

**Call for Inputs for the report of the Independent Expert on the enjoyment of all human rights by older persons to the Human Rights Council on older persons deprived of their liberty**

**Older Persons in Detention in England and Wales**

**I. General Remarks**

1. This submission provides information on the legal standards, protection framework and current situation affecting older persons in detention in England and Wales, with a focus on prison infrastructure and conditions, rehabilitation opportunities and sentencing.

2. The ‘greying’ of the prison population has seen an upward trend as documented by Penal Reform International in the Global Prison Trends Report 2019.[[1]](#footnote-1) Correctional facilities have traditionally categorised older persons in detention as age 50 plus due in part to the phenomenon of “accelerated ageing” in prison. The challenges faced by older persons in detention have been well documented by criminal justice experts, civil society organisations, academics and Intergovernmental Organisations.

**II. Legal Standards and Protection Framework: Older persons deprived of liberty**

3. There is a robust legal framework in place to protect the rights of people in prison - most importantly the *UN Standard Minimum Rules for the Treatment of Prisons (the Nelson Mandela Rules)[[2]](#footnote-2),* a set of non-binding ‘soft law’ standards which set out a *de minimis* standard for the treatment of people in prison and contains rules that pertain to all aspects of prison life. The rules call for people in prison to be ‘treated with the respect due to their inherent dignity and value as human beings’. [[3]](#footnote-3) Most importantly, the principle of non-discrimination underpins the application of the rules and entreats prison administrations to take account of the individual needs of people in prison, in particular the ‘most vulnerable categories in prison settings.’[[4]](#footnote-4)

4. European human rights standards seek to protect vulnerable categories of prisoners through the lens of non-discrimination. In July 2020, the European Prison Rules (EPR) were revised and amended by the Committee of Ministers.[[5]](#footnote-5) As currently drafted, the EPR does not make specific reference to older persons in prison as a vulnerable group; however, it does state, in clear terms, that the rules should be applied to all persons deprived of their liberty and with respect for their human rights.[[6]](#footnote-6) Further, the Committee of Ministers make reference to older persons in prison in Recommendation No. R(98) 7, the relevant section of which states:

50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment[[7]](#footnote-7).

5. The concept of vulnerability is also central to monitoring bodies including the European Committee for the Prevention of Torture (CPT) which has made clear its reservations on the continued detention of certain vulnerable groups including, “those who are subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be treated properly in prison conditions, who are severely handicapped or of an advanced age.”[[8]](#footnote-8)

6. Further, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment has noted that certain group of detainees suffer “double or triple discrimination” given their position in prison hierarchy; the elderly and persons with disabilities and diseases fall within this group.[[9]](#footnote-9)

7. In addition, the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) identifies certain groups as particularly vulnerable including ‘...persons with disabilities, and persons with acute medical or psychological dependencies or conditions’, which could very easily encompass older persons in prison.[[10]](#footnote-10)

8. The European Court of Human Rights has dealt on several occasions with the issue of the imprisonment of older people. The case law confirms that: ‘There is no prohibition in the Convention against the detention in prison of persons who attain an advanced age.’[[11]](#footnote-11) However, prolonged detention of an older person, particularly where that person suffers from health problems, can raise an issue under Article 3 where the conditions of detention reach the level of severity required to fall within the scope of inhuman or degrading treatment.[[12]](#footnote-12)

9. While age or health problems are not necessarily a bar to imposing a prison sentence, the Courthasheld that both are factors that may be taken into account either when a sentence is passed or while the sentence is being served. In *Papon,* the Court held that the conditions of the applicant’s detention were not sufficiently severe to fall within the scope of Article 3[[13]](#footnote-13). While the applicant was 90 years of age and suffered from heart problems, the Court noted that his health was generally good overall and that the conditions of detention were adequate.

10. In *Farbtuhs v Latvia*, the applicantwas eighty-four years of age, and physically disabled to the extent that he required assistance with most daily tasks[[14]](#footnote-14). The Court stated that imprisoning a person in these circumstances requires authorities to take particular care to ensure that the prison conditions accommodate their specific needs. Here, in light of the applicant’s age and infirmity, the Court ruled that their prolonged detention was inappropriate and constituted a violation of Article 3 .

11. A key principle emerging from the jurisprudence of the European Court of Human Rights, therefore, is that age and infirmity should be factors taken into account at the sentencing stage and should influence not only the length of custodial sentence imposed but also the decision of whether or not a custodial sentence is appropriate at all in the circumstances.

12. Despite this, there is no indication in the UK Sentencing Guidelines that age or infirmity is a factor to be taken into account when a decision is made to impose a custodial sentence[[15]](#footnote-15).

