

Submission to the UN Human Rights Committee's Seventh Periodic Review of the United Kingdom at the Committee's 114th session

By members of the UK National Preventive Mechanism

1. This submission to the United Nations Human Rights Committee is made by members of the United Kingdom's National Preventive Mechanism in line with its power to make recommendations with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture, cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations (OPCAT Art. 19(b)).
2. The UK NPM was designated in March 2009. It is made up of 20 member bodies whose statutory powers require/enable them to visit, monitor and inspect places of detention. The NPM is coordinated by HM Inspectorate of Prisons.
3. This submission draws from the reports and information of three members of the NPM: HM Inspectorate of Prisons (paragraphs 5-34, 44-48), HM Inspectorate of Constabulary (paragraphs 5-10, 16-20, 24, 28, 29[1], 37-42, 43[3]), and the Office of the Children's Commissioner for England (OCC) (paragraphs 24, 26, 35, 36, 43[1][2]). HMIC has a statutory duty to inspect and report on the efficiency and effectiveness of policing, including police custody, in England and Wales. HMI Prisons' has statutory powers to assess the treatment of and conditions for detainees in prisons, police custody, immigration detention, court custody, some areas of military custody and places where children are detained, primarily in England and Wales. OCC has the power to enter any setting where a child is accommodated or cared for (other than a private dwelling) as part of its primary function to promote and protect the rights of children in England.
4. This submission focuses on a number of the topics raised by the Committee in its List of Issues. Alongside this submission, the visit reports and annual reports of all NPM members may shed light on the issues of interest to the Committee.¹

Racial disparities in the criminal justice system (paragraph 7)

5. In January 2014, the Home Secretary commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to conduct a thematic inspection on the welfare of vulnerable people in police custody.² HMIC published its findings from this inspection in a report *The Welfare of Vulnerable People in Police Custody* in March 2015.³ Fieldwork for this inspection involved unannounced inspections of custody arrangements in six police forces.
6. Data collected from police forces in the inspection indicated that a disproportionate number of people from African-Caribbean groups (compared to numbers in the general population) were in custody. While three percent of the overall inspected forces' population were from African-Caribbean backgrounds, they represented nine percent of the custody throughput. The overall percentages varied between forces, but disproportionality was present in all cases.
7. Similarly, while making up nine percent of the total number of people detained in police custody, 17 percent of those strip-searched in the forces inspected were of African-Caribbean ethnic

¹ See <http://www.justiceinspectorates.gov.uk/hmiprison/national-preventive-mechanism/#.VXAwaPsqQA> for further information.

² Under section 54(3) of the Police Act 1996

³ At: <http://www.justiceinspectorates.gov.uk/hmic/publication/the-welfare-of-vulnerable-people-in-police-custody/>

background. This disparity was true in all but one of the forces able to provide data. In the light of the research information available coupled with the lack of authoritative police data, we consider that police forces are at considerable risk of discriminatory strip-searching practices.

8. Police forces were not routinely analysing data that enabled them to identify whether people from BAME groups were disproportionately arrested and detained in custody. This hindered their ability to monitor and assess their performance, make necessary improvements, or provide information to the public about who is taken into custody and what happens as a result.
9. During inspections, HMIC and HMIP inspectors did not observe any difference in the treatment of BAME and white detainees held in custody. However, views gathered through focus groups and interviews indicated that people from African-Caribbean backgrounds felt they were discriminated against by the police. They cited examples of rudeness, disrespect or an over-use of force, which they attributed to racism.
10. **Recommendation:** Police forces should collect and publish data on police detention, collated by gender, race and ethnicity and age. Regular reports should be provided by forces to the Police and Crime Commissioner, and be published on PCC's websites to improve transparency.

