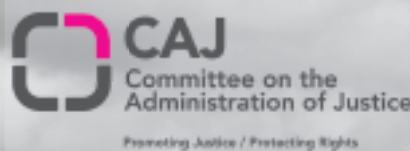


# Prisons and Prisoners in Northern Ireland

Putting human rights  
at the heart of prison reform

Committee on the Administration of Justice  
(CAJ)

December 2010



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## **What is CAJ?**

The Committee on the Administration of Justice was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First and Human Rights Watch and makes regular submissions to various UN and European bodies established to protect human rights.

CAJ's activities include – publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include – policing, the criminal justice system, equality and the protection of rights.

In 1998 the organisation was presented with the Council of Europe's Human Rights Prize for its successful efforts to mainstream human rights and equality considerations into the peace negotiations.



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## Executive Summary

A great deal has been written and said over the past number of years in relation to the Northern Ireland Prison Service (NIPS). Hundreds of recommendations for change have been made, and although many of them have been taken on board, there exists a mass of unimplemented recommendations. The nature of the proposals made by the Northern Ireland Human Rights Commission, the Northern Ireland Affairs Committee, the Prisoner Ombudsman for Northern Ireland, Criminal Justice Inspection and others, imply that considerable deficiencies remain unaddressed.

CAJ believes that the approach to improving the prison system as a whole has been both insufficient and piecemeal, and what is needed is a comprehensive and systemic review. Having considered some 40+ reports and reviews relating to prisons in Northern Ireland written since 2002, what is most startling is the repetition of themes and issues which have significant human rights implications and which remain insufficiently addressed. The report therefore groups together into broad themes the recommendations which have been made over the past number of years by numerous review and inspection reports in order to help identify the overall issues which remain unsatisfactorily addressed, and facilitate a human rights analysis upon which a review could be premised.<sup>1</sup> The same concerns in relation to a number of themes have frequently been raised in 7 or more of the 40 review/inspection reports referred to in this report, thus demonstrating that many recommendations to the prison service are not effectively, efficiently or consistently acted upon.<sup>2</sup>

It seems clear that the prison system in Northern Ireland is in a state of crisis – the number of reports and recommendations and the frequency with which recommendations are repeated alone are evidence of this. What has happened repeatedly in the prison system over the years has been that each ‘crisis’ is treated with a plaster, without ever dealing with the root causes of the problem. The focus and response by the prison service to these issues - which dwells on the numbers of recommendations and the development of paper-exercise policies and action plans, fails to recognise and address the bigger problems underlying the recommendations themselves. The problems identified are not simply operational matters that can be addressed by an action plan; rather what is required is a focus on the issues and problems behind the recommendations. In short, what is needed is widespread cultural and systemic change.

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<sup>1</sup> As a public authority, NIPS is obliged to comply with the *European Convention on Human Rights*, as incorporated in the *Human Rights Act*. Other relevant obligations and standards include but are not limited to: the *International Covenant on Civil and Political Rights* (ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); the *Convention on the Rights of the Child*; the *UN Standard Minimum Rules for the Treatment of Prisoners*; the *Basic Principles for the Treatment of Prisoners*; the *European Prison Rules*; and the *Code of Conduct for Law Enforcement Officials*.

<sup>2</sup> Whilst the issues are inter-related and cannot be dealt with in isolation, the following overarching themes have been mentioned most repeatedly and are thus addressed in the report: Safer Custody; Security; Staffing & Management Issues; Daily Activity and Long-term Planning; Health and well-being; Living conditions; Diversity and equality; Complaints; Women; Discipline; Life-sentenced prisoners; and Juveniles.

The report concludes that the prison system in Northern Ireland does not measure up to international and regional human rights benchmarks. As such, there is a need to step back and undertake an overarching appraisal of the policies and practices of the prison system. The prison system as a whole should be examined in relation to effectiveness, efficiency and adherence to international standards so as to construct a strategic approach to reform.

With devolution of responsibility for criminal justice, more local pressure for accountability and change can be asserted. Indeed, the *Hillsborough Agreement*, which facilitated that devolution of power for criminal justice, highlighted “a review of the conditions of detention, management and oversight of all prisons” and we have since seen the establishment of a Prison Review Team. CAJ is concerned that this review must not continue the piecemeal approach that has been witnessed to date, but rather go back to “first principles” and review the system in a comprehensive and holistic way.

CAJ advocates that domestic and international human rights standards should provide the framework upon which holistic and systemic change is based. These standards and obligations have freely been entered into by government, and are the basic rights which human beings are entitled to by virtue of their humanity. At their heart is the assumption that those who are deprived of their liberty do not relinquish all rights by virtue of their imprisonment. As such, they are entitled to the equivalent level of protection of their rights as those who are not detained, albeit within the context of imprisonment. It must also be borne in mind that international human rights standards are the minimum required, meaning that they are a base that should be built upon, not a goal to be aspired to.



## List of Acronyms

CAT –	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW –	Convention on the Elimination of All Forms of Discrimination against Women
CJI –	Criminal Justice Inspection
CJR –	Criminal Justice Review
CJS –	Criminal Justice System
CoE –	The Council of Europe
CRC –	UN Convention on the Rights of the Child
CRPD –	UN Convention on Rights of Persons with Disabilities
DST –	Dedicated Search Team
ECHR –	European Convention on Human Rights
ECtHR –	European Court of Human Rights
ECPT –	European Committee for the Prevention of Torture
EPR –	European Prison Rules
HMIP –	Her Majesty’s Inspectorate of Prisons
HSC Trust –	Health and Social Care Trust
ICCPR –	International Covenant on Civil and Political Rights
ICESCR –	International Covenant on Economic, Social and Cultural Rights
JCHR –	Westminster Joint Committee on Human Rights
NIAC –	Westminster Northern Ireland Affairs Committee
NIACRO –	Northern Ireland Association for the Care and Resettlement of Offenders
NIHRC –	Northern Ireland Human Rights Commission
NIPS –	Northern Ireland Prison Service
NIO –	Northern Ireland Office
OPS –	Operational Performance Standards
PAR –	Prisoners at risk
POA –	Prison Officers Association
PREPS –	Progressive Regimes and Earned Privileges
PRT –	Pearson Review Team
PSNI –	Police Service of Northern Ireland
SLCN –	Speech, language and communication needs
SMR –	United Nations Standard Minimum Rules for the Treatment of Prisoners
SST –	Search and Standby Team
SSU –	Special Supervision Unit
UDHR –	Universal Declaration of Human Rights
WHO –	World Health Organisation

## Main Report

### Introduction

A great deal has been written and said over the past number of years in relation to the Northern Ireland Prison Service (NIPS). Hundreds of recommendations for change have been made, and although many of them have been accepted, there exists a mass of unimplemented recommendations. The nature of the proposals made by the Northern Ireland Human Rights Commission, the Northern Ireland Affairs Committee, the Prisoner Ombudsman for Northern Ireland, the Criminal Justice Inspection and others, imply that there are considerable deficiencies that remain unaddressed. CAJ believes that the approach to improving the prison system as a whole has been both piecemeal and insufficient, and what is needed is a comprehensive and systemic review. This report seeks to offer analysis from a human rights perspective and provide human rights principles upon which such a review could be premised.

### Context

Clearly the conflict had a significant impact on the entire prison system. The Northern Ireland Affairs Committee (NIAC) reported in 1998 that in the 1970s the number of prison staff rose from about 300 to over 3,000 as a result of the conflict.<sup>1</sup> The NIPS website states that the prison population, which is presently just under 1,500, was at its peak in 1979 with 3,000 sentenced and remand prisoners.<sup>2</sup> Over the course of the conflict, 29 prison staff members were killed, scores more were injured and many prisoners also died. The death and injury of colleagues has clearly had a profound and lasting impact on the mindset of the prison staff.

The early release of four hundred and forty five Republican and Loyalist prisoners convicted of scheduled offences following the Good Friday / Belfast Agreement led to an early retirement plan which, by mid-2001, saw the NIPS 'workforce reduce by around 1,100 staff (40%).'<sup>3</sup>

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<sup>1</sup> Northern Ireland Affairs Committee, *Fourth Report, Session 1997-98: Prison Service in Northern Ireland*, December 1998, para 10.

<sup>2</sup> Northern Ireland Prison Service, available at <http://www.niprisonservice.gov.uk/index.cfm>. Last accessed 20 March 2010. See the 'History Section' and the 'Situation Reports'. It is also worth considering that between 9 August 1971 and December 1975 almost 2000 people were interned without trial, which would have detrimental impact and add to the milieu of the prison estate.

<sup>3</sup> Northern Ireland Prison Service, available at <http://www.niprisonservice.gov.uk/index.cfm>. Last accessed 20 March 2010. See 'the 1990s' section under the 'History Section'.

According to the Prisoner Ombudsman, less than 200 prisoners at present are Category A.<sup>4</sup> One senior civil servant working with the Criminal Justice Division in the Northern Ireland Office has stated that of the Category A prisoners, less than 20 are any real threat to society.<sup>5</sup> Since at least December 2005, according to the NIPS statistics, the separated prisoner population has not exceeded 87 at any one time.

Despite the recent violence in Northern Ireland, it is clear that times have changed. As such, the style of running prisons in Northern Ireland must also change and the fact that so many reports have been written suggests that this change has happened neither quickly nor extensively enough. It is also important to acknowledge that the prison system does not exist in a vacuum. Numerous comments relating to the wider criminal justice system are repeated in the reports relating to prisons, perhaps most significantly imprisonment for fine default and the overuse of remand. While there has been some movement in relation to the high number of fine defaulters in prison, for example, and advances are being made to adapt policy, change however, has been slow. The high number of remand prisoners also demonstrates how slow the criminal justice system is, and appears to be contrary to Council of Europe (CoE) standards which state that:

‘in view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.’<sup>6</sup>

### What has happened to date?

Since 2002 there have been no less than 40 reports in relation to the prison system in Northern Ireland, with hundreds of recommendations. In response to every report written, NIPS creates an action plan and has recently undertaken to consolidate the action plans into a master plan. According to a letter received from the head of NIPS Operational Policy and Co-ordination, the action plans assist with monitoring progress of the recommendations made in the report:

‘...against agreed deadlines...Where a recommendation is resisted or accepted only in principle, the reasons and constraints have to be recorded.

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<sup>4</sup> Pauline McCabe, *Launch of the Prisoner Ombudsman for Northern Ireland Annual Report*, Malone Lodge, Belfast, 11 August 2009. *The Annual Report and Accounts 2008/09* of the Northern Ireland Prison Service defines a Category A prisoner as ‘A prisoner whose escape would be highly dangerous to the public or the police or the security of the state, no matter how unlikely that escape might be, and for whom the aim of the Prison Service must be to make escape impossible.’ Available at <http://www.niprisonservice.gov.uk/publications/Annual%20Report%20'09.pdf> Last accessed 12 August 2010.

<sup>5</sup> Comment made in conversation with CAJ staff members at the launch of the Prisoner Ombudsman *Annual Report in Belfast*, 11 August 2009.

<sup>6</sup> Council of Europe, Committee of Ministers Recommendation Rec (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, 27 September 2006. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1041281&Site=CM>. Last accessed 1 September 2010.

When action plans are developed, they need to clearly set out SMART [Specific, Measurable, Achievable, Realistic and Time-bound] objectives, lead responsibility, a deadline for delivery and identify auditable measures for when the action is completed...

Implementation against agreed targets is being monitored on a monthly basis, with regular reports to the Prison Service Management Board on progress. Where there is slippage, this has to be accounted for with senior managers and new deadlines agreed. This process does not just apply to implementation against recommendations from scrutiny bodies, but also to action plans for those programmes and strategies that have been self-generated.

In terms of numbers, [NIPS is] currently monitoring 27 action plans which amount to roughly 1200 recommendations - some of these are fairly minor and easy to implement whilst others may represent major pieces of work, such as the development and implementation of a strategy which may take several stages to complete. It is also worth clarifying that a significant body of recommendations fall to the SE Health and Social Care Trust to deliver, although [NIPS] also will monitor implementation of these recommendations as well. Approximately one third of recommendations [have] been completed and a small number (less than 100) have been resisted. The remainder are still in train and not yet complete, though many are partially completed; a significant number are due to be audited in January, which [NIPS] anticipate will considerably reduce the number of outstanding recommendations.<sup>7</sup>

This letter suggests that NIPS is clearly aware of the need for change; however questions arise as to who is 'resisting' the recommendations and why. Moreover, although it is anticipated that the number of outstanding recommendations will be reduced, there appears to be a disconnect between policy and practice; reducing the number of outstanding recommendations appears to be a 'tick box' exercise in that creation of better policies may not sufficiently address the problem *in practice*.

Furthermore, this does not acknowledge that some recommendations require ongoing implementation. With continually better policies in place why does there appear to be a continued lack of link-up between policy and practice? When devising policy, does the policy unit meet with the staff, namely the prison officers, who are supposed to implement policy? There also appears to be a focus on outstanding recommendations, rather than addressing the underlying causes why recommendations are repeated. To focus on the pending recommendations loses sight of the outstanding overall problems, and the aim to fulfil recommendations could easily become a cosmetic exercise without addressing the fundamental issues.

