

***United Kingdom Universal Periodic Review
Submission by the Howard League for Penal Reform***

October 2011

The Howard League for Penal Reform is the leading non-governmental organisation dealing with penal reform in the United Kingdom and was awarded special consultative status with the United Nations in 1947. It is an independent charity and accepts no funding from government.

The Howard League for Penal Reform has the following values statement:

- The Howard League for Penal Reform works for a safe society where fewer people are victims of crime
- The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives
- The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community.

The Howard League for Penal Reform welcomes the opportunity to contribute towards the upcoming United Kingdom Universal Periodic Review. We have chosen to focus on a number of key issues which are in violation of the human rights framework and fall below the standards expected of a developed nation. In addition to these key points we also note that the UK has a substandard and unjust penal system which flouts much of the guidance outlined in the United Nations standards in the treatment of prisoners (1955).

Indeterminate prison sentences

Breach of proportionality and the independence of the judiciary

The Howard League for Penal Reform has calculated that England and Wales currently has more people incarcerated on indeterminate prison sentences than all the other 46 countries in the Council of Europe combined. The expansion of mandatory open ended sentences is a clear breach of proportionality and the principle that punishment should be based on the crime committed, rather than risk of future criminality. The use of mandatory sentences also fetters the discretion of the judiciary, yet they are applied to the most serious and violent crimes where the stakes are at their most high.

Over 14,000 men and women are serving an indeterminate sentence in England and Wales and until our sentencing framework has been reformed we will continue to condemn hundreds of people each year to an uncertain and unjust future.

Breaches of Articles 7 and 9 of the UN Declaration of Human Rights

The number of people serving an indeterminate sentence dramatically increased following the implementation of the Imprisonment for Public Protection (IPP) sentence in 2005. Whilst the IPP sentence has now been recognised as flawed on many levels, its impact is still evident – there are currently around 6,550 men and women serving an IPP sentence and over half of them are being detained past their tariff with no realistic prospect for release.

The Ministry of Justice has recently announced that the IPP sentence will be abolished. However this will not be retrospective and the backlog of prisoners will continue to be held until the prison service is able to provide the courses that will allow them to demonstrate eligibility for release. The financial and logistical constraints within the prison service means that in practice those serving an IPP cannot progress through their sentence and the UK is therefore in violation of Article 7 of the Declaration as their detention is arbitrary and indiscriminate. In addition to problems facing the general IPP population, those with learning disabilities who do not meet the minimum threshold for education have no prospect of completing their sentence plan. Discrimination on such grounds is a further breach of Article 9 of the Declaration. Whilst the Howard League welcomes the announcement that the IPP sentence will be removed we are concerned that the failure to make any new provision retrospective means that the many thousands of men and women on this sentence will continue to be detained in prison with no clarity about the length of their imprisonment.

Children in the criminal justice system

Breach of Article 37(b), UN Convention on the Rights of the Child

The Howard League has a history of campaigning against the government's treatment of vulnerable children, particularly where they have breached their obligation to only use arrest, detention or imprisonment as a last resort or for the shortest possible time. Following the Resolution on 'Human rights in the administration of justice, in particular juvenile justice' which was passed in September this year, the UK is also disregarding many of the recommendations regarding children.

In England and Wales the age of criminal responsibility is 10 whilst in both Northern Ireland and Scotland moves are being made to increase their minimum age to 12. This low age of criminal responsibility means that many children whose behaviour should be dealt with by parents or in extreme cases of vulnerability and need, by appropriate children's services, are instead criminalised. Research conducted by the Howard League for Penal Reform recently found that at least a quarter of a million children are arrested every year. Consequently, the UK has one of the largest youth justice systems in Europe.

Breach of Article 3, UN Convention on the Rights of the Child

The use of penal custody for children as young as 10 contravenes our obligations under international law. Once a child has been criminalised, their best interests are no longer prioritised and this remains a clear breach of article 3 of the convention on the rights of the child. The UK uses child custody excessively; over 5,000 children were imprisoned in 2010 and at any one time almost 2,500 children are held in custody (YJB/MoJ 2011). Of those children, around 80 per cent are held in Young Offender Institutions, the most punitive and basic provision available.

Breach of Articles 6, 19 and 37(a/c), UN Convention on the Rights of the Child

The Howard League has raised concerns about further breaches of the rights of the child, in regards to the use of restraint, solitary confinement and forcible strip-searching of children in custody. An investigation by Lord Carlile QC concluded that using these methods with children in custody would be unlawful in any other context (The Howard League, 2006). His report revealed that the use of force on children is endemic in prisons and privately run secure training centres.

Women in the criminal justice system

Breach of Article 2, UN Convention on the Elimination of all forms of discrimination against women

Cross party policy has recognised that female imprisonment is unjust, ineffective and has a catastrophic impact on women (APPG, 2011). The prison service was built to house men, and it does not meet the needs of the vulnerable and damaged female population. Despite its impropriety, the UK continues to imprison women excessively and impose disproportionately punitive sentences in comparison to men. More than half of women entering prison do so on remand and of that number 60 per cent do not then receive a custodial sentence. In addition, the number of women serving short sentences or who are recalled to prison has increased disproportionately in the past year.

The Howard League recommends that women are diverted from custody into supportive, effective centres that get to the heart of offending behaviour. Only when dealing with dangerous and violent women should custody be imposed, and in these cases they should be held in small, secure, local units instead of traditional prison institutions.

Breach of Article 3, UN Convention on the Rights of the Child

The UK's excessive imprisonment of women not only contravenes the rights of female prisoners, but also the rights of their children whose wellbeing should always be considered when sentencing. The Howard League presented our report 'Voice of a Child' (2011) at the United Nations Committee on the Rights of the Child Day of General Discussion on prisoners' children. Our research found that more than 17,000 children are separated from their mother every year through imprisonment, causing long term emotional, social, material and psychological damage and subsequent breaches of other human rights safe guards designed to protect the child and family.

If sentencing reform was introduced ensuring community sentences were prioritised over imprisonment, thousands of children could be spared the agony of separation and their mothers could address their own needs in a community based environment.

Recommendations

- The removal of all mandatory indeterminate sentences which should be replaced by a sentence which reinstates judicial discretion
- An increase in the age of criminal responsibility from ten to fourteen
- A commitment from the UK that no child will be sent to a young offender institution and only secure children's homes should be used for those where custody is required
- Sentencing guidelines that promote community sentences for all women, except in the most serious cases

References

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