



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**RESPONSE TO NORTHERN IRELAND PRISON
SERVICE DRAFT FAMILY STRATEGY 2009-2014**

Summary

This is a response to the Northern Ireland Prison Service (NIPS) draft Family Strategy 2009-2014. Rather than having one general family strategy, it is recommended that separate strategies for each prison establishment are developed from which local policies should evolve. Within this, prisoner needs relating to age, gender, length of sentence, linguistic and cultural minorities, and issues relating to security classification, health, disability and vulnerability need to be addressed.

It is suggested that the family strategy and local policies, once finalised, should be cross-referenced to other relevant NIPS strategies and policies. For example, to gender specific standards, and policies governing self harm and suicide, mothers and babies, foreign national prisoners and the application of the Prison rules, so as to ensure a consistent approach in meeting the needs of all prisoners and their families.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding

¹ Northern Ireland Act 1998, s.69 (1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission has a particular interest in the detention regime and has carried out a number of investigations in this area.⁵ It welcomes the consultation by the Northern Ireland Prison Service (NIPS) on the Draft Family Strategy.
3. While the ECHR is the only human rights treaty with domestic effect, the NIPS would presumably wish to ensure that the strategy complied with all international standards in relation to the treatment of prisoners in its care. There is scant reference to human rights standards within the consultation document, and, in addition to ensuring and monitoring the human rights compliance of the strategy, the NIPS should strive to embed the language of rights in the Family Strategy.
4. The proposed amendments touch on areas covered by a number of human rights treaties ratified by the United Kingdom, including:
 - European Convention on Human Rights (ECHR); in particular, Article 3 (the right to be free from torture or to inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security), Article 6 (the right to a fair hearing), Article 8 (the right to private and family life), Article 9 (the right to freedom of thought, conscience and religion), and Article 14 (the right to non-discrimination);
 - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
 - Convention on the Elimination of All Forms of Racial Discrimination (CERD); in particular, Article 1 (meaning of racial discrimination), Article 2 (measures to eliminate racial discrimination) and Article 5 (the right to freedom from racial discrimination);
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; in particular Article 10 (training of personnel);

⁴ *Ibid*, s.69(6).

⁵ Scraton P and Moore L (2005 2nd ed.), *The Hurt Inside: The imprisonment of women and girls in Northern Ireland*, NIHRIC, and (2007) *The Prison Within: The imprisonment of women at Hydebank Wood 2004-06*, NIHRIC.

- Convention on the Rights of the Child (CRC); in particular Article 3 ('best interests' principle), Article 16 (the right to privacy and family life), Article 37 (on the treatment of children deprived of liberty) and Article 40(3) (the establishment of laws, procedures, and institutions applicable to children alleged, accused, or recognised as having infringed the law).
 - Convention on the Rights of Persons with Disabilities (CRPD); in particular, Article 1 (full and equal enjoyment of all human rights), Article 2 (definition re: reasonable accommodation), Article 6 (women with disabilities), Article 16 (freedom from exploitation, violence and abuse), Article 21 (access to information).
5. The four prison establishments in Northern Ireland are tasked with meeting very different prisoner needs in terms of age, gender, size of prison population, length of sentence, linguistic and cultural minorities, and issues relating to security classification, health, disability and vulnerability. As such, it is difficult to respond generically to the draft family strategy, and it is recommended that separate strategies for each prison establishment are developed from which local policies should evolve. Further, it is our view that it would be helpful if the family strategy and local policies, once finalised, are cross-referenced to other relevant NIPS strategies and policies, for example, gender-specific standards, care of vulnerable prisoners, self-harm and suicide policy, mother and baby policy, foreign national prisoners policy and the Prison Rules, so as to ensure a consistent approach.

Children and young offenders

6. The strategy must address the needs of all prisoners and their families. In relation to young offenders, it is vital that the particular needs of children are fully addressed in the formulation of the family strategy. International human rights standards such as the UN Convention on the Rights of the Child (CRC) define children as anyone under 18 years of age. The provisions of the CRC apply to children whose parents or carers are imprisoned. States are required to respect the right of children whose parents or carers are imprisoned, and are required to respect the right of children separated from one or both parents to "maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests".⁶

⁶ UNCRC Article 9; *The Prison Within*, p103.

7. In Northern Ireland, boys under the age of 18 can be held on remand or sentence in the Young Offenders Centre (YOC). In certain circumstances, legislation still permits children as young as 15 years to be held on remand in the YOC.⁷ Bearing in mind international human rights standards and, in particular, the requirement that "Every child deprived of liberty [is] treated [...] in a manner which takes into account the needs of persons of his or her age" (Article 37(c) CRC), the Commission considers that special provision should be made for children formulated within a separate family strategy for the YOC.
8. In addition, the Commission's advice to the Secretary of State on a Bill of Rights for Northern Ireland includes the following recommendations under 'The right to liberty and security':⁸

Every child has the right not to be detained except as a measure of last resort, in which case, the child may be detained only for the shortest period of time, and has the right to be:

 - a) kept separately from detained persons over the age of 18 years; and
 - b) treated in a manner, and kept in conditions, that pays due regard to the child's age.
9. It is noted that the family/child centred visits scheme is identified as 'good practice' in the recent report by HMCIP/CJI following their inspection of the YOC in November 2007.⁹ However, feedback would be welcomed on actions taken to address a number of other concerns raised in the inspection report, which include:
 - a) improving access to telephones;
 - b) addressing unnecessary delays in prisoners receiving mail;
 - c) additional privacy between closed visit rooms and general visits area;
 - d) guidance on when decisions to impose restrictions

⁷ See Article 13(1)(b) of the Criminal Justice (Children) (Northern Ireland) Order 1998: where a court decides not to release a child on bail, it can make an order committing her or him to the YOC "if he is aged 15 or over and the court considers that he is likely to injure himself or other persons".

