

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
Briefing for the UN Human Rights Council
Universal Periodic Review – 13th session (2012)

Gender Inequality in the Criminal Justice System (England and Wales)¹

Executive Summary

Key issue: adopt and implement a national strategy for women in the criminal justice system

- 1. Women in Prison, a national charity supporting over 4,000 women a year,² believes that the United Kingdom (UK) is perpetuating gender inequality in the criminal justice system and rolling back progress in contravention of its national and international commitments. The briefing outlines the commitments the UK has made, the lack of action taken and the impact of this inaction on women in the criminal justice system.**
- 2. The United Kingdom's (UK) treatment of women in the criminal justice system is covered by all of its international legal commitments. This briefing will focus on the following international standards:**
 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
 - United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules)
 - United Nations Standard Minimum Rules for the Treatment of Prisoners
 - European Prison Rules
 - Convention on the Rights of the Child
- 3. The UK has embarked on a process of criminal justice reform and Women in Prison recommend that this process should include the adoption of a national strategy for women in the criminal justice system designed to uphold their rights and dignity and eliminate gender-based discrimination in the criminal justice system.**

The Need for a Gender-Responsive Criminal Justice System is Internationally and Nationally Recognised

- 4. The United Nations has recognised the need for gender-differentiated responses to offending. The adoption of the Bangkok Rules demonstrates the international**

¹ Criminal justice is a devolved issue in the United Kingdom, the Scottish Parliament and Northern Ireland Assembly are responsible for criminal justice matters in their respective jurisdictions.

² Founded in 1983 by a former prisoner, Women in Prison (a registered charity) works in England and aims to reduce the number of women in prison and prevent the damage done to women by imprisonment. Women in Prison seeks to achieve this by providing information, advice and support services and campaigning for the rights of women in the criminal justice system. Women in Prison supported 4,137 women in the last year.

understanding of and commitment to delivering a criminal justice system that upholds women's dignity and human rights by providing specific responses to their specific needs and circumstances.

5. The UK has accepted “the need for a distinct radically different, visibly-led, strategic, proportionate, holistic, woman-centred, integrated approach” to women's offending, as recommended in the government's 2007 report entitled *A report by Baroness Jean Corston of a Review of Women with particular vulnerabilities in the criminal justice system* (Corston Report). The Corston report states:

“There are fundamental differences between male and female offenders and those at risk of offending that indicate a different and distinct approach is needed for women.”

6. The UK's 2006 Equality Act created a proactive obligation on all state machinery to ensure gender equality. Replaced by the 2010 Equality Act this duty remains and requires the government to take action to ensure that state policies and activities do not create or perpetuate gender-based inequality.
7. When the UK reported to CEDAW in 2008 the CEDAW Committee welcomed the measures taken by the United Kingdom in response to the Corston Report and made the following Concluding Observations:

The Committee urges the State party to intensify its efforts to reduce the number of women in conflict with the law, including through targeted prevention programmes aimed at addressing the causes of women's criminality. Recalling its previous recommendation, the Committee urges the State party to intensify its efforts to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences. It also urges the State party to address the situation of women in prison through the development of comprehensive gender-sensitive policies, strategies and programmes. The Committee calls upon the State party to ensure that young female offenders are not held in adult prisons, to take further measures to increase and enhance educational, rehabilitative and resettlement programmes for women in prison and to ensure the provision of adequate health facilities and services, including mental health services, for women in prison. It also calls upon the State party to take further steps towards the establishment of small custodial units and community establishments, as well as separate women's facilities, in particular in Northern Ireland.³

The Gap between Obligations and Commitments and Action

8. Women in Prison submits that despite national and international commitments the UK is taking no discernible action at this time to further the implementation of a gender-responsive criminal justice system and is in the process of rolling back some of the progress that has been made. The UK has not fully implemented the recommendations made by the CEDAW Committee. As a result women continue to face discrimination and inequality in the criminal justice system.
9. The UK government is undertaking a process of criminal justice reform in which women are invisible. The principle piece of draft legislation arising from this reform process, the Legal Aid, Sentencing and Punishment of Offenders Bill makes no mention of women

