

SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, IN PREPARATION FOR THE PRE-SESSIONAL WORKING GROUP CONSIDERATION FOR THE EIGHTH PERIODIC REPORT OF THE UNITED KINGDOM OR GREAT BRITAIN AND NORTHERN IRELAND.

Submission on the situation of women in the criminal justice system in the UK, by the following organizations: Birth Companions, INQUEST, the Prison Reform Trust and Women in Prison.

11 June 2018

We are a group of civil society organizations with shared expertise in the experiences of women and girls in prison: Birth Companions, INQUEST, the Prison Reform Trust, and Women in Prison.

We would like to bring to the attention of the CEDAW Committee our profound concerns, in order to inform the Pre-Sessional Working Group processes and the preparation of the List of Issues.

We note the repeated concerns expressed by the CEDAW Committee in its review of the United Kingdom's compliance with the treaty, in 2008¹ and 2013,² relating to the experiences of women and girls in prison.

To assist the CEDAW Committee, we summarise our key concerns and refer to our published reports which are available online.

1. SUICIDE AND SEVERE MENTAL HEALTH PROBLEMS IN THE FEMALE PRISON POPULATION

In its report of May 2018, *Still Dying on the Inside*, INQUEST said:

“11 years after the publication of Baroness Corston’s seminal review in 2007 of women in the criminal justice system, the situation has never felt so desperate. It is with anger, sadness and deep frustration that we report almost no progress on the systemic and structural change needed.”³

INQUEST refers to “institutional State violence” – structures of persistent denial of economic and social rights, discrimination and inequality, particularly against Black and Ethnic Minority women (BAME) which have led to the high numbers of women in UK prisons.

This situation of marginalization and discrimination experienced by women in prison is particularly compelling in the context of austerity which has persisted in UK government policy in recent years. This policy was referred to the Committee on Economic, Social and Cultural Rights most recent concluding observations, in 2016. The Committee on Economic, Social and Cultural Rights specifically made recommendations that the UK address austerity’s impact on the economic, social and cultural rights by disadvantaged and marginalised individuals and groups, in particular women, children, and persons with disabilities.⁴ The Committee on Economic, Social and Cultural Rights also drew attention to the lack of adequate resources for mental health services and lack of adequate mental

¹ UN Doc CEDAW/C/UK/CO/6 10 July 2008, paragraph 266, 267.

² UN Doc CEDAW/C/GBR/CO/7, 30 July 2013, paragraph 55.

³ *Still Dying on the Inside*, Examining deaths in women’s prisons, May 2018, page 4. For access to the original report by Baroness Jean Corston, see <http://aka.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

⁴ UN Doc E/C.12/GBR/CO/6, 14 July 2016, paragraph 18 and 19.

healthcare generally in the UK, and made specific mention of the situation of persons in detention.⁵ In 2013, the Committee against Torture expressed concern about the “unprecedented increase of women in prison over the last 15 years, at information that about half of them have severe and enduring mental illness, and at the disproportionate rate of self-harm among women prisoners”⁶ and called on the UK government to “ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.”⁷

2016 saw the largest number of prison suicides ever. For statistics and graphs, see INQUEST, *Dying on the Inside*, pages 14 and 15.

Following this rise in self-inflicted deaths in women’s prisons in 2016, the Independent Advisory Panel on Deaths in Custody identified the following reasons for the sudden rise in deaths:

- Reductions in staffing;
- Unmet mental health, drug and alcohol treatment needs;
- A discernible increase in the vulnerability and complex needs of women entering prison;
- Increase in illicit drug use, intimidation, bullying and debt in prisons;
- Decrease in “release on temporary licence;”
- Knock-on effect of the closure of Holloway Prison (the only women’s prison in London) including increased distances of women prisoners from their families and support networks, and increased numbers of women in other prisons, many with complex needs;⁸
- The widespread closure of women-only support services in the community.

As well as a rise in suicides, the IAP identified concerns about deaths from ‘natural causes’ – which may be the impact of poor prison healthcare for physical and mental health. INQUEST is also concerned about poor health of women prisoners and increased mortality rates after release from prison.⁹

Research into inquests into deaths in custody indicate that prison staff mismanage severe mental health problems, including interpreting mental distress as “a disciplinary issue.”¹⁰

2. MOST WOMEN IN PRISON SHOULD NOT BE THERE AT ALL

Even if suicides were reduced in number or entirely prevented, we would still have serious concerns about the numbers of women in prison: we are especially concerned that the traumatic histories and situations of these women, their marginalisation in society and their attendant vulnerability means that it is entirely inappropriate – indeed, disproportionately punitive – that many of these women are in prison at all.