⁸ NIHRC, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland*, 10 December 2008, at p25.

⁹ HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, *Hydebank Wood Young Offender Centre, Report of an announced inspection*, 5-9 November 2007.

- should be reviewed; and
- e) babies should be searched only when there is a specific intelligence, agreed by a senior manager, that this is necessary.

Women in prison

10. While acknowledging that the tariffs set by the sentencing court are outside the control of the NIPS, the Commission reiterates its view that detaining women in custody should be a measure of last resort and only in serious cases. It is also concerned by the lack of progress in taking forward recommendations for the building of a new discrete women's custodial facility and in the provision of alternatives to custody for low-level offences. Of particular concern is the large number of women and men who are imprisoned for fine default or remanded to custody pending trial. In cases where there are genuine reasons for failure to discharge a criminal penalty, the sum at stake is not recovered by imprisonment, and the cost to society and to the individual of imprisonment is likely to exceed by a vast measure the original fine. It is to be hoped that the recent announcement by the Northern Ireland Office, to trial supervised activity orders in some areas, will reduce progressively the numbers of those receiving custodial sentences for fine default. As stated in the Corston Report (2007),¹⁰ "short prison sentences do not successfully deflect from further offending and for many women make their lives and those of their children worse".
11. With reference to maintaining contact with the outside world, a number of concerns have been raised in the recent inspection of Ash House by Criminal Justice Inspection.¹¹ These include:
 - a) problems with receiving mail due to logging and censoring procedures;
 - b) women prisoners sharing visiting accommodation with young men;
 - c) insufficient visiting capacity at weekends;
 - d) high cost of telephone calls, particularly to mobile telephones.

¹⁰ Home Office, *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, 2007.

¹¹ HM Chief Inspector of Prisons and the Chief Inspector of Criminal Justice in Northern Ireland, *Ash House, Hydebank Wood*, Report of an announced inspection, 29 October-2 November 2007.

The Commission seeks assurances that these issues have been addressed and will continue to be addressed within local policies. The underlying principles of the draft strategy state that NIPS will provide "safe and secure visiting facilities in a family friendly, neutral environment", and, as such, the sharing of visiting accommodation and insufficient visiting capacity raise particular concern.

12. The praise for the staff employed in the Hydebank Wood and YOC Visitors Centre in the IMB's 2007-08 Annual Report is also noted.
13. The Commission is aware that extended unit visits are due to be piloted in the very near future at Ash House. This is a welcome development and it is to be hoped that subsequent evaluations lead to a rolling out of this facility.
14. It is understood that after a trial period of 'screening off' an area for women to receive visitors, that this approach was not popular with the women prisoners and was subsequently abandoned. The previous arrangement whereby the visit area was shared with young male prisoners and dominated by them was deemed "unsatisfactory" by HMCIP/CJI in their 2007 inspection report of Ash House. They also recommended that there should be separate visiting facilities for women and men. Given this, the Commission would welcome an update on current visiting arrangements for women.
15. Are records maintained of the number of visits refused or curtailed due to shortage of space? If so, the Commission would welcome further information as to whether the limited space available within the visiting area at Hydebank leads to the refusal or cutting short of visits.

Mothers and babies

16. Although the draft family strategy does not refer specifically to mothers and babies in prison, it is our view that the strategic approach to this issue should form an integral part of the family strategy. The Commission has previously welcomed the introduction of a mother and baby policy by NIPS. However, it is surprising that there is no specific mention within the draft strategy of how this policy fits in with strategic thinking. International human rights standards make special provision for mothers in prison with their babies.

Positive measures designed solely to protect the rights of women, particularly pregnant women and breast-feeding mothers, are not deemed discriminatory.¹²

17. In acknowledging the adverse effects of imprisoning mothers the Council of Europe Parliamentary Assembly recommended that states “develop and use community-based penalties for mothers and young children”; avoid the use of prison custody; ensure that custody for pregnant women and mothers of young children is a last resort and restricted to those who have committed the most serious offences and who represent a danger to the community.¹³
18. Women’s prisons must provide special accommodation for pre-natal care and treatment. There should be a nursery available for babies in prison run by fully trained staff.¹⁴ The Revised European Prison Rules (2006) state that infants can stay in prison with their parents, but only when it is considered to be in the child’s best interests.
19. While it is acknowledged that it is usually the case that there are very small numbers of mothers and babies in Ash House at any one time, it is important that babies living in prison can develop to their fullest potential. A purpose-built women’s unit that has semi-open units suitable for mothers and babies, with access to outside facilities such as day nurseries if appropriate and in the child’s best interests, would provide a more appropriate environment.

