

**Submission by the Howard League for Penal Reform to the Human Rights Committee: list of issues with regard to the UK examination under the International Covenant on Civil and Political Rights**

**1 Introduction**

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The charity has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government. The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and policy work aimed at revealing underlying problems and discovering new solutions to issues of public concern, as well as through direct legal and participation work. Our legal team works directly with children and young adults in prison. Our legal advice line, which is free to every child and young person aged 21 years and under in prison, receives hundreds of calls each year.
- 1.2 The Howard League has engaged in constructive discussion with the Equality and Human Rights Commission to inform its proposals for the UK List of Issues. This submission develops themes that fall within our sphere of expertise that we believe the Committee should adopt for inclusion in its List of Issues. The main body of this submission is about children in the criminal justice system. However, we enclose our recent submission to the UN Torture Committee which sets out pressing concerns about adults in prison.
- 1.3 This submission deals with human rights within the youth and adult criminal justice systems, with a focus on prisons. We have tried to keep this submission as brief as possible. We have a wealth of further information on the issues we raise and would be pleased to provide additional details to the Committee if required.

**2 The UK government's lack of commitment to human rights**

- 2.1 We are gravely concerned at the lack of political will within the UK Government to recognise and enforce human rights for those who come into contact with the criminal justice system. We see no evidence of government work to address many of the concerns and recommendations raised in relation to the criminal justice system by the Committee in its *Concluding observations on the seventh period report of the United Kingdom* dated 17 August 2015 ("the 2015 *Concluding observations*").

- 2.2 We note, for example, that there continues to be resistance to raising the minimum age of criminal responsibility in line with international standards; the numbers of children on remand have been rising, with black, Asian and minority ethnic children disproportionately affected (Gibbs and Ratcliffe, 2018). Efforts have not been stepped up by the Government to further reduce the number of children in the criminal justice system, although the police have made very significant efforts to reduce the number of child arrests, the point of entry to the system (Howard League, 2019). The recent Government announcement that it will put a further 20,000 police officers on the street, the expansion of stop and search powers and the Home Secretary's punitive rhetoric are very worrying. The police, who we speak to regularly, tell us that they expect arrests to increase and prisons are expecting their populations to expand.
- 2.3 Many of the issues we raise below were covered in the 2015 *Concluding observations*. Since then the situation has worsened, as demonstrated in our recent submission to the Committee Against Torture (enclosed). There are many reasons for this, including the UK Government's lack of interest in human rights, the Government's punitive approach to criminal justice and the many issues caused by austerity measures the Government has imposed.

### **3 The incarceration of children**

- 2.1 Child prisons have consistently been shown to be unsafe and unsuitable for the vulnerable children they hold. In 2017, the Chief Inspector of Prisons warned that there was not a single child prison that was safe enough to hold children. In October 2019, the UK Government's Youth Custody Service stated that their safeguarding review of the system evidenced "*harmful cultures that have become inherent parts of the system*" (2019, p3). In February 2019, the Independent Inquiry into Child Sexual Abuse published its report on sexual abuse of children in custodial institutions. The Inquiry heard of more than 1,000 allegations of child sexual abuse in custody between 2009 and 2017. A former Chief Inspector of Prisons told the Inquiry that child prisons were holding "*very vulnerable children in a very dangerous place*". These comments raise serious concerns about compliance with the ICCPR.
- 2.4 We consider that Committee ought to focus on the following issues with respect to children in prison: behaviour management measures, including restraint; solitary confinement; levels of violence; self-injury; cultures of punitive control; lack of and inadequate safeguarding frameworks and practice; the over-representation of and discrimination against some groups of children in the system. We also have concerns about the treatment of young adults aged 18-25 years, a group highlighted as being of concern in custodial settings in the 2015 *Concluding observations*. We provide some more detail on each of these below.

