THE UK PRISON SYSTEM: COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS LAW

WORKSHOP REPORT: UK NETWORK ON THE PROHIBITION OF TORTURE[*]

The treatment of prisoners is subject to a range of international laws, norms and standards, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In April 2019, the United Kingdom of Great Britain and Northern Ireland (UK) will be examined by the United Nations (UN) Committee against Torture on its record in implementing the CAT, which obligates states not just to refrain from all forms of torture and other ill-treatment but also to take positive steps to prevent their occurrence. Prisons are one of the places where persons are most at risk of abuse and the state of the UK prison system is likely to be a major focus of the 2019 review. At the end of the review process, the Committee will make recommendations to the UK government on the actions it needs to take to comply with its international obligations and address any shortcomings found.

Driven largely by a combination of overcrowding and underfunding, prisons in the UK are facing significant challenges. Staff shortages, poor living conditions and practices such as the continued use of solitary confinement have resulted in an overall deterioration of safety in prisons and increased levels of suicide and self-harm. Yet, accountability is lacking not just for individual cases of abuse but also in respect of more systemic failings. This is compounded by the fact that we do not have a clear picture of the extent of abuse by staff against individual prisoners due to inconsistent record keeping, widespread mistrust in existing complaints procedures and a lack of protection for whistle-blowers.

With a view to contributing to the UK's upcoming review under the CAT, the UK Network on the Prohibition of Torture convened a workshop on 21 November 2018 to reflect on the state of the UK prison system from an international human rights law perspective. Jointly hosted by Royal Holloway University of London, the Centre for Human Rights Law at SOAS University of London, the UCL Institute of the Americas and the UCL Global Governance Institute, the workshop brought together leading practitioners, policy-makers and academics to share experiences, perspectives and insights and consider key priorities for future research, policy and practice. The workshop was held under Chatham House rules and this report does not necessarily reflect the views of all participants.

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THE UK PRISON SYSTEM IN LIGHT OF INTERNATIONAL HUMAN RIGHTS STANDARDS

There is an extensive armoury of international norms and mechanisms to promote good practice within prisons and prevent torture and other ill-treatment of those detained. This includes the CAT and its Optional Protocol (OPCAT), the Nelson Mandela Rules (revised Standard Minimum Rules for the Treatment of Prisoners) and other standards on the treatment of prisoners adopted by the UN or the Council of Europe. On the national level, the UK Human Rights Act and human rights bodies such as the Equality and Human Rights Commission (EHRC) and the National Preventive Mechanism (NPM) provide complementary legal and institutional safeguards to ensure UK prisons conform to international standards. Despite this elaborate normative, legal and institutional framework there are a number of deeply concerning trends in the UK prison system.

Trends in the UK prison system over the past decade:

➢ **Historically high prison population:** The UK prison population remains high both by historic and international standards. England, Wales and Scotland have the highest imprisonment rate in Western Europe.[1] This is largely due to an increase in long prison sentences, with about 60% of the prison population serving sentences over four years or indeterminate sentences.[2] Although there has been a significant decrease in the number of children and young people in custody, worryingly the elderly prison population (aged 50+) has increased by over 100% since 2008.[3]

➢ **Deteriorating conditions and safety concerns:** The quantitative data regarding the rapid deterioration of safety in prisons makes for alarming reading (see table on page 3). Over the last decade, the number of prisoner deaths has almost doubled, as has the number of prisoners who self-harm, and the number of prisoner suicides has increased by a quarter. The number of assaults in prisons has doubled, the number of serious assaults has tripled, and proportionally, more of these assaults have targeted prison staff. From a qualitative perspective also, prison conditions have worsened, with many prisoners spending twenty-two hours a day in their cells, which are often cramped and have poor hygiene standards.[4]

DEATH IN CUSTODY PER 1,000 PRISONERS (ENGLAND & WALES)[5]