Suicides in prison (paragraph 12) and conditions of detention including overcrowding (paragraph 22a)

11. Outcomes for prisoners have declined across all the areas we inspect. The reasons for this are complex. There has been a long term increase in the proportion of prisoners sentenced for violent offences. A rapid increase in the availability of new psychoactive substances (NPS) such as 'Spice' and 'Black Mamba' had a severe impact and led to debt and associated violence. HMI Prisons considers that staff shortages, over-crowding and wider policy changes have had a significant impact on prison safety. In March 2015, the cross-party parliamentary Justice Committee published a report *Prisons: planning and policies*.⁴ This report, to which HMI Prisons contributed evidence, sets out a broad range of concerns and recommendations about the current state of prison policy.
12. HMI Prisons has repeatedly reported its concerns about increased numbers of self-inflicted deaths (suicides) in prisons in England and Wales over recent years, as well as increased rates of self-harm in adult male prisons. The number of self-inflicted deaths has risen 40% in the last five years, with a peak of 88 in the year to March 2014. The number of self-harm incidents involving male prisoners has risen steadily over the last five years and the total for the year ending December 2014 was almost a third higher than the year the year to December 2010. In the last year, the number of serious assaults between prisoners and the number of assaults and serious assaults against staff all rose.
13. Though overall population pressures have eased slightly in the last year, as of 27 March 2015 the prison estate was operating at 97.7% of its usable capacity, with an overall population of 85,681.⁵ HMI Prisons is concerned by overcrowding not just because it leads to two prisoners sharing cells designed for one, with an unscreened toilet, but also because it means that prisons will not have the activity places, the support mechanisms or the rehabilitation programmes they need for the population they contain. The central and most likely published projections for an increased prison population do not match published plans for increases in prison capacity.⁶

⁴ House of Commons Justice Committee, 2015. *Prisons: Planning and Policies Ninth Report of Session 2014 - 15*.p.39. London. The Stationery Office.

⁵ Ministry of Justice. 2015 *Prison population statistics* <https://www.gov.uk/government/collections/prison-population-statistics>

⁶ Ministry of Justice, 2014. *Prison Population Projection 2014 -2020*. London, Ministry of Justice

14. The number of full-time equivalent staff in post of all grades and roles in public sector prisons reduced by 29% from 45,080 in March 2010 to 32,100 in December 2014⁷. Although prison governors report that newly benchmarked staffing levels are adequate, high levels of vacancies and absences put systems under further pressure.
15. **Recommendation:** Consider in full the report of the Justice Committee, *Prisons: policy and planning*.

Safeguards against the misuse of electro-shock weapons by law enforcement officers (paragraph 15)

16. HMI Prisons and HMIC have consistently raised concerns about the lack of arrangements to monitor use of force in police custody, which makes it impossible to analyse trends or practices of concern.
17. An analysis of 19 inspections of police forces conducted between April 2013 and December 2015 identified that nine forces were not using forms recording use of force (a requirement by the Association of Chief Police Officers⁸). In three cases police officers logged incidents on an alternative system, but in six cases use of force was not being logged or monitored at all. Out of the 13 forces where use of force was being recorded, inspectors found that systems were inconsistent and inadequate in at least five force areas⁹
18. The range of restraint equipment available to police forces varied but (in total) included handcuffs, leg restraints, spit hoods, emergency restraint belts, body cuffs and Taser. In the course of the thematic inspection on the welfare of vulnerable people in police custody, HMIC asked each force inspected for data on their use of Taser in custody suites in the 12 months prior to the inspection. Two forces were able to confirm that Taser had not been used in custody within this time period. One force reported that on one occasion Taser had been drawn but not discharged. The other forces inspected were not able to confirm from their records whether or not Taser had been used in custody in the previous 12 months.
19. Findings from HMIC and HMI Prisons' regular inspections of police custody showed that forces did not know with any certainty what type of restraint (including Taser) had been used, how often and in what circumstances. There was little evidence of management review or analysis of the use of force in custody in any of the forces HMIC and HMIP visited. Where information was available, this was primarily used to inform officer safety training rather than to improve practice.
20. **Recommendation:** The police service should establish a definition and monitoring framework on the use of force by police officers and staff. This should include the requirement that use of force in custody be recorded on CCTV and/or body worn cameras, and the recordings monitored by senior managers, and made available to National Preventative Mechanism-visiting bodies as required.

⁷ Ministry of Justice. 2015 *National Offender Management Service Workforce statistics: December 2014 tables* <https://www.gov.uk/government/statistics/national-offender-management-service-workforce-statistics-december-2014>

⁸ With effect from April 2015, the Association of Chief Police Officers has been superseded by the National Police Chiefs Council.

⁹ Unpublished submission to Independent Police Complaints Commission.