*Behaviour management, including restraint, and self-injury*

- 2.5 In 2017/18, the Youth Justice Board (YJB) reported an increase across all “behaviour management measures” in the youth secure estate compared with the previous year. Self-harm incidents in child custody were up by 40 per cent (almost 1,800 incidents), proven assaults by 29 per cent (more than 3,500 incidents), incidents of “Restrictive Physical Interventions” (5,400 incidents) had increased by 20 per cent and there were 6,600 “use of force” incidents. The euphemistically termed “single separations” were up by eight per cent (YJB, 2019), although this does not adequately reflect the extent of this fundamental abuse of children’s rights. Data are only published for secure children’s homes and STCs on this issue. Comparable data are not held for public YOIs (YJB, 2019, p59, footnote 119).

### *Solitary confinement*

- 2.6 Children in prison regularly report to us that they are spending 23-and-a-half hours a day in their cells with little meaningful contact with other people. This falls within international definitions of solitary confinement.<sup>1</sup> The extent of the problem was noted by the UK Government’s Joint Committee for Human Rights (JCHR), which said that in custodial settings, “*children are separated from human contact (whether in their own room or in a particular unit) too often and for too long, where other options would be less harmful and more effective. The problem is even worse than is reported, due to some data not being collected fully and some data not being collected at all in particular for the separation of children in their own cells in YOIs*” (JCHR, 2019, para. 50). In the two years up to September 2018, the Howard League received requests for help in respect of isolation at least 98 times.
- 2.7 The JCHR concluded in the above-mentioned report, that “*Data from hospitals and custody shows that children are restrained too often, with potentially thousands of unjustified restraints each year, and that separation is also used too often. Rates of restraint and separation are even higher for BAME (black, Asian and minority ethnic) children. We believe that the high rates of restraint and separation are incompatible with the threshold of ‘last resort’, and are therefore in breach of the rights of children*” (JCHR, 2019, page 4).

### *Cultures of punitive control and lack of adequate safeguarding*

- 2.8 From our frequent contact with children in prison, we observe that there is a cultural aspect to the punitive control that exists in prisons that means children do not feel safe. Children have little faith in complaints systems or child protections procedures. Many lack the self-esteem, knowledge or ability to access these systems in any event. This means that abuse is able to occur with impunity.

### *Over-representation and discrimination*

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<sup>1</sup> The Istanbul statement on the use and effects of solitary confinement provides this definition: “*Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day.*”

- 2.9 Some groups of children and young people suffer over-representation and discrimination in the UK youth justice system. These include (i) children from black, Asian and minority ethnic background; (ii) children in the care of the State (“looked-after children”); (iii) child victims of criminal and sexual exploitation; and (iv) children with mental health problems.

#### *Young adults aged 18-25 years*

- 2.10 There is concern about the treatment of young adults up to the age of 25 years in the criminal justice system and particularly in the custodial estate. Young adults in the 18-25 age group make up less than 10 per cent of the general population, but account for more than a third of the probation service’s caseload and a third of those sentenced to prison every year (T2A at <https://www.t2a.org.uk/>).<sup>2</sup>
- 2.11 Recent neurological research has demonstrated how the brain is still developing and does not reach maturity until at least the mid-20s (Johnson *et al*, 2010). Currently young adults in the UK are subject to the adult penal system from their 18<sup>th</sup> birthday.
- 2.12 T2A (Transition to Adulthood) is an initiative of the Barrow Cadbury Trust criminal justice programme. The Howard League is a founding member of this group. The group conducts research into the issues affecting young adults and campaigns for change. Further details on young adult’s treatment within the UK criminal justice system can be found at <https://www.t2a.org.uk/>.

### **3 Adult custody**

- 3.1 The adult prison system in the UK is in a state of crisis. Conditions that we believe the Committee should consider include: overcrowding; poor environmental conditions; high levels of violence; self-isolation because of fear of violence; solitary confinement; long periods in cells; lack of meaningful or any, activity; self-injury including death through suicide; lack of satisfactory safety and safeguarding procedures; routine strip-searching; use of incapacitant sprays; a capricious and inherently unfair punishment system in prisons which imposed 359,081 days of additional imprisonment on prisoners across England and Wales in 2017 (Howard League, 2019).

### **4 Conclusion**

- 4.1 The above provides a very brief summary of the wealth of knowledge the Howard League has on these issues. We would be pleased to provide further information and to assist the Committee in any way we can.