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<sup>7</sup> Email from the Head of NIPS Operational Policy and Co-ordination dated 9 December 2009. On file with CAJ.

That so many recommendations for improvement have been repeated over the years suggests that there is no systematic method of addressing the problems. There appears to be resistance to implement what Northern Ireland Office (NIO) Minister Goggins, who had responsibility for prisons prior to devolution in April 2010, called 'much needed change' and this resistance appears to be fuelled by the culture of the prison system in Northern Ireland. Changing the culture within the prison system would in turn lead to better implementation of policy and practice, and therefore result in fewer criticisms and fewer recommendations.

## Where are we now?

A damning report by the Criminal Justice Inspection (CJI) and Her Majesty's Chief Inspector of Prisons (HMIP) report in 2009 concluded that Maghaberry prison specifically fell short in relation to prisoners being 'treated with respect for their human dignity.' The report saw correlation between respect and a wide variety of issues and noted the following concerns:

'While most officers were friendly, there was little supportive and active engagement with prisoners. The prison was generally clean, but overcrowded. Shared cells were too cramped and the original square houses were very difficult to supervise. Few prisoners considered the quality of food was satisfactory and mealtimes were too early. Although some work on equality and diversity was beginning and some reasonable support had been provided for foreign national prisoners, little had been done to monitor by religion and ethnicity to promote equality. The complaints system did not provide the safeguards of confidentiality we would expect to see, and some serious allegations against staff had not been adequately investigated. Delays in the transfer of health services to the National Health Service had hindered their further development and, in particular, there were insufficient mental health services. The prison was not performing sufficiently well against the healthy prison test for respect.'<sup>8</sup>

This is unacceptable for any prison in Northern Ireland.

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<sup>8</sup> Criminal Justice Inspection NI and HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Maghaberry Prison 19 – 23 January 2009*, July 2009, p. vi.

## Human rights perspective

Prisons and the prison system as a whole must be just and humane, and 'human rights are an integral part of good prison management.'<sup>9</sup> The Guidance Notes on Prison Reform maintain that 'prisons run according to human rights principles are an integral part of a justice system that maintains the rule of law.'<sup>10</sup>

As a public authority, NIPS is obliged to comply with the *European Convention on Human Rights*, as incorporated in the *Human Rights Act*. The rights in this piece of domestic legislation are further supported and supplemented by a range of other international hard and soft law standards.

The *Universal Declaration of Human Rights* (UDHR) lays down fundamental rights which, despite legal incarceration, cannot be taken away. Both the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) further detail every human individual's rights. Moreover, various instruments set the rules for the treatment of prisoners or give specific guidelines for staff working with people who have been deprived of their liberty. These important tools include:

- the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT);
- the *Convention on the Rights of the Child* (CRC);
- the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW);
- the *UN Standard Minimum Rules for the Treatment of Prisoners*;
- the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*;
- the *Basic Principles for the Treatment of Prisoners*;
- the *European Prison Rules*;
- the *Standard Minimum Rules for the Administration of Juvenile Justice*;
- the *Code of Conduct for Law Enforcement Officials*;
- the *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
- the *Rules for the Protection of Juveniles Deprived of their Liberty*; and
- the *Basic Principles on the Use of Force and Firearms*.

<sup>9</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 9.

<sup>10</sup> International Centre for Prison Studies, *Guidance Notes on Prison Reform: Guidance Note*

1: *Penal reform projects and sustainable change* (London: International Centre for Prison Studies, 2004), p. 1.

One does not relinquish all rights by virtue of imprisonment. The Joint Committee on Human Rights (JCHR) at Westminster has stated that:

‘when the state takes away a person’s liberty, it assumes full responsibility for protecting their human rights.’<sup>11</sup>

The *European Prisons Rules* state that:

‘persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.’ (rule 2)<sup>12</sup>

Similarly, the UN Human Rights Committee (general comment 21) emphasises that persons deprived of their liberty enjoy all the rights set forth in the International Covenant on Civil and Political Rights.

Prisons serve various purposes, but the very nature of incarceration serves as punishment; being deprived of liberty *is* the punishment and treatment inside the prison should not amount to further punishment unless permitted by prison rules and in line with international human rights standards. Regardless of the crime which they committed, prisoners are human beings. As such, according to the Office of the UN High Commissioner for Human Rights:

‘while facing situations of lawful limitations of freedoms and rights, prison officials are at the forefront of human rights protection on a daily basis, experiencing them and putting them into practice; respecting them and enforcing their respect.’<sup>13</sup>

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<sup>11</sup> Joint Committee on Human Rights. Third Report, Session 2004-05, December 2004, Volume I, Summary.

<sup>12</sup> Council of Europe, Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison <sup>12</sup> Rules, 11 January 2006. Available at <https://wcd.coe.int/ViewDoc.jsp?id=955747>. Last Accessed 1 September 2010.

<sup>13</sup> Office of the United Nations High Commissioner for Human Rights, Manual on Human Rights Training for Prison Officials (New York and Geneva: United Nations, 2005), p 4.



## Purpose of this report

Despite varying views on imprisonment, and notwithstanding the complexity of prison management - particularly in Northern Ireland, there are international, regional and domestic human rights obligations which should be adhered to.

This report looks at the prison system as a whole through a human rights lens to assess how the system measures up against these obligations. The aim is not to make further recommendations, but to provide evidence for the need to step back and analyse the prison system as a whole and to address the problems in a holistic and human rights compliant manner.

This report therefore groups together into broad themes the recommendations which have been made over the past number of years by numerous review and inspection reports, in order to help identify the overall issues which remain unsatisfactorily addressed, and to facilitate a human rights analysis.

Very often the same concerns in relation to the themes below have been raised in 7 or more of the 40 review/inspection reports referred to in this report, thus demonstrating that many recommendations to the prison service are not effectively, efficiently or consistently acted upon.<sup>14</sup> Whilst the issues are inter-related and cannot be dealt with in isolation, the following overarching themes have been mentioned most repeatedly and thus warrant attention:

- **Safer Custody;**
- **Security;**
- **Staffing & Management Issues;**
- **Daily Activity and Long-term Planning;**
- **Health and well-being;**
- **Living conditions;**
- **Diversity and equality;**
- **Complaints;**
- **Women;**
- **Discipline;**
- **Life-sentenced prisoners;**
- **Juveniles.**

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<sup>14</sup> See appendix 1 for the list of reports referred to. Whilst most of the issues have been noted in a number of reports, some issues mentioned in this document have not received as much attention in the reports but are significant and contemporary.



## 1. Safer Custody

*‘When the State deprives a person of liberty, it assumes a duty of care for that person. The primary duty of care is to maintain the safety of persons deprived of their liberty. The duty of care also embraces a duty to safeguard the welfare of the individual.’<sup>15</sup>*

Numerous reports refer to the need for the prison service to have more effective policies and/or better practices on safe custody issues, such as:

- bullying (including victim support);
- suicide awareness & prevention;
- self-harm; and
- vulnerable prisoners at risk.

Moreover, it is vital that policies are fortified by monitoring and staff training, and policies must transfer to operational practice and procedures, which is apparently not always the case. Comments made in the Pearson Review Team (PRT) *Final Report* illustrate that NIPS is ‘an organisation in which written word is often less powerful than local custom or practice.’ It noted that written policy does not always reflect practice and highlighted that amending written instructions is not an effective means of ‘changing staff behaviour.’

Subsequent to the suicide of Colin Bell in Maghaberry Prison on 1<sup>st</sup> August 2008, the Prisoner Ombudsman investigated the circumstances of his death and made recommendations to NIPS. The PRT and the CJI issued subsequent reports on safer custody and vulnerable prisoners and the progress of implementation of the Ombudsman’s recommendations. Significantly, the CJI found that:

‘while the NIPS has worked hard and delivered the *letter* of many recommendations, it has still considerable scope for progress in relation to implementing their *spirit*. While we conclude that most of the Prisoner Ombudsman’s recommendations had been implemented, the minority that had not been implemented were some of the most critical. Most progress had been made in relation to “policy” initiatives (issuing instructions/reminders to staff, providing physical equipment and making structural amendments) – 66% achieved – compared with 39% of “operational” issues.’<sup>16</sup>

The European Court of Human Rights (ECtHR) has maintained that there is an obligation on prison management and staff to protect the lives of prisoners who are known to be at risk and has determined the responsibility of the state, including prison management, to protect individuals at threat of self-harm.<sup>17</sup>

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<sup>15</sup> Penal Reform International. *Making Standards Work: an international handbook on good prison practice*, March 2001, p.7.

<sup>16</sup> Criminal Justice Inspection, *Vulnerable Prisoners: An inspection of the treatment of vulnerable prisoners by the Northern Ireland Prison Service*, December 2009, p.8.

<sup>17</sup> *Keenan v. the United Kingdom*, application no. 27229/95, European Court of Human Rights Judgment, 3 April 2001, § 88. The ruling cited *Osman v the United Kingdom*, European Court of Human Rights, Judgment, 28 October 1998, Reports 1998 VIII, § 115.

HM Inspectorate of Prisons considers respect and safety as two fundamental pillars which underpin a 'healthy prison' and are paramount to the overall well-being of prisoners and staff alike.<sup>18</sup>

The United Nations considers an 'essential principle' for good order and control to be that 'prisons should be safe environments for all who live and work in them.'<sup>19</sup> The *International Covenant on Civil and Political Rights* (ICCPR) explicitly states that:

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.' (article 10)

This is re-affirmed in the *Basic Principles for the Treatments of Prisoners* which states that:

'All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.' (principle 1)

This is reiterated in the *European Prison Rules* (EPR) (principle 1) as well as in the *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, which states that:

'All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.' (principle 1)

Similarly, the *Code of Conduct for Law Enforcement Officials*, which includes prison officers, obliges that:

'in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.' (article 2)

And the *European Prison Rules* stipulate that:

'good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity.' (rule 49)

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<sup>18</sup> Whilst the notion of a 'healthy prison' may be contested, according to the HMIP, the criteria for a healthy prison are: Safety of prisoners - even the most vulnerable are held safely; Respect - prisoners are treated with respect for their human dignity; Purposeful activity - prisoners are able, and expected, to engage in activity that is likely to benefit them; Resettlement - prisoners are prepared for their release into the community and helped to reduce the likelihood of reoffending. HMIP, *Suicide is Everyone's Concern*, 1999, p.57. The notion of a healthy prison has been adopted by the Criminal Justice Inspection NI.

<sup>19</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p.88.

## 2. Security

*'An officer in a watchtower on the perimeter is likely to see an escape attempt only after it has begun. An officer who works closely with prisoners and knows what they are doing will be much more aware of possible threats to security before they occur.'*<sup>20</sup>

It is noted in numerous reports that there remains within the prisons an over-emphasis on security and control, despite the considerable change in the prison population and dynamic in the post-conflict environment.

According to the Pearson Review Team:

*'Security is cited as the factor which determines everything. Staffing requirements, regime activity, daily routines for prisoners and how visitors to the prison are received and admitted to prison are regarded as security matters. A number of prisoners at Maghaberry require the very highest level of security. But there is a crucial distinction that needs to be made between security and control. Security ought to provide the envelope in which the life of the prison runs in a safe, orderly and constructive way. As a consequence of this lack of clarity, regime activities were routinely cancelled and curtailed, movement around the prison limited and sluggish. The impact on timetables and planning was serious.'*<sup>21</sup>

The residual effect of the conflict and long-standing over-emphasis on security and containment has led to the development of, and is perpetuated by, a security culture in the prison system which both impacts on most of the other themes addressed in this document (for example, safer custody; purposeful activity; regime; staffing & management issues) and underpins almost all problems related to the NIPS and the prison system as a whole. It would appear that focused attention on changing the culture within the prison system is needed.

Maghaberry houses remand prisoners; those serving life sentences for the most serious and violent crimes; and those serving a few days for fine defaulting. All prisoners are nonetheless held in maximum security conditions. The PRT noted that:

*'staff, including the governor and other senior staff, describe Maghaberry as a complex prison. They seem somewhat overwhelmed by its perceived complexity and by the requirement to meet the needs of a diverse prisoner population.'*<sup>22</sup>

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<sup>20</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p.86. The manual states that positive and interactive relationships between staff and prisoners are instrumental for providing security within a prison.

<sup>21</sup> Pearson Review Team Report, *Final Report: Review pursuant to the Death in Custody of Colin Bell* 1 August 2008, 9 June 2009, p.33.

<sup>22</sup> Pearson Review Team Report, *Final Report: Review pursuant to the Death in Custody of Colin Bell* 1 August 2008, 9 June 2009, p.33.

