

The Equalities and Human Rights Committee

Oral Evidence Invite on Human Rights and the Scottish Parliament

Written Submission from Her Majesty's Chief Inspector of Prisons for Scotland

Background

Human rights are at the heart of the remit and operation of HM Inspectorate of Prisons for Scotland (HMIPS). As part of the UK National Preventive Mechanism, HMIPS supports Scotland to fulfil its obligations relating to the Optional Protocol Against Torture and Other Cruel, Inhuman, Cruel or Degrading Treatment or Punishment (OPCAT). We do this through preventive monitoring and inspection of prison custody in Scotland.

HMIPS takes a human rights based approach to the inspection and monitoring of prisons. The Standards for Inspecting and Monitoring Prisons in Scotland seek to embed human rights principles in prison inspection activity and the work of Independent Prison Monitors.

I welcome the opportunity to provide evidence to the Committee.

Participation and Engagement

OPCAT exists because it is recognised internationally that prisoners are particularly vulnerable to having their rights abused, or failing to have their rights upheld by states. Evidence from inspection and monitoring in Scotland suggests that many prisoners are also particularly disempowered in terms of awareness and understanding of their rights under domestic and international law.

The prison population in Scotland includes people with a wide range of specific needs and vulnerabilities, for instance in terms of mental and physical health, literacy and other factors linked to socio-economic deprivation. Many people currently held in prison therefore face multiple, complex barriers to participation and engagement in human rights terms. The Scottish Prison Service works hard to overcome these barriers and ensure prisoners can access their rights; however, the prison environment is often not conducive to this, particularly where a range of organisations need to be involved in the solutions. The effect of this is that prisoners' treatment and conditions are not always what they should be.

My report [Who Cares? The Lived Experience of Older Prisoners in Scotland](#), provides some concrete examples of this. From speaking to older prisoners with particular health and social care needs, it was clear that, while staff were working hard to respond to their needs, some were subject to degrading treatment that was not in line with their human rights. Many older prisoners who participated in this thematic inspection felt powerless to challenge their treatment, despite feeling that staff, who they were reliant on for care, were doing their best. There was no clear ownership across public authorities for finding a solution to ensuring appropriate social care for this group.

Such challenges for effective participation and engagement are compounded by the fact that in Scotland a prison sentence presents a concrete barrier to participation and engagement in civil society, since prisoners may not vote in elections. In addition systemic problems in ensuring effective transition from custody to the community and stigma associated with convictions and time spent in prison may often mean these barriers continue to exist long after someone has left prison.

Parliamentary Procedure and Process

Representation is a key challenge in terms of recognising and including prisoners' human rights in parliamentary procedure and process. Since prisoners are effectively excluded from participation in many 'usual' processes for developing legislation and policy, it is particularly important that the Parliament engages with stakeholder bodies that can help overcome some of the barriers set out above, and ensure policy and legislation is appropriately informed by the experiences of prisoners and their families.

I have been encouraged by examples of Committees, policy officials and others recognising the barriers to engagement and participation for prisoners, and making particular arrangements to overcome these. For instance, the Health and Sport Committee's Inquiry into healthcare in prisons sought evidence directly from prisoners and widely consulted stakeholder organisations.

Accountability

Accountability in relation to the international legislative framework for human rights at a Scotland level is complex, due to the fact that formal engagement at an international level is often via the UK Government, even where related functions are devolved.

The inclusion of or reference to key conventions and protocols in relevant domestic legislation can support effective accountability. The clear commitment to OPCAT in the *Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015*, which introduced Independent Prison Monitoring to Scotland, is a helpful example of this. Such references strengthen awareness and understanding of international legislation and how these obligations should be overseen.

The Parliament also plays an important role in providing oversight and so supporting and protecting the functions of the members of the National Preventive Mechanism in Scotland, as we work to uphold the obligations provided under OPCAT.