



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Submission of the Northern Ireland Human Rights Commission to the Department of Justice and Department of Health consultation on improving health within criminal justice.

Summary

2.12 The Commission advises the Department of Health and Department of Justice to include references to the NI Executive's human rights obligations within the strategy and to specifically address the relevant aspects of the recommendations of the UN Human Rights Committee and UN Committee against Torture through the strategy.

3.3 The Commission advises that the strategy would be strengthened by the inclusion of concrete, deliberate and targeted outcome measures attached to each strategic priority. This should be accompanied by a detailed timeframe and the establishment of robust monitoring and evaluation mechanisms. The Department of Health and Department of Justice must ensure the strategy is formulated on the basis of a reliable data set.

4.3 The Commission advises that this strategic priority should be further developed by outlining the specific objectives that the strategy will deliver and the desired outcome. This should include analysis of the existing sentencing framework with consideration of whether it can be utilised to ensure effective diversion or if law reform is required to ensure an appropriate range of disposals.

4.6 The Commission advises that significant investment in the development of alternatives to pre-trial detention is required as a matter of priority and considers that legislative and administrative measures, including the development of bail arrangements such as accommodation should be expedited to ensure children are held in detention only as a measure of last resort.

4.10 The Commission advises that the strategy refer to the acknowledged need to address the high number of prisoners on remand for lengthy periods within the prison system, the impact of this issue on our criminal justice system including the pressure it places on health and social care services and the proposals to address it.

5.3 The Commission advises that in developing a suicide and self-harm strategy the Department of Health and Department of Justice should take stock of all relevant recommendations from the Prisoner Ombudsman and should consider how failures to operationalise safeguards within the existing procedures have been allowed to occur.

5.6 The Commission advises that the review of discharge planning arrangements should be focused on ensuring the reformation and social rehabilitation of the offender. The review should include specific outcomes which are measurable, verifiable through performance indicators and time-bound. Key stakeholders should be involved in the review from an early stage and the review should be informed by the experiences of users.

6.2 The Commission advises the Department of Health and Department of Justice to clarify and clearly set out within the strategy the body responsible for the social care of prisoners and ensure specific actions and appropriate resources are allocated.

7.4 The Commission advises the Department of Justice to publish details of the construction of a separate custodial facility for female prisoners in Northern Ireland and to identify within the strategy how the healthcare needs of women will be addressed.

8.3 The Commission advises the Department of Health and Department of Justice to consider how the strategy can contribute to the effective implementation of the Mental Capacity (NI) Act 2016.

9.5 The Commission advises that the Department of Health and Department of Justice ensure that the maximum available resources are devoted to ensure the fulfilment of the right to health for those within the criminal justice system and to ensure that persons deprived of their liberty are never treated in an inhuman or degrading manner.

1. Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.¹ In accordance with this function the following statutory advice is submitted to the Department of Justice and Department of Health in response to the consultation on improving health within prisons.²

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:

- the International Covenant on Civil and Political Rights (ICCPR)³;
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴;
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵;
- the Convention against Torture (CAT)⁶;
- the UN Convention on the Rights of the Child (CRC)⁷;
- the UN Convention on the Rights of Persons with Disabilities (CRPD)⁸.

1.3 In addition to these treaties, there exists a body of 'soft law' developed by the human rights bodies of the UN and Council of Europe. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- United Nations Standard Minimum Rules for the Treatment of Prisoners ('Standard Minimum Rules') (1977);
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules') (1985);

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

² DoJNI DHSPS 'Improving Health within Criminal Justice' 2016 available at: https://www.justice-ni.gov.uk/sites/default/files/consultations/doj/improving-healthwithinjustice-system-consultation_0.pdf

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1981.

⁶ Ratified by the UK in 1988.

⁷ Ratified by the UK in 1991.

⁸ Ratified by the UK in 2009.

- United Nations Body of Principles for the protection of All Persons under Any Form of Detention and Imprisonment (1988);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990);
- United Nations Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines') (1990);
- United Nations Basic Principles for the Treatment of Prisoners 'the Basic Principles') (1990);
- United Nations Standard Minimum Rules for Non-custodial Measures ('the Tokyo Rules') (1990);
- United Nations Economic and Social Council-endorsed Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (2002);
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules') (2010);
- United Nations Standard Minimum Rules on the Treatment of Prisoners ('the Nelson Mandela Rules') (2016).

1.4 Relevant regional instruments and recommendations include:

- Council of Europe European Convention on Human Rights, 1950 (ECHR)⁹;
- Council of Europe European Prison Rules (2006);
- Council of Europe Recommendation R(92)16 on the European Rules on Community Sanctions and Measures (1992);
- Council of Europe Recommendation R(2000)22 on improving the implementation of the European Rules on community sanctions and measures (2000);
- Committee of Ministers Recommendation CM/R(2010)1 on the Council of Europe Probation Rules (2010);
- European Union Framework Decision on Restorative Justice (2001);

1.5 The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification and the provisions of the Northern Ireland Act 1998.¹⁰

General Observations

⁹ Ratified by the UK in 1951.

¹⁰ In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... he may by order direct that the proposed action shall not be taken'. Moreover the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

2.1 The Commission broadly welcomes the proposed Strategy and Action Plan on 'Improving Health within Criminal Justice'. The Commission also recognises