It recommended tackling the situation by reviewing staffing levels and physical security procedures against proportionate, risk-assessed criteria.<sup>23</sup>

It further recommended that security levels should match the needs of the prison population and a differentiated security regime needed to be applied:

‘physical security needs should be reviewed and a sensible balance struck between security and good order.’<sup>24</sup>

This would require a security-classification review of each prisoner and subsequent modifications to and balancing of procedures which relate to human rights: staff ratio/deployment; escort arrangements; freer movement; cell and body searches; and the role and action of the search and standby team (SST).<sup>25</sup>

These issues and others which relate to security procedures and policy are mentioned in no less than 9 reports written since 2004. Although this seems to be accepted and acknowledged by NIPS in that the interim *Offender Management Practice Manual – Operational Guidance and Standards* states that ‘the concept of Offender Management ensures that offenders will be managed and supervised throughout their time in custody, appropriate to the risk they present, before being prepared for their return to the community,’ this has apparently not yet been rolled out in practice.

Nor does the security focus necessarily lead to a safer environment. The 2009 CJI/HMIP follow-up report on Maghaberry determined that the prison was one of three jails out of 169 in the UK which was particularly poor in the area of safety.<sup>26</sup>

A balance between what Lord Justice Woolf termed ‘security, control and justice’ is the key to a successfully managed prison. After his investigation into rioting in prisons in England, he stated that:

‘There are three requirements which must be met if the prison system is to be stable: they are security, control and justice...For present purposes, ‘security’ refers to the obligation of the Prison Service to prevent prisoners escaping. ‘Control’ deals with the obligation of the Prison Service to prevent prisoners being disruptive. ‘Justice’ refers to the obligation of the Prison Service to treat prisoners with humanity and fairness and to prepare them for their return to the community.’<sup>27</sup>

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<sup>23</sup> Pearson Review Team Report, *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*. 9 June 2009, p33-34.

<sup>24</sup> Pearson Review Team Report, *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*. 9 June 2009, p.41.

<sup>25</sup> The SST has been disbanded and replaced by the Dedicated Search Team (DST). See section 7 for more information.

<sup>26</sup> The CJI refers to ‘safety’ in a broad sense and combines both safety and security issues. Criminal Justice Inspection NI and HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Maghaberry Prison 19 – 23 January 2009*, July 2009, p.vii. Consideration also needs to be given to incidents of inter-prisoner violence; the European Committee for the Prevention of Torture (ECPT) reported a number of such incidents and questioned the approach of prison officers to physically withdraw when large numbers of prisoners are present so as to monitor behaviour by CCTV. See *The Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment from 18 November to 1 December 2008*, 8 December 2009.

<sup>27</sup> Home Office, *Report of an Inquiry into Prison Disturbances April 1990* (London: HMSO, 1991). Quoted in Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 59.

The over-emphasis on security also results in breach of international standards and human rights norms. The *Standard Minimum Rules for the Treatment of Prisoners* (SMR) states that it is desirable to provide varying degrees of security according to the needs of different groups (rule 63(2)). And although prisons should be safe environments for all who live and work in them, the SMR states that:

‘order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.’ (rule 27)

Fundamentally, the *European Prison Rules* state that:

‘good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity.’ (rule 49).

### 3. Staffing & Management Issues

International best practice demonstrates that running an effective prison requires a positive relationship between staff and prisoners, something that has been acknowledged by the Prison Officers Association (POA):

‘the prisoner/prison officer relationship is the key to safe, decent and secure prisons of all categories and serves to ensure the public is safe and remains confident in the criminal justice system.’<sup>28</sup>

From as far back as 2000, the Criminal Justice Review Group noted:

‘we attach great importance to the training of prison staff in cultural awareness; furthermore, given the extent of change being experienced by the Service, we endorse the view that particular emphasis should be given to training in new roles and skills to enhance the ability of prison officers to work effectively with prisoners.’<sup>29</sup>

Yet concerns around staffing and management abound. The June 2009 CJI report on *Prison Service Staff Training and Development* notes the resistance to change of some staff. Similarly, the Pearson Review Team commented about ‘those who do not wish to embrace the essential change agenda.’ There has been much said in relation to both the rights and responsibility of prison staff, yet it is perhaps the area where the least amount of change has taken place: better interaction and an improved working environment between the management and prison officers is needed. Likewise, more constructive and creative engagement between prison officers and prisoners is required, as is greater support and training for staff on numerous topics.

The POA acknowledges that times are different and there is a need for the system to change:

‘In the last twenty years the role of a prison officer has changed from that of a supervisor or guard to that of a multi skilled manager of offenders. Officers have to fulfil the role of teacher, trainer, welfare officer, agony aunt, listener, enforcer and supervisor. Their work continues to evolve to ensure the demands of the service are met and re-offending reduced. It is no good sending someone to prison with drug and alcohol problems for example and then sending them back to society unless we have addressed those underlying factors and put in place support mechanisms for their release.’<sup>30</sup>

Staff dissatisfaction, high levels of absenteeism, grievances, threats of industrial action and the implementation of work to rule have all had a detrimental impact on the rights of prisoners and the rights of prison staff.

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<sup>28</sup> Prison Officers Association, available at <http://www.poa.uk.org.uk/index.php?the-role-of-a-prison-officer>. Last accessed 2 September 2010.

See ‘The Role of a Prisoner Officer’ in the ‘About POA’ section.

<sup>29</sup> Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast: Stationary Office Bookshop, 2000), p.306.

<sup>30</sup> Prison Officers Association, available at <http://www.poa.uk.org.uk/index.php?the-role-of-a-prison-officer>. Last accessed 2 September 2010.



Staff absenteeism rates remained extraordinarily high in 2009 (at least in some prisons),<sup>31</sup> more than *ten years* after the Northern Ireland Affairs Committee (NIAC) noted the detriment of absenteeism:

‘The first step to addressing the high rate of staff absence is to define its causes. In doing so, the management of the Service will gain an insight into the state of morale of staff; it is possible that the process of investigating the origins of this problem will of itself provide some improvement in the low morale which is undeniably an essential component of absenteeism. Only when the causes of absenteeism are identified clearly can management proceed to deal with the problem adequately.’<sup>32</sup>

Low staff morale was mentioned in the *Review of Safety at HMP Maghaberry* by the Safety Review Team (chaired by John Steele, a former head of the prisons in Northern Ireland) in 2003.<sup>33</sup> Indeed, the 1998 NIAC report suggested that the implementation of the internal 1996 Prison Service Review (PSR) would ‘have important effects on the conditions under which staff are employed and, related to these, staff morale...’

Bullying among prison staff is also a problem:

‘The NIPS has a fairly high number of complaints and grievances from staff, including formal complaints of harassment. This is both stressful and distressing for the members of staff involved and costly and damaging to the organisation. These cases may indicate a lack of understanding and respect for one another in the workplace: staff may experience working in a difficult environment and feel unable to be themselves at work. A reduction in these types of cases will be one indicator of a changing culture, whilst at the same time staff must continue to address inappropriate behaviours at work through formal channels where necessary. As an organisation we are all responsible for tackling the causes of grievance, harassment and bullying robustly.’<sup>34</sup>

The PRT *Final Report* outlines a number of broad changes in relation to NIPS governance, staff relations and management; particularly they make recommendations concerning overall prison governance, efficiency and staff performance.<sup>35</sup>

The NIAC stated in 2007 that there was a need to change the culture within the prison system and recommended that NIPS:

‘continues with its drive to introduce a culture which encourages prison officers to engage with prisoners to a greater extent and to view their role

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<sup>31</sup> Independent Monitoring Board, *Hydebank Wood Young Offenders’ Centre and Prison Independent Monitoring Board’s Annual Report for 2008/09*, p.15. The NIPS *Diversity Strategy* states that staff absence due to sickness ‘is a current cause of concern in the NIPS, with many absences due to stress and related conditions. A more positive and inclusive working environment may mitigate some of these conditions.’ See: Northern Ireland Prison Service, *Make a Difference: Northern Ireland Prison Service Diversity Strategy 2008 – 2011*, June 2008, Annex A, para 17.

<sup>32</sup> Northern Ireland Affairs Committee, First Report, Session 2007–08: The Northern Ireland Prison Service, December 2007, para. 42.

<sup>33</sup> Safety Review Team, *Review of Safety at HMP Maghaberry*, 29 August 2003.

<sup>34</sup> Northern Ireland Prison Service, *Make a Difference: Northern Ireland Prison Service Diversity Strategy 2008 – 2011*, June 2008, Annex A, para 17.

<sup>35</sup> Similar recommendations had been made previously by the Prison Service Pay Review Body *Fourth Report on Northern Ireland 2006*.

as one of facilitating resettlement, rather than solely enforcing security.’<sup>36</sup>

In response, NIPS ‘strongly’ agreed that such a change was needed and undertook to provide prison officers ‘with a tailored 2-day programme which is focused on their role within the modern prison service.’ The crux of the programme was ‘the promotion of public protection through engaging positively with prisoners where prison officers act as positive role models and actively influence prisoners’ attitudes and behaviours.’<sup>37</sup> Whilst some changes are being made, it would seem that fundamental change is happening far too slowly and although many reports comment on the excellent work of some of the prison officers and staff, this seems the exception rather than the rule.

It may be easy to come to the conclusion that the starting point for significant change in the Northern Ireland Prison Service is a fair and equitable process which will allow staff the option to take early retirement and permit the hiring of new personnel.<sup>38</sup>

Although the number of prison staff was reduced by 40% between 1998 and 2001, there has been virtually no new staff hired in the past decade. Various reports, including *Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, a report which was commissioned by NIPS, note that the prison service has been a ‘largely static workforce’ for at least 15 years.<sup>39</sup>

The ongoing tensions between the POA and prison management, and the staff-related concerns mentioned above, suggest that while crucial change perhaps requires a change in personnel, it most certainly demands a shift in culture.

Significantly, the PRT stated that the:

‘insidious sub-culture...allowed delinquent behaviour by some junior staff... On taking up post we believe that the new NCOs [night custody officers] were quickly subverted into accepting the culture of that part of the workplace. Regrettably this was not picked up by middle and senior managers... This is not simply a matter of disobeying rules and procedures or ignoring practice instructions. Rooting out malpractice will only come when there is much more vigorous managerial attention to behaviour at the coal face, where modelling good behaviour and practice is actively

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<sup>36</sup> Northern Ireland Affairs Committee, First Report, Session 2007-08: The Northern Ireland Prison Service, December 2007, para 149. The report noted that Kit Chivers, the then Chief Inspector of Criminal Justice, had given testimony regarding the prison culture in Northern Ireland as ‘being basically obsessed with security, being instruments of security of the State and not focusing on resettlement and reducing convictions as their first objective’. NIAC, para 194.

<sup>37</sup> Northern Ireland Affairs Committee, The Northern Ireland Prison Service: Government Response to the Committee’s First Report of Session 2007-08, First Special Report of Session 2007-08, 27 February 2008, p. 15.

<sup>38</sup> In December 2009, Robin Masefield, the Director of the Northern Ireland Prison Service, stated that the focus within the prison service is still on security rather than resettlement and on the group rather than the individual. He noted the very low staff turnover and highlighted that unlike the reform of the police service, NIPS has had ‘no Patten Commission, no legislation, no extra funding so [therefore] little leverage [to implement change]’. Robin Masefield, ‘Diversity and Equality in Government Conference’ Diversity and Equality in Government Conference, London, 10 December 2009. Available at <http://www.equalityconference.co.uk/wp-content/uploads/Robin%20Masefield.pdf>. Last accessed 3 September 2010.

<sup>39</sup> Section 75 of the Northern Ireland Act 1998 ensures that equality and good relations considerations are central to policy development by all government bodies and public authorities.



encouraged and there is zero tolerance of bad behaviour. *In short, major cultural change is needed.*<sup>40</sup> (emphasis added)

Although the following comment was written by the Criminal Justice Inspection (CJI) in relation to the treatment of vulnerable prisoners, the statement sums up what many reports say about the prison system overall:

‘inspectors met some excellent and committed staff who were making a difference, but it was too often on the basis of individual interest rather than within a corporate framework... Cynical attitudes remained and there was an overriding security focus with certain staff remaining reluctant to engage with prisoners.’<sup>41</sup>

Yet it is not as simple as just getting rid of ‘troublesome personnel.’ Addressing the grievances of the POA would be the first step to bettering the system as a whole. Failing to address the complaints by the prisoner officers or dealing inadequately with the NIPS governance issues are to the detriment to prisoners, prison staff and taxpayers. Ensuring the rights of the staff of the prison system is a step towards ensuring the rights of the prisoners. Staff who do not feel that they are respected or treated with dignity are, in turn, unlikely to fulfil the requirement to treat prisoners with respect and dignity. There is no reason why skilled, well-trained, well-paid and respected prison staff cannot be a sustainable reality, particularly given that it would appear that there would be a positive subsequent effect for the prison system as a whole.