Investigations into allegations of torture and ill treatment of individuals detained overseas in the context of British military interventions (paragraph 16)

21. In 2011, the official inquiry into the 2003 death of Baha Mousa in Iraq recommended that consideration be given to involving HMI Prisons to provide external inspection of operational detention facilities. HMI Prisons had conducted preparatory work for such an inspection in 2011, at the request of by the Ministry of Defence and successive Ministers of State for the Armed Forces, and at this time its role was well received.
22. On 28 March 2014 the Ministry of Defence announced to Parliament its decision not to follow this recommendation, stating that a 'triple inspection regime' (the Provost Marshal [Army], the Army Inspector, and the ICRC) was fit for purpose and HMI Prisons' role would not be introduced.¹⁰ HMI Prisons considers that the Provost Marshall and Army Inspector's existing inspections do not provide guarantees of independence as required by the Optional Protocol to the Convention against Torture. The ICRC are clear that their visits do not provide any guarantee of conditions.
23. **Recommendation:** Consideration should be given to setting out a role for independent inspection by HMI Prisons (on behalf of the UK National Preventive Mechanism) in overseas military detention.

The implementation of the new restraint system for individuals deprived of liberty, use of physical restraint and solitary confinement on children (paragraph 18)

24. Members of the UK NPM have strengthened their approaches to monitoring restraint in the areas that they monitor. After concerns about repeated deaths in all forms of detention following restraint, and the findings of subsequent investigations that similar concerns had arisen in many of the cases, the Joint Ministerial Board on Deaths In Custody (for England and Wales) developed and endorsed a set of 'Common principles of restraint'¹¹ with a view to improving the safe management of restraint. NPM members agreed to use these principles as a basis for developing their own practice.
25. At the request of the parliamentary Justice Committee, HMI Prisons is conducting a review of minimising and managing physical restraint (MMPR), which is replacing the use of control and restraint (C&R) across the juvenile estate. MMPR aims to minimise the use of restraint through the application of behaviour management techniques, de-escalation and communication, with physical restraint as the last option. If they use restraint, staff must be able to clearly demonstrate why this was necessary. HMI Prisons cannot anticipate the findings of this report, but notes that in a recent inspection of Hindley Young Offender Institution, staff saw the introduction of MMPR as a positive move. In Secure Training Centres, where MMPR has been introduced, HMI Prisons found a concerning increase in use of force.
26. Restraint in children's custodial settings is sanctioned to prevent non-imminent threats of injury, damage to property or escape and, in Young Offenders' Institutions, to promote "good order and discipline". The Children's Commissioner and HMI Prisons are concerned that "pain compliance" techniques are approved for restraining children and considers this to be wrong and unnecessary. Restraint is also used outside immediate threat of harm to the child or another person (and particularly for 'good order and discipline'). All forms of youth justice custody permit the use of "single separation" or "segregation", including for purposes of "good order and discipline". In YOIs

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<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140327/wmstext/140327m0001.htm#14032769001887>

¹¹ At: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2013/07/IAP-common-principles-for-safer-restraint.pdf>

this can lead to children spending 22 hours or more in their cell each day for considerable periods of time.

27. Arising from its monitoring of deportation flights, HMI Prisons raised concerns that there was no accredited restraint training for escort staff on using force in the confined space of an aircraft. This was introduced in 2014.
28. As mentioned above (paragraphs 10 and 11), the use of force on people in police custody is inconsistently recorded by frontline police staff and is not systematically monitored by police senior managers. This is a significant concern, particularly in the light of findings on the use of force to restrain people who are at risk of harming themselves while mentally unwell. All forces provided some training for staff on restraint and de-escalation techniques. However, staff seemed unaware of the need for different approaches to restraint for children and pregnant women, or that resistance might be caused by fear or mental disturbance (and so the person would be more amenable to reassurance than restraint). The absence of a robust, systematic approach to monitoring the use of force in custody means that senior managers are unable to demonstrate that the use of force is safe and proportionate.
29. **Recommendations:** (1) Data on the use of force in police custody should be monitored routinely, examined for trends, reported to police and crime commissioners and published on force websites. (2) Consider the findings of the HMI Prisons review on MMPR commissioned by the Justice Committee when published, and implement these recommendations; (3) All escorting staff should receive full accredited training in the use of force, particularly on board an aircraft.

