



Margaret Mitchell MSP

27 February 2020

Convener

Justice Committee

Scottish Parliament

EH99 1SP

Dear Margaret Mitchell MSP,

We are writing to you to bring your attention to the concerns raised by international bodies relating to detention in Scotland, as well as the need to strengthen the National Preventive Mechanism (NPM) to meet international treaty obligations. We believe these are highly relevant to the Justice Committee.

Firstly, we wish to raise the issues uncovered in Scottish places of detention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in their visits to Scotland in October 2018 and October 2019.

We would also like to highlight a forthcoming report from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), after their first visit to the United Kingdom in September 2019, which included a trip to Scotland. Their visit centred on the role and status of the NPM and we expect their upcoming report will contain strong recommendations about strengthening the UK NPM to meet international obligations. We would like to bring this to the attention of the Committee and seek your support.

Please find attached to this letter a submission containing more information relating to the visit from the CPT and its findings, the SPT visit and its upcoming report and the NPM's lack of legislative underpinning. The NPM is happy to meet with the Committee or provide additional information, if this would be helpful.

Yours sincerely,

John Wadham

Chair

UK National Preventive Mechanism

Colin McKay

Chair

UK NPM Scottish Sub-Group

On behalf of:

Care Inspectorate

Her Majesty's Inspectorate of Prisons for Scotland

Her Majesty's Inspectorate of Constabulary in Scotland

Independent Custody Visitors Scotland

Mental Welfare Commission for Scotland

Scottish Human Rights Commission



UK National Preventive Mechanism Submission to Scottish Parliament Justice Committee on the findings of the visit from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Background

1. The UK National Preventive Mechanism (NPM) was established in March 2009 as a consequence of the UK's ratification of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2003. It is made up of 21 statutory bodies across the UK that monitor places of detention, most of whom existed before their designation as part of the UK's NPM.¹
2. Six NPM members are based in Scotland: Her Majesty's Inspectorate of Prisons for Scotland (HMIPS), Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), the Mental Welfare Commission for Scotland (MWCS), Independent Custody Visiting Scotland (ICVS), the Care Inspectorate (CI), and the Scottish Human Rights Commission (SHRC).
3. The objective of OPCAT is to establish a system of regular visits, undertaken by both independent international and national bodies, to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
4. In order to fulfil its obligations under OPCAT, the UK had to establish a National Preventive Mechanism, which must:
 - i) regularly examine the treatment of persons deprived of their liberty in places of detention, with a view to strengthening the protection against torture and ill-treatment;
 - ii) make recommendations to relevant authorities with the aims of improving the treatment and conditions of persons deprived of their liberty and preventing torture and ill-treatment; and
 - iii) submit proposals and observations concerning existing or draft legislation.
5. The NPM's main aim is to promote the prevention of torture and ill-treatment in all places of detention in compliance with the mandate established under OPCAT. It does this by visiting, monitoring and inspecting every place of detention in each of the four nations of the UK. Its strategic aims are to strengthen the protection of those in detention through coordinated and collaborative work on relevant issues, and to build an NPM that is effective in delivering all of the requirements of OPCAT.
6. The effective operation of the NPM is a continuing obligation on States party to OPCAT. There is

¹ Further information about the UK NPM can be found on our website at: <http://www.nationalpreventivemechanism.org.uk/>

an expectation that NPMs are reinforced and strengthened as necessary after their designation.²

The NPM wishes to bring to your attention a number of issues that we think relevant to the Committee, including concerns raised by international bodies relating to detention in Scotland as well as the need to strengthen the NPM for it to meet international obligations.

Concerns around detention identified by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

7. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is a committee of independent and impartial experts, appointed by the Council of Europe under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to carry out visits to places of detention within Member States to see how detainees are treated and, if necessary, to recommend improvements.
8. In October 2018 the CPT conducted a formal visit to Scotland, their first since 2012. The delegation visited five prisons and five police stations in Scotland and met with Scottish NPM members.
9. We would like to take this opportunity to flag with you some of the most serious concerns raised by the CPT in their report³. While we were pleased that the CPT found police custody facilities to be safe environments overall and reported that the vast majority of prisoners they spoke to stated that they had been treated correctly by prison officers, the report issued by the CPT confirmed concerns that our members have raised in their own reports which still require addressing.