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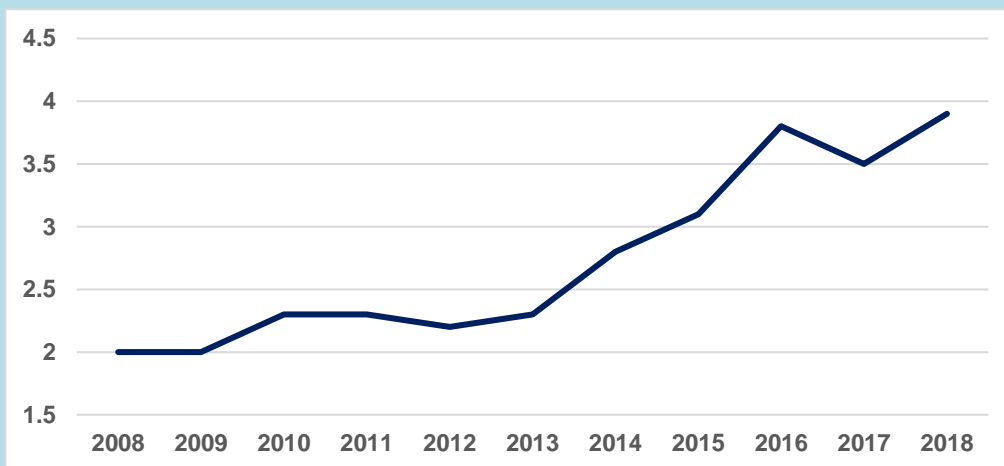
[1] Prison Reform Trust (2018). *Prison: The Facts. Bromley Briefings Summer 2018*.
[2] Sturge, G. (2018). *UK Prison Population Statistics*. Briefing Paper Number CBP-04334, 23 July 2018. House of Commons Library.
[3] Ibid.
[4] HM Inspectorate of Prisons (2017). *Life in Prison: Living Conditions*.
[5] UK Ministry of Justice (2008-2018). *Safety in Custody Statistics, England and Wales*. Reports from various years.

DETERIORATING SAFETY IN PRISONS (ENGLAND & WALES)

2007/2008[6]	2017/2018[7]
166 deaths in prison custody	325 deaths in prison custody
69 suicides in prison custody	87 suicides in prison custody
6,454 self-harming prisoners	12,142 self-harming prisoners
15,877 assaults	32,559 assaults
1,523 serious assaults	3,951 serious assaults
3,269 assaults on staff	9,485 assaults on staff
295 serious assaults on staff	947 serious assaults on staff

What are the drivers behind this trend?

- ➢ **Staff and budget cuts:** These concerning developments have largely been driven by government commitments to a policy of austerity, resulting in a significant reduction of state spending on institutions such as prisons and the justice sector more broadly. As assessments by Her Majesty's Inspectorate of Prisons (HMI Prisons) show, prison staff reductions, especially of experienced staff members, clearly correlate with a 'huge increase in violence across the prison estate' since 2013.[8]

- ➢ **'Last resort' responses becoming normalised:** With fewer staff to oversee greater numbers of prisoners, UK prisons have seen an increasing reliance on physical force, pain compliance techniques, strip searching, solitary confinement and other problematic response strategies. This has led to even greater animosity within prisons, thereby contributing to an increasingly dangerous environment.

- ➢ **Lack of accountability and transparency:** Finally, a key issue is the lack of reliable data on assaults by staff. Poor record keeping, inadequate complaints systems and other barriers to transparency mean that when ill-treatment of prisoners occurs, it is rarely thoroughly investigated, resulting in a void of accountability for those responsible. The lack of transparency and prosecution of individual perpetrators, in turn, obscures more systemic failings and constitutes a major obstacle to holding decision-makers to account.

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[6] UK Ministry of Justice (2018). *Safety in Custody Statistics, England and Wales. Deaths in prison custody to September 2015. Assaults and Self-harm to June 2015.* The numbers for deaths and suicides in custody are for the 12 months period to September 2008. The numbers on self-harm and assaults in prisons are for the 12 months period to June 2008.
[7] UK 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.* The numbers for deaths and suicides in custody are for the 12 months period to September 2018. The numbers on self-harm and assaults in prisons are for the 12 months period to June 2018.
[8] HM Chief Inspector of Prisons for England and Wales (2018). *Annual Report 2017-18*, p. 8.

