

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers

Ref.: AL GBR 9/2024
(Please use this reference in your reply)

6 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/7, 53/4 and 53/12.

On this occasion, we are writing to renew the concerns that we have previously expressed to the United Kingdom in relation to the system of sentences of Imprisonment for Public Protection (IPP), that continues to affect thousands of prisoners in England and Wales even though the law was repealed many years ago; and to call on the newly elected Government to undertake a re-sentencing programme of all remaining IPP prisoners as a matter of urgent priority.¹

According to the information received:

On 11 July 2024, 70 civil society organisations addressed an open letter to the newly appointed UK's Secretary of State for Justice calling for a reform of the system of sentences of Imprisonment for Public Protection (IPP).²

They asked, in particular, that the newly elected Government: a) implement all IPP-related provisions provided for in the Victims and Prisoners Act 2024;³ b) publish the first annual report on IPP, which was due by the end of March 2024; c) set out the new Government's plans and a timetable to address the remaining, outstanding challenges affecting individuals serving an IPP sentence; d) commit to set up an expert committee to advise on the conduct of a resentencing exercise of IPP prisoners, to be initiated within 18 months.⁴

¹ For a detailed overview of the IPP system, and the concerns we expressed to the Government of the United Kingdom in relation to it, see AL GBR 15/2023:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28329>; as well as UK: UN torture expert calls for urgent review of over 2,000 prison tariffs under discredited IPP sentencing scheme: <https://www.ohchr.org/en/press-releases/2023/08/uk-un-torture-expert-calls-urgent-review-over-2000-prison-tariffs-under>. The Government's reply to AL GBR 15/2023 can be found here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37874>; and here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37875>. On the IPP system and recently announced reforms, see also Reform of problematic UK sentencing system welcome but bolder action needed: <https://www.ohchr.org/en/press-releases/2023/12/reform-problematic-uk-sentencing-system-welcome-bolder-action-needed-says-un>.

² See Joint letter on Reform of the Imprisonment for Public Protection Sentence:

<https://www.nacro.org.uk/news/joint-letter-signed-on-reform-of-the-ipps/>.

³ See

<https://www.legislation.gov.uk/ukpga/2024/21#:~:text=An%20Act%20to%20make%20provision,of%20the%20Pa,role%20Board%3B%20to>.

⁴ To date, a total of 2,796 individuals remains in prison serving an IPP sentence. See IPP reform in the Victims and Prisoners Act: <https://howardleague.org/blog/ipp-reform-in-the-victims-and-prisoners-act/#:~:text=Changes%20to%20IPP%20sentences&text=The%20sentence%20was%20abolished%20in,which%20have%20never%20been%20released>.

The 2024 Victims and Prisoners Act include a number of measures for IPP prisoners and DPP prisoners (a parallel indeterminate sentence for children), namely: a) to reduce the qualifying period for licence review by the Parole Board from 10 years to three years (for IPP) or two years (for DPP); b) to include a presumption that the IPP/DPP licence will be terminated by the Parole Board at the end of the three-year period; c) to introduce a provision that will automatically terminate the IPP/DPP licence two years after the qualifying period, in cases where the Parole Board has not terminated the licence, so long as the person is not recalled during that period; d) to enable the Secretary of State to release someone serving an IPP or DPP sentence who has been recalled through the Risk Assessed Recall Review process; e) to allow the Secretary of State to disregard the recall of someone serving an IPP or DPP sentence for the purposes of the two-year automatic termination period; f) to require the Secretary of State to lay an annual report before Parliament about the steps taken to support those serving IPP sentences with their rehabilitation and progress towards release. These measures are to be implemented when the new Government specifies a commencement date.

In addition to the IPP/DPP challenges, the United Kingdom's prison system has faced serious and entrenched over-crowding challenges in prisons in England and Wales, and Scotland, for a number of years.⁵ On 12 July 2024, the new UK's Secretary of State for Justice announced temporary, emergency measures to address, *inter alia*, over-crowding in the UK's prison system.⁶

Based on those measures, a) individuals serving eligible standard determinate sentences will now leave prison after serving 40%, rather than 50%, in custody (with the exclusion of sentences for sex and serious violent offences; as well as a series of offences linked to domestic violence); b) a prison capacity statement will be published every year; and c) a ten-year prisons' capacity strategy will be published in the course of 2024.⁷ The emergency measures will be reviewed in 18 months.

Without prejudging the accuracy or impact of the above-mentioned information, we wish to welcome, at the outset, the initiatives announced by the new Secretary of State for Justice in relation to reducing prison over-crowding and look forward to keeping abreast of progress on implementing those measures.