*The UN Standard Minimum Rules for the Treatment of Prisoners* states that prison management has the duty to carefully select every grade of personnel:

‘since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.’ (rule 46 (1))

Prison staff, in turn, have rights which should also be adhered to in order to foster a just, humane and effective prison system. As such, the conditions of employment of staff should also be of a high standard. The SMR also recommend that prison officers should:

‘have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.’ (rule 46)

The Council of Europe (CoE) Committee of Ministers has recommended a number of relevant standards relating to work conditions and management responsibilities

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<sup>40</sup> Pearson Review Team Report. *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*, 9 June 2009, p. 12. Although the Pearson Review was specifically about Maghaberry prison, the review team noted, ‘We cannot be certain that the appalling behaviour of some night duty staff was not mirrored at other prisons. Unacceptable behaviour may have gone unchallenged over time at any of the three prisons.’ Pearson, p.12.

<sup>41</sup> Criminal Justice Inspection Northern Ireland, *Vulnerable Prisoners: An inspection of the treatment of vulnerable prisoners by the Northern Ireland Prison Service*, December 2009, p.9.

for those involved in the ‘implementation of sanctions.’<sup>42</sup> They have said that:

‘staff should be aware of the fundamental principles that provide the framework for their work.’

In order to be effective, a policy statement that:

‘defines the general aims, principles, values and methods of the service’  
and has been prepared in consultation with staff should be created.’  
(recommendations 34 and 35)

They also recommend that efforts are made to ensure that prison staff ‘receive the social recognition’ which the work merits (recommendation 41). This is reiterated by the SMR. (rule 46)

Furthermore, the Council of Europe states that management at all levels should strive to prevent working conditions likely to give rise to stress symptoms among the staff by suitable arrangements for physical safety, reasonable working hours, decision latitude, open communication and a psychologically supportive climate in each work unit (recommendation 42). Suitable support should be made available to staff with high levels of stress or who have been traumatised and this should be made explicit through set welfare policies (recommendations 43 and 44).

Importantly, the CoE further recommends that efforts to establish how better mechanisms of staff recruitment, selection, training, work organisation, incentives and professional support can be undertaken (recommendation 47).

New recruits should be required to hold an ‘adequate’ standard of education (SMR 47). This is reaffirmed by the EPR which maintains that new staff should have ‘integrity, humanity, professional capacity and personal suitability’ and should be properly trained both prior to being hired and:

‘throughout their career, all staff [should] maintain and improve their knowledge and professional capacity.’ (rules 76, 77 and 81)

Having a higher standard of necessary qualification would also help to foster a new culture within the prison which would be less security-focused. This would offer the opportunity to overhaul prison officer-management relations, contribute to better staff morale and thus decrease both the occurrence of absenteeism and threat of industrial action which has plagued the prison service for many years.

A starting point may be for NIPS, with significant input from both administrative and prison grade staff, to re-examine its *Statement of Purpose, Vision and Values* so as to make it more reflective of both the obligations and rights of staff, as is recommended by the CoE.<sup>43</sup> The international and regional standards referenced in this section should be drawn upon when revising or drafting new policies and strategies pertaining to officers and governors.

The application of the highest human rights standards for prison officers could be the starting point for breaking the cycle of contention and propelling the necessary change within the system.

<sup>42</sup> Council of Europe, *Recommendation No. R (97) 12 of the Committee of Ministers to Member States on Staff Concerned with the Implementation of Sanctions and Measures*, 10 September 1997. Available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/legal\\_instruments/Rec.R\(97\)12.asp](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/legal_instruments/Rec.R(97)12.asp) Last accessed 3 September 2010.

<sup>43</sup> Similarly, the Pearson Review stated: ‘It would be a valuable exercise for senior managers and trade unions to spend time together, ideally with a facilitator; to hammer out a revised statement of values capable of being signed up to by staff at all levels.’ Pearson Review Team Report. *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*, 9 June 2009, p. 21.

## 4. Resettlement and Reintegration

*'The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.'*<sup>44</sup>

According to the homepage of the NIPS website:

*'The Prison Service, through its staff, serves the community by keeping in secure, safe and humane custody those committed by the courts and, by working with prisoners and with other organisations, seeks to reduce the risk of re-offending and in so doing aims to protect the public and to contribute to peace and stability in Northern Ireland.'*<sup>45</sup> (emphasis added)

It is to be understood from this, and indeed it is commonly understood of prison services, that part of the purpose of imprisonment is to prepare prisoners for resettlement and reintegration into society in a way that reduces the risk of reoffending and recidivism. As such, prison regimes should be such that they provide activities, services and support that enable this to happen.

It could be argued that rehabilitation is a relatively new concept for the prison service in Northern Ireland and various reports appear to agree that substantial improvement is needed in relation to individual resettlement strategies. Further, that the different resettlement needs of separated, short-term, fine default and remand prisoners must not continue to be overlooked has been noted in various reports. Also mentioned several times is the need for 'offending behaviour programmes', including interventions for 'deniers.' Industrial action and work to rule results in lockdown, prisoner isolation and subsequent breaches of the obligation to offer prisoners purposeful activity and the opportunity to learn skills which will support their successful re-integration into society. This has also been frequently noted.

The June 2009 report by Criminal Justice Inspection NI and Her Majesty's Inspectorate of Prisons found that Maghaberry fell short when measured for purposeful activity and resettlement, two of the four criteria that comprise internationally recognised healthy prison standards.<sup>46</sup> A number of reports highlight that education, work and rehabilitation activities are often linked to resettlement and reintegration and such activities need to be expanded and improved. Resettlement and reintegration are closely linked to purposeful daily activity and regime in that how each prisoner spends his or her days whilst in prison will clearly affect their ability to adjust to life in the community once released from prison.

The remainder of this section will look at these issues in turn before highlighting relevant international standards.

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<sup>44</sup> International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16 December 1966, Article 10 (3). Available at <http://www2.ohchr.org/english/law/ccpr.htm> Last accessed 3 September 2010.

<sup>45</sup> Available at <http://www.niprisonservice.gov.uk/index.cfm> . Last Accessed 3 September 2010

<sup>46</sup> Respect and safety are the other two criterion; Maghaberry also fell short of these. Criminal Justice Inspection NI and HM Chief Inspector of Prisons, Report on an unannounced full follow-up inspection of Maghaberry Prison 19 – 23 January 2009, July 2009.

## a. Purposeful Activity

There has been consistent criticism of the prison system due to the fact that many prisoners are not kept busy with purposeful or constructive activity. One CJI report states that inspectors witnessed a:

‘lack of activity places to keep prisoners purposefully engaged which led to many men spending most of their days locked up without the opportunity to gain useful skills.’<sup>47</sup>

A Prisoner Ombudsman report also notes the importance of purposeful activity and refers to independent research which indicates that:

‘at prison level, lower rates of self-inflicted death are associated with higher rates of purposeful activity, even when the type of prison is taken into account.’<sup>48</sup>

In relation to one specific prisoner, Colin Bell, who hanged himself whilst in custody at Maghaberry, the Prisoner Ombudsman has demonstrated that during the last 6 days of his life, the time that he spent in purposeful activity:

‘fell well short of that required by Prison Rules, recommended good practice and of the recommendation made by Professor McClelland and accepted by the Prison Service for implementation by 31 March 2006.’<sup>49</sup>

Daily routine and the ability to engage in purposeful activity are greatly hindered by excessive lockdown. In this way, purposeful activity is linked both to the ongoing threat of industrial action and work to rule by prison officers, high rates of absenteeism by prisoner officers and/or overly cautious rules and procedures (i.e. disproportionate security). The PRT *Final Report* states that:

‘security was frequently cited as a reason why planned activities did not go ahead at Maghaberry.’<sup>50</sup>

The report continues:

‘the requirement to deliver decent and purposeful regime, linked to measurable outcomes for prisoners, need not undermine or threaten security.’

Professor Coyle argues that justification for keeping prisoners locked in their living space because there is insufficient staff to supervise them:

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<sup>47</sup> Criminal Justice Inspection Northern Ireland, Press Release: ‘Chief Inspectors declare poor standards at Maghaberry Prison cannot continue’, 21 July 2009. Available at <http://www.cjini.org/getdoc/ba304b33-4e61-4885-85e8-edcf3e3af3c7/Chief-Inspectors-declare-poor-standards-at-Maghabe.aspx>. Last accessed 3 September 2010.

<sup>48</sup> The Prisoner Ombudsman for Northern Ireland, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Colin Martin Bell Aged 34 in Maghaberry Prison in the Late Hours of 31 July and the Early Hours of 1 August 2008*, 9 January 2009, p. 39.

<sup>49</sup> The Prisoner Ombudsman for Northern Ireland, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Colin Martin Bell Aged 34 in Maghaberry Prison in the Late Hours of 31 July and the Early Hours of 1 August 2008*, 9 January 2009, p. 42.

<sup>50</sup> Pearson Review Team Report. *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*, 9 June 2009, p. 34.

‘needs to be examined closely on operational grounds. There will usually be sufficient staff to allow groups of prisoners out in rotation. It may also be possible for some prisoners to help other prisoners in education, by teaching literacy for example, or in craft activity.’<sup>51</sup>

Various reports also note that prisoner movement is often restricted as a consequence of the high rate of staff absenteeism and staff-safety protocol and thus negatively impacts on prisoner attendance and punctuality at education/vocational classes and activities.

Access is further curtailed when facilities, such as those in Hydebank Wood, are shared between prisoners who need to be kept apart. Several reports suggest that where applicable, each training programme should specifically cater to prisoners’ needs (e.g. juveniles, women). Furthermore, vulnerable prisoners continue to be neglected and CJI has noted that the daily ‘regime provided for vulnerable prisoners remained unduly limited.’<sup>52</sup>

Concerns are raised in numerous reports about the lack of time out of cell (particularly outdoors) for many prisoners. Issues are also raised around the allocation of prisoner jobs, or at the least the perceptions about the allocation of prisoner work. Concerns have been raised in relation to discrimination against those with short-term sentences and on remand (in terms of having fewer opportunities). Discrimination based on religion is also mentioned as a cause for concern in various reports.

Access to library facilities is regularly mentioned in the reports, as is the issue of prevention of some prisoners to access the library thus suggesting that the opening hours are insufficient and access is not equal for all prisoners.<sup>53</sup>

It appears from the reports that each prison needs a clear educational or vocational aspect as part of a regime and resettlement strategy, created in conjunction with outside partners. The PRT recommends that:

‘regimes and daily routines should be reinvigorated to make best use of regime facilities and opportunities.’<sup>54</sup>

## **b. PREPS (Progressive Regimes & Earned Privileges Scheme)**

The Progressive Regimes & Earned Privileges Scheme (PREPS) sets out to provide incentives for prisoners which are earned through good behaviour. There are three levels in the scheme (basic, standard and enhanced) and prisoners can be promoted or demoted based on their behaviour. Those prisoners on the enhanced level are offered greater privileges.

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<sup>51</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 42.

<sup>52</sup> Criminal Justice Inspection, *Vulnerable Prisoners: An inspection of the treatment of vulnerable prisoners by the Northern Ireland Prison Service*, December 2009, p. 8.

<sup>53</sup> For example, it appears that prisoners in the Special Supervision Unit (SSU) and healthcare facilities may not have regular or equal right to use the library facilities.

<sup>54</sup> Pearson Review Team Report. *Final Report: Review pursuant to the Death in Custody of Colin Bell 1 August 2008*, 9 June 2009, p.41.



CJI has noted that PREPS does not act as an 'appropriate incentive' for prisoners and has repeatedly recommended that greater support should be offered to prisoners on the basic regime for more than four weeks. It has continued to call for further monitoring of PREPS.<sup>55</sup>

The PREPS consultation document (May 2006) stated that NIPS had conducted an Equality Screening Assessment of the PREPS proposals and concluded that there was not a likelihood of significant adverse differential impact to any of the s75 categories. Nonetheless, CJI reported last year that the statistics relating to PREPS were cause for concern and noted that they had highlighted this in previous prison inspection reports. CJI reports that the equality monitoring done by NIPS and inspections by CJI and HM Inspectorate of Prisons demonstrate that:

'Roman Catholic prisoners in each of the three NIPS establishments are over-represented on the basic and standard levels of PREPS and under-represented on the enhanced level.'<sup>56</sup>

There appears to be discrepancy in how policy is rolled out and inconsistency was noted in the Judicial Review brought by a prisoner in which the judgement highlighted that there appeared to be:

'confusion on the part of prisoners and staff as to where the applicable procedures are to be found... In particular there is no common description of the approach to reduction in status in the Staff Policy Document, the Information for Prisoners and the Guidance for Prisoners; or as to the identity of the officer who should endorse adverse reports; or as to the input of the completion of residential reports; there is lack of clarity as to whether a recommendation for loss of status is an essential ingredient of an adverse report; whether the endorsement by a senior officer is of the adverse report and/or the recommendation and whether there is any discretion on reduction in status.'<sup>57</sup>

The revised PREPS *Corporate Framework*, a policy made effective in June 2009, appears to take on board a number of the recommendations made by the various reports, at least in theory. How this updated policy is rolled out in practice needs to be reviewed.

