



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

Humza Yousaf MSP
Cabinet Secretary for Justice
The Scottish Government

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

By e-mail

Tel: 0131 348 5195
Textphone: 0800 092 7100
justicecommittee@parliament.scot

16 June, 2020

Dear Cabinet Secretary,

Prisons, Young Offenders Institutions and Covid-19

During today's Committee meeting, members considered correspondence from the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland (see Annex).

Members noted that both letters raised important concerns including the human rights of prisoners, conditions in prisons and YOIs, family contact and access to mobile phones and a lack of data on such matters.

The Committee agreed to seek your views and that of the Acting Chief Executive of the Scottish Prisons Service (whom I copy in) on the points raised in their letters.

I look forward to your response, preferably before Wednesday 24 June so that members can consider this before the summer recess begins.

Best wishes,

Margaret Mitchell MSP
Convener, Justice Committee

cc. Teresa Medhurst, Acting Chief Executive, SPS

ANNEX

LETTER FROM THE SCOTTISH HUMAN RIGHTS COMMISSION

I am writing to you today to set out the Scottish Human Rights Commission's continuing concerns about measures being taken in prisons during the COVID-19 pandemic, and the associated risks to people's human rights.

We are particularly concerned at the ongoing lack of action taken to address these human rights issues by both the Scottish Prison Service and the Scottish Government. We ask you to consider this letter as part of your scrutiny of the Scottish Government and the wider justice system's response to COVID-19.

Background

People in prison are likely to be more vulnerable to the risks and impacts of COVID-19. Closed conditions of detention make social distancing virtually impossible; many prisoners are currently living together in cells designed for one person; and prisoners are spending more time in their cells with no possibility of receiving a visit from their family.

On 20th March 2020, the Council of Europe's Committee for the Prevention of Torture (CPT) issued a Statement of Principles on the treatment of people in prisons and other places of detention during the COVID-19 pandemic¹. This set out the steps required to ensure respect for people's fundamental rights in the context of emergency public health measures. These fundamental rights include:

- The right to at least one hour of time in the open air each day
- The right to maintain adequate personal hygiene including access to soap and hot water
- The right of access to a lawyer
- The right to alternative means of contact with the outside world in the absence of face-to-face visits

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also produced advice on COVID-19 for State parties and National Preventive Mechanisms².

On 2nd April 2020, the Commission and other members of the Scottish Sub-Group of the National Preventive Mechanism (NPM) wrote to the Cabinet Secretary for Justice, setting out a number of recommendations to ensure that people's rights would be respected in Scotland's prisons and other places of detention³. Subsequently, the Commission and other key stakeholders have met with the Cabinet Secretary on a number of occasions to raise and discuss our various concerns.

The Commission welcomes and supports a number of the steps taken by the Scottish Government in response to some of these concerns. In particular, we recognise the dedication of staff working in detention settings and we commend efforts made by government to reduce the prison population.

However, we remain deeply concerned about the current conditions being experienced by some people within Scotland's prisons.

Current measures and conditions

As the Committee is aware, the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 introduced significant changes to the prison regime at the discretion of the Scottish Prison Service. The amended rules relax requirements to meet some basic needs including nutritious food, clean socks and underwear, access to bathing or showers, family contact, reading material, and purposeful activity.

We are concerned that some of these changes, and associated Scottish Prison Service requirements of governors, are creating conditions where some prisoners' fundamental rights are not being respected. We are particularly concerned that current conditions being experienced by some people could amount to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights.

These concerns are based on our review of the amended rules and the action required of governors. We are aware, for example, of people being confined to their cell for 24 hours a day, for extended periods of time, with no access to shower facilities or time out of cell, including access to outdoor exercise. We are also aware that prisoners who are confined in their cells for COVID-19 related reasons are afforded limited telephone contact with their lawyer, and that some prisoners have been unable to maintain any form of telephone contact with their families.

While it may be legitimate and reasonable to suspend non-essential prison activities in the current public health emergency, any restrictions must be minimised, proportionate to the nature of the health emergency, and made in accordance with law.

Measures amounting to solitary confinement for healthcare reasons should only be adopted on the basis of a comprehensive medical assessment. Solitary confinement, which carries significant mental and physical health impacts, should only ever be adopted where it is proportionate, limited in time and subject to procedural safeguards.