**Howard League for Penal Reform  
13 January 2020**

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<sup>2</sup> Accessed on 9 January 2020

## References

Gibbs, P. and Ratcliffe, F. (2018) *Path of little resistance: is pre-trial detention of children really a last resort?* London: Transform Justice. Available at [http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT\\_V2-December.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf).

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## Submission to the Committee Against Torture for consideration at the 66<sup>th</sup> session: list of issues with regard to the UK

1 Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the Economic and Social Council and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government. The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects. Our legal team works directly with children and young adults in custody.

2 The Howard League for Penal Reform comments on the items in the list of issues raised by the Committee prior to submission of the sixth periodic report of the UK which are relevant to our expertise and raises some issues of concern.<sup>1</sup>

### Article 10 (education and information regarding the prohibition against torture)

3 The Committee asked (para 20) of the list of issues for further information about the use of electrical charge weapons and other less than lethal devices. In 2018 the UK government decided to arm prison officers working with adult men, and eventually officers responsible for women and children, with incapacitant sprays (PAVA), despite considerable concern about its safety and efficacy. Research commissioned by the UK government into a trial conducted in four prisons showed that the pilot was unable to conclusively demonstrate that PAVA had any direct impact on levels of prison violence.<sup>2</sup> Overall violence levels continued to rise across all of the pilot (and comparator) prison sites during the period. The research found that some staff were developing an over-reliance on PAVA as a way of resolving

<sup>1</sup> List of issues prior to submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland dated 7 June 2016, available at

<https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

<sup>2</sup> <https://docs.google.com/document/d/18ggrGgHTIJTOY1KVF3GBSFG1dAsKOqXlviwrBekcsjQ/edit>

conflict and it had even been used against a prisoner who was self-injuring. The incapacitant spray

It is not clear that it would be possible to train staff to use PAVA safely in prison settings. The report concluded that “considering previous research as well as the findings from this pilot, should PAVA be rolled out, the evaluation findings suggest that some staff will use it in situations that extend beyond policy and training boundaries, and which would not meet with standards of professional behaviour or expectations set by external regulators.”

#### **Article 11 (systematic review of rules and practices to prevent torture)**

4 The Committee asked the UK government to describe procedures in place for ensuring compliance with Article 11 (paras 22 and 23). It is the view of the Howard League for Penal Reform that enforced cell sharing that involves containing people in cells designed and designated for one person for the majority of the day amounts to the deliberate infliction of cruel, inhuman and degrading treatment and punishment. More than 20,000 men are routinely detained in these conditions in England and Wales.<sup>3</sup> Winchester prison has places for 469 men but holds 595 which means that half are ‘doubled up’. Wandsworth prison has places for 929 but holds 1,428. Durham prison has places for 595 but holds 919 men. Swansea has places for 268 but holds 450 men. All prisons are full or overcrowded. This has led to an increase in violence, assaults, disorder and self-injury. The inspection report on Bedford prison published in September 2018 found serious problems with very high violence and inexperienced staff struggling to maintain control. Birmingham prison, run by the security company G4S, was found to be so violent and chaotic that it was taken back into public control. In November 2018 inspectors said that the prison was exceptionally violent and fundamentally unsafe, with many prisoners and staff living and working in fear. Many frightened and vulnerable prisoners ‘self-isolated’ in locked cells but could not escape the bullying and intimidation as urine and faeces were thrown through their door panels. Birmingham routinely holds over 600 men in cells designated for one, as its capacity is 796 but at the time of the inspection was holding over 1400 men. All these prisons were built in Victorian times and cells are small, cramped and have little natural light or ventilation. Toilets were installed inside the cells which means that men have to urinate and defecate in a toilet immediately next to the bunks in front of their cell mate. It is common for the prisons to be infested with rats and cockroaches. Men will often spend 20 to 22 hours a day locked up.