Measures to investigate allegations of sexual abuse of women at Yarl's Wood Immigration Removal Centre (paragraph 22f)

30. HMI Prisons has recently conducted a full, unannounced inspection of Yarl's Wood Immigration Removal Centre, and will release a report later in the summer setting out its findings.
31. **Recommendations:** Review and implement the findings of the HMI Prisons inspection report once published.

Access to justice for non-residents and immigration detainees (paragraph 24)

32. HMI Prisons has reported its concerns that increasing numbers of detainees do not have lawyers to assist them with their immigration cases or to apply for bail. In some cases this is because legal aid is no longer available and in other cases, entitlements to legal aid were not well understood by staff and arrangements to ensure detainees had access to legal representation were not working effectively. As a consequence, some detainees are paying privately for legal representation.
33. HMI Prisons is also concerned about the effectiveness of the procedures that are supposed to provide safeguards for vulnerable detainees, including those who have experienced torture and have mental illnesses. Rule 35 of the Detention Centre Rules requires that health care staff report to the Home Office where they consider that a detainee's health is likely to be affected by detention, or if they might have suicidal intentions or have been a victim of torture. However, our review of relevant files during our inspections shows that doctors' reports and Home Office caseworkers' consideration of them were often poor, and did not assure us that the most vulnerable detainees were protected. Although we have recently begun to see more releases directly as a result of rule 35 reports (this had previously been extremely rare), too many responses to reports from caseworkers were cynical and dismissive. Not enough health care staff in immigration removal centres had received training in recognising and treating torture or trauma.

34. **Recommendations:** (1) The Home Office should invite the Legal Aid Agency to investigate the reasons for detainees' poor access to adequate representation in immigration removal centres; (2) The Home Office should ensure that the rule 35 process provides vulnerable detainees with adequate protection. Torture survivors should not be detained.

Measures taken to ensure children are held in custody only when absolutely necessary and as a measure of last resort (paragraph 25)

35. There were 1,004 children in youth justice custody (sentenced or remanded) in England and Wales in March 2015, of whom 966 were boys and 38 were girls, and 44 were aged 10-14 and 960 aged 15-17.¹² There has been a welcome, steady decline in the number of children in custody over recent years, from 2,821 in March 2001 to 2,027 in March 2011. The Children's Commissioner is concerned that custody is not always used as a last resort, and in particular by the introduction of presumptive custodial sentences for knife crime offences by children aged 16 and 17 in England and Wales.
36. Children are no longer detained at Yarl's Wood or Dungavel Immigration Removal Centres, but can be detained as part of the family removals process at Cedars or Tinsley House for short periods and in short-term holding facilities in ports and airports on arrival to the UK. Children whose age is subject to dispute may be detained in adult immigration removal facilities until their age is determined. During a recent inspection of Tinsley House, HMI Prisons expressed concern that alternatives to detention before holding families with children were not always considered.¹³
37. The detention of children overnight in police cells has been a concern for many years, but has not yet been addressed effectively. A child may be detained by police for investigation of an alleged offence, under the powers of the Police and Criminal Evidence Act 1984, or for 'their own protection' under the Children Act 1989, or under the Mental Health Act 1983, but should only be held until such time as alternative suitable accommodation can be found. We welcome the government's proposal to prohibit the use of police cells as a place of safety for children under the Mental Health Act.
38. Code G of the Police and Criminal Evidence Act¹⁴ requires police officers, when exercising the power of arrest, to consider if the necessary objectives can be met by other, less intrusive means. The Children Act 2004 places a duty on all agencies including police, health and local authorities, to safeguard and promote the welfare of children¹⁵.
39. HMIC found clear evidence that custody could have been avoided for children had other services been available to support them. Although some police staff and officers spent significant amounts of time trying to avoid taking children into custody (for instance, by contacting other agencies to see if they could help), and joint working arrangements with mental health services in some areas were successfully diverting them away from custody, appropriate services were not always available. As a result, police officers saw no option other than to take children into custody, sometimes as a mechanism for getting them the health or social care support they needed. Despite the explicit legal responsibilities of public agencies to safeguard and promote the welfare of children, some police officers did not regard children as vulnerable, and saw their offence first, and the fact that it involved a child as secondary when making a decision to detain.