The Commission is also concerned about the lack of transparent and accessible data currently available to enable adequate monitoring of prison conditions and their impacts.

Given the serious nature of our concerns, we have urged the Scottish Government to take action to ensure that all prisoners are being held in conditions which are fully in accordance with the state's human rights obligations. To date, we have not received the assurances we would wish to see in this regard.

We remain committed to working with the Scottish Government, Scottish Prison Service and all other relevant stakeholders to ensure that people's rights are respected and protected through the current public health emergency. We welcome the Justice Committee's consideration of the issues and concerns we have set out here.

Judith Robertson
Chair

LETTER FROM CHILDREN AND YOUNG PEOPLE'S COMMISSIONER SCOTLAND

Dear Convener

We note the Scottish Human Rights Commission's letter of 18 May 2020 in which the Commission sets out its concerns around human rights and prison conditions during the Covid-19 pandemic. We agree with all of the points made in the letter, in particular that in some cases conditions experienced by prisoners may amount to inhuman and degrading treatment in terms of Article 3 of the European Convention on Human Rights (ECHR).

In addition, we would ask the Committee to give specific consideration to the rights of children and young people who are deprived of their liberty. These children are recognised in international law as being particularly vulnerable to human rights breaches in normal times, and are additionally so during the current pandemic. We refer the Committee to the UN Committee on the Rights of the Child's General comment No.24 (2019) on children's rights in the child justice system, which specifically requires that children are deprived of their liberty only as a measure of last resort, by absolute necessity and for the shortest appropriate period of time in accordance with the law.

In Scotland, children may be deprived of their liberty and detained in various settings including Young Offenders Institutions (YOIs) Secure Care provision, mental health facilities, and an immigration detention centre. Each of these types of establishments are governed by different procedural legal frameworks but all children detained are entitled to the full protection of human rights in international law.

We note that on 20 March 2020, there were 24 children and 270 young people (aged 18-21) detained in YOIs. On 15 May 2020, there were 7 children held on remand and 8 serving a sentence; with a further 58 young people being held on remand, 9 convicted and detained pending sentence and 149 serving sentences. In total therefore there were 231 children and young people deprived of their liberty, some for significant and uncertain periods of time.

We would refer the Committee to a number of recent and significant reports which set out the human rights situation at an international and domestic level. In particular, "The Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty" and "Rights Respecting? Scotland's Approach to Children in Conflict with the Law". It is worthy of note that shortly before the Coronavirus crisis began the findings and recommendations of the Scottish Independent Care Review were published with 'The Promise' echoing the HMIPS concerns for children deprived of their liberty. The "Report on an Expert Review of the Provision of Mental Health Services, For Young People Entering and in Custody at HMP YOI Polmont" (HMIPS Mental Health Report) sets out serious concerns about mental health in Scotland's YOIs and as we note below, the situation has only become worse as a result of the pandemic. The Report "Children in Prison During the Coronavirus Pandemic" sets out concerns about detention of children in England and Wales and includes commentary on many issues that are equally relevant to Scotland.

Solitary confinement

International human rights frameworks clearly prohibit the use of solitary confinement for children, recognising the damaging effects it can have on physical and mental health. Solitary confinement is defined by the United Nations in the Nelson Mandela Rules as confinement “for 22 or more hours a day without meaningful human contact”. It is important to note that the negative impacts of isolation can begin long before the 22-hour threshold is reached. We understand that some children and young people in YOIs are currently being confined in their cells for up to 23 hours a day and those who are showing symptoms of Coronavirus are isolated in their cells for 24 hours a day.

Access to education and other activity

We have been told that access to education, activity and exercise are very limited at present. This has a negative impact on children’s rights to education and health. We note that the HMIPS inspection of Polmont YOI found that children on remand in particular experienced limited access to meaningful activity and support prior to the pandemic, and that access to services was also restricted prior to sentencing.

Social work support

We have been told that social work visits have largely ceased. This will affect the level of support provided to children, the level of additional scrutiny over protection of their rights, and their ability to be assessed for and prepare for release.