³ CEDAW/C/UK/CO/6 Extract from A/63/38, page 142, Concluding observations of the Committee on the Elimination of Discrimination against Women: United Kingdom of Great Britain and Northern Ireland, para. 267

and no specific provision for women in conflict with the law. Since coming into office the current administration has stated that it is committed to the recommendations in the Corston Report. However, no plan of action has been put in place and the visible leadership and transparency that existed under the previous administration has been removed. This government has stated that it will not appoint a Ministerial Champion for Women in the Criminal Justice system and has not issued any progress updates on this agenda.⁴ Previously, the Ministerial Champion provided accountability for progress towards ending gender inequality in the criminal justice system and was instrumental in securing government funding for women-specific diversion schemes. The cross-departmental unit that worked under her issued biannual progress reports on activities designed to implement Corston's recommendations, no such report have been issued since December 2009.

10. The UK says in its Seventh report to CEDAW that:

“Through the proposals set out in the Green Paper, the UK Government will ensure that women who offend are successfully rehabilitated, whether they serve sentences in custody or in the community.”⁵

The UK also states in this report that it is “developing a strategy that will ensure that the women's sentence delivery, in both custodial and community environments, is fit for purpose and meets the complex needs of women offenders.” This strategy does not yet exist and no visible progress has been made towards it since the report was submitted to CEDAW in June 2011.

The Impact of Inaction on Women in the Criminal Justice System

11. The impact of the continuing gender-based discrimination and inequality in the criminal justice system is that the needs of women, as identified in the Corston report and which motivated the United Nations to develop and adopt the Bangkok Rules, are not being met. By way of example some specific impacts are:

Women are held in higher security conditions than required

In contravention of international standards⁶ women are held in higher security conditions than required. Whilst the men's prison estate is divided into four security categorisations (category A-D), there are only two security categorisations for women: Open and Closed. There are 4,422 prison places for women in England and Wales, there are just two open prisons with a capacity of only 228 (5% of the overall capacity for women). Until March 2010 there was a third, mid-level, categorisation: Semi-Open. This has been removed and the women previously categorised as suitable for semi-open conditions are now in closed conditions. The lack of intermediate security categorisations makes it harder for women to progress through their sentence towards release.

The lack of accredited women-specific programmes in prison

There is only one accredited women-specific behaviour programme available. This is being delivered in one prison and currently has a cohort of 10 women. The limited access to this programme and the lack of other women-specific programmes mean that women are not getting rehabilitative programmes that are needed to complete their

⁴ Record of Parliamentary Debate: Hansard, HC Deb, 2 November 2010, c737W

⁵ United Kingdom, Home Office: United Kingdom's Seventh Periodic Report, submitted June 2011, para. 23

⁶ UN Standard Minimum Rules on the Treatment of Prisoners, Rule 63; European Prison Rules, Rule 18.10

sentence plans. This under-resourcing of rehabilitative programmes for women is resulting in women serving longer sentences than necessary as women are unable to fulfil parole board requirements to complete certain programmes due to a lack of provision not an unwillingness or inability on their part.

Disproportionately high rates of self-harm in women's prisons

Women are just 5% of the prison population but women account for 43% of all self harm incidents in prison.⁷

Inappropriate behaviour by male prison staff

Following an unannounced inspection in 2010 the Chief Inspector of Prisons reported that in HMP Holloway:

“Some [women] reported unwanted attention from male staff, which they did not believe was appropriately dealt with and they had little confidence that anyone in authority would listen to them. They were disconcerted about male night staff observing them through hatches. Given the life experiences of many women prisoners, these reports were a particular concern. Some male staff were under investigation for alleged inappropriate behaviour, but senior managers said it was often very difficult to get conclusive evidence, even when they had identified concerns about specific individuals.”⁸

Lack of appropriate clothing

Women in Prison staff who regularly go into prison have reported that there is a lack of appropriate clothing, including a lack of underwear, in some prisons infringing their right to dignity.