While fully recognizing that deprivation of liberty in accordance with international standards remains a necessary and legitimate investigative measure and punitive sanction, we emphasize that imprisonment should remain a measure of last resort, used only for serious offences for which any other sanction would appear

⁵ See National Preventive Mechanism, Monitoring Places of Detention, 14th Annual Report of the United Kingdom's National Preventive Mechanism 2022/23: <https://cloud-platform-e218f50a4812967ba1215eaccede923f.s3.amazonaws.com/uploads/sites/23/2024/02/UK-NPM-Fourteenth-Annual-Report-1.pdf>.

⁶ See New Lord Chancellor sets out measures to avert prison capacity crisis: <https://www.gov.uk/government/speeches/new-lord-chancellor-sets-out-measures-to-avert-prison-capacity-crisis>.

⁷ *Ibid.*

inadequate.⁸ Over-crowding imposes a significant burden on all aspects of the functioning and management of places of detention and is a principal cause of poor detention conditions. It also increases the risk of disease transmission and infection and has been identified as a factor in self-harm and suicide among inmates.⁹ For older prisoners, over-crowding may pose particular risks in terms of their mobility and/or susceptibility to infectious disease.

Within this context, we find it is extremely important, among other measures, that prison authorities report accurately and regularly on detention conditions and over-crowding levels to decision makers (including judges who decide on incarceration or alternatives), as well as to policy and monitoring bodies.¹⁰ Hence, we very much support the decision of the new Secretary of State for Justice to have prison authorities publishing a yearly prison capacity statement, and a ten-year prison capacity strategy in 2024. We would encourage the UK Government to go further in line with the Special Rapporteur on torture's recent report on prison management, such as to adopt early warning systems, as well as good communication flow between prosecutors, prison administration and judges so that every decision to deprive someone of their liberty is based on accurate and up-to-date data.¹¹

At the same time, however, we express our disappointment that the announced reforms would appear to apply solely in relation to prisoners serving determinate sentences, thus excluding individuals currently serving an IPP sentence.

As expressed in AL GBR 15/2023, we are of the view that the documented severe distress, fear, depression and anxiety generated by the IPP sentencing scheme, and the corresponding physical and psychological damage caused to IPP prisoners, including incidents of self-harm, suicide attempts and high numbers of suicides, potentially contravene the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, set forth in articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United Kingdom in 1985 and 1976 respectively; the prohibition of arbitrary deprivation of liberty, established in article 9 of the ICCPR; the right to health, enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights, also ratified by the United Kingdom in 1976; and the right to life, protected by article 6 of ICCPR. We also recall that, pursuant to article 10 paragraph 3 of the ICCPR, as reiterated by the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the essential aim of the treatment of prisoners shall be their reformation and social rehabilitation.¹²

In light of the Government's commitment to addressing challenges in the area of prison administration and criminal justice, we take this opportunity to encourage Your Excellency's Government to give renewed consideration to the question of the IPP sentencing scheme and respectfully call again for a re-sentencing exercise of all

⁸ See A/HRC/55/52: <https://documents.un.org/doc/undoc/gen/g24/011/85/pdf/g2401185.pdf?token=wsmzQH9znU9uyEYHjw&fe=true>; and A/HRC/42/20: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F42%2F20&Language=E&DeviceType=Desktop&LangRequested=False>.

⁹ See A/HRC/42/20, quoted above.

¹⁰ See A/HRC/55/52, quoted above.

¹¹ *Ibid.*, paragraph 18.

¹² See AL GBR 15/2023 quoted above.

remaining IPP-sentenced individuals, to be conducted without delay.¹³ We would consider that even a partial re-sentencing exercise, in which re-sentencing is carried out over a period of time for different groups of offenders, would be a welcome development. We encourage the allocation of adequate resources to be able to cope with the Government's prison reforms for prisoners serving both determinate and indeterminate sentences, including in particular in the area of prisoner rehabilitation.

We stand ready to support the relevant authorities in any effort undertaken towards satisfactorily settling this matter. We remain available to meet with Your Excellency's Government representatives, with a view to discussing and determining how can we constructively assist in the ongoing reform process.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

¹³ See recommendation issued by the House of Commons Justice Committee that we endorsed in AL GBR 15/2023: <https://committees.parliament.uk/publications/28825/documents/173974/default/>.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with the above mentioned information and concerns, and as elaborated in detail in AL GBR 15/2023, we would like to refer your Excellency's Government to article 5 of the Universal Declaration of Human Rights (UDHR); article 7 of the International Covenant on Civil and Political Rights (ICCPR); and articles 1, 2 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) which reaffirm the absolute (*jus cogens*) prohibition of torture or other cruel, inhuman or degrading treatment or punishment.¹⁴ Attached to such prohibition are obligations to take all necessary measures to prevent torture or other ill-treatment (art. 2) and investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims (arts. 10 and 11 *et seque*).¹⁵

We refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Nelson Mandela Rules"), particularly rule 4, as well as rules 86-107, which state that "The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners."¹⁶

We further recall that, pursuant to article 6 of the ICCPR, "States parties (...) have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The same heightened duty of care attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities. A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities, military camps, refugee camps and camps for internally displaced persons,

¹⁴ See A/77/502: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/610/77/PDF/N2261077.pdf?OpenElement>.

