

UK Implementation of the UN Convention against Torture: Submission to the UN Committee against Torture, March 2019

About this submission

The Human Rights Consortium Scotland is a network of civil society organisations who work together to promote and protect human rights in Scotland. This submission is a collation of contributions from several of our members:

- Howard League for Penal Reform in Scotland
- Migrant Help Scotland
- Refugee Survival Trust
- Amnesty International in Scotland
- JustRight Scotland.

Not all of these organisations work across all areas addressed or necessarily support all of the recommendations. This submission does not claim to be a comprehensive report on all aspects of the Convention in Scotland, but we hope that it is a useful contribution to the Committee's review of the United Kingdom. We also endorse the separate submission of Together: Scottish Alliance for Children's Rights.

Scotland and devolution

Some aspects of Scotland's law and policy are dealt with on a 'reserved' basis by the UK Government, such as immigration rules and foreign policy. Other aspects such as migrant integration, health and social care services, prisons and police are 'devolved' to the Scottish Government. Many reserved issues are dealt with by the *Redress* civil society shadow report for England and Wales, which we fully endorse.

The present submission focuses on devolved issues within the responsibilities of the Scottish Government.

Recommendation: We encourage the Committee to make recommendations on issues directed towards the Scottish Government as well as the UK Government.

All references to the Committee's previous position refer to the *List of issues prior to submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland of 7th June 2016* (short title: List of Issues 2016).

Prison isolation (Article 11)

Scottish prisoners whose behaviour is judged to be prejudicial to the good order and discipline of the institution may be removed from association and located in a 'Separation and Reintegration Unit' (SRU) under Rule 95 of the Prisons and Young Offenders Institution (Scotland) Rules 2011. Although such orders are initially made for a period of up to 72 hours they can be repeatedly extended with reference to the delegated authority of Scottish Ministers.

Concerns include that such extensions arise recurrently in the case of certain prisoners such that they come to **be removed from ‘the mainstream’ for many months in succession**. Statistics provided by the Scottish Prison Service in response to a Freedom of Information request¹ show that on 1 January 2017, one prisoner had spent over 800 consecutive days in a SRU in one prison (Grampian). In the period 2014-2016, figures show that many other prisoners had been held in isolation consecutively, for example prisoners were held for: 783 days (Edinburgh), 570 days (Edinburgh) and 491 days (Glenochil). There has been a limited (though notable) amount of prisoner litigation on this issue² but little or no current research or recent public discussion on policy.

- **List of Issues 2016 Para 22 and 23:** The Committee asks the UK to describe procedures in place with regards to compliance with Article 11. The Committee asks for comment on reports of inconsistencies in the use of isolation and solitary confinement.
- **The UK’s Sixth Periodic Report** explains that there are new ‘Standards for Inspecting and Monitoring Prisons in Scotland’, that prisons are monitored by Independent Prison Monitors and that prisoners can take complaints to the Scottish Public Services Ombudsman. The Report details the law relating to prison isolation including that the person must have opportunity to make representations against their removal and that they are monitored and reviewed regularly. The focus is to minimise any time spent separate from others.

Recommendation: The Scottish Government and Scottish Prison Service should investigate the use of seclusion of prisoners, particularly including its repeated use for individual prisoners, with a view to ensuring that the use of seclusion does not breach a prisoner’s human rights.

Prison overcrowding (Article 11)

After several years of declining Scottish prison numbers, **the number of people in prison in Scotland now appears to be gradually increasing**, from 7469 on 2 March 2017 to a total of 8066 on 1st March 2019³. Compared to other European countries, we know that Scotland imprisons approximately 50% more than the average and about twice those that imprison the fewest.⁴ There is a presumption against short sentences of less than 3 months, and a presumption against prison for sentences less than 12 months being introduced later this year. However, Scottish Prison Service statistics appear to show that despite the recent restrictions, the number of prisoners serving longer sentences is increasing.

This is one of the reasons that **Scotland’s prisons are significantly overcrowded**. In January 2018, of the fifteen prison estates in Scotland, seven of these were over-capacity with Barlinnie Prison at 139% capacity and Inverness 137% capacity⁵. More than 1,400 prisoners are being housed in overcrowded ‘doubled-up’ single cells across Scotland. A total of 1,420 prisoners are currently being held in these cells, with one in every 10 single-cells in the prison estate housing more than one inmate⁶. New community custody units are currently being built for female prisoners - it is estimated that this new estate will hold 230 female prisoners but at 15 January 2019, the female prisoner population stood at 381.