FOUR PILLARS OF TORTURE PREVENTION

Strategies to prevent torture and ill-treatment, as outlined by international human rights bodies, typically focus on four groups of measures:

- ➢ Laws and procedures
- ➢ Complaints mechanisms
- ➢ Prosecution and accountability of perpetrators
- ➢ Independent preventive visits to places of detention

While contemporary discussions on torture prevention put much focus on monitoring and preventive visits, holding perpetrators accountable is arguably key to ensure the effectiveness of all other preventive mechanisms: Legal provisions alone will have little impact if torturers are rarely prosecuted in practice. Similarly, complaint mechanisms have been shown to have scant preventive effect unless they are 'organically linked to judicial investigation and prosecution'.[9]

RESPONSES TO ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT

To prevent torture and other ill-treatment within UK prisons it is paramount that appropriate mechanisms are put in place to protect whistle-blowers and victims and that allegations of abuse are documented and followed up upon in a timely and thorough manner. Without such mechanisms, individual perpetrators are unlikely to be held to account and prisoners will be discouraged to make any complaints in the first place. Special attention should be given to particularly vulnerable groups who are most likely to experience abuse but least likely to report it.

Barriers to accountability:

- ➢ **Ineffective recording systems:** The UK prison system currently lacks a centralised database to record allegations of torture and ill-treatment, making it difficult to estimate the scale of abuse, flag up areas for intervention, and hold individual perpetrators to account for (repeat) offences. This is compounded by the unsystematic use of language, whereby terms used to describe abuse (such as 'assault', 'use of force' or 'restraint used') are significantly varied and context specific and human rights treaties such as the CAT or the European Convention on Human Rights (ECHR) are rarely referenced. There is also a lack of reliable data on how many of the allegations made actually result in disciplinary outcomes, e.g. termination of employment or court sentences.

- ➢ **Moral hazard:** Accountability mechanisms that require custodians and other personnel working within prisons to record and mediate reports of abuse are likely to invite moral hazard (i.e. opportunistic behaviour on the part of the prison personnel), resulting in false paper-trails, missing information, delays in reporting and underreporting of incidents. Too frequently have cases of alleged ill-treatment by prison guards been inappropriately documented – if at all – to avoid investigations and reprimand.

- ➢ **Distrust in the system:** Without adequate protection for whistle-blowers and a reporting system which those in custody feel able to confide in, accountability mechanisms will remain ineffective. Fear of the ramifications for reporting abuse, and a belief that procedures will fail to hold perpetrators accountable, significantly decrease the likelihood of victims and whistle-blowers filing reports. This is particularly pertinent for the most vulnerable groups, who are already less likely to report, such as children in custody, persons with mental health conditions and black and minority ethnic (BME) prisoners.

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[9] Carver, R. and Handley, L. (2016). *Does Torture Prevention Work?* Liverpool: Liverpool University Press, p. 92.

Areas for reform:

> **Restructuring the complaints system:** A more centralised, standardised and robust complaints system with transparent procedures and guidelines to ensure consistent use of appropriate terminology specifying the nature of the alleged violation would increase the frequency of reports being correctly filed and thereby the likelihood of perpetrators being held to account. This, in turn, would enhance trust in the effectiveness of the system. Further to this, data collected through the complaints system should be supplemented by surveys, academic research and findings from visits conducted by the National Preventive Mechanism (NPM), so as to better identify and act upon red-flags.

> **On-the-spot investigations:** Even if complaints are lodged, there is often a long time lag before they get investigated. Ideally, action should kick in as soon as abuses are being reported and serious cases should be referred to the police immediately. Technologies such as body-cameras and more instantaneous communication technologies can help facilitate quicker investigations, if they are supported by adequate training and guidelines. More training might also be needed for the police as responding to incidents in prisons is routinely deprioritised.