¹⁵ See A/HRC/52/30: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5230-good-practices-national-criminalization-investigation>.

¹⁶ See A/RES/70/175: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/NelsonMandelaRules.pdf>.

juvenile institutions and orphanage.”¹⁷

Furthermore, “States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations, including individuals deprived of their liberty.”¹⁸

We also refer to article 9 of the ICCPR which states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

As explained by the Human Rights Committee, “The Covenant is consistent with a variety of schemes for sentencing in criminal cases. Convicted prisoners are entitled to have the duration of their sentences administered in accordance with domestic law. Consideration for parole or other forms of early release must be in accordance with the law and such release must not be denied on grounds that are arbitrary within the meaning of article 9. If such release is granted upon conditions and later the release is revoked because of an alleged breach of the conditions, then the revocation must also be carried out in accordance with law and must not be arbitrary and, in particular, not disproportionate to the seriousness of the breach. A prediction of the prisoner’s future behaviour may be a relevant factor in deciding whether to grant early release.”¹⁹

“When a criminal sentence includes a punitive period followed by a non-punitive period intended to protect the safety of other individuals, then once the punitive term of imprisonment has been served, to avoid arbitrariness, the additional detention must be justified by compelling reasons arising from the gravity of the crimes committed and the likelihood of the detainee’s committing similar crimes in the future. States should only use such detention as a last resort and regular periodic reviews by an independent body must be assured to decide whether continued detention is justified.”²⁰

“State parties must exercise caution and provide appropriate guarantees in evaluating future dangers. The conditions in such detention must be distinct from the conditions for convicted prisoners serving a punitive sentence and must be aimed at the detainee’s rehabilitation and reintegration into society. If a prisoner has fully served the sentence imposed at the time of conviction, articles 9 and 15 prohibit a retroactive increase in sentence and a State party may not circumvent that prohibition by imposing a detention that is equivalent to penal imprisonment under the label of civil detention.”²¹

We further recall that the right of everyone to life constitutes a *jus cogens* and customary international law norm (general comment No. 36, paragraph 2). States hold heightened due diligence obligations in relation to protect the right to life of

¹⁷ See CCPR/C/GC/36: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsrdB0H115979OvGGB%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNiJrLLdefuuQjjN19BgOr%2fS93rKPWbCbgoJ4dRgDoh%2fXgwn>.

¹⁸ *Ibid.*

¹⁹ See CCPR/C/CG/35: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>.

²⁰ *Ibid.*

²¹ *Ibid.*

individuals who are detained under their auspices “since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity” (general comment No. 36, paragraph 25). Inadequate conditions of detention can be a contributing factor to deaths and serious injuries in detention, and when seriously inadequate, can pose an immediate or long-term threat to the lives of detainees.

Lastly, we recall article 12 of the International Covenant on Economic, Social and Cultural Rights which states that States Parties to the Covenant “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This includes “an obligation to take positive measures that enable and assist individuals and communities to enjoy the right to health.”²² Violations of such obligation may occur “through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the (...) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized (...)”²³.

Lastly, we would like to recall the observations of the Independent Expert on the enjoyment of all human rights by older persons that “[d]etention facilities are often not designed to accommodate older persons or to respond to their needs as they are generally planned for younger detainees” and therefore she recommended that “[a]ge-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured”.²⁴

We also flag that the notion of the relativity of older age is crucial when addressing the situation of older persons deprived of liberty, especially in the context of the criminal justice system. Therefore, due to this phenomenon of “accelerated ageing”, we recognize that the non-discrimination principle under international law necessitates specific attention to the needs of certain groups of prisoners, including older detainees, to ensure they are not discriminated against in their enjoyment of human rights and fundamental freedoms.²⁵

²² See E/C.12/2000/4:
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2B9t%2BsAtGDNzdEqA6SuP2r0w%2F6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL>.

²³ *Ibid.*

²⁴ See A/HRC/51/27:
<https://documents.un.org/doc/undoc/gen/g22/447/00/pdf/g2244700.pdf?token=sVyZaIIHAa9vpyfgJG&fe=true>.

²⁵ See UNODC, Handbook on Prisoners with Special Needs:
https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.