¹² YJB Youth Custody Report, March 2015 <https://www.gov.uk/government/statistics/youth-custody-data>

¹³ <http://www.justiceinspectorates.gov.uk/hmiprisonsonline/inspections/tinsley-house-immigration-removal-centre/#.VXBcraPsgQA> at S.35 and S.37

¹⁴ Police and Criminal Evidence Act 1984 - Revised Code of Practice for the statutory power of arrest by police officers (November 2012)

¹⁵ Children Act 2004 section 11

40. The difficulty of finding appropriate alternative accommodation for children, even when requested by police to social care services, is a major factor in the length of time that they are detained in police custody. There is no national data on the number of children who are detained overnight due to the lack of alternative accommodation, but our inspections found evidence of young people being detained in custody overnight in all forces.
41. There is a legal requirement for custody staff to identify and contact an 'appropriate adult' (AA) as soon as practicable and without delay, so that all children have one with them during the custody process and any interviews. Although we found that almost all children did have an AA present while being read their rights and if they were interviewed subsequently, the average wait for an AA was five and a half hours, with examples of some individuals waiting much longer (up to 22 hours in one case).
42. Despite some proactive efforts to keep children out of custody, our analysis of custody records in six police forces showed that 70 of the 81 children detained had been in police detention on at least one previous occasion.
43. **Recommendations:** (1) Investment in early intervention and preventive services in order further to reduce the number of children in the juvenile justice system, and should introduce statutory presumptions against detention for children except when necessary to protect the public against serious harm. (2) Alternatives to detention should always be explored before holding families with children in immigration removal centres. (3) Police forces and local authority children's services should be held to account for the provision of services to divert children away from custody and provide the support as required in law to children in custody.

Measures taken to establish a time limit on the duration of immigration detention and measures to ensure that detention is only used as a last resort (paragraph 27)

44. In 2012, HMI Prisons and the Independent Chief Inspector of Borders and Immigration published a report into the effectiveness of immigration detention casework.¹⁶ Its research found poor casework at all levels. Although initial decisions to detain were properly authorised and recorded, it was clear that not all factors were being considered before individuals were detained, including the age of the detainee and in one case, whether the detainee was a victim of trafficking. In 30% of cases at least one monthly detention review was missed, late or not on file, and in 59% of cases, detention had not been reviewed at the right level of authority. Many reviews did not consider all relevant factors, including family ties and health problems, and factors that might support a detainee's case for release were regularly under-recorded, while detrimental information was recorded in detail.
45. Time-consuming asylum claims and problems with travel documentation were commonly cited reasons for prolonged detention. In most cases travel documentation problems could not easily be resolved by Home Office action, but there was a lack of strategic approach to managing cases where there was, or was likely to be, a problem in obtaining travel documents. Many detention reviews accused detainees of failing to cooperate and, if this was the case, prosecution for non-compliance should have been considered under section 35 of the 2004 Asylum and Immigration (Treatment of Claimants) Act. We found a number of cases where asylum claims were not dealt with efficiently, leading to periods of detention that were not the fault of detainees. In 25% of our file sample, inefficiencies in casework were the main explanation for ongoing detention, and in a further 10 cases there were delays in removing people. Files were in poor condition, making cases hard to understand, and missing information could have included documents to establish the validity or otherwise of unlawful detention claims.

¹⁶ <http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/04/immigration-detention-casework-2012.pdf>

46. **Recommendations:** Home Office caseworkers should act with diligence and expediency to conclude cases. Detainees should only be detained when removal is likely within a reasonable period of time. An independent panel should be established to examine all cases of detainees held for lengthy periods (the exact period to be defined by the panel after consultation) to establish if prolonged detention is justified for exceptional and clearly evidenced circumstances only.

Measures taken to amend legislation denying all convicted prisoners the right to vote (paragraph 30)

47. HMI Prisons is not aware of any concrete, current legislative proposal to give effect to the ruling of the European Court of Human Rights on prisoners' right to vote, though proposals were presented to Parliament by the previous government. HMI Prisons has stated its position that the UK should comply with the judgement of the European Court of Human Rights.
48. **Recommendation:** Present legislation to parliament to give effect to the judgement of the European Court of Human Rights.