> **Access to alternative personnel and independent bodies:** To mediate issues relating to moral hazard, and increase the likelihood of prisoners reporting abuse, the complaints system could be taken out of prisons and handled through an external body such as the Prisons & Probation Ombudsman.[10] It is also paramount that whistle-blowers and at-risk individuals enjoy legal protection and are able to express concerns confidentially to independent parties. In addition, alternative personnel within prisons, in particular medical professionals, could act as mediators that are often more trusted by inmates than regular prison staff. This would require, however, better access to clinicians in prisons as well as better training for medical staff to help them recognise, document and report signs of abuse and neglect and make sure they are familiar with prisoners' rights under the CAT and other international treaties.

RESPONSES TO SYSTEMIC FAILINGS IN THE UK PRISON SYSTEM

The abuses of individual perpetrators are frequently symptomatic of broader systemic failings within the prison system. Practices such as prolonged solitary confinement, including of children and youth, are endemic in prisons across the UK and reflect system-wide abuses. The escalating death rates due to 'natural causes' can also be attributed to the poor living conditions in prisons – the combination of emotional and physical neglect accelerates deaths, especially of the weak and aged. Overcrowding and a decline in safety in prisons are exacerbated by budget cuts and a decrease in prison staff numbers. The investigation and prosecution of individual cases, while crucial, cannot address such systemic failings. However, there are significant barriers to holding governments and decision-makers to account.

Barriers to accountability:

> **Difficulties of exposing systemic failings:** Current accountability mechanisms fall short of addressing systemic failings in the UK prison system as problems are flagged up on a case-by-case basis across prisons, and there is a lack of transparent data that reflect their wider dimension. In addition, the definitional ambiguity surrounding forms of ill-treatment that do not amount to torture makes it challenging for domestic organisations to stress the gravity of many systemic failings. The absence of effective feedback channels to international institutions such as OPCAT can further obscure systemic failings.

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[10] In this context, putting the Prisons & Probation Ombudsman's office on a statutory footing (as envisaged in the now-abandoned Prisons and Courts Bill) could significantly strengthen its independence and impact.

➢ **Limits to legal action and establishing responsibility:** While the courts provide a potential route to holding governments accountable and pressing for reform, building legal cases that directly link systemic abuse to government negligence is complex and challenging, not least due to the lack of systematic data. On the international level, human rights courts and mechanisms tend to steer away from discussions on domestic resource allocation.[11] The impact of privatisation within the UK prison system is another complicating factor in establishing responsibility for systemic failings and deserves further attention.

➢ **Public sentiments:** The indifference of the public and the media towards the well-being of prisoners has resulted in a lack of public sanctions on government decisions. Civil society organisations have an important role in this regard but they often encounter little media interest when campaigning for prison reforms.

Pathways forward:

➢ **Leveraging the Urgent Notification process:** Under the Urgent Notification process, which was introduced in November 2017, the Chief Inspector of Prisons can directly alert the Secretary of State for Justice of any urgent and serious failings found in a particular prison. Once the process is formally invoked, a team of specialists will be brought together to develop an immediate action plan which the Secretary of State must publish within 28 days.[12] While this measure falls short of addressing systemic failures and overall resource deficits, it has been useful in eliciting a ministerial response and channelling additional staff and resources into specific prisons, and it could potentially be leveraged to generate a wider parliamentary discussion on accountability in the UK prison system.

➢ **Role of independent national observers:** Independent national organisations such as the NPM, research institutions and civil society organisations play an important role in collecting data, identifying gaps, flagging up urgent issues and demanding responses from the administration. Through the use of various advocacy tools, these organisations have the potential to broaden the discussion, advance concrete recommendations, raise public awareness and engage parliamentary interest in systemic failings in the UK prison system.

➢ **International pressure:** Domestic organisations can maximise their impact by leveraging existing international frameworks such as the CAT/OPCAT and the ECHR. International pressure may be more effective in generating publicity and engendering expedited responses to systemic failings in UK prisons, but this requires improved feedback channels between domestic and international groups. At the same time, international interference in questions of domestic budgeting and resource allocation is contentious, rendering uncertain the potential of such mechanisms in addressing austerity measures and their consequences.

