authority. The judgment has also been criticised as an example of the misuse of human rights, in the sense that the ECtHR's interpretation of Article 3 of Protocol No 1 went beyond the drafters' intentions. The Conservative Government's Queen's Speech in May 2015 did not refer to any plans to change the current legislative position, and the Prime Minister subsequently implied that the blanket ban on prisoner's voting rights will not be changed while he remains Prime Minister.

In October 2015, in the case of *Thierry Delvigne v Commune de Lesparre-Médoc and Préfet de la Gironde*, the Court of Justice of the European Union (CJEU) ruled that a French law, which deprived certain convicted prisoners of the vote, was not an unlawful breach of the right of EU citizens to vote in elections for the EU Parliament, as protected by the Charter of Fundamental Rights of the European Union. The CJEU's judgment also explained that the French law in question was lawful because it was proportionate, which in these circumstances meant that the law took into account "the nature and gravity of the criminal offence committed and the duration of the penalty".

In December 2015, Michael Gove, the Secretary of State for Justice, responsible both for human rights legislation and for prisons, indicated that the Government would in 2016 produce a full substantive response to the report published in December 2013 by the Joint Committee (i.e. drawn from both Houses of Parliament) on the Draft Voting Eligibility (Prisoners) Bill, after the publication of the consultation on reform of the Human Rights Act 1998. Future developments on prisoner voting are likely to be closely tied to the Government's forthcoming proposals on reforming the Human Rights Act 1998. Prisoner voting, as an example of how the existing system of human rights protection operates in the UK, is likely to feature prominently in that debate. Since May 2015, the Council of Europe's Committee of Ministers has twice called upon the UK to respond to the ECtHR judgments in *Hirst (No 2)* and *Greens and MT*.

The net result is that prisoners remain excluded from the right to vote, in clear contravention of ECtHR judgements. Whilst this policy appears to command a good deal of popular support, the question is rarely addressed on its merits, rather than in the context of broader political arguments. The policy runs directly counter to a welcome reassertion by the Secretary of State of a need to recognise prisoners as potential assets to society and to focus on their rehabilitation as law abiding members of the community at large.

Conclusion

These headings represent only a fraction of the Prison Reform Trust's concerns, but we have identified them as areas of both high priority and particular relevance to the Committee's remit. The Committee's visit is opportune, coming at a time when the condition of prisons and treatment of prisoners are in decline overall, due to a sharp reduction in resources and a continuing failure to deal with the unnecessary use of imprisonment. However, this decline coincides with a new and welcome interest in prison reform from the Secretary of State, Michael Gove, appointed in May 2015. He has consulted extensively, and we await the detail of the programme of reform which he has said he intends to instigate. The Committee's visit provides the opportunity to reassert the prime importance of a secure human rights framework for prison policy, and to shed light on the areas in which the current performance of prisons in England and Wales falls short of the standards which such a framework demands.

Prison Reform Trust

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Relevant UN standard minimum rules for the treatment of prisoners: The Nelson Mandela Rules (SMR)

Rule 12.1 Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself.

Rule 4.2 . . . prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 1 All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 38.1 Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.

Rule 23.1 Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.

3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

Rule 2.1 1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.