Women foreign national prisoners

20. The Commission is concerned that prisoners who are foreign nationals, particularly women with primary childcare responsibilities, are particularly vulnerable to experiencing isolation. The Commission has previously welcomed the consideration of a range of alternative technologies to counter the levels of isolation such as webcam visits, and would be interested in obtaining further information as to whether webcams are now available, and if so the level of uptake. It is also important that NIPS ensures that its policies and procedures allow flexible and extended visiting times for all foreign national prisoners whose family and friends may be

¹² UN Body of Principles, Principle 5; *The Prison Within*, p103.

¹³ Council of Europe recommendation 1469 (2000) on Mothers and Babies in Prison, adopted by the Parliamentary Assembly.

¹⁴ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 23(1) and (2), and Revised European Prison Rules 28.2; *The Prison Within*, p103.

travelling great distances.

21. The Commission is especially interested in the timely provision of appropriately translated information for foreign national prisoners and other prisoners with language needs. This to include gender-specific information for pregnant women and mothers, and access to the information contained in the range of packs and leaflets referred to in the draft family strategy action plan. The Commission seeks assurances as to how this is being addressed.
22. The Commission seeks clarification as to whether the Prison Service has a policy in place to assist foreign national prisoners who may be subject to deportation at the end of their sentence. It is important to ensure that foreign national prisoners are not remaining in custody beyond their release date, while they await documentation from the UK Border Agency.
23. The Commission has previously questioned the appropriateness of the NIPS relying on the provision of specialist advice from the UK Borders Agency, a non-independent agency with the primary function of enforcing immigration control. The Commission strongly advocates that the NIPS should source its immigration advice from independent organisations that have staff trained in the delivery of specialist advice pertaining to immigration law. In relation to the provision of special information about access to legal advice to prisoners who are foreign nationals, it is useful to reiterate one of the recommendations in *The Prison Within*, which stated that the "Prison Service should consult with immigration legal practitioners, statutory bodies and NGOs in providing this advice" (recommendation 36).

General points

24. The Commission would welcome further information as to how the views of children and young persons were gathered to inform the action plan referred to at 5.1 of the draft strategy.
25. The Commission recommends that the term 'inmate' is replaced by 'prisoner' throughout the strategy document.
26. The Commission welcomes the appointment of Family Liaison Officers (FLOs) across all sites and requests further information regarding the number of FLOs presently based within each establishment.

27. If a family member raises particular concerns with an FLO on behalf of a vulnerable prisoner, is there scope to grant more support, for example, in the form of additional visits or telephone contact?
28. What provision is made for facilitating intra-prison visits between family members? For example, is there an agreed entitlement to a visit in these circumstances? There is a very clear onus of responsibility upon the NIPS to ensure that resources are provided to facilitate such visits.
39. What support is provided to prisoners who are particularly isolated and who have little or no family support? For example, are befriending services available?
30. In its 2007 Inspection Report of Ash House, HMCIP/CJI draw attention to the inappropriateness of penalising families by having the length of visits based on progressive regimes and earned privileges level. It is important to consider very carefully the potential impact upon a prisoner or her/his family if a breach of prison rules impacts negatively upon visiting rights, and it is recommended that such decisions should have independent oversight.
31. Chapter 9 of the draft strategy outlines the arrangements for the monitoring, evaluation and review of procedures. Further information is requested as to how the feedback from prisoners and families will be obtained and analysed. For example, issues relating to confidentiality and language needs need to be fully addressed.
32. It is noted that the family strategy spans the period 2009-2014; however it is recommended that an indication of timeframes for achieving outcomes and actions outlined in the action plan be included in the strategy. This addition would greatly assist in the monitoring and evaluation process. Also, an indication as to when local family policies will be finalised is required.
33. **Other relevant international standards**

Finally, the Commission wishes to highlight that there is a body of non-binding 'soft law' standards that should be considered in relation to the formulation of the family strategy, including:

- UN Standard Minimum Rules for the Treatment of Prisoners
- UN Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, December 1990);
- Revised European Prison Rules;
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Framework Convention for the Protection of National Minorities (FCNM); in particular, Article 6 (the right to be protected from threats or acts of discrimination);
- Council of Europe Recommendation 1469 (2000) (mothers and babies in prison);
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), in particular, Article 6 (interpreter), Article 24 (information), Article 28 (conditions of detention), , Article 48 (religion), Articles 59-62 (communication);
- UN Standard Minimum Rules for the administration of Juvenile Justice, 1995 (the Beijing Rules).

34. The Commission hopes that these comments will help inform the work of taking the family strategy forward and is willing to engage in further discussion in respect of any of the issues raised in this response.

October 2009

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Tel: (028) 9024 3987
Textphone: (028) 9024 9066
SMS Text: 07786 202075
Fax: (028) 9024 7844
Email: information@nihrc.org
Website: www.nihrc.org