➢ **Reframing the issue:** Advocating for prison reform necessitates effective communication of systemic abuses and neglect in public discourse. It can be helpful for civil society organisations to frame this as a fundamental human rights issue, drawing on international frameworks such as the CAT and the ECHR. Advancing court cases pertaining to systemic failings in prisons may require legal innovation, such as attempts to prosecute under the Corporate Manslaughter and Corporate Homicide Act 2007 or reframe the positive obligations contained in the CAT and ECHR.

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[11] That said, the European Court of Human Rights has made clear that 'financial or logistical difficulties' cannot be used to justify prison conditions that do not 'ensure respect for the dignity of detainees'. See: *Gusev v Russia* Application No. 67542/01 (15 May 2008) at para 58.

[12] UK Ministry of Justice (2017). *Justice Secretary enforces robust action to improve prison safety*. Press Release (30 November 2017).

THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT)

OPCAT establishes a unique monitoring system to assist State Parties in meeting their obligations under the CAT. State Parties agree to regular preventive monitoring of places of detention by the UN Subcommittee on Prevention of Torture (SPT). Composed of 25 independent experts, the SPT is the only international body with the power to visit any place where people may be deprived of their liberty, without restriction, and conduct confidential interviews with detainees and other relevant persons. Based on these visits, the SPT issues recommendations to State Parties. The SPT is also mandated to advise State Parties on the establishment and functioning of and independent National Preventive Mechanisms (NPMs). Just like the SPT, the NPMs conduct regular preventive visits to all places of detention, including prisons, police stations, mental health and social care institutions.

AN ASSESSMENT OF THE UK'S COMPLIANCE WITH OPCAT

Under OPCAT, State Parties agree to establish independent National Preventive Mechanisms (NPM) to conduct preventive visits of all places of detention, including prisons. The UK NPM is unique among its counterparts around the world as it is made up of 21 organisations across four jurisdictions: England, Wales, Northern Ireland and Scotland. While this unusual multi-body structure has both advantages and disadvantages, the most important barriers to OPCAT compliance in the UK relate to concerns about the NPM's budget, independence and legislative anchoring.

Challenges and Opportunities for the UK NPM:

➢ **Scale and complexity of the NPM's structure:** When the NPM was established in 2009, the government decided against the creation of any new bodies and instead designated existing statutory bodies (such as HMI Prisons) to collectively fulfil the UK's domestic requirements under OPCAT. While there were initial concerns that this approach would result in a business-as-usual scenario, in practice, NPM members have taken their new role under OPCAT very seriously. Some have argued that the NPM is too big and unwieldy and may lose focus on torture prevention as a result. However, many also point to the benefits of a multi-member NPM, including the ability to cover a diverse set of issues and settings from a variety of angles and share methods and observations across members, thus making sure that they are operating to the best standard.

➢ **Concerns regarding adequate funding:** NPM member organisations did not receive additional funding when assuming their new roles under OPCAT. Given the sheer complexity of issues the NPM deals with, there is a danger of falling back into the routine work of preventive visits while abandoning other projects due to a lack of resources. For instance, the NPM currently lacks funds to continue its detention population data mapping project. This may impede the effective functioning of the NPM as it requires information about where and how many people are detained across every setting in the four jurisdictions of the UK.

➢ **Concerns regarding independence:** Another potential weakness of the NPM is that it is not unequivocally perceived to be a fully independent institution – which is a key component of a strong monitoring system. This was a concern raised during the last periodic review of the UK by the Committee against Torture, which criticised in particular "the practice of seconding State officials working in places of deprivation of liberty to [NPM] bodies".[13]

➢ **Need for a proper legislative basis:** Finally, in order to improve the UK's compliance with CAT/OPCAT, it is essential that its provisions are incorporated into domestic law. Such legislative backing and recognition would help put to rest the concerns about the NPM's independence, specify its mandate and remits and make it more effective and accountable.