⁵ UN Doc E/C.12/GBR/CO/6, 14 July 2016, paragraph 57 and 58.

⁶ UN Doc CAT/C/GBR/CO/5, 24 June 2013, paragraph 32.

⁷ UN Doc CAT/C/GBR/CO/5, 24 June 2013, paragraph 33.

⁸ “After Holloway” Women in Prison and the Centre for Crime and Justice Studies, March 2018. <http://www.womeninprison.org.uk/research/reports.php?s=2018-03-05-after-holloway>

⁹ Still Dying on the Inside, Examining deaths in women’s prisons, May 2018, page 7.

¹⁰ Still Dying on the Inside, Examining deaths in women’s prisons, May 2018, pages 9 and 10.

While the Corston Review pre-dates the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) they share a common theme, that women should be diverted from prison as much as possible, especially where they have health concerns or caring responsibilities. The same approach was taken by the Angiolini Commission on Women Offenders in Scotland which reported in 2012.¹¹

The UK still has one of the highest rates of women in prison in Europe, with approximately 4500 women in prison at any one time and about 12,000 women received into prison in the course of a year.¹² In England and Wales problems have been exacerbated by the Government's Transforming Rehabilitation reforms which introduced post-custody supervision for all given custodial sentences of more than one day. This, as we predicted and cautioned the government, has had a disproportionately harsh impact on women. In 2017, 1,692 women were recalled to prison post-release. In very few of these cases had women committed a further offence, it is a reflection of a

¹¹ For further data on women in Scotland see Prison Reform Trust briefing "Why focus on reducing women's imprisonment in Scotland," October 2017.

Other information specific to women in prison in Scotland:

"Plans are well advanced for the replacement of HMP & YOI Cornton Vale with a smaller national prison for women and two Community Custody Units in Glasgow and Dundee. These Units have the potential to allow women to serve their prison sentence at a location closer to their home, thereby enabling them to maintain family and community links in a way which will be constructive and helpful for their return to the community. The number of women in custody remains stubbornly high at over 350. Given that the new configuration of the female custodial estate will provide only 230 places, much work is still required to reduce the number of women in custody ahead of the new prison's opening in 2020. There needs to be a greater use of alternative sentencing, more diversion from prosecution and enhanced support for women to prevent offending. "
https://www.prisoninspectoratescotland.gov.uk/sites/default/files/news_attachments/What%20next%20for%20prisons%20in%20Scotland.pdf

The Scottish Government, COSLA and the Improvement Service have published the Equally Safe Quality Standards and Performance Framework. Developed in partnership with the National Violence Against Women Network, the framework provides an invaluable resource to help multi-agency Violence Against Women Partnerships measure their progress and performance in implementing *Equally Safe: Scotland's Strategy for preventing and eradicating violence against women and girls* at a local level. It will also help identify any areas where improvements may be required.
http://www.improvementservice.org.uk/documents/violence_against_women/equally-safe-quality-standards-performance-framework.pdf

Self-harming in Scotland's prisons has almost doubled in the past four years, it has emerged. Urgent action is now being demanded from the Scottish Government to tackle the problem amid concerns that prison staff are not getting proper support. The Prison Service insists that main reason behind the increase is improvements to the way figures are collected to provide a fuller picture of the problem. Liberal Democrat justice spokesman Liam McArthur made the plea after prisoners were recorded self-harming on 532 occasions in 2017 – the equivalent of about ten incidents a week. Figures obtained by the Liberal Democrats using Freedom of Information showed in Cornton Vale, Scotland's only all-female prison, incidents of self-harm increased from 27 in 2013 to 59 in 2017.
<https://www.scotsman.com/news/politics/self-harming-in-scotland-s-prisons-almost-doubled-in-four-years-1-4748870>

¹² This figure includes over 8,000 for England and Wales, over 3000 for Scotland and about 700 for Northern Ireland: detail is available from the Ministry of Justice, collated by Prison Reform Trust in the 'Why focus...' briefings.

lack of support and high levels of homelessness. Women in UK prisons tend to have the following characteristics:

- a) More than half of women in prison a history of abuse and violence, during childhood and adulthood,¹³ this figure may well be an underestimate given women's anxiety about disclosing information.
- b) Many are from Black and Minority Ethnic (BAME) and foreign nationals.¹⁴ While BAME women account for 3% of the population of women as a whole in the UK, BAME women account for 10% of the women's prison population in the UK.¹⁵ We note that the Committee on the Elimination of Racial Discrimination expressed concern on the 'overrepresentation of black people and people belonging to ethnic minority groups at all stages of the criminal justice system' and called on the UK government to thoroughly investigate and "take concrete measures to effectively address racial prejudice and bias in the criminal justice system."¹⁶
- c) More than half of the women in prison are mothers of children under 18, many are single parents.¹⁷ We note that in its most recent Concluding Observations to the UK, the Committee on the Rights of the Child expressed concern that, due to insufficient cooperation between courts and child protection authorities, a parent may be sentenced to imprisonment and directly incarcerated while his or her children are left alone without proper care.¹⁸ The Committee on the Rights of the Child recommended that, in accordance with the Bangkok Rules, that the best interests of the child be taken into account as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children.¹⁹ Prison Reform Trust notes that an estimated 17,240 children are separated from their mothers by imprisonment every year.²⁰
- d) Women entering prison are, according to the Chief Inspector of Prisons, "increasingly vulnerable" because of mental health problems, with pre-existing or exacerbated poor mental health, including self-harm.²¹
- e) Even though the Bangkok Rules recommend the diversion of pregnant women and girls, and new mothers, from prison, around 600 women receive antenatal care in prison and 100

¹³ Still Dying on the Inside, Examining deaths in women's prisons, May 2018, page 12. Prison Reform Trust, "Why focus on reducing women's imprisonment" February 2017, page 3. Further information in "There's a reason we're in trouble". Domestic abuse as a driver to women's offending, Prison Reform Trust, November 2017.

¹⁴ Still Dying on the Inside, Examining deaths in women's prisons, May 2018, page 12; Prison Reform Trust "Counted Out: Black, Asian and minority ethnic women in the criminal justice system." September 2017.

¹⁵ Prison Reform Trust, "Why focus on reducing women's imprisonment" February 2017, page 4.

¹⁶ UN Doc CERD/C/GBR/CO/21-23, paragraph 29.

¹⁷ Still Dying on the Inside, Examining deaths in women's prisons, May 2018, page 12. Prison Reform Trust, "Why focus on reducing women's imprisonment" February 2017, page 5.

¹⁸ CRC/C/GBR/CO/5, 12 July 2016, paragraph 54.

¹⁹ CRC/C/GBR/CO/5, 12 July 2016, paragraph 55.

²⁰ Prison Reform Trust, Transforming Lives, page 1. .See also Prison Reform Trust 'Sentencing of Mothers: A discussion Paper', 2015

²¹ INQUEST, "Still Dying on the Inside, Examining deaths in women's prisons," May 2018, page 13.

women give birth in custody every year in England.²² Pregnancy and birth for imprisoned women are more risky than pregnancy and birth for women in the community. Not all women have access to Mother and Baby Units, leading to even worse outcomes for this group of women, who are dependent on securing medical care from prison officers who are not always appropriately trained. Women who are separated from their babies after birth are at higher risk of depression.²³

- f) Women tend to be in prison on remand or to serve short sentences for non-violent crimes, often for a first offence.²⁴

All these issues were highlighted in the Corston Review in 2007 as reasons to ensure women have access to community-based solutions rather than being imprisoned, yet, the female prison population remains persistently high, and double that of 25 years ago.

Our organizations are concerned that despite recommendations on this issue from the CEDAW Committee over the last 10 years, and despite promises from successive governments over that time, progress has not been made.

3. FAILURES TO IMPLEMENT THE CORSTON REVIEW: DETAILS OF KEY PROBLEMS

We note that the CEDAW Committee made a recommendation to the UK government to implement the Corston report in 2008 and again in 2013. Women in Prison prepared a report on the implementation of the Corston Review, ten years after its launch, in 2017, which we refer to in summary to assist the CEDAW Committee in following up on the detail inherent in this recommendation.²⁵

While there have been some improvements in conditions in women's prisons. There has been a decrease in the use of strip-searching,²⁶ however, the practice still persists: a recent inspection of HMP Peterborough found that women held there continue to be strip-searched extensively and unnecessarily - over a nine-week period, the inspectorate found 70 women had been strip-searched. Strip-searching is a humiliating and degrading experience. For the many women in prison who have suffered abuse in the past, particularly sexual abuse, it is a traumatic reminder of those experiences. The Inspectors noted that although prison staff had undergone 'trauma-informed' training, their practices in many respect did not reflect this.²⁷

²² For an overview of the recommendations, and detailed research relating to the recommendations, see The Birth Charter for Women in Prisons in England and Wales, available at: <https://www.birthcompanions.org.uk/Birth-Charter>

²³ Royal College of Midwives and Birth Companions Joint Submission to the prison healthcare inquiry, Health and Social Care Committee May 2018

²⁴ Prison Reform Trust, "Why focus on reducing women's imprisonment" February 2017, page 3.

