

Submission to the UN Special Rapporteur on Contemporary Forms of Slavery

THE EXPLOITATION OF CURRENTLY INCARCERATED PEOPLE

Though stipulated within the UK Government's policy (*'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing for Offenders'*) that the objective of developing vocational employment skills in offenders is to foster rehabilitation, and although this may appear satisfactory on paper, the reality is starkly different. For the purposes of this submission, the exploitative aspects of labour practices in prisons in England and Wales shall be summarised under three points.

It should be noted that the issues described are not mere structural defects nor omissions,, but instead, the result of longstanding governmental failures to ensure those who are incarcerated are afforded adequate opportunities, to ensure that 'rehabilitation' no longer remains a fantastical concept far out of reach and instead, a realistic prospect.

1) Exclusion from employment rights leaves impunity rife

The premise of labour exploitation relies on the perpetuation of a social relationship based on the imbalance of power between employees and employers.

It is estimated by the Independent Labour Organisation that 3.9 million people worldwide are subject to State-imposed forced labour¹, with forced prison labour accounting for over half of this estimated figure. From 2011 to 2012, public sector prisons delivered around 11.4 million prisoner working hours². 11.4 million hours of prisoners working within exploitative environments, for a minimum wage of £4.00 per week.

The inherent and obvious power imbalance between incarcerated individuals and those detaining them is exacerbated by the lack of legal protections to safeguard prisoners from labour exploitation.

Prisoners are not classed as employees even while undertaking employment in prison and are therefore exempt from the provisions of the Employment Rights Act and Working Time Regulations. Prisoners are also excluded from the National Minimum Wage under

¹ [https://www.antislavery.org/what-we-do/state-imposed-forced-labour/#:~:text=In%202022%2C%20the%20ILO%20and,\(under%20ILO%20Convention%20105.\)](https://www.antislavery.org/what-we-do/state-imposed-forced-labour/#:~:text=In%202022%2C%20the%20ILO%20and,(under%20ILO%20Convention%20105.))

² <https://assets.publishing.service.gov.uk/media/5a7b8d84e5274a7318b8f67e/0265.pdf>

the National Minimum Wage Act 1998, section 45. Article 4 of the European Convention on Human Rights, though prohibiting slavery and forced labour, excludes prisoners from the protection it affords, thereby leaving prisoners who are subjected to labour exploitation, unable to seek redress. Although prisoners are owed a general 'duty of care', this does not provide effective protection for prisoners where injuries arise as a result of the poor working environments within the prison.

Prisoners, albeit not recognised as 'employees', are expected to deliver high standards and large volumes of work, lest they risk being penalised. Though the Government vehemently defends its agenda of creating '*working prisons*' under the thinly veiled guise of cultivating rehabilitation, it is wholly unrealistic to expect incarcerated individuals to have any *real* prospect of rehabilitation, while working in environments wherein they are not at the very least, safeguarded from exploitation. .

The issue extends to prison privatisation. The 'profit motive' is rife within the private sector and the effects of prison privatisation are among cost-cutting and a relentless desire to spearhead market expansion. Within the Chief Inspector of Prisons report on the therapeutic community in HMP Dovegate, it was noted there was pressure to maintain the numbers within the community as required by the contract, with the selection '*being skewed by commercial imperatives*'.³

The overarching function of privately contracted prison labour is naturally to increase the profits of private companies. The monotonous work undertaken by prisoners unsurprisingly does little to foster rehabilitation.

The private sector has no interest in seeing a reduction in the prison population and evident from the lack of employment rights afforded to prisoners⁴, the Government has failed to ensure that incarcerated individuals have available to them, the necessary protections and fair working environments within which employment can realistically be utilised as a means of fostering rehabilitation.

2) Pay rates below minimum wage do not constitute fair remuneration.

The Prison Service Order 4460 governs the minimum weekly pay provided to prisoners. The minimum weekly pay for the employed is £4.00 (See Section 2.3), though Section 2.5.2 of PSO 4460 stipulates that establishments can pay prisoners below the minimum employed rates.

³ HM Chief Inspector of Prisons, 2004

⁴ https://www.prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/private%20punishment%20who%20profits.pdf

The rate of unemployment pay and short-term sickness pay is capped at £2.50 (See Section 5.1), and the rate of long-term sickness pay is £3.25. Those who are willing to work but unable to find employment, are provided the weekly unemployment pay of £2.50.

Proposals had previously been agreed for an increase to the minimum pay by the Prison Service Management Board in 2008, yet these were vetoed within 24 hours by Prime Minister Gordon Brown, with the notion that a 'contract' with prisoners was soon to be debated to incentivise '*better behaviour*'.

An increase to the minimum pay has therefore not been given effect since at least 7th January 2002, according to the Prison Service Order 4460 and the 2015 Findings Paper by HM Inspectorate of Prisons, 'Life in Prison: Earning and Spending Money'.

The minimum weekly pay for the employed of £4.00 is incomparable to the National Living Wage received by those in the community in the United Kingdom. yet despite the large disparity in pay, incarcerated individuals in England and Wales are made to pay supermarket-level, 'recommended retail' prices for essential items and additional foodstuffs, according to the 2015 Findings Paper by HM Inspectorate of Prisons, 'Life in Prison: Earning and Spending Money'.

3) Exploitative prison labour is detrimental to rehabilitation.

It is a widely neglected fact that the prison population consists of some of the most vulnerable members of our society, a large proportion of whom are from disadvantaged backgrounds, 29% of whom have endured abuse in childhood, and many who suffer from significant mental health problems, exacerbated by their time in detention.

Rehabilitation should be the sole purpose of incarceration, and societal progression will be hindered for as long as the welfare and safeguarding needs of incarcerated individuals are left unfulfilled and hopelessly disregarded.

Working large numbers of hours of monotonous work, for pay so little it can hardly be considered 'remuneration', in environments without legal protection from exploitation, fails to amount to a set of circumstances ideal for rehabilitation. Incarcerated individuals in the United Kingdom are driven to overwork in an effort to afford basic and essential items, sold at rates comparable to or higher than supermarket rates.

The concept of education becomes significantly less attractive considering it would be accompanied by a pay cut to an already low salary, and those wishing to engage in creative endeavours or self-care as a means of engaging in well-being practices find themselves at a disadvantage due to difficulties in affording even basic items.

4) The main challenges in eliminating labour exploitation among incarcerated individuals, and relevant recommendations.

The exploitation and mistreatment of prisoners both in the context of labour and general terms shall persist for as long as core, structural issues remain unacknowledged and unaddressed. The prison system within the United Kingdom is not suited to the rehabilitative needs of those whom it detains, nor was it created with rehabilitation at the heart of its ethos.

The concept of employing prisoners with the notion that 'hard work breeds rehabilitation', renders itself entirely ineffective when prisoners, even while engaging in unsustainable practices such as overworking, are unable to make a 'liveable wage'.

Prisoners must be fairly remunerated for their work with the National Living Wage being implemented across the board and with employment rights being conferred unto prisoners. At the very least, items available for purchase within prisons should be sold at subsidised rates to account for the disparity in incomes. The work available for undertaking by prisoners should be varied and stimulating, instead of monotonous and repetitive.

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*The Intervene Project is a registered legal charity, founded by Kesar & Co Solicitors in 2013. The Intervene Project provides free legal advice to prisoners and supports those who wish to bring civil claims following breaches of their human rights whilst incarcerated. The support provided by the charity has become more so invaluable since LASPO 2012, which brought another relentless wave of cuts to publicly funded work, the hourly rates for which have not increased since 1994.