Inadequate treatment for women with mental health issues in prisons

10. The NPM are particularly concerned by the CPT's account of the treatment of women in need of urgent psychiatric care in Cornton Vale prison [paragraphs 89-96]. The CPT's report states that they saw at least five women held in the segregation unit in Cornton Vale who they assessed needed urgent psychiatric care [paragraph 95]. Two of the women seen by the CPT had been referred to an outside hospital under the Mental Health Act, but returned under the premise they "suffered from personality disorders and not a psychiatric illness". Another had remained for months in prison despite having been assessed as requiring a hospital bed. These women were being held in segregation units that the CPT found to be "totally inappropriate environments" for addressing their complex needs.⁴ The NPM agrees with the CPT on the inappropriateness of this environment. In the NPM's 2017 guidance on isolation in detention we state that segregation should be avoided for vulnerable or mentally ill individuals unless there are exceptional circumstances and all other options have been exhausted.⁵
11. These findings confirm the concerns of the Mental Welfare Commission for Scotland (MWCS) about the pathways for women from prison into mental health services. They will follow up the individual cases, and undertake a themed visit to all of Scotland's prisons this calendar year, looking at mental health care and access to specialist psychiatric services.

² UN SPT, *Guidelines on national preventive mechanisms*, 9 December 2010 (CAT/OP/12/5), paragraph 15.

³ NPM, [UK NPM Response to European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) report to the United Kingdom on their 2018 visit to Scotland](#) (October 2019)

⁴ See NPM, [Monitoring places of detention: Eighth Annual Report of the UK' NPM 2016-2017](#) for the NPM's work looking at transitions and pathways between different types of detention.

⁵ NPM, [Guidance: Isolation in detention](#) (January 2017)

12. We welcome the review of forensic mental health services which the Scottish Government has announced, but more urgent action is necessary to address the needs of vulnerable women with severe mental health issues in prison. HMIPS will also be inspecting Cornton Vale as part of its normal inspection programme towards the end of April 2020.

Overcrowding and isolation in men's prisons

13. NPM members share the CPT's concerns around overcrowding in men's prisons in Scotland [paragraphs 37-38].⁶ The prison population currently exceeds by over 400 the Scottish prison system's normal operating capacity. According to the CPT if a prison is running at over 95% of its capacity it is difficult, if not impossible, for the prison service to ensure the safety and dignity of prisoners. At the time of their visit, HMP Barlinnie was running at a capacity rate of 132%. Overcrowding leads to a number of human rights concerns, such as the unintentional isolation of prisoners, poor material living conditions such as dirty and cramped cells, and limited access to purposeful rehabilitative interventions and time out of cell. HMIPS have noted that single cells are now being used to accommodate two prisoners, contrary to international guidance and best practice around cell sharing and size, and the availability of adapted cells for prisoners with physical disabilities is inadequate. Opportunities for purposeful activity, personal officer time and access to offending behaviour programmes have become significantly constrained.
14. The CPT describe the regime in male segregation as "akin to solitary confinement", which becomes prolonged due to the "carousel" of prisoners in and out of different segregation units in Scotland [paragraph 64]. We welcome the CPT recommendation that a step-down facility be considered as an alternative to prolonged segregation in Separation and Reintegration Units (SRUs) [paragraph 74] and encourage the government to seek input from HMIPS and the NPM into the 'short life working group' they have set up to review SRU practices and share their results widely. NPM members' concerns about the unintended social isolation of non-offence protection and remand prisoners is echoed in the CPT report, which notes that remand prisoners at Barlinnie "had little to do to structure their days and spent around 22 to 23 hours per day in their cells, with nothing to do other than sleep, watch television or read" and non-offence protection prisoners at Edinburgh Prison "had allegedly been locked up for 23 to 24 hours per day."
15. The CPT also commented on the cupboard-like holding cells, colloquially referred to as "dog-boxes", used for prisoners on transit through the reception area at Barlinnie Prison. The CPT has criticised their use in all four reports of their visits to Scotland since 1994; the CPT's view is that holding people in cells this size could amount to degrading treatment and asked the government to provide a response to its concerns within three months [paragraph 47-48]. It was therefore of particular concern to note that the government response to the CPT was exactly the same as the response provided to the CPT in January 2019. An inspection by HMIPS in 2019 confirmed that these holding cells remain in use, which remains of deep concern. A report of the 2019 HMIPS inspection of Barlinnie is expected to be published in April.

