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Convenor of the Justice Committee
The Scottish Parliament
Edinburgh
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By email: justicecommittee@parliament.scot

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Dear Convenor,

Human rights and prison conditions during COVID-19

I am writing to you today to set out the Scottish Human Rights Commission's continuing concerns about measures being taken in prisons during the COVID-19 pandemic, and the associated risks to people's human rights.

We are particularly concerned at the ongoing lack of action taken to address these human rights issues by both the Scottish Prison Service and the Scottish Government. We ask you to consider this letter as part of your scrutiny of the Scottish Government and the wider justice system's response to COVID-19.

Background

People in prison are likely to be more vulnerable to the risks and impacts of COVID-19. Closed conditions of detention make social distancing virtually impossible; many prisoners are currently living together in cells designed for one person; and prisoners are spending more time in their cells with no possibility of receiving a visit from their family.

On 20th March 2020, the Council of Europe's Committee for the Prevention of Torture (CPT) issued a Statement of Principles on the treatment of people in prisons and other places of detention during the COVID-19 pandemic¹. This set out the steps required to ensure respect for people's fundamental rights in the context of emergency public health measures. These fundamental rights include:

- The right to at least one hour of time in the open air each day
- The right to maintain adequate personal hygiene including access to soap and hot water
- The right of access to a lawyer
- The right to alternative means of contact with the outside world in the absence of face-to-face visits

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also produced advice on COVID-19 for State parties and National Preventive Mechanisms².

On 2nd April 2020, the Commission and other members of the Scottish Sub-Group of the National Preventive Mechanism (NPM) wrote to the Cabinet Secretary for Justice, setting out a number of recommendations to ensure that people's rights would be respected in Scotland's prisons and other places of detention³. Subsequently, the Commission and other key stakeholders have met with the Cabinet Secretary on a number of occasions to raise and discuss our various concerns.

The Commission welcomes and supports a number of the steps taken by the Scottish Government in response to some of these concerns. In particular, we recognise the dedication of staff working in detention

¹ Published online at: <https://rm.coe.int/16809cfa4b>

² Published online at: <https://undocs.org/CAT/OP/10>

³ Published online at: <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/04/NPM-letter-to-Cabinet-Secretary-for-Justice-re.-COVID-19.pdf>

settings and we commend efforts made by government to reduce the prison population.

However, we remain deeply concerned about the current conditions being experienced by some people within Scotland's prisons.

Current measures and conditions

As the Committee is aware, the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 introduced significant changes to the prison regime at the discretion of the Scottish Prison Service. The amended rules relax requirements to meet some basic needs including nutritious food, clean socks and underwear, access to bathing or showers, family contact, reading material, and purposeful activity.

We are concerned that some of these changes, and associated Scottish Prison Service requirements of governors, are creating conditions where some prisoners' fundamental rights are not being respected. We are particularly concerned that current conditions being experienced by some people could amount to inhuman and degrading treatment, in breach of Article 3 of the European Convention on Human Rights.

These concerns are based on our review of the amended rules and the action required of governors. We are aware, for example, of people being confined to their cell for 24 hours a day, for extended periods of time, with no access to shower facilities or time out of cell, including access to outdoor exercise. We are also aware that prisoners who are confined in their cells for COVID-19 related reasons are afforded limited telephone contact with their lawyer, and that some prisoners have been unable to maintain any form of telephone contact with their families.

While it may be legitimate and reasonable to suspend non-essential prison activities in the current public health emergency, any restrictions must be minimised, proportionate to the nature of the health emergency, and made in accordance with law.

Measures amounting to solitary confinement for healthcare reasons should only be adopted on the basis of a comprehensive medical assessment. Solitary confinement, which carries significant mental and physical health impacts, should only ever be adopted where it is proportionate, limited in time and subject to procedural safeguards.

The Commission is also concerned about the lack of transparent and accessible data currently available to enable adequate monitoring of prison conditions and their impacts.

Given the serious nature of our concerns, we have urged the Scottish Government to take action to ensure that all prisoners are being held in conditions which are fully in accordance with the state's human rights obligations. To date, we have not received the assurances we would wish to see in this regard.

We remain committed to working with the Scottish Government, Scottish Prison Service and all other relevant stakeholders to ensure that people's rights are respected and protected through the current public health emergency. We welcome the Justice Committee's consideration of the issues and concerns we have set out here.



Judith Robertson
Chair, Scottish Human Rights Commission