**III. England & Wales: An Ageing Prison Population**

13. Older people are the fastest growing prison population in England and Wales and, as at March 2020, there were 5,176 people in prison over 60 and a further 8,588 prisoners aged between 50-59.[[16]](#footnote-16) These represent 6% and 10% of the population respectively. The number of prisoners aged 60 or over has increased by 82% in the last decade and by 243% since 2002.[[17]](#footnote-17) By 2023, the number of older people in prison is expected to be in the region of 12,500 with those reaching 70 or over at 1800.[[18]](#footnote-18) The number of women aged 60 or over rose from 23 in 2002 to 131 in March 2020.[[19]](#footnote-19) The issue of older people in prison has come under external scrutiny by the Justice Committee of the UK Parliament in their report, *Ageing Prison Population* (July 2020).[[20]](#footnote-20)

14. Older people in prisons in England and Wales currently face barriers and challenges in their everyday lives in detention. Prison estates are generally not well equipped to accommodate older people in prison in terms of prison design and infrastructure; in particular, older prisoners with mobility issues face challenges of accessibility of cells and communal areas. This is not surprising given that approximately a third of prisons in England and Wales are from the Victorian era; the Justice Committee found that reasonable adjustments to accommodate older prisoners “is highly inconsistent across the prison estate and often constrained by limited funding.”[[21]](#footnote-21) Moreover, opportunities for rehabilitative activities are often limited for older prisoners who are often excluded from work, social or leisure programmes; at present, there is a distinct absence of age-appropriate activities in some prisons.

15. There are pockets of promising practice within the prison estate in England & Wales. The ‘Cameo’ Centre (‘Come and Meet Each Other’) run by the Salvation Army at HMP Wymott provides a day centre offering a range of activities for older prisoners (aged 60 or over and any men on the Elderly and Disabled Unit) including IT skills, physical education programmes, gardening and cooking activities.[[22]](#footnote-22) The Centre also provides older prisoners with practical skills for their release on their four week ‘Preparation for Living’ Course. In a similar vein, the *Rubies* group at HMP Eastwood Park, provides a safe space for older women in prison (50 or over) to take part in purposeful activities and to find a safe haven away from the stresses of prison life. This initiative is run by a not-for-profit organisation, RECOOP.[[23]](#footnote-23)

**IV. Recommendations**

1. That age/ infirmity is explicitly recognised as a factor to be taken into account by judges in England and Wales when imposing a custodial sentence, in order to reflect ECHR jurisprudence.
2. ‘Age friendly’ prisons (see the Age UK report)
3. Justice Committee recommendation, ‘Older Prisoners Strategy’ - rejected by the UK Govt.

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And

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1. Global Prison Trends Report 2019 - https://www.penalreform.org/resource/global-prison-trends-2019/ [↑](#footnote-ref-1)
2. Nelson Mandela Rules - https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\_ebook.pdf [↑](#footnote-ref-2)
3. Nelson Mandela Rules, Rule 1 [↑](#footnote-ref-3)
4. Nelson Mandela Rule, Rule 2.1 [↑](#footnote-ref-4)
5. Recommendation Rec (2006) - rev of the Committee of Ministers to Member States on the European Prison Rules, 1 July 2020 - https://search.coe.int/cm/Pages/result\_details.aspx?ObjectId=09000016809ee581 [↑](#footnote-ref-5)
6. Revised European Prison Rules, July 2020 <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581> Rule 1 & 13 [↑](#footnote-ref-6)
7. Recommendation No. R(98) 7 of The Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison [↑](#footnote-ref-7)
8. Health Care Services in Prison - Extract from the 3rd General Report of the CPT, published in 1993 [↑](#footnote-ref-8)
9. Report of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention,* 5 February 2010 - https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.39.Add.5\_en.pdf [↑](#footnote-ref-9)
10. The approach of the Subcommittee on the Prevention of Torture to the concept of prevention and torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, SPT, 30 December 2010 - CAT/OP/12/6 [↑](#footnote-ref-10)
11. *Sawoniuk v United Kingdom* ECHR 2001-VI, §3 [↑](#footnote-ref-11)
12. *Papon v France (No.1)* ECHR 2001-VI [↑](#footnote-ref-12)
13. Ibid [↑](#footnote-ref-13)
14. *Farbtuhs v Latvia* [2004] ECHR 663 [↑](#footnote-ref-14)
15. Sentencing Council ‘Sentencing Guidelines for Use in Crown Court’ <[General guideline: overarching principles – Sentencing (sentencingcouncil.org.uk)](https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/general-guideline-overarching-principles/)> accessed 14 March 2022;
Sentencing Council ‘ Imposition of Community and Custodial Sentences’ < [Imposition of community and custodial sentences – Sentencing (sentencingcouncil.org.uk)](https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/)> accessed 14 March 2022. [↑](#footnote-ref-15)
16. See Justice Committee, UK Parliament, ‘*Ageing Prison Population’* July 2020 available here: <https://committees.parliament.uk/publications/2149/documents/19996/default/>, para 19 [↑](#footnote-ref-16)
17. Justice Committee, UK Parliament, ‘*Ageing Prison Population’* July 2020 available here: https://committees.parliament.uk/publications/2149/documents/19996/default/ [↑](#footnote-ref-17)
18. Ibid, see above para 25 [↑](#footnote-ref-18)
19. Ibid. see above, para 21 [↑](#footnote-ref-19)
20. Justice Committee, UK Parliament, ‘*Ageing Prison Population’* July 2020 available here: https://committees.parliament.uk/publications/2149/documents/19996/default/ [↑](#footnote-ref-20)
21. Ibid. page 3 [↑](#footnote-ref-21)
22. The Butler Trust, Paul Conley and Rita Conley (HMP Wymott) - https://www.butlertrust.org.uk/paul-conley-rita-conley-hmp-wymott/ [↑](#footnote-ref-22)
23. RECOOP, ‘International Women’s Day: a focus on women over 50 in prison’, 8 March 2022 available here: https://www.recoop.org.uk/international-womens-day-a-focus-on-women-over-50-in-prison/ [↑](#footnote-ref-23)