Prison overcrowding means that prisoners are more likely to be housed at a distance from family, thereby affecting the wellbeing of their children. Overcrowding causes strain on staff, poorer living conditions, and is

¹ <http://www.sps.gov.uk/FreedomofInformation/FOI-5783.aspx>

² <https://www.supremecourt.uk/cases/docs/uksc-2014-0273-judgment.pdf>

³ Scottish Prison Service figures <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

⁴ HM Chief Inspector Prisons in Scotland quoted in SPICE Briefing Feb 2017:

https://www.parliament.scot/ResearchBriefingsAndFactsheets/SB_17-11_The_Scottish_Criminal_Justice_System-The_Prison_Service.pdf

⁵ Parliamentary Question from Liam McArthur MSP, answered by Humza Yousef MSP 8/1/2019

⁶ Letter from Cabinet Secretary for Justice Humza Yousef MSP to Daniel Johnson MSP, available here:

<https://www.gov.scot/publications/foi-201900000566/>

likely to mean lesser access to education, training and work. Prison overcrowding has a negative impact upon prisoners' mental health, many of whom already suffer from poor mental health when they arrive in prison⁷. This is of particular concern given the number of suicides in prisons and the young offenders' institution in recent months.

We further note that Scotland's prison population includes a significant proportion of people in pre-trial detention/remand. At the end of 2017, people on remand in Scotland accounted for just under a fifth (18.5%) of the male prison population and nearly a quarter (22.9%) of the female prison population⁸. The proportion of those in prison who are on remand has risen from 16.2% (889) in 2000 to 18.7% (1361) in 2017, and women are significantly more likely to be on remand than men.⁹ Reasons for people being placed on remand can include the court considering that there is considerable risk that they will abscond or not appear at trial, substantial risk that they may reoffend or pervert the course of justice, or any other relevant reason.

However, evidence shows that a high proportion of those on remand do not then go on to receive custodial sentences. Only 71.1% of accused remanded in solemn proceedings in Sheriff Courts (2014-17) received a custodial sentence and only 42.82% of accused remanded in summary proceedings over the same period were given a sentence of detention¹⁰. In addition, women are particularly disproportionately affected - a report from 2012 highlighted that only 30% of women remanded in custody go on to receive a custodial sentence¹¹.

We are very concerned therefore that too many people are put in prison on remand in Scotland where alternative methods of supervision would be better, and that this is particularly true for women.

- **List of Issues 2016 Para 23:** Committee requests description of measures taken to reduce prison overcrowding, and disaggregated data on the prison population, including the number of pretrial detainees.
- **The UK's Sixth Periodic Report** notes the fall in Scotland's prison population up until 2016 and the presumption against short-term sentences, and that this fall in the use of custodial sentences was most pronounced amongst young people.
- **UNCAT 2013:** The Committee urged the State party to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures, and to speedily implement the reforms undertaken with a view to reducing the reoffending rate.
- **CEDAW 2019** found that the rate of imprisonment of women in Scotland continues to be high due to the rise in the use of custodial sentences. It recommended that the State Party should continue to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences.

Recommendation: The Scottish Government should explore and publish the reasons for an increase in the prison population and address prison overcrowding as a matter of urgency. Furthermore, the Scottish Government should implement an evidence-based strategy to reduce the number of prisoners held on remand, particularly women prisoners.

⁷ For discussion of impact of prison overcrowding: http://criminaljusticealliance.org/wp-content/uploads/2015/02/Crowded_Out_CriminalJusticeAlliance.pdf

⁸ Scottish Parliament Justice Committee, An Inquiry into the use of remand in Scotland – see: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf>

⁹ Prison Reform Trust (2016) Women and Remand in Scotland: Roundtable Report.

¹⁰ Ibid Scottish Parliament Justice Committee

¹¹ Prison Reform Trust (2017) Why focus on reducing women's imprisonment in Scotland.

Deaths in custody (Article 11)

Each year for the last several years **a significant number of prisoners have died whilst in Scottish Prison Service custody** – 28 prisoners died in 2016, 29 prisoners died in 2017 and 29 prisoners died in 2018.¹² Various factors, including both the poor physical and mental health experienced by many people on entry to the prison, prison overcrowding and the rising number of older people in prisons, combine to produce these outcomes.