²⁵ "The Corston Report 10 years on: How far have we come on the road to reform for women affected by the criminal justice system." available at: <http://www.womeninprison.org.uk/research/reports.php?s=2017-03-07-corston-10>

²⁶ Corston recommendation 4, "the Corston Report, 10 Years on" page 7.

²⁷ HM Chief Inspector of Prisons report on HMP Peterborough, 11-21 September 2017;

There have also been some improvements to sanitation and hygiene in women's prisons.²⁸ However, the situation is not consistent everywhere, and often data is not available to track whether recommendations have been fully implemented.

Baroness Corston recommended that existing women's prisons should be replaced with small, multi-functional and widely geographically dispersed custodial units, and prison reserved only for a very small number of high-risk women. While the government has proposed the creation of five "new community prisons for women" these appear to be aimed at increasing prison places for women, which is contrary to the overall recommendations of the Corston Report.²⁹ This proposal was in the White Paper on Prison Safety and Reform, in November 2016. The organisations contributing to this submission all opposed the building of any new prisons unless and until a strategy to reduce the women's prison population is in place.

Key problems are:

- A failure to ensure joined-up thinking, planning and action across government³⁰ and overall, a failure on the part of the government to provide leadership in giving a consistent message that prison is not the right place for women who pose no risk to the public. We are still waiting for a Strategy on Female Offenders over 2 years since it was formally promised.³¹
- A failure to provide sufficient access to services which would reduce women's offending and re-offending, by helping women to deal with health, addiction, housing, and violence.³² Homelessness for women on leaving prison is particularly high.³³ Mental health care provision for women with complex needs, in police stations, prisons and the community, is simply inadequate, and needs substantial investment and training.³⁴ We note that the CEDAW Committee made recommendations on this issue in 2008.³⁵

²⁸ Corston recommendation 3, "the Corston Report, 10 Years on" page 6.

²⁹ Corston Recommendation 2, "the Corston Report, 10 Years on" page 6.

³⁰ Corston recommendations 7,8,9, "the Corston Report, 10 Years on" on pages 8 – 10.

³¹ Corston recommendation 35, "the Corston Report, 10 Years on" page 21. On the impact of cuts to women-focused services, see also Research Report 86 of the Equality and Human Rights Commission, "The impact of changes in commissioning and funding of women-only services" 2012.

³² Corston recommendations 13,14,15, 17, on pages 11-13 of "the Corston Report, 10 Years on", pages 11-13.

³³ Corston recommendation 16, "the Corston Report, 10 Years on" page 13.

³⁴ Corston recommendation 39, 40, 41, 42, 43, "the Corston Report, 10 Years on" pages 24-26.

³⁵ UN Doc CEDAW/C/UK/CO/6 10 July 2008, paragraph 266 and 267. In a matter relating to appropriate women-only services, we note that the UK Supreme Court made a ruling, *R (on the application of Coll) v Secretary of State for Justice [2017] UKSC 40, 24 May 2017* that the UK government discriminated against women through its failure to provide sufficient numbers of appropriate women-only accommodation with sufficient dispersal across the UK. There is a small number of medium or high risk prisoners for whom it can be a condition of release from prison that they must live at 'Approved Premises' ('APs') after their release. APs are single sex establishments. There are 94 APs for men, distributed around England and Wales including several in London. There are only 6 APs for women, who constitute 5% of the prison population, and none of them is in London or in Wales. This means that women are much more likely than men to be placed in an AP which is far from their homes and communities.