Use of force in police custody

16. The CPT report highlights worrying instances of excessive use of force in police custody [paragraphs 14-15]. Complaints made to the CPT by detainees include allegations of excessively tight hand-cuffing and physical abuse at the hands of police officers. The CPT met a number of people in police custody who had visible injuries. In some instances, in which detainees' injuries

⁶ HM Chief Inspector of Prisons for Scotland, [Annual Report 2018-19](#) (August 2019) and [oral evidence](#) to Justice Committee of the Scottish Parliament, 28 May 2019

were recorded by custody staff, the CPT noted that there was no follow-up investigation enquiry by police into the cause of the injuries. HMICS has not received reports of excessive use of force during inspections, nor have the organisation witnessed it. They have, however, previously commented on the need for improved governance around use of force, including the need for better collation and monitoring of use of force data. To account for the fact those held in police custody may be reluctant to report excessive use of force while they remain in custody, HMICS has begun to engage with those who have experience of police custody outside the custody environment. HMICS and the NPM will continue to check that force is used only when necessary and proportionately in future inspections.

17. The CPT referred to several other issues of concern, including the rise in inter-prisoner and prisoner-on-staff violence, gaps in the continuity of medication in detention, and concerns over the effectiveness of investigations into police conduct.

Follow-Up Visit

18. Due to the significant concerns identified in their 2018 visit, the CPT organised a targeted follow-up visit to Scotland in October 2019 to examine these issues raised in its report. The visit focused on the areas covered above; the use of segregation and mental health care for women prisoners and issues of overcrowding and long-term segregation in the male custodial estate.⁷
19. The NPM is committed to preventing torture and ill-treatment in its many forms and the relevant NPM bodies will follow-up on the issues raised in the CPT's report in their inspection and monitoring work. We have asked the Government to respond urgently to the report to create improvements for people in police custody and prisons in Scotland.

Visit and Incoming Report from the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

20. The United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is a committee set up under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), an international human rights treaty designed to strengthen the protection of people deprived of their liberty. OPCAT is mandated to carry out preventive visits to places of detention, and to advise and assist the establishment of NPMs in accordance with Articles 11, 12 and 13 of OPCAT.⁸
21. In September 2019, a delegation from the SPT visited the United Kingdom for the first time. During their visit, the SPT met with government ministers and officials, members of the NPM, NGOs, academics and parliamentarians. They made unannounced visits to places of detention and conducted some visits with NPM members. As part of their visit, they went to St Leonards Police Station in Edinburgh with Her Majesty's Inspectorate of Constabulary in Scotland and Independent Custody Visitors Scotland⁹.
22. The SPT will shortly submit a report to the UK Government (via MOJ), and a separate report to the NPM, which will contain observations and recommendations arising from the visit and encourages

⁷ Council of Europe, [Council of Europe anti-torture Committee visits the United Kingdom](#) (October 2019)

⁸ United Nations Human Rights, [Subcommittee on Prevention of Torture](#)

⁹ NPM, [NPM Press Release on conclusion of Subcommittee for Prevention of Torture Visit](#) (September 2019)

both to publish these¹⁰. This will be the first time that an international body has looked in detail at the role and status of the NPM and the extent to which it meets the requirements of OPCAT.

23. During the visit, the SPT praised the work of the NPM and its members as an important system of oversight, with excellent and comprehensive monitoring of places where people are detained. The SPT were pleased to follow the NPM on several visits and consider that there is lots to be learned from how we carry out our visits and inspections, the professionalism of those involved and the standards we use.
24. The NPM raised our lack of legal basis with the SPT and were pleased that all of our concerns were shared. It is therefore anticipated that the SPT will recommend that the NPM have a “clear legislative underpinning”. In a news release on 19 September 2019, following the SPT’s visit, the head of the SPT delegation, Daniel Fink, said: “The visiting bodies (NPM members) do an impressive amount of good work, but a more robust legislative framework is needed to achieve full compliance with the Optional Protocol”. We expect the committee to strongly criticize our lack of legal basis and make some firm recommendations to the government when they deliver their formal response in the coming months.
25. The NPM wishes to make the Scottish Parliament Justice Committee aware of these upcoming reports and the expected content, and we are happy to provide an update after we have considered their recommendations to the NPM.