In Scotland, deaths in custody may lead to a Fatal Accident Inquiry (FAI) chaired by a judge. The decision to hold an FAI, and the timing of a Sheriff Court being petitioned to hold an FAI, is decided by the Lord Advocate (Scotland's chief legal officer). However, there is no statutory time limit on this FAI process and there is a substantial backlog in completing these. Analysis of information on the fifty most recent FAIs provided by Scottish Courts and Tribunals Service, shows that whilst most take place within twelve months of the date of death, there are instances where this has taken up to four years. None of the resulting determinations included recommendations for improving systems or processes, and there was much variance in the time taken to publish the determinations i.e. from a matter of days to over a year¹³.

In addition, there is an unacceptably high number of suicides in Scotland's prisons and young offenders' institutions. Whilst firm data from the Scottish Prison Service is unavailable, it is estimated that there may have been as many as 12 suicides in prisons in 2018 alone¹⁴. More needs to be done to address the very significant mental health needs of prisoners and to ensure their safety and security.

- **List of Issues 2016:** The Committee asked for data regarding deaths in custody and information on the results of the investigations of those deaths.
- **The UK's Sixth Periodic Report** states that the Scottish Prison Service publishes information on deaths in custody and that they have a policy to audit, analyse and review when there has been any self-inflicted death in custody.
- **UNCAT 2013:** The Committee recommended that the State party step up efforts to prevent violence and self-harm in places of detention.
- **CCPR 2015** found that the UK should take robust measures to prevent self-inflicted deaths including addressing the root causes of the problem, operating effective early intervention strategies, ensuring adequate mental health and other support services, and ensuring that cases of suicide and self-harm are independently and thoroughly investigated and that lessons are learned.

Recommendation: The Scottish Government should take action to ensure: implementation of effective suicide prevention strategies in Scottish prisons; better health care provision related to mental ill-health in detention; reduction in delays around inquiries into deaths in prison.

¹² <http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx>

¹³ <http://www.scotcourts.gov.uk/search-judgments/fatal-accident-inquiries>

¹⁴ There were 29 deaths in prison in 2018, with half found to be from natural causes. Hence it is estimated that as many as 12 or more may be the result of suicide. News story here: <https://www.thenational.scot/news/17221305.twelve-suicides-in-scottish-prisons-this-year-claims-anwar/>

Use of electric Taser weapons (Article 10)

There are significant concerns and risks associated with the use of the electronic shock device, the Taser. There are concerns about the risks of injuries or death resulting from Taser use; the potential for excessive or inappropriate use; and the possibility that certain groups, such as those with mental health issues, children and young people, may be disproportionately affected. It is light in of these issues, that we highlight our concern that **Police Scotland's use of Tasers on suspects has risen** by 400% in three years: Police officers used the devices 65 times during a 12-month period from April 2017-March 2018. The figure compares to 27 the previous year and 13 occasions in 2016¹⁵. This increase also comes in the context of falling crime figures.

All incidents of Police Scotland's use of firearms must be referred to the Police Investigations and Review Commissioner (PIRC) for independent assessment, who then decide if a report is required. However, there is no consistent regular publication of data around the use of Tasers by Police Scotland. Whilst from April 2017 in England and Wales, police forces have been required to publish quarterly data on the use of force,¹⁶ no such data publication exists for Police Scotland. The Scottish Government repeatedly claims that the deployment of Taser by Police Scotland is an operational matter, yet Scottish Ministers do have a responsibility for firearms regulation and policy including oversight, data publication and monitoring.

- **List of Issues 2016 Para 20:** The Committee has highlighted that there should be a high threshold for the use of these weapons and has asked the UK Government to provide detailed information on training for officers using them.
- **The UK's Sixth Periodic Report** states that in Scotland, training is delivered in accordance with guidelines and with a range of oversight mechanisms of the head of the police force, Police Scotland.¹⁷
- **UNCAT 2013:** 'The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons, and to strictly monitor and supervise their use.'

Recommendation: The Scottish Government should give further detail on the methods of training for authorised officers. The Scottish Government should collect information on the reasons why there has been an increased use of Tasers and consider steps to reduce Taser use, particularly on vulnerable groups. More generally, the Government should ensure that Scotland's police force collect and publish data regularly on their use of electric Taser weapons and ensure adequate monitoring and accountability.

¹⁵ From Freedom of Information request, reported in the media: <https://www.dailyrecord.co.uk/news/scottish-news/taser-use-scots-cops-up-14043452>

¹⁶ User Guide to Police 'Use of Force' Statistics England and Wales, December 2018: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763512/user-guide-police-use-of-force.pdf

¹⁷ UK's Sixth Periodic Report, paras. 92-93.