Additionally, it would appear that the particular physical circumstances of the prison estate do not always permit women prisoners on the 'enhanced' regime to avail of their full entitlements (a consequence of sharing the prison estate with young males), thus resulting in inequality. One CJI inspection also confirmed that for many women at Ash House:

'the apparent link between PREPS and resettlement was not very real...as there were few purposeful activities they could be involved in to constitute a sentence plan.'<sup>58</sup>

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<sup>55</sup> Criminal Justice Inspection NI and HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Maghaberry Prison 19 – 23 January 2009*, July 2009, p.6.

<sup>56</sup> Criminal Justice Inspection, Section 75 The impact of *Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland*, May 2009, p. 17.

<sup>57</sup> An Application for Judicial Review by Edward Watters, citation no. [2008] NIQB 74, Ref: WEA7194, The High Court of Justice in Northern Ireland, 30 June 2008, para. 47.

<sup>58</sup> HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, *Report on an announced inspection of Ash House, Hydebank Wood, 29 October – 2 November 2007*, June 2008, p. 64.

Finally, it is also worth bearing in mind that because under 18 year olds are detained at Hydebank Wood, minors can also be subject to PREPS, although it may not necessarily be suitably adapted for them.

There are a significant number of international standards relating to the overall purpose of prisoner daily regime and activities: the International Covenant on Civil and Political Rights (ICCPR) advocates that the 'reformation and social rehabilitation' of prisoners should be the fundamental intention of a prison system (article 10.3). As such, it would appear that this obligation impacts on all activities and actions relating to the prisoner. Similarly, the SMR state that the very purpose of the prison regime and the treatment of prisoners should be to help prisoners to lead law-abiding and self-supporting lives after their release (rules 58 and 65).

Such standards suggest that prison activities should also be seen as a part of developing the whole person and not merely as recreational activities. The *Human Rights Approach to Prison Management: a handbook for prison staff* puts forth the idea that prisons must strive to prevent the physical or mental deterioration of prisoners. To this end, the SMR suggests that:

'all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.' (rule 66 (1))

This holistic notion of developing the whole person is reiterated by the UN Economic and Social Council (Resolution 1990/20 of 24 May 1990) which also notes that:

'disincentives to prisoners who participate in approved formal educational programmes should be avoided.'

*The Basic Principles for the Treatment of Prisoners* clearly state that the cultural and educational prison activities should aim at the 'full development of human personality' (principle 6). The UDHR provides for the right to education (article 26) and the right to 'participate in the cultural life of the community' (article 27) as does the ICESCR (articles 13 and 15) and the SMR (rules 77 and 78).

Many standards are in place not only in relation to educational and cultural activities, but also of the right to work (UDHR article 23) which is meaningful and gives prisoners the skills to earn a living after release. The SMR suggest that all prisoners should be required to work or undertake vocational training (rule 71); this is re-iterated in the *Basic Principles for the Treatment of Prisoners* (principle 8).

The *Standard Minimum Rules for the Administration of Juvenile Justice* emphasise young peoples' fundamental rights to personal development and education and vocational training (articles 1, 24, and 26); reaffirmed by the SMR (rules 71 and 77).

The SMR indicate that a resettlement plan for each prisoner which will consequently assist in their reintegration into society should be created at the beginning of a prisoner's sentence (rule 80) and should involve all agencies and services that have some responsibility for this reintegration (rule 81).

Also of importance are *the European Prison Rules 2006* which state that *all* prisoners should be offered a balanced programme of activities and should be permitted to:

‘spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.’ (rule 25)



## 5. Health and well-being

All persons, including prisoners, have the right to the highest attainable standard of physical and mental health, as enshrined in the *Universal Declaration of Human Rights* (article 25) and the *International Covenant on Economic, Social and Cultural Rights* (article 12). There have been considerable concerns raised in relation to the physical and mental health of many prisoners and it appears that the prison system falls short of attaining the *highest standard* for both physical and mental health. In his recent response to the Pearson Review Team *6-Month Audit Report*, Robin Masefield responded that:

‘the Prison Service will continue to work closely with the South Eastern Health and Social Care Trust to ensure the medical needs of all patients are addressed to *the highest standards achievable within a prison setting*.’  
(emphasis added)

This suggests that NIPS has not embraced the principle of the rights to equality of access to healthcare, that is to say that those within the criminal justice system should have access to treatment and care that is equivalent to that available to other members of our society as supported by the *Bamford Review* team.

Whilst the responsibility for prisoners’ health care was transferred from NIPS to the Health and Social Care Trust (HSC Trust) in autumn 2008, the overall responsibility for the well-being of prisoners remains with NIPS. As such, the recommendations which have been repeated over recent years are still relevant and apparently outstanding. These include the need for a review of the suicide prevention and self-harm policies, as well as the monitoring of such incidents and of policy implementation. Numerous reports also highlight that the misuse of both legal and illegal drugs within the prisons continues to be a major source of concern and have suggested that a holistic programme to deliver drug and alcohol counselling, therapeutic intervention, detoxification and rehabilitation should be implemented. That voluntary drug-testing should be separate from PREPS has been repeatedly recommended. Reports speak with concern about the frequency of delays in providing medication to prisoners after their arrival in prison and the seemingly common practice of drastically reducing or completely stopping prisoner’s medication.

It is probably too soon to assess the outcome of the transfer of responsibility for healthcare from NIPS to the HSC Trust. Since the handover, there appears to be (perhaps unwittingly) a general lack of transparency, evident by the fact that no HSC Trust policy or guidelines specific to the prisons have thus far been made readily accessible to the public or been put out for consultation. There is also lack of clarity around internal and external procedures that may not be exclusively health-related. The potential for individuals to ‘fall between the stools’ of NIPS and the HSC Trust was exemplified by a recent report about a remand prisoner who did not receive adequate health care for a number of days whilst incapacitated with arthritis, during which time his family was not notified by the prison authorities and he missed bail hearings.<sup>59</sup>

<sup>59</sup> See <http://www.u.tv/UTVMediaPlayer/Default.aspx?vidid=128818>, 10 March 2010. Last accessed 12 April 2010. No longer available online.

Although CJI has called for a formal review in 2014 of the ‘service provided by the Health Service to the NIPS’ there is a need for ongoing assessment during the interim period.<sup>60</sup>

The recent report by the Prisoner Ombudsman on her investigation into the death in custody of Stephen Doran made eight recommendations which relate to the need to review and update policy and implementation of good practice. The fact that the recommendations are made to ‘the Prison Service and its South Eastern Health and Social Care Trust partners’ suggests that there is clear overlap of responsibilities.

It would appear that although the HSC Trust has taken over responsibility for healthcare, it does not actually employ all of the personnel delivering healthcare duties. Prior to the transfer of healthcare responsibility from NIPS, it had been recommended that all staff working in prison healthcare should be employed by and accountable to the HSC Trust, although this does not appear to have been implemented. This would have apparent ramifications relating to the duty of care as referenced by Penal Reform International<sup>61</sup> and as applicable in tort law.

In relation to international standards, the European Court of Human Rights has stated that the prohibition of degrading or inhumane treatment (ECHR article 3) obliges the state to ensure that conditions of detention are compatible with respect for prisoners’ human dignity and that:

‘given the practical demands of imprisonment, his [sic] health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.’<sup>62</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) has suggested that prison healthcare should extend beyond caring for sick prisoners to include social and preventive medicine, notably supervising proper hygiene in prisons, preventing transmissible disease, suicide and violence, and limiting the disruption of social and family ties.<sup>63</sup>

Whilst it does appear that the prisons in Northern Ireland do adhere to the rule that every prisoner shall have at least one hour of exercise in the open air (SMR rule 21), it should be remembered that one hour is the *minimum*, not the optimum. For those who so desire, physical and recreational training should be provided (SMR Rule 21) and a walled yard is insufficient. Moreover, *A Human Rights Approach to Prison Management* states that the right to exercise in open air applies also to segregated prisoners or those under punishment.<sup>64</sup>

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<sup>60</sup> Criminal Justice Inspection, *Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland*, March 2010, p.xi.

<sup>61</sup> Penal Reform International. *Making Standards Work: an international handbook on good prison practice*, March 2001, p. 7.

<sup>62</sup> *Kudła v. Poland*, application no 30210/96, European Court of Human Rights, Judgment, 26 October 2000, § 94.

<sup>63</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p.68.

<sup>64</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 44.

## a. Learning Disabilities and Learning Difficulties

The *Convention on the Rights of Persons with Disabilities* (CRPD) calls on states to ensure that all individuals with physical, mental, intellectual or sensory impairments are not denied human rights; this includes prisoners. It would appear that NIPS falls significantly short of the standards found in the convention.

There are significant issues concerning individuals with learning difficulties: for example, a recent conference by the Royal College of Speech and Language Therapists and the Youth Justice Agency highlighted the gaps in the current provisions for offenders who have speech, language and communication needs (SLCN). It was noted several times that approximately 60% of offenders have significant communication disabilities or SLCN.<sup>65</sup>

That this is important (and suggests the need for a holistic approach to awareness and training for the criminal justice system as a whole) is demonstrated in an audit of the youth justice system:

‘Several said they did not understand the long words or “jargon” used and some felt unable to ask for an explanation in case it was seen as “answering back”... Some magistrates have more difficulty than others in effectively engaging with young defendants, with 61 per cent of those surveyed saying they have some or a lot of difficulty in getting young people to engage in discussion. This can influence the way in which young people are perceived by the court, which can have important consequences. For example, if a young person is inarticulate, inhibited or lacks understanding, which is not uncommon among teenagers, this may lead to misunderstandings and even the passing of an inappropriate sentence. Eighty per cent of magistrates surveyed said that the attitude and demeanour of a young person influences their sentencing decision to some or a great extent.’<sup>66</sup>

Whilst the above is said in relation to youth in a court situation, there is nothing to indicate that this is significantly different, or that the same consequences could not be applied to adults and indeed juveniles within the criminal justice system. For example, the Westminster Joint Committee on Human Rights (JCHR) recently reported that a learning disability impacts on a prisoner having equal access to parole and subsequently raised ‘one of the most serious issues’ of the inquiry:

‘We are deeply concerned that this evidence indicates that, because of a failure to provide for their needs, people with learning disabilities may serve longer custodial sentences than others convicted of comparable crimes.’<sup>67</sup>

As noted by the JCHR, this falls foul of the *European Convention on Human Rights* (ECHR) guarantee to the right to liberty (article 5) and to the security that the ECHR rights and freedoms are applicable to all without discrimination (article 14).

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<sup>65</sup> Jane Mackenzie and Professor Karen Bryan, *Locked Up and Locked Out Communication is the key conference*. University of Ulster, Jordanstown, Belfast, 23 June 2009.

<sup>66</sup> Audit Commission, *Youth Justice 2004: A Review of the Reformed Youth Justice System*, January 2004, p. 30.

<sup>67</sup> Joint Committee on Human Rights, *Seventh Report, Session 2007-08: A Life Like Any Other? Human Rights of Adults with Learning Disabilities*, March 2008, paras. 53; 215.

The Prison Reform Trust's UK-wide *No One Knows* research and advocacy programme focuses on raising awareness and fostering change within the justice system for individuals with learning difficulties and learning disabilities. *Prisoners' Voices* is the concluding report of the programme and calls for an end to the 'collective and unlawful failure' of the CJS to meet the minimum requirements of disability legislation and recommends that agencies within the CJS comply with the *Disability Discrimination Act (2005)* and specifically the disability equality duty.

## **b. Mental Health Issues**

In a thematic review of the care and support of prisoners with mental health needs in England and Wales, Anne Owers, the HM Chief Inspector of Prisons, said:

'prison has become, [to] an extent, the default setting for those with a wide range of mental and emotional disorders.'<sup>68</sup>

There is no evidence to suggest that the Northern Ireland prison system is any more forward thinking in its approach to dealing with and providing for prisoners with mental health concerns. In fact, in its report on Maghaberry Prison, the Criminal Justice Inspection NI and Her Majesty's Inspectorate of Prisons lambasted the prison for its 'insufficient mental health services.' The threat that prisoners pose to themselves needs to be considered as much as their potential threat to other prisoners and staff, yet the CJI/HMIP report noted that, at least at the time of the inspection, there was no local suicide or self-harm policy for the prison; little therapeutic support for some very vulnerable men; and poor monitoring procedures were in place for those at risk.

Grave concerns relating to the care in prison of individuals with mental health issues, including those with 'severe mental health problems' and the subsequent implications around staff training and specialisation have been expressed in a variety of reports. Despite the opening of the Shannon Clinic, a medium secure unit located at Knockbracken Health Care Park outside Belfast in 2005, the needs of prisoners with mental health problems are not adequately addressed.<sup>69</sup> As noted in a number of reports, most recently by CJI, facilities in Northern Ireland are insufficient and there is the need for a local high security hospital.