Lack of effective, coherent response to prior experience of violence against women

The UK has recognised that women who have experienced domestic violence or sexual abuse and women who have been involved in prostitution have particular support needs in prison and on release. A lead officer for both of these issues has been appointed in each women's prison. However, there is no central guidance for these leads. Previously there was just one domestic violence intervention run in prison, this was withdrawn when it was shown that the way in which it was run was increasing incidents of self harm amongst participants. No programmes were introduced in its place.

Indefinite incarceration of women with mental illness

UK law provides for a sentence of indefinite Imprisonment for Public Protection, the sentencing judge will give a minimum tariff which must be served in prison. However, there is no maximum length to an IPP sentence. In November 2010 there were 3,173 prisoners (men and women) on IPP sentences above their tariff.⁹ Almost 80% of women serving IPP sentences are convicted of arson which is an indicator of serious mental illness and self harm.¹⁰

⁷ Ministry of Justice (2010) Safety in Custody Statistics 2009

⁸ HM Chief Inspector of Prisons (2011) Report on a full unannounced inspection of HMP Holloway 15 – 23 April 2010, para. 2.35

Her Majesty's Inspector of Prisons is an independent inspection body which has a coordinating function for the UK's National Preventative Mechanisms under the Optional Protocol to the UN Convention Against Torture

⁹ Record of Parliamentary Debates, Hansard HC, 29 March 2011, c234W

¹⁰ HM Chief Inspector of Prisons and HM Chief Inspector of Probation (2008) The indeterminate sentence for public protection: A thematic review,

Failure to consider best interests of the child in sentencing their primary carers¹¹

In contravention of the UN Convention on the Rights of the Child (article 3.1) the UK's courts are failing to consider the best interests of the child when sentencing their primary carers. An ongoing study has found that in all 42 cases examined no balancing exercise assessing the best interests of the child and public safety was undertaken, the rights of the child were not mentioned in a single case and in four examples no reference at all was made to the children.¹²

Proposed Recommendations

12. The women's prison population hit an 8-year low of in January 2011 (3,982).¹³ However, since then it has risen steadily (it was 4,208 on 18 November 2011).¹⁴ Women in Prison believes that in order to reverse this and to meet its international obligations towards women and in line with its national commitments the UK must:

Adopt a national action plan on women in the criminal justice system.

The action plan should include the following:

- a) Women-specific commissioning and contracting
- b) Women-specific drug rehabilitation services, in prison and in the community
- c) A timetable for replacing the women's prison estate with a small number of small custodial units
- d) Maintaining effective support for women in the criminal justice system which is independent of the system that punishes them
- e) Creation of a central driver, supported by the MOJ Criminal Justice Women's Policy Team, responsible for ensuring delivery across government
- f) A nationwide prison and community programme of prevention and support for women in the criminal justice system who have experienced domestic violence or sexual abuse
- g) A specific action plan for women engaged in prostitution focussed on ending criminalisation and increasing exiting support
- h) National provision of women-specific community sentences
- i) Provision of specialist women-specific mental health liaison and diversion
- j) Removal of systemic barriers to progression through custodial sentences towards release
- k) Ensure that the judiciary understand and act in line with their human rights obligations in regard to sentencing individuals with caring responsibilities for children

¹¹ This is primarily a child rights issue, but is also equality issue as it disproportionately impacts on women in the criminal justice system as they tend to be the primary or sole carers of children.

¹² Report of interim findings from a study conducted by Rona Epstein, University of Coventry. Findings will be published when 70 cases have been reviewed. The sample of 42 cases has been taken from a range of courts: Magistrates' Court: 2, Crown Court 10, Court of Appeal 30.

¹³ Ministry of Justice, Prison Population Bulletin – Weekly 07 November 2011

¹⁴ Ministry of Justice, Prison Population Bulletin – Weekly 18 November 2011