Destitution of asylum seekers (Article 16)

People living in Scotland who have been refused asylum, and rendered homeless, experience exceptionally high levels of risk, destitution and harm, which might reach the threshold of inhuman and/or degrading treatment. The British Red Cross in Scotland report that the number of destitute refugees and asylum seekers it had helped in Glasgow (the only dispersal area for asylum seekers in Scotland) had increased from 326 in 2014 to 820 in 2016¹⁸. The Refugee Survival Trust give out around 100 destitution grants per month to people in crisis in Scotland¹⁹ and 21% of these grant applications in 2016/17 included children²⁰. Home Office figures suggest there could be as many as 1000 people in Scotland who have been refused asylum and are at risk of destitution²¹.

There are many reasons why people do not return to their countries of origin when their asylum claim is refused. If they still maintain a fear of returning to their home country, they have a legal right to lodge a fresh claim for asylum, but may face logistical barriers, in accessing the legal advice they require, and practical barriers in gathering evidence necessary for a fresh asylum claim. They are also prevented from accessing mainstream benefits or homelessness assistance; are not allowed to work or access education; and face significant barriers to engaging with health and social care services. Refused asylum seekers frequently struggle to meet their basic needs and, at best, must rely upon charities and friends to access food and clean, warm clothes. They are often given only 7 days' notice to leave their homes and, even when they are accommodated within the asylum support system, they are housed in accommodation which fall well below the national standards for social housing.²² They must also travel a 200 mile journey from Glasgow to Liverpool to submit a fresh asylum claim but the Home Office does not provide any funding for this travel²³. Furthermore, destitute asylum seekers are at increased risk of sexual, domestic and labour exploitation.

The Scottish Government's New Scots Refugee Integration Strategy is to be commended and includes practical steps that will help those in the asylum system or those who have been granted asylum. However, much more needs to be done to ensure that those whose immigration status is insecure are not forced, through the acts or omissions of public authorities, to suffer inhuman and/or degrading treatment.

- **The UN Special Rapporteur on Extreme Poverty and Human Rights**, Philip Alston, said in his report on his 2018 visit to the UK that 'Destitution is built into the asylum system...While asylum seekers receive some basic supports such as housing, they are left to make do with an inadequate, poverty-level income of around £5 a day. For those who have no recourse to public funds as a result of their immigration status, the situation can be particularly difficult; such individuals face an increased risk of exploitation and enjoy restricted access to educational opportunities.'
- **ICESCR 2016** recommended that the UK increase the level of support provided to asylum seekers and to not restrict asylum seekers from accessing employment while their claims are being processed.
- **The European Court of Human Rights** found in 2011 that an asylum seeker living in extreme poverty had suffered a violation of Article 3 of the European Convention on Human Rights. The Court noted in particular that the individual was part of an extremely vulnerable group, and found that the authorities failed to have "due regard to the applicant's vulnerability as an asylum seeker

¹⁸ British Red Cross. (2017). Written submission to Scottish Parliament Equalities and Human Rights Committee

¹⁹ Take action to end asylum destitution, resource available here:

<https://destitutionaction.files.wordpress.com/2013/08/destitution-action-pack.pdf>

²⁰ <https://www.rst.org.uk/what-we-do/destitutiongrants>

²¹ From Pillar to Post, Destitute Asylum Seeker Service, 2019

²² Report of the Independent Chief Inspector of Borders and Immigration, "An inspection of the Home Office's management of asylum accommodation provision" (February-June 2018)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757285/ICIBI_An_inspection_of_the_HO_management_of_asylum_accommodation.pdf

²³ <https://theferret.scot/scotland-refugee-destitution/>

and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs.”²⁴

Recommendation: *Scottish Government should lead on the development and implementation of a Scottish human rights-based strategy against asylum and migrant destitution.*

Legal Aid Reform (Article 2)

In Scotland, it is becoming **increasingly difficult for individuals to find a legal aid solicitor** because many law firms simply cannot afford to carry out legal aid work because the legal aid fees are not enough to cover a law firm’s true costs. The Law Society of Scotland reports that owners of the smallest firms with fees of under £100,000 per year, were earning just £6.67 per hour, whilst partners in specialist legal aid firms were making a profit of £4.19 for every hour²⁵. This is under the UK Living Wage level of £9 per hour. Many firms also report carrying out legal aid work without any remuneration because of the complexity of cases.