Also noted by CJI, there is significant complexity in that definitions, diagnosis and treatment of 'mental disorders' are not always straightforward.<sup>70</sup> As such, the report of the *Bamford Review* encompassed the examination of policies, service provision and legislation applicable to individuals suffering from mental health or learning disabilities given that:

'many individuals who are subject to the Criminal Justice System have mental health and learning disability needs.'<sup>71</sup>

<sup>68</sup> HM Inspectorate of Prisons, *The mental health of prisoners: A thematic review of the care and support of prisoners with mental health needs*, October 2007, p. 7.

<sup>69</sup> The Shannon Clinic has limited facilities for women and no facilities for individuals requiring more than 2 years treatment. The Bamford Review of Mental Health and Learning Disability (Northern Ireland), *Forensic Services*, October 2006, paras. 8.32-8.33.

<sup>70</sup> Criminal Justice Inspection, *Not a Marginal Issue: Mental Health and the Criminal Justice System in Northern Ireland*, March 2010, p. 3.

<sup>71</sup> The Bamford Review of Mental Health and Learning Disability (Northern Ireland), *A Comprehensive Legislative Framework: Consultation Report*, February 2007, p. 5.52.

A strategic approach for supporting prisoners with mental health issues is needed particularly given that such problems appear to be widespread. Reports suggest that mental healthcare should be fully assessed, counselling should be integrated into a comprehensive therapeutic regime and suitable prisoners should be permitted to transfer on a voluntary basis so as to receive care in a more appropriate facility (i.e. hospital).

Applicable legislation does not yet recognise personality disorder as a treatable mental health problem (this is set to change in April 2011); this would indicate that more can be done both to acknowledge the need for greater support and to provide the support for those prisoners who suffer from mental health problems. Reports have also recommended that there should be better continuity of care and prisoners with mental health problems should be referred to community mental health services when being released from prison, as recommended by the SMR (rule 83).

According to the World Health Organisation, the very environment of prison can pose a threat to mental well-being and some mental health problems can be negatively influenced by imprisonment.<sup>72</sup> The *Standard Minimum Rules for the Treatment of Prisoners* also oblige the medical officer to consider whether imprisonment itself is actually detrimental to the prisoner's mental (or physical) well-being (rule 25).

The ECPT has concluded that:

‘a mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.’<sup>73</sup>

Significantly, there have been various cases in which the European Court of Human Rights has found that inadequate health care was in violation of the *European Convention on Human Rights*: ‘inadequate medical, mental health or drug detoxification treatment’ which results in the death of a prisoner may be in breach of the right to freedom from torture, inhuman or degrading treatment or punishment (article 3)<sup>74</sup> and the suicide of a mentally ill prisoner has been found to be a breach of this right (article 3) by reason of neglect, rather than a breach of the right to life (article 2).<sup>75</sup>

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<sup>72</sup> World Health Organisation Regional Office for Europe, *Status paper on prisons, drugs and harm reduction*, 2005. Quoted in Lars Møller, Heino Stöver, Ralf Jürgens, Alex Gatherer and Haik Nikogosian (ed.), *Health in prisons: A WHO guide to the essentials in prison health* (Copenhagen: World Health Organisation, 2007), p. 101.

<sup>73</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *The CPT standards: ‘Substantive’ sections of the CPT’s General Reports*, CPT/Inf/E (2002) 1 - Rev. 2009, para. 43.

<sup>74</sup> *McGlinchey v. the United Kingdom*, application no. 50390/99, European Court of Human Rights, 29 April 2003, quoted in Joint Committee on Human Rights, *Third Report, Session 2004-2005*, December 2004, para. 36.

<sup>75</sup> *Keenan v. the United Kingdom*, application no. 27229/95, European Court of Human Rights Judgment, 3 April 2001. Here the European Court of Human Rights recognised for the first time that a positive obligation under Article 2 may arise ‘where the risk to a person derives from self-harm’.

The *European Prison Rules 2006* state that prisoners 'who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison' should be detained in an establishment specially designed for the purpose (rule 12).

The SMR states that every prison should provide psychiatric services for the diagnosis and, if appropriate, treatment of 'states of mental abnormality' (rule 22). The SMR also states that during their stay in a prison, prisoners who suffer from 'mental diseases or abnormalities' shall be supervised by a medical officer and shall be provided with psychiatric treatment (rule 82). The EPR maintain that individuals who suffer from 'mental illness and whose state of mental health is incompatible with detention in a prison' should be detained in 'specifically designed' establishments (rule 12).



## 6. Living conditions

The basic standard that all individuals have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding is enshrined in the *Universal Declaration of Human Rights* (article 25) and the ICESCR (article 11); this also applies to prisoners.

Time and again, it has been reported that considerable improvement and refurbishment of the physical estate is required. Various rooms within the prison estate are specifically mentioned (rooms for visits or association; specific facilities for family visits including visits with children). Cells for one prisoner are being shared by 2; a lack of lockable cupboards for personal goods including medicines in shared cells has been highlighted; 24-hour access to toilets is required if in-cell toilet facilities are not available;<sup>76</sup> partition is needed in shared cells with in-cell toilet facilities; complaints have been made in relation to prison heating; inadequate standards of hygiene and cleanliness throughout the prison; and prison lighting systems.<sup>77</sup> There have been numerous and repeated concerns raised around food temperature, menu, communal eating and timing (i.e. final meal served before 4pm). The ECPT has noted with concern the prospect of overcrowding becoming a regular feature of the prison system.<sup>78</sup>

The Prisoner Ombudsman's report on the death in custody of Colin Bell disturbingly describes the hours prior to his death in which he was naked and apparently so cold he wrapped toilet tissue around his feet to keep warm:

'Because Colin was dressed in anti-ligature clothing and his blanket had been removed for his own protection as a result of his attempts at making ligatures, he appeared at times cold. There is evidence of this on 3 consecutive nights, and on 2 of those nights Colin wrapped toilet paper around his feet in what appears to be an attempt to keep warm.'<sup>79</sup>

Similarly, the 2008-2009 *Annual Report* of the Prisoner Ombudsman outlines a complaint about cold cell temperature at night by a prisoner with health concerns which demonstrates a typical complaint relating to cell conditions.<sup>80</sup> The Ombudsman's *Annual Report* also notes a significant number of prisoner complaints which are contrary to the rules and regulations concerning standards of accommodation, personal hygiene and general health and safety standards.

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<sup>76</sup> Many prisoners at Magilligan Prison are kept in cells which still do not have toilets or adequate in-cell washing facilities. As has been noted over the past number of years, it is wholly unacceptable that there are prisoners within the Northern Ireland prison system who still have to slop out.

<sup>77</sup> The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009, p. 31. See also The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2009 – March 2010*, June 2010, p. 37.

<sup>78</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008*, CPT/Inf (2009) 30, 8 December 2009, para 151. Available at <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.htm>. Last accessed 3 September 2010.

<sup>79</sup> The Prisoner Ombudsman for Northern Ireland, *Report by the Prisoner Ombudsman into the Circumstances Surrounding the Death of Colin Martin Bell Aged 34 in Maghaberry Prison in the Late Hours of 31 July and the Early Hours of 1 August 2008*, 9 January 2009, p. 7.

<sup>80</sup> The Prisoner Ombudsman for Northern Ireland, *Annual Report April 2008 – March 2009*, June 2009, p. 40.

Of particular concern are the conditions of detention for women in custody. The 2003 HMIP inspection report of Maghaberry called for the prison service to 'draw up a policy and strategic plan for the treatment of women in custody' as well as noting concerns in relation to the need for staff training specific to dealing with women in custody and the need for discrete healthcare facilities for women. While women prisoners were transferred from Mourne House (at Maghaberry) to Hydebank Wood in June 2004, at the time of the move a report commissioned by the Northern Ireland Human Rights Commission (NIHRC) concluded that 'the problems associated with holding women in male establishments have not been adequately addressed' and that 'little consideration appears to have been given to the central issues of concern raised by the Inspectorate and its recommendations.' Noting the 2003 HMIP recommendations, as well as international human rights obligations, the NIHRC reported that the transfer to Hydebank Wood would result in the women's facilities not being physically separate; a prediction which was accurate and is still relevant given that the Northern Ireland Prison Service continues to maintain facilities for women prisoners at Ash House within the Hydebank Wood estate that are not separate and do not meet international standards. Although some movement has been made to improve policy and practice, NIPS has apparently rejected calls to act upon its human rights obligations and provide separate facilities for women. Since the move to Ash House in 2004, numerous bodies have repeatedly called for more suitable facilities for female prisoners which are separate from the juveniles who are also housed at Hydebank Wood.

Both the construction of a new prison on the site of Magilligan and the creation of a self-contained women's prison, which would be a move towards addressing some of these problems, appear to be progressing much too slowly. The prison service announced in December 2007 that it would build a new prison on the site of Magilligan; in August 2009 it was announced that firms were appointed to 'design and administer the construction contract.'<sup>81</sup>

The Northern Ireland Prison Service regards the *European Prison Rules* as the 'common principals [sic] regarding penal policy among the member states of the Council of Europe'<sup>82</sup> yet it would appear that these principles are not being implemented in practice. For example, it has been argued that the lack of in-cell sanitation and the need to slop out contravene the EPR (rules 64 and 65) and NIPS prison rules.<sup>83</sup> According to Justice Girvan, the *Prison and Young Offenders Centre Rules (Northern Ireland) 1995* were drafted with due consideration to the 1987 *European Prison Rules* yet the sanitary conditions described in the judicial review were contrary to EPR.

Rule 65 of the 1987 EPR provides that 'every effort shall be made to ensure that prison regimes are designed and managed so as to ensure that the conditions of life are compatible with human dignity and acceptable standards in the

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<sup>81</sup> 'HLM, ARUP and EC Harris win Magilligan Prison deal', *Builder and Engineer Online*, 18 August 2009. Available at <http://www.builderandengineer.co.uk/news/contracts/hlm-arup-and-ec-harris-win-magilligan-prison-deal-4282.html>. Last accessed 3 September 2010.

<sup>82</sup> Northern Ireland Prison Service, *Equality Screening Consultation: Northern Ireland Prison Service Statement of Ethics*, 28 September 2004, p.7.

<sup>83</sup> Justin Martin and the Northern Ireland Prison Service, citation no. [2006] NIQB 1, Ref: GIRC5440, 6 January 2006, The High Court of Justice in Northern Ireland, para. 23.



community; [and] to minimise the detrimental effects of imprisonment and the differences between prison life and life at liberty which tend to diminish the self respect or sense of personal responsibility of prisoners.’<sup>84</sup>

The ECtHR has determined that the prohibition on inhumane or degrading treatment (ECHR article 3) implies that the conditions of detention must be compatible with human dignity.<sup>85</sup> That some individuals still slop out is entirely contrary to a 2006 High Court ruling, which took note of the jurisprudence of a European Court of Human Rights case law which determined that ‘treatment which does not reach the severity of article 3 may nonetheless breach article 8 in its private life aspect where there are sufficiently adverse effects on physical and moral integrity.’<sup>86</sup>

The SMR states that:

‘sanitary arrangements shall be adequate to enable every prisoner to comply with the needs of nature when necessary in a clean and decent manner.’ (rule 12)

The SMR also states that all prisoners should be provided with wholesome and adequate food at the usual hours and with drinking water available whenever needed (rule 20). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has suggested that a last meal at 16.00 is inappropriate.<sup>87</sup>

The SMR obliges prisons to provide accommodation, including sleeping accommodation that meets:

‘requirements of health, due regard being paid to climatic conditions and particularly cubic contents of air, minimum floor space, lighting, heating and ventilation.’ (rule 10)

Suitable clothing and bedding are also considered components of an adequate standard of living (UDHR article 25 and ICESCR article 11).

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<sup>84</sup> Council of Europe, *Recommendation R (87) 3 of the Committee of Ministers to Member States on the European Prison Rules*, 12 February 1987, Rule 65(a) and 65 (b). Available at <https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=607507&SecMode=1&DocId=692778&Usage=2> Last accessed 1 September 2010. Rule 65(a) and 65(b). The EPR was updated in 2006 and the present rules do not necessarily correspond to the *number* of rules of 1987 though they correspond in spirit and intent.

<sup>85</sup> *Kudła v. Poland*, application no 30210/96, European Court of Human Rights, Judgment, 26 October 2000, § 94.

<sup>86</sup> Justin Martin and the Northern Ireland Prison Service, citation no. [2006] NIQB 1, Ref: GIRC5440, 6 January 2006, The High Court of Justice in Northern Ireland, para. 32, citing *Bernard v United Kingdom* [2001] 11 BHRC 297.

<sup>87</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p 55.

## 7. Discipline

As with all prison information, the rules, regulations and disciplinary procedures of the prison must be given and explained to prisoners upon arrival and in a language and format (verbal or written) that they can understand.