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[13] Committee against Torture (2013). *Concluding observations on the fifth periodic report of the UK* (6-31 May 2013).

KEY THEMES AND FUTURE PRIORITIES FOR RESEARCH AND PRACTICE

The lack of transparency and accountability in the UK prison system were key themes addressed throughout the workshop. These two problems are clearly interrelated: Without reliable information on general detention conditions and cases of abuse, accountability remains elusive for both individual and systemic failings. In addition to more robust transparency and accountability mechanisms, better staff policies, recruitment processes and training could help improve conditions in UK prisons. Ultimately, however, the year-long neglect of the prison system has been a political choice. In the absence of more resources, political commitment and public interest the situation is unlikely to improve significantly.

ADDRESSING THE LACK OF TRANSPARENCY AND ACCOUNTABILITY

While the rise of general levels of violence, suicide and self-harm is well-documented (see above), there is a lack of reliable data on the use of force and disciplinary measures by prison staff. This makes it difficult to determine if and when these measures are disproportionate and illegitimate and whether such incidents amount to torture or ill-treatment. This lack of transparency has severe implications for accountability which is key to attaining justice for victims, prevent torture and other ill-treatment, and improve overall conditions in UK prisons.

To hold individual perpetrators to account it is essential that victims and whistle-blowers can speak out without fear of retaliation and that complaints are systematically documented and investigated in a timely and consistent manner. Serious cases need to be escalated quickly and dealt with through the criminal justice system, rather than internally.

Beyond cases of individual wrongdoings, a wider public and parliamentary discussion is needed to hold ministers and other decision-makers to account for systemic failings in the UK prison system. Independent national organisations such as the NPM and civil society organisations can play a key role in this regard. By leveraging international frameworks and scrutinising government engagement with UN mechanisms such as the upcoming CAT review, they can also help transcend human rights 'ritualism'.[14]

Key themes that deserve further exploration:

➢ **Staffing and recruitment:** Prison staff reductions over the past decade have clearly correlated with deteriorations of conditions in UK prisons, including rising numbers of assaults, substance abuse, self-harm and death in prison custody. But concerns relate not just to staff numbers but also their experience and education. According to a recent study, UK prisons have lost officers with about 70,000 years of combined experience since 2010.[15] While staff turnover may help shift prison cultures away from the 'old guard vision', it is essential that new staff are well qualified. Experiences of other countries, such as Norway, suggest that prison officers' education and training can have a real impact. In this context, a review of prisons' staff policies, recruitment processes and induction procedures may also help to shift organisational cultures and ensure that unfit personnel is not employed in the first place and that perpetrators are not simply re-employed in other prisons.

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[14] Ritualism occurs when states accept and participate in formalised international procedures in the absence of any substantial commitment to the goals themselves or any interest in allowing real scrutiny of their behaviour. See: Charlesworth, H. and Larking, E. (2015). *Human Rights and the Universal Periodic Review: Rituals and Ritualism*. Cambridge: Cambridge University Press.
[15] Savage, M. (2018). Loss of experienced staff leaving prisons unsafe. *The Guardian* (29 April 2018).

- ➢ **Training and capacity building:** There is also a need to train prison staff on their human rights obligations and their ethical responsibilities towards the prisoners. Such trainings are likely to be more effective if they are embedded in practice, i.e. when they provide concrete tools that conform to human rights principles *and* enable officers to do their everyday job better. Finally, the possibility of unintended adverse effects should be taken into account when providing training. For example, training prison staff in physical restraint techniques may lead to those practices becoming normalised even if the stated aim is to minimise their use.

- ➢ **Resourcing:** Underlying all of these issues is the broader problem of funding for prisons and the institutions monitoring them. While this is often discussed as a 'fallout' of austerity, the decision to take resources out of the prison system has clearly been a political choice – one that has also been driven by a lack of public interest in the needs and rights of prisoners.

ACKNOWLEDGEMENTS