This shortage of legal aid lawyers has a particular impact on access to specialist legal advice in rural areas. The Scottish Women’s Rights Centre, a Scottish government funded collaboration, which offers specialist legal advice and advocacy to women survivors of gender-based violence, also reports that this shortage has a particular impact upon their service users. **Access to a legal aid lawyer who accepts domestic abuse cases, understands the dynamics of domestic abuse, and has the specialist skills to effectively handle such cases remains too limited in Scotland.**²⁶ Solicitors also report challenges in accessing legal aid in emergency situations when we know that any delay could negatively impact on the safety of women seeking urgent protective orders²⁷. If women cannot access legal advice and assistance, or if legal assistance is not effective because of funding constraints, women can be forced to remain in abusive situations (either by staying with an abusive partner, or leaving but continuing to be abused through the legal processes). They also continue to suffer due to being required to remain in contact with their abuser – for example, they may have secured an interdict or non-harassment order against an ex-partner, but still require to attend child welfare or child contact proceedings with their ex-partner present.

- **List of Issues 2016 Para 6:** The Committee has asked the UK Government to give information on the impact of legal aid reform on access to justice and remedy.
- **The UK’s Sixth Periodic Report:** Specifically referring to Scotland, the Report states that there are ‘consistent and transparent’ criteria for legal aid²⁸ and that legal aid is the subject of a comprehensive independent review.
- **CCPR 2015** recommended that changes to the legal aid system do not undermine the right of access to courts and effective remedy.
- **ICESCR 2016** recommended that the State party review the impact of the reforms to the legal aid system with a view to ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups.
- **CEDAW 2019** recommended that the State party ensure that women have effective access to justice and remedies with adequate legal support and representation, including by ensuring that the legal aid and representation is accessible and available, as well as

²⁴ European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011, para. 263.

²⁵ Law Society of Scotland, 2017b. Social Return on Investment in Legal Aid: Summary Report. [Online] Available at: <https://www.lawscot.org.uk/media/359232/social-return-on-investment-in-legal-aid-summary-report.pdf> [Accessed 2018].

²⁶ Scottish Women’s Right Centre (2017) Gender, Justice and Legal Aid in Scotland.

²⁷ See: <https://www.scottishwomensrightscentre.org.uk/news/news/on-legal-aid-and-justice/>

²⁸ UK’s Sixth Periodic Report, para. 15.

the provision of procedural and age-appropriate accommodations. It also recommends that the State party take effective measures to ensure that women have access to legal aid in areas that affect them most, such as family, housing, immigration and welfare benefits law.

- (We note that these UN Committee recommendations are likely to have been particularly addressed to the UK Government reforms but the principle nonetheless applies to Scotland's legal aid system.)

Recommendation: The Scottish Government's forthcoming 2019 consultation on legal aid should include asking for views around the setting of a viable and sustainable legal aid fee rate that would enable good availability of legal aid solicitors to ensure access to justice.

Victims of torture (Article 14)

Many survivors of torture and organised violence living in Scotland are unable to receive rehabilitation & psychological therapies due to the extremely limited capacity of the services available. Only one organisation currently provides specialist services for victims of torture but they are direly needed by many. The end result is that the physical and psychological trauma of their experience is being re-lived by the individuals.

In addition, victims of torture are often unable to access other, non-specialist therapeutic and rehabilitation services because of the low level of financial support which they receive. For example, Home Office asylum support for current asylum seekers (Section 95 support) only amounts to £37.75 a week, to cover food and all other essential living costs. Rates are even lower for asylum seekers who have made a fresh claim for asylum (Section 4 support) at only £35.39 per week. This amount therefore in no way is enough to cover the travel costs to get to the counselling and therapeutic support, for example a one day travel ticket in Glasgow costs £4.40. Whilst asylum support rates are a matter reserved to the UK Government, obligations to support vulnerable adults at risk, and support the rehabilitation of survivors of torture fall within devolved competency of the Scottish government. For example, free travel to therapeutic and rehabilitative interventions could be funded by the Scottish Government and local authorities.

- **List of Issues 2016 Para 38:** The Committee asks for information on the means of rehabilitation provided to victims of torture and their families, on programmes for the treatment of trauma and on the material, human and budgetary resources allocated for their effective functioning.
- **The UK's Sixth Periodic Report** does not include any information about therapeutic support for victims of torture living in Scotland.
- **UNCAT 2013:** The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on means of redress, including compensation and rehabilitation, provided to the victims.

Recommendation: The Scottish Government and local authorities should consider ways to ensure that all victims of torture can access the therapeutic and rehabilitative therapies that they need.

March 2019, Human Rights Consortium Scotland

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