- A failure to divert women from prison at point of bail decisions and sentencing on conviction. Significant issues contributing to this failure include:
 - a) the government has failed to make clear its policy that prison is not the right place for women who pose no risk to the public.³⁶ The latest Secretary of State for Justice David Gauke has been making more helpful statements in recent weeks about the need to reduce use of short custodial sentences and increase the use of community orders, but this needs to be put on a firmer footing, and backed by funding for women’s centres and services.
 - b) Baroness Corston recommended a review of sentencing frameworks so that aspects of women’s experience which makes them unsuitable for prison should be taken into account, in the context of the gender equality duty: this still has not been done.³⁷
 - c) There are still high levels of imprisonment on remand, even with non-violent crimes or crimes that are not likely to lead to a sentence of imprisonment.³⁸
 - d) Most women are imprisoned for non-violent crimes, mainly for theft, handling stolen goods, or failure to pay local authority taxes or TV licence.³⁹ We note that the CEDAW Committee expressed concerns on this issue in 2008.⁴⁰
 - e) Some women are still being sent to prison, “for their own good” for example, in order to access services such as drug detoxification, and even for their own safety, particularly in situations of homelessness or complex mental health needs.⁴¹
 - f) There has been insufficient information to the judiciary on gendered issues relevant to rights-based sentencing, use and investment in bail provision and community-based sanctions.⁴² Sentencing guidelines have been improved in some minor respects but the best option would be to pass legislation on gender equality in sentencing. Many women that our organizations deal with feel that what should be regarded as mitigating factors (for example, caring responsibilities for children, and drug and alcohol problems) are regarded by many judges as aggravating factors and a reason to increase prison sentences. An overarching guideline enshrined in legislation would codify the gender differences that criminal justice decision makers need to be alert to.

³⁶ Corston Recommendation 35, “the Corston Report, 10 Years on” page 21.

³⁷ Corston recommendation 12, “the Corston Report, 10 Years on” page 11.

³⁸ Corston recommendation 19 “the Corston Report, 10 Years on” page 14.

³⁹ Corston recommendation 18 “the Corston Report, 10 Years on” page 14.

⁴⁰ UN Doc CEDAW/C/UK/CO/6 10 July 2008, paragraph 266.

⁴¹ Corston recommendation 20 “the Corston Report, 10 Years on” page 14; Pattison: Prison as a place of safety for women with complex mental health needs, The Griffins Society Research Paper 2015/01 http://www.thegriffinssociety.org/system/files/papers/fullreport/griffins_research_paper_2015-01.pdf

⁴² Corston recommendation 21, 23, 24, 25, 26,27 28 “the Corston Report, 10 Years on, pages 15-18.

- g) There has been insufficient investment in “one-stop-shop” women’s centres, which could have huge value in supporting marginalized and at-risk women so that they avoid coming into contact with the criminal justice system in the first place.⁴³ Indeed a number of these centres have closed in the last 2 years due to lack of funding, and many others are struggling to survive despite the evidence that they are extremely cost-effective.
- h) Competent and thorough reports into women’s psychiatric conditions are not available in a timely manner to the judiciary for sentencing hearings. Obtaining psychiatric reports is a complicated, lengthy and costly process. Due to lack of provision of mental health care in the community, it is often the case that women and girls with mental health problems have not been able to access mental health care, therefore there will be no professional who is involved in their treatment who can make a report on their situation.⁴⁴

CONCLUSIONS AND KEY RECOMMENDATIONS

We note a consistent repetition of concerns and recommendations expressed by, not just the CEDAW Committee, but the Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Rights of the Child, and the Committee on the Elimination of Racial Discrimination, relevant to the situation of women in prison in the UK.

We are deeply concerned at the persistent failure of the UK government to take meaningful and effective action to implement existing treaty body recommendations on this issue – and indeed, because of the demands of austerity on services to people who are most marginalized in society, the situation is worsening.

With this in mind, we have specific recommendations to the UK government which we share with the CEDAW Committee in advance of the Pre-Sessional Working Group, in the hope of assisting CEDAW Committee members with their important work.

1. **Redirect resources** from criminal justice to welfare, health, housing and social care: we recommend that the UK government implement a coherent and long-term funding strategy for a national network of holistic women’s centres, one-stop shops, hubs and outreach services.
2. **Divert women away** from the criminal justice system: we urge that legislation be passed to enshrine a statutory presumption against custodial sentences of less than 12 months, with accompanying gender-informed guidance; diversion from prison is particularly important for those women and girls who are pregnant or new mothers, and those with physical and mental health problems and vulnerabilities.
3. **Halt prison building** and commit to an immediate reduction in the prison population.

⁴³ Corston recommendation 29, 30, 32, 33, 34 “the Corston Report, 10 Years on” pages 18-21.

⁴⁴ Corston recommendation 36, 37, “the Corston Report, 10 Years on” pages 22-23.

4. **Review sentencing decisions** and policy; we urge the UK government to repeal the mandatory post-release supervision requirement for short-sentenced prisoners , to make post-release support available and effective but without the counter-productive punitive element that currently applies.
5. **Undertake an urgent review** of the deaths of women following release from prison.
6. **Ensure access to justice** and learning for bereaved families, including legal aid for inquests.
7. **Build a national oversight mechanism** for implementing official recommendations, including the Birth Charter, prepared by Birth Companions and endorsed by the Royal College of Midwives.