Reports state that acceptable punishment should be standardised and monitored with particular attention paid to the use of the segregation unit, use of force and use of special unfurnished accommodation (and related patterns of use). It is also worth noting the high number of prisoner complaints relating to the adjudication process.

Several reports clearly state that extended periods of lockdown should cease; cellular confinement as punishment is over used; and concern has been expressed about the actions of the Stand-by Search Team, including accusations of ill treatment. A CJI/HMIP report noted that the Standby Search Team 'still had too forceful a presence' within the prison.<sup>88</sup>

The European Committee for the Prevention of Torture (ECPT) report states that several prisoners at Maghaberry had claimed to have been physically ill-treated by SST prison officers shortly before the ECPT visit.<sup>89</sup> The ECPT also notes that 'members of staff at Maghaberry Prison told the delegation that incidents of ill-treatment of inmates by SST-members had indeed occurred.'<sup>90</sup> The ECPT called upon NIPS to take 'appropriate action' to ensure that the SST does not abuse its powers.

Although SST has recently been disbanded and replaced by the smaller Dedicated Search Team (DST), it remains to be seen how differently the DST operates or whether the same personnel work on the new team.

The right to physical and moral integrity is substantiated by the UN Convention Against Torture (article 16) which defines ill-treatment as acts of cruel, inhuman or degrading treatment or punishment which does not necessarily amount to torture, and officials are prohibited from committing, instigating or consenting to ill-treatment. The use of force by officials is forbidden except in self-defence or when 'strictly necessary' according to the *Code of Conduct for Law Enforcement Officials* (article 3); *SMR* (rule 54); *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (principles 4 and 15).

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<sup>88</sup> Criminal Justice Inspection NI and HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Maghaberry Prison 19 - 23 January 2009*, July 2009, p. vi.

<sup>89</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008*, CPT/Inf (2009) 30, 8 December 2009, para 152-155. Available at <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.htm>. Last accessed 3 September 2010.

<sup>90</sup> The ECPT also reported that 'many' prisoners at Maghaberry complained that full body searches had been carried out inappropriately. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008*, CPT/Inf (2009) 30, 8 December 2009, para 157. Available at <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.htm>. Last accessed 3 September 2010.

While discipline for breaking prison rules is acceptable, the international instruments including the SMR and EPR offer guidelines which state that prior to disciplinary action the rules and regulations must be provided to prisoners in a manner which is understandable to them and that disciplinary action must not be arbitrarily decided (SMR rules 29, 30 and 35 and EPR 57). According to the *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* disciplinary procedures should be in line with the written prison rules and regulations (principle 30).

Confinement is generally not an appropriate form of punishment and can also have detrimental impact on an individual's mental health, as noted in *A Human Rights Approach to Prison Management*.<sup>91</sup>

In relation to the overuse of cellular confinement, there is little evidence to suggest that it positively affects behaviour; it is contrary to the EPR (rule 60) and the *Basic Principles for the Treatment of Prisoners* (principle 7) and should be limited to exceptional circumstances and only by a decision of adjudicating governor.

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<sup>91</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 84.

## 8. Complaints

*The Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment* and the *Standard Minimum Rules for the Treatment of Prisoners* both provide prisoners with the right to complain about the conditions of their imprisonment (principle 33 and rule 36).

Although the Northern Ireland Prison Service does have a complaints procedure, the process requires that individuals can read and write; and despite the significant improvements with the internal procedures for collecting and dealing with complaints, there is seemingly resistance to accommodating those prisoners who are illiterate or who do not have adequate English to fill out a complaint form.<sup>92</sup> So whilst this right is upheld in policy, it is not accessible, in practice, for some prisoners. It should be noted that the Prisoner Ombudsman has devised a procedure which permits those who are illiterate to initiate verbal complaints.

It is also worth noting however that in order for complaints to be admissible to the Prisoner Ombudsman, the prisoner must first have exhausted the internal NIPS process. This is clearly a catch-22 for some and falls foul of the SMR which states that every prisoner will be provided with written - or oral, if necessary - information about the regulations governing the treatment of prisoners, the disciplinary and complaints procedures and 'all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution' (rule 35). This intimates that prisoners who are illiterate, or who for other reasons cannot read the necessary information, shall be given it in a format which they can understand (i.e. orally or a different language) *and* that they will be given options for enabling the prisoner to access his rights. It is important to note that numerous reports indicate that prisoner confidence in the complaints system remains unacceptably low.

The Prisoner Ombudsman can no longer investigate complaints concerning matters of 'health' since the HSC Trust has taken over responsibility for healthcare and such complaints are now dealt with by the Commissioner for Complaints (one of the bodies within the Northern Ireland Ombudsman's jurisdiction). Whether these complaints are dealt with effectively remains to be seen.

It would appear that the Prisoner Ombudsman should have the power to make policy recommendations and monitor the trends and patterns of complaints in the same way that s63 of the Police (Northern Ireland) Act 2000 allows the Police Ombudsman to do in relation to the PSNI; particularly as many of the complaints registered with the Ombudsman relate to the areas discussed in this document which have repeatedly been referred to in inspection and review reports.

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<sup>92</sup> The ECPT noted with concern an allegation of ill-treatment was not investigated, despite visible injuries which were seen by health care staff, because the prisoner, who was illiterate, had not lodged a formal (written) complaint. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008*, CPT/Inf (2009) 30, 8 December 2009, para 156. Available at <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.htm>. Last accessed 3 September 2010.

## 9. Diversity and equality

Over the past few years, it has been reported that an effective, comprehensive and regular monitoring scheme should be introduced covering prisoners' treatment, access to regime activities and services by religion or community background, ethnic origin, disability, age and nationality. In fact, the *Criminal Justice Review* in 2000 recommended that all elements of the criminal justice system undertake such equity monitoring.<sup>93</sup> In addition, many reports mention the need for cultural awareness and subsequent training relating to the cultural differences of the Catholic and Protestant communities, Irish Travellers and foreign nationals.

The Northern Ireland Prison Rules state that 'all prisoners shall be allowed to practice their religion to the extent compatible with good order and discipline' and that a chaplain will visit prisoners who are 'sick, under restraint, or confined to a cell' (rules 56 and 59). Nonetheless, numerous recommendations relate to the need for better access to clergy and church services for all prisoners. Complaints of this nature are also noted in the Prisoner Ombudsman *Annual Report*. This is particularly significant given that all prisoners are guaranteed access to a minister of their religion as endorsed by the UDHR (article 18); the ICCPR (article 18) and the SMR (rule 41).

Various reports have demonstrated the continued need for specific and general staff training needs in relation to diversity issues. This is particularly worrying given that this was a recommendation made by the Criminal Justice Review (CJR) in 2000. Whilst in response to the CJR the prison service had said that this response was 'implemented', it should in fact be an ongoing process which needs to be updated as diversity issues change and expand over time.

For example, reports have identified areas of concern and noted that there are inconsistencies in the application of procedures and decisions in relation to the allocation of work; education; PREPS and the adjudications team. Irregular decision making and variable policy application, together with insufficient monitoring, may lead to the *perception* if not the actual practice of discrimination and bias.

Although NIPS has been commended for its work to dramatically improve its diversity policy and the NIPS-appointed equality review team who undertook to review the equality of opportunities of prisoners on the basis of religion, in relation to the s75 statutory duties of the prison service, concluded that there was no evidence for 'systematic bias within the NIPS,'<sup>94</sup> there are significant issues which remain unaddressed. Diversity and equality concerns relate to both staffing and prisoners.

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<sup>93</sup> Specifically, the CJR states: 'we recommend that the Criminal Justice Board and its research sub-committee be tasked with developing and implementing a strategy for equity monitoring the criminal justice system, as it affects categories of people, in particular by community background, gender, ethnic origin, sexual orientation and disability, whilst ensuring that this is done in a way that does not compromise judicial independence.' Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* (Belfast: Stationary Office Bookshop, 2000), para. 3.38.

<sup>94</sup> Northern Ireland Prison Service, *The Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, May 2009, para 3.1, 7.1. This review was undertaken by a NIPS-appointed team.

Various reports have recommended to each prison establishment that there should be consistent monitoring of equality policy implementation. In 2008, CJI/HMCIP reported that despite the creation of the Equality & Diversity Committees there was 'a lack of clear central guidance [from the Northern Ireland Prison Service] about equality and diversity.'<sup>95</sup> According to the *Inside View*, which was written by the equality review team, the committees at the time of the inspection (autumn 2007) were 'largely ineffective, poorly attended and did not carry out detailed analysis of the differentials identified in the monitoring statistics nor take steps to address the differentials.'<sup>96</sup> The *Inside View*, did not mention whether or not these committees were more effective since the time of the CJI/HMCIP inspection.

According to Robin Masefield, Director of NIPS, Equality and Diversity Committees have since been rolled out in all prisons<sup>97</sup> and NIPS has subsequently been commended for its Diversity Strategy. Masefield has said:

'the difference is starting to be seen. For example, in the past two years, over 40% of our recruits have been women, and the proportion of applications from Roman Catholics has increased very significantly.'<sup>98</sup>

It would be interesting to know the percentages for *appointments* of people from a Catholic background arising from application process. However, it is important to note that Masefield has also acknowledged that staff turnover is 'very low' so 40% will amount to a very small number and is clearly not going to have a significant overall impact.<sup>99</sup>

The CJI report *Prison Service Staff Training and Development* (June 2009) recommended that:

'as part of its wider HR strategy the NIPS should continue to review the imbalances which are present in its workforce and the potential role that training can play in addressing these' (paragraph 3.10).

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<sup>95</sup> Criminal Justice Inspection and HM Chief Inspector of Prisons, *Report on an announced inspection of Hydebank Wood Young Offender Centre 5 – 9 November 2007*, March 2008, para 3.67-3.68. HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, *Report on an announced inspection of Ash House, Hydebank Wood, 29 October – 2 November 2007*, June 2008, para 3.43-3.44.

<sup>96</sup> Northern Ireland Prison Service, *The Inside View: A review of equality of opportunity of prisoners on the basis of religion, in relation to our s75 statutory duties*, May 2009, para. 4.13.

<sup>97</sup> Robin Masefield, 'Diversity and Equality in Government Conference' Diversity and *Equality in Government Conference*, London, 10 December 2009. Available at <http://www.equalityconference.co.uk/wp-content/uploads//Robin%20Masefield.pdf> . Last accessed 3 September 2010.

<sup>98</sup> Northern Ireland Prison Service, Press Release: 'Prison Service Director Presents Diversity Message', 10 November 2009. Available at <http://www.niprisonservice.gov.uk/module.cfm/opt/1/area/News/page/news/caid/1/nid/591> Last accessed 3 September 2010.

<sup>99</sup> Robin Masefield, 'Diversity and Equality in Government Conference' Diversity and *Equality in Government Conference*, London, 10 December 2009. Available at <http://www.equalityconference.co.uk/wp-content/uploads//Robin%20Masefield.pdf> . Last accessed 3 September 2010. The Prison Service Pay Review Body also reported that 'there was a major staff reduction programme between 1999 and 2001, but around 70 per cent of those who left were aged 50 or over. As a result, the Prison Service has a relatively young workforce which contributes to minimal turnover.' The Body also reported that between 1993 and 2004 there had been no external recruitment of prison officers. Prison Service Pay Review Body *Second Report on Northern Ireland 2004*.



The Prison Service responded that:

‘NIPS continuously reviews any imbalance and has developed a comprehensive Diversity Strategy to address the issues which have arisen. Diversity training is being delivered to all staff and specific consideration is being given to needs of female staff.’

However, it is important that NIPS also bears in mind the comment by CJI in the same report that:

‘whilst diversity is clearly critical in a modern prison service, it is important that it is seen as a constant background to all prison activities and underpinning all training, rather than a one-off issue which then is met with cynicism from staff.’

There is a worrying number of recommendations relating to Catholics. The *Inside View* report states, for example, that:

‘one [Catholic] prisoner amassed 48 adjudications throughout the year... the current statistics still illustrate that the number of Catholics being adjudicated on is high and this needs further and ongoing monitoring and analysis.’

It would also appear that due consideration needs to be given to the growing non-national population. Complaints to the Prisoner Ombudsman suggest that significant problems exist in relation to application of policies and procedures affecting prisoners who do not have a good command of the English language, contrary to the SMR (rule 6) and EPR (rule 13), which state that all rules will be applied without discrimination to all prisoners. Additionally, it is important that non-nationals are ensured interaction with others from their own country or those who speak their native language as is recommended in the *Human Rights Approach to Prison Management*.<sup>100</sup>

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<sup>100</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 107-110.



## 10. Women

The situation of women prisoners has received significant attention in numerous reports. Whilst some movement has been made in the past two years to create new policies specific to the needs of women prisoners, it remains the fact that the prison estate is inadequate and NIPS is presently falling short of its international obligations. First and foremost, a separate facility is required and has been recommended many times.

The Criminal Justice (NI) Order 2008 does not prevent the detention of children and young people in Hydebank Wood but has gone some way to diminish the frequency in which young girls are detained in Hydebank Wood.<sup>101</sup> However, various reports have frequently mentioned the fact that girls under the age of 18 years should not be accommodated along with adult women prisoners at Hydebank Wood.