Family contact

We have been told that family contact is not taking place despite it being recognised as playing a huge role in mitigating vulnerability and mental illness. We understand that no measures have been put in place to facilitate additional virtual contact and to support rights to respect for family life (such as socially distanced visits, significantly increased telephone or video contact.)

In-cell telephony and technology

One of the recommendations of the HMIPS Mental Health Report which the Scottish Government agreed to (in June 2019) was to install in-cell telephony in HMP YOI Polmont. On 17 April 2020, the Cabinet Secretary for Justice announced the Scottish Government’s intention to provide mobile phones to those in custody. To date this has not been done.

Hygiene

Amendments to the prison rules have relaxed duties to meet basic needs including those related to hygiene. We are not aware of any Children’s Rights Impact Assessment having been conducted on these amendments. Notwithstanding the impact on human dignity of having access to showers restricted, when the strong messaging from public health professionals is about the critical and life-saving important of washing hands to prevent the spread of the virus, we question how hygiene and infection control in prisons is being managed.

Mental health

The consequence of all the above will be to seriously exacerbate existing mental health vulnerabilities and to place all children detained at heightened risk of developing mental health problems. There were pre-existing concerns in YOIs about the level and quality of mental health support for children and young people. The HMIPS Report highlighted significant concerns for the mental health of those on remand, awaiting sentence, or in the early stages of their sentence. These groups are identified as being the most vulnerable to episodes of self-harm or suicide. A key reason outlined in the Report for why the remand population was considered to be particularly vulnerable related to their experience of 'social isolation'. As noted above similar concerns were raised by the Centre for Youth and Criminal Justice (CYCJ) and the Independent Care Review. The situation is only likely to have worsened as a result of the pandemic.

Early Release

In March, 2020, the United Nations High Commissioner for Human Rights, Michelle Bachelet, appealed for urgent action to prevent Covid-19 from "rampaging" through places of detention and on 8th April 2020, the United Nations Committee on the Rights of the Child (the CRC) called on all States to:

"Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families."

"Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19, and ensure that any child who was arrested or detained is immediately returned to his or her family."

We welcome therefore the fact that some children and young people are covered by the early release regulations, but note that the 16 and 17 year olds detained in Young Offenders' Institutions (YOIs) are subject to the same eligibility criteria as adults. As the Howard League noted in its submission to the Committee, the criteria are not human rights based, and make no provision for assessment of children's rights, needs and wellbeing to inform a decision on release. There is no evidence that the Government gave any consideration to the specific needs and rights of children when drafting the regulations.

In line with the overwhelming weight of international expert opinion, including the United Nations Committee on the Rights of the Child (UN CRC), the Office of the UN High Commissioner for Human Rights (OHCHR), the World Health Organisation (WHO), the UN Office on Drugs and Crime (UNODC), the UN Joint Programme on HIV/AIDS (UNAIDS), and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we are calling on the Scottish Government to ensure that all children detained in YOIs are individually assessed for release using a human rights based approach. This approach would be consistent with the Government's obligations in international law to grant children additional legal protection and consideration.

We are especially concerned that failure to include children and young people on remand in the early release regulations disproportionately impacts on this group, who are likely now to be facing detention and deprivation of their liberty for significant and uncertain periods of time, without having been convicted of any offence.

We welcome the Committee seeking data on the Scottish Government's early release programme. We would also encourage the Committee to seek specific disaggregated data on children detained in YOIs and in particular the length of detention, the reason for detention, the scheduled release date, parole/appeal or trial dates, whether they are care experienced or have a disability or additional support needs. This would greatly assist the Committee in assessing the impact of the programme on those whose rights are most at risk.

In addition, we consider that children in secure care centres should also have their situation reviewed, allowing a rights-based assessment of whether detention continues to be in their best interests. This does not require legislation, but it is not clear that the Government has set an expectation that this will happen.

We intend to raise the issues around early release with the Covid-19 Committee as many of them require legal change in order to resolve, however we consider that the Justice Committee will wish to be aware of these matters to provide context in relation to the concerns we set out above.

We hope members find this information useful, and we encourage and support the Committee in its scrutiny of the Scottish Government and Scottish Prison Service approach to ensuring the human rights of children deprived of their liberty are respected, protected and fulfilled.

Bruce Adamson
Children and Young People's Commissioner Scotland