Strengthening the NPM

26. The NPM believes that to be able to comply fully with OPCAT [see Paragraph 4], sufficient resourcing and appropriate legislation must be in place to support its work. The current level of funding afforded to the NPM is not considered to be adequate to support its activity and the lack of statutory footing, as mentioned above, is also a limitation to the effective functioning of the NPM.
27. The NPM’s coordination is funded in part by the Ministry of Justice, via Her Majesty’s Inspectorate of Prisons (HMIP) (England and Wales), and in part by its members who make annual contributions. In addition, the Scottish Government currently support NPM’s activities in Scotland by funding a 0.5 FTE member of staff to help coordinate the work of NPM members in Scotland.
28. The NPM believes that the resources provided to coordinate an NPM of such complexity are inadequate. They are only sufficient to cover a very small secretariat and basic costs. Additional resources would be used to increase the staffing of the secretariat (and associated costs) and pay the NPM chair a daily rate (he is currently unpaid), in line with other public roles with similar stature and responsibility. If granted, the resources requested would undoubtedly make a significant difference to the NPM’s ability to coordinate preventive work between the 21 members.
29. In addition to funding issues, the NPM is also not currently underpinned by UK or Scottish legislation. As far as we know, of 71 NPMs around the world we are the only one to exist without legislation. The 21 members of the UK NPM all have a statutory basis for their work, but apart from two NPM members in Scotland whose legislation refers broadly to the objectives of OPCAT, none of these statutes sets out the organisation’s role in the NPM, nor their duties under OPCAT¹¹.

¹⁰ United Nations Human Rights, [UN torture prevention body concludes visit to the United Kingdom of Great Britain and Northern Ireland](#) (September 2019)

¹¹ Police and Fire Reform (Scotland) Act 2012, s. 93-96, and The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015, Section 6A

30. The NPM's lack of legislation hinders its ability to perform its role in two main ways. Firstly, while the statutory roles of many of the NPM members are in some ways commensurate/compatible with a broad reading of OPCAT, other organisation's statutory roles have no clear link to the overarching requirement of an NPM: that it seek to prevent *ill* treatment. As a result, their OPCAT role can only be seen as a lesser priority, and it is impossible to hold them to account for delivering this role through legal means. Secondly, the UK NPM is the most complex NPM model anywhere in the world because of its 21 individual members. A strong central function, with its role and responsibilities recognised in law, is essential to bringing such a complex structure together in a meaningful way.
31. Legislation should clarify the role of the NPM and its members, provide statutory guarantee of independence, provide sufficient financial and human resourcing for carrying out all NPM activities, obligate the state to enter into dialogue for implementation of recommendations and embed the mandate required by the United Nations. Without this legislative underpinning, the NPM's future contribution to preventing ill-treatment will not be as significant as we would hope.
32. In a 2018 letter from the SPT to the NPM, it was stated that: 'the experience of the SPT is that the situation of an NPM remains precarious without its being underpinned by a clear legislative basis. We have seen, unfortunately, too many examples of cases in which states have put pressure on NPMs, directly or indirectly, which they have not been able to challenge for the want of a clear basis on which to do so. Practical effectiveness is dependent on functional independence, and the independence is threatened when the NPM is vulnerable to political pressure or political exigencies.'¹² The CPT also support the need for the NPM to be put on a statutory basis.
33. In addition to the SPT and CPT supporting the legislative underpinning of the NPM, the UK Parliamentary Justice Committee and Joint Committee on Human Rights have also called for the NPM to be put on a statutory footing, as have the Equality and Human Rights Commission¹³.
34. In order that the legislation apply across the UK and to NPM members whose legislation originates in devolved parliaments, we envisage this to be an Act of the Westminster Parliament, to be supported by consent motions from the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly.
35. In a 2018 report from the Scottish Parliament Equality and Human Rights Committee, SHRC are quoted, stating that "*it is vital that the Parliament does not aim to merely 'comply' with human rights treaties and law but instead aims to continually take action and decisions for the progressive realisation of rights*"¹⁴. The NPM encourages the Scottish Parliament Justice Committee to consider the case for enshrining the NPM in legislation. We would welcome any support that the Committee could provide in order to achieve this.

27 February 2020

¹² [Correspondence between the UN Subcommittee on Prevention of Torture and John Wadham, Chair of the UK NPM](#), 29 January 2018

¹³ NPM, [United Kingdom National Preventive Mechanism submission to the 66th session of the Committee against Torture](#), 2019

¹⁴ Scottish Parliament Equality and Human Rights Committee, [Getting Rights Right: Human Rights and the Scottish Parliament](#), 2018