Discrimination in relation to vocational training and work opportunities for women prisoners as a result of the physical circumstances at Hydebank Wood lend towards gender discrimination in practice, and is commonly noted. That women should be transported separately from men has been repeated time and time again.

We await the responses from NIPS to the *Family Strategy; Gender Specific Standards for Working with Women Prisoners; Foreign National Prisoner Strategy* and *Strategy for the Management of Women Offenders* consultations before determining which of the recommendations (notably the need for gender-specific policies relating to anti-bullying, self-harm and suicide, resettlement, substance use for example, as well as for gender-specific training for women prisoners and staff) have or have not been adequately considered in creating new policies.<sup>102</sup>

Again, the 2002 inspection report of the women's prison stated that while Mourne House was

'physically, totally separate from Maghaberry main prison...it shared services and resources. Our previous reports have pointed out the potential dangers in situations where the needs of a small group of women - in the case of Mourne House around 25 female prisoners - can become marginalised [...] There need to be safeguards, such as total separation, distinct management and staffing teams, and separate healthcare facilities.'<sup>103</sup>

These recommendations are still applicable and remain unfulfilled following the move to Ash House.

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<sup>101</sup> Criminal Justice (NI) Order 2008, article 96.

<sup>102</sup> At the time of going to print, the Department of Justice had just issued the final strategy for women offenders; however time did not permit an analysis of this.

<sup>103</sup> HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland. *Report on a Full Announced Inspection of HM Prison Maghaberry, including Mourne House 13-17 May 2002*, August 2002, para. MH. 17.

As has been pointed out to NIPS, women are entitled to the equal enjoyment and protection of all human rights as guaranteed in the *Universal Declaration of Human Rights* (article 2); the *International Covenant for Civil and Political Rights* (article 3); the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW articles 1, 2 and 3) and *Declaration on the Elimination of Violence against Women* (article 3). These international standards should be borne in mind when modifying and creating new policies applicable to women. Similarly, the specific guidelines relating to women prisoners set out in the SMR and EPR should be adhered to, notably that men and women should be detained in separate institutions (SMR rule 8 and EPR rule 18).

## 11. Juveniles

Juveniles are commonly referred to in many of the reports although these may not specifically be about incarceration of young people. Nonetheless, many of the recommendations that require ongoing and further attention and have been noted in this document are also applicable to the Young Offenders Centre at Hydebank Wood (notably around lockdown and association, staff relationships, education opportunities, daily routine, discipline, complaints process, physical and mental health needs).

Specifically relating to juveniles and young people, NIPS has been called upon to either remove juveniles under 18 from Hydebank Wood or provide more appropriate accommodation for them at Hydebank Wood. The *International Covenant for Civil and Political Rights* (article 10), the *Convention on the Rights of the Child* (article 37), the *Standard Minimum Rules for the Administration of Juvenile Justice* (rules 13 and 26) and the *Rules for the Protection of Juveniles Deprived of their Liberty* (rule 29) all support this recommendation. It is crucial to remember that the CRC considers a ‘child’ to be ‘every human being below the age of eighteen years’ (article 1).<sup>104</sup> This is affirmed by the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (rule 11).

The UN *Manual on Human Rights Training for Prison Officials* offers as an essential principle that:

‘children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects the best interests of the child and takes their needs into account.’<sup>105</sup>

Accordingly, NIPS and their implementing partners (HSC Trust, for example) need to give careful consideration to the fact that children are a particularly vulnerable group and imprisonment clearly has an impact on the rest of their lives. As such, focused attention on rehabilitation is vital. As noted by Include Youth:

‘the recommendation of the UN Committee on the Rights of the Child (with regards to article 37) [of the *Convention on the Rights of the Child*] in September 2008 that the government should “ensure that, unless in his or her best interests, every child deprived of their liberty is separated from adults in all places of deprivation of liberty” should be implemented forthwith.’<sup>106</sup>

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<sup>104</sup> Specifically, the CRC says ‘a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier’ (article 1). The exception to this is if a country holds that individuals under the age of 18 are not considered minors and have the rights and responsibilities entitled to adults.

<sup>105</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p. 157.

<sup>106</sup> Include Youth, *Young People’s Response To Independent Monitoring Board Annual Report Hydebank Wood YOC and Prison 2007/8*, August 2009, p. 14.

## 12. Other issues

Numerous other issues are raised in several reports, and at least three other areas have significant human rights implications: prisoners over the age of 65, prisoners with physical disabilities, notably mobility issues, and life sentence prisoners.

A report from the IMB at Maghaberry highlighted that there are presently 25 prisoners over the age of 65. The IMB also noted that:

‘Healthcare conditions in prisons do not resemble those in the community in any way, and cognisance has to be taken of this fact. Exercise is limited as is access to fresh air and other forms of mental stimulation. The result of this is that the ageing process can be accelerated and conditions such as arthritis, dementia and heart disease are more prevalent and more pronounced. Although there are downstairs cells in Bush and Roe house, there is otherwise only one disabled cell in Maghaberry prison. All other cells are up two flights of stairs and are inaccessible to prisoners on Zimmer frames or wheelchairs.’<sup>107</sup>

As noted earlier in relation to prisoners with learning disabilities, the UN *Convention on the Rights of Persons with Disabilities* (CRPD) calls on states to ensure that all individuals with physical, mental, intellectual or sensory impairments are not denied human rights; this includes prisoners. It is worth noting that the CRPD provides that in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff (article 12).

Various reports speak of the need for improvement in policy and practice relating to life sentence prisoners and one thematic inspection of CJI is specifically about them. Issues raised include the need for a comprehensive management policy to be developed for life sentence prisoners dealing with reception, induction and assessment through accommodation, sentence planning, training, programmes, to pre-release and resettlement. Attention to support services during imprisonment and after release is highly recommended. The SMR specifically notes that the treatment of long-term prisoners should encourage ‘self-respect and to develop their sense of responsibility’ (rules 65 and 66). A number of applicable guidelines specific to the management of life-sentenced and long-term prisoners are offered by the Council of Europe Committee of Ministers.<sup>108</sup> The United Nations has expressed that:

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<sup>107</sup> Independent Monitoring Board, *Maghaberry Prison Independent Monitoring Board’s Annual Report for 2008/09*, p.14.

<sup>108</sup> Council of Europe, *Recommendation Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners*, 9 October 2003. Available at <https://wcd.coe.int/ViewDoc.jsp?id=75267&Site=CM>. Last accessed 3 September 2010. See also Council of Europe, Committee of Ministers, *Resolution (76) 2 on the treatment of long-term prisoners*, 17 February 1976. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=591961&SecMode=1&DocId=653294&Usage=2>. Last accessed 3 September 2010.

‘the overall objective of the management of life-sentence prisoners is their safe release into society once they have served a sufficient period in custody to mark the seriousness of their offences.’<sup>109</sup>

It recommends that states should provide life sentence prisoners with ‘opportunities for communication and social interaction,’ as well as ‘opportunities for work with remuneration, study, and religious, cultural, sports, and other leisure activities.’<sup>110</sup>

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<sup>109</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Training for Prison Officials* (New York and Geneva: United Nations, 2005), p 169.

<sup>110</sup> Andrew Coyle, *A Human Rights Approach to Prison Management: A Handbook for Prison Staff, Second Edition* (London: International Centre for Prison Studies, 2009), p. 153 quoting United Nations, *Life Imprisonment* (Vienna: United Nations, 1994).

## Conclusions

It seems clear that the prison system in Northern Ireland is in a state of crisis – the number of reports and recommendations, and the frequency with which recommendations are repeated alone are evidence of this.

Furthermore the focus and response by the prison service to these issues which dwells on the numbers of recommendations, and the development of paper-exercise policies and action plans to implement these recommendations, fails to recognise and address the bigger problems underlying the recommendations themselves. The problems identified are not simply operational matters that can be addressed by an action plan; rather what is required is a focus on the issues and problems behind the recommendations. In short, what is needed is widespread cultural and systemic change.

With devolution of responsibility for criminal justice, more local pressure for accountability and change can be asserted. Indeed, the *Hillsborough Agreement* which facilitated that devolution of power for criminal justice highlighted ‘a review of the conditions of detention, management and oversight of all prisons.’<sup>111</sup> On 21<sup>st</sup> June 2010, the Minister announced the establishment of a Prison Review Team.<sup>112</sup> CAJ is concerned, however, that rather than undertaking the kind of wide-ranging and systemic review that is so clearly needed, this review will again adopt a piecemeal approach, as evidenced by statements from the Minister and letters from the Review Team which indicate that the review will begin with one prison, rather than looking at the prison system as a whole.<sup>113</sup> As highlighted in this report, the role of the workforce will be central to the kind of systemic and cultural change required, yet it appears that this will be dealt with separately from the Prison Review.<sup>114</sup>

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<sup>111</sup> *Agreement at Hillsborough Castle*, 5 February 2010, page 7. Available at [http://www.nidirect.gov.uk/Orphans/castle\\_final\\_agreement15\\_\\_2\\_-3.pdf](http://www.nidirect.gov.uk/Orphans/castle_final_agreement15__2_-3.pdf). Last accessed 2 September 2010. The agreement also promised a comprehensive strategy for the management of offenders; consideration of a women’s prison, which is fit for purpose and meets international obligations and best practice; and a review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.

<sup>112</sup> Department of Justice, Press release: ‘Minister Announces Prison Review Team’, 21 June 2010. Available at [http://www.dojni.gov.uk/index/media-centre/news\\_archive\\_june\\_2010/minister\\_announces\\_prison\\_review\\_team.htm](http://www.dojni.gov.uk/index/media-centre/news_archive_june_2010/minister_announces_prison_review_team.htm). Last accessed 3 September 2010.

<sup>113</sup> The Minister has stated “I envisage that their work will be undertaken in several stages, the first of which will include a review of the regime at Maghaberry Prison. Secondly, it will examine other issues identified in the Hillsborough Agreement, such as the replacement prison for Magilligan and the accommodation for women offenders. It will also consider wider issues pertaining to the Service, including the future composition of its workforce and its culture and ethos.” Department of Justice, Press release: ‘Minister Announces Prison Review Team’, 21 June 2010. Available at [http://www.dojni.gov.uk/index/media-centre/news\\_archive\\_june\\_2010/minister\\_announces\\_prison\\_review\\_team.htm](http://www.dojni.gov.uk/index/media-centre/news_archive_june_2010/minister_announces_prison_review_team.htm). Last accessed 3 September 2010. Furthermore, a letter from the Review Team to consultees states that they will be “taking a first principles approach” yet goes on to say that the first stage will be a review of the regime at Maghaberry prison.

<sup>114</sup> The Minister has stated that ‘alongside the review we will be driving forward a Workforce Reform Programme’ Department of Justice, Speech by the Minister of Justice, 7 June 2010. Available at [http://www.dojni.gov.uk/Homepage/minister\\_of\\_justice\\_speech\\_07.06.10.pdf](http://www.dojni.gov.uk/Homepage/minister_of_justice_speech_07.06.10.pdf). Last accessed 3 September 2010.

As stated at the outset, the aim of this report has not been to make further recommendations but to provide evidence for the need to step back and undertake a root and branch appraisal of the policies, practices and culture of the prison system, and to address the problems that have been identified in a holistic manner.

The NIPS has committed itself ‘to protecting the human rights and dignity of our staff, prisoners and all others with whom we come into contact’ and highlighted its plan to ‘continue to take forward a comprehensive review of all...existing policies, practices and procedures to ensure that they are human rights compliant.’<sup>115</sup> However, it is clear from the analysis in this report that on many issues they are failing to meet even the most basic human rights standards.

CAJ would advocate that the domestic and international human rights standards provide the framework upon which holistic and systemic change should be based. The prison system as a whole should be examined in relation to effectiveness, efficiency and adherence to international standards so as to construct a strategic approach of systemic reform.

These standards and obligations have freely been entered into by government, and are the basic rights which human beings are entitled to by virtue of their humanity. At their heart is the assumption that those who are deprived of their liberty do not relinquish all rights by virtue of their imprisonment. As such they are entitled to the equivalent level of protection of their rights as those who are not detained, albeit within the context of imprisonment. It must also be borne in mind that the international human rights standards are the minimum required. As such, they are a base that should be built upon, not a goal to be aspired to.

Whilst it must be acknowledged that improvements have been made, there is still a long way to go before Northern Ireland has a rights-based prison system both in policy and practice which meets the needs of prisoners and society, and is fair and equitable to both prison staff and prisoners.

Dostoyevsky said: ‘The degree of civilisation in a society is revealed by entering its prisons.’ Northern Ireland has a long way to go.

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<sup>115</sup> Northern Ireland Prison Service, *Blueprint for Future Development of the Service, Corporate Plan 2009/12 and Business Plan 2009/10*, p.12.





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