5 Children and young adults are routinely held in isolation for long periods of time in prisons in England and Wales. The Howard League for Penal Reform legal team is representing a 15 year old boy who was routinely locked alone in his cell in Feltham prison, in west London, for 23 and a half hours a day. This isolation continued for 55 days, during which he received no education.<sup>4</sup> The case has been considered by the Court of Appeal: the Howard League for Penal Reform is asking the court to rule that keeping a child in conditions of solitary confinement amounts to inhuman and degrading treatment. The Howard League for Penal Reform runs a

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<sup>3</sup> <https://www.gov.uk/government/statistics/prison-population-figures-2018>

<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-june-2018>

<sup>4</sup> <https://howardleague.org/news/childs-solitary-confinement-case-goes-to-the-court-of-appeal/>

legal advice line for children and young adults in custody. In the last two years, on average we have received around 40 calls each year from children (under 18) about being isolated in prison, and even more from young adults. The Chief Inspector of Prisons has reported for the last two years that around 40 per cent of young adults held in adult institutions spend over 22 hours a day in the cells.<sup>5</sup> Data on the isolation of children is not collected and published by the government.<sup>6</sup>

6 Assaults and self-injury in jails rose by 20 per cent in the last year. A statistical bulletin published by the Ministry of Justice shows that prisons in England and Wales recorded 49,565 incidents of self-injury in the 12 months to the end of June 2018 – at a rate of one every 10-and-a-half minutes.<sup>7</sup> Over the same period, prisons recorded a total of 32,559 assault incidents. This included 9,485 assaults on staff – a 27 per cent rise compared to the figure recorded for the 12 months to the end of June 2017. The figures show that 325 people died in prison custody in the 12 months to the end of September 2018, including 87 people who lost their lives through suicide. There were five homicides.

7 The Committee asked the UK government to report on its efforts to reduce overcrowding. The number of people in prison in England and Wales has doubled in the last two decades. In 1991 there were 41,000 men, women and children in prison in England and Wales. On 14 December 2018 the prison population stood at 82,661. The prison population comprised 78,851 men and 3,810 women. The UK government is not intending to introduce any legislation to cut sentence lengths or curtail entry however due to ministerial pressure there were 2,518 fewer people in prison than this time last year.<sup>8</sup> Overcrowding caused by sentence inflation and the over-use of prison for remands and short sentences is due to continue with all of its concomitant problems. The government plans to build new prisons which it hopes will ease crowding, but the large prison constructed in Wales has been overwhelmed by problems with men dying, calls for ambulances, drugs and violence.<sup>9</sup> It was built contrary to UN guidelines with forced cell sharing for the majority of men and in-cell toilets.

8 Despite significant reductions in the number of children in custody, England and Wales still has the highest level of child imprisonment in Western Europe. Children may be incarcerated in three different institutions. In October 2018 there were 619 boys aged 15 to 17 in young offenders institutes (prisons), 152 in three secure training centres (two of which are run privately by G4S and MTCNovo) that hold boys and girls aged 12 to 17, and 88 children are detained in local authority run

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<sup>5</sup> See annual reports by Her Majesty's Inspector of Prisons, 2017 and 2018  
<https://www.justiceinspectorates.gov.uk/hmiprisons/>

<sup>6</sup> Evidence of Edward Agar to the Joint Committee on Human Rights, 17 October 2018,  
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/youth-detention-solitary-confinement-and-restraint/oral/91905.html>

<sup>7</sup> <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2018>

<sup>8</sup> <https://howardleague.org/why-the-system-is-broken/>

<sup>9</sup> <https://www.liverpoolecho.co.uk/news/liverpool-news/merseyside-prisoner-died-new-years-15626650>



secure units.<sup>10</sup> The prisons and the secure training centres (STCs) have consistently been revealed to be unsafe, indeed HM Chief Inspector of Prisons said in 2017 that not one of the prisons was safe for children. Inspections of STCs have revealed them to be unsafe and badly run<sup>11</sup>. After a BBC television exposé of abuse of children in Medway STC, run by G4S, it was taken back into public control and the number of children reduced, yet it has continued to have problems and children are still not being cared for safely.

9 The Committee noted the recommendation of the National Preventative Mechanism that improved collection of data on the use of force was needed (para 23). There is still no published data on the use of restraint by staff on adult prisoners. It is not known how many prisoners are injured during restraints or how many are inflicted for punishment.

10 Routine strip searching of women and child prisoners has been abolished but adult men continue to be routinely stripped for searching. Strip-searching continues to be over-used in certain prisons and the monitoring of its use is sometimes poor. For example, the Chief Inspector of Prisons found that strip-searching at Peterborough prison was used “extensively” and there were “numerous examples of where this had been unnecessary”.<sup>12</sup> The Howard League has provided evidence to the High Court about insufficient oversight, governance and monitoring of the use of strip-searching in private prisons.<sup>13</sup>

11 A total of 295 people died in prison in 2017 including eight women. This included 70 people who took their own lives and 184 who died from natural causes. On average a prisoner died by suicide every five days in 2017. There has been a worrying increase in the number of people dying for unexplained reasons, known as ‘awaiting further information’ which at the end of the year amounted to 38 deaths.

12 Violence in prisons has escalated. A total of 32,559 assault incidents were recorded in the 12 months to June 2018. This included 9,485 assaults on staff – a 27 per cent rise compared to the figure recorded for the 12 months to the end of June 2017<sup>14</sup>. From 2014 onwards a programme of staff cuts resulted in a reduction of over 30 per cent of frontline officers and managers. At the same time, more than ten prisons were closed resulting in prisoners being crammed into fewer establishments with fewer staff. In recognition of the resulting chaos, the UK government has been desperately recruiting new staff but this has itself brought challenges as they are provided with little training or support. The increase in violence can be linked to overcrowding, lack of expert staff and long periods of confinement in cell. Large prisons with young men with no hope, nothing to do all day and nothing to look forward to, get into trouble.

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<sup>10</sup> <https://www.gov.uk/government/statistics/youth-custody-data>

<sup>11</sup> <https://files.api.ofsted.gov.uk/v1/file/50000136>

<sup>12</sup> <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2018/01/HMP-YOI-Peterborough-Women-Web-2017.pdf>

<sup>13</sup> <https://howardleague.org/wp-content/uploads/2018/08/WS-Frances-Crook-FINAL2-2018-06-13-website.pdf>

<sup>14</sup> <https://howardleague.org/news/further-rise-in-assaults-self-injury-and-lives-lost-in-prisons-in-england-and-wales/>

## **Article 16 (prevention of cruel, inhuman or degrading treatment or punishment which do not amount to torture)**

13 The Committee asked for information about the infliction of restraint on children in young offender institutes (para 40). The use of restraint on children in detention is widespread even though it should be used as a last resort. In the year ending March 2017 restraint was used on children more than 4,500 times, a rate of 32 per 100 children<sup>15</sup>.

14 Following the tragic death of two children in restraint related incidents, attempts have been made to roll out a method of restraint for use on children that aims to de-escalate and reduce the instances of restraint. The method, known as Minimising and Managing Physical Restraint (MMPR), has taken much longer than expected to be rolled out. In 2017, the Howard League issued a judicial review on behalf of a child, ZY, who was subjected to adult restraint techniques.<sup>16</sup> MMPR includes the deliberate infliction of pain on the child by staff. Legal action has led to an independent review of the use of deliberate pain in restraint, which is on-going.<sup>17</sup>

15 In the past two years the Howard League legal team has received significantly more requests for assistance in respect of isolation than use of force. The reasons for this are not clear. However, it may relate to the nature of the issue in that on-going isolation continues to be a live problem for a period of time whereas by its very nature most instances of restraint are over in a short period of time. In the experience of the Howard League, children in prison tend to live in the moment and will be less engaged in complaining or raising concerns about a matter once it is over. In the two years up to September 2018 the Howard League received requests for help in respect of children concerned about isolation at least 98 times and restraint 13 times through the access to justice service. This suggests that the mechanisms to support children to report and complain about the use of restraint are inadequate.

14/1/2019

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/676072/youth\\_justice\\_statistics\\_2016-17.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf)

<sup>16</sup> <https://howardleague.org/news/howard-league-legal-challenge-brings-an-end-to-the-routine-use-of-adult-restraint-techniques-on-children-at-feltham-prison/>

<sup>17</sup> <https://www.parliament.uk/documents/commons-committees/Justice/correspondence/Letter%20dated%202018%20Nov%202018%20from%20Edward%20Argar%20on%20use%20of%20pain%20inducing%20techniques%20in%20the%20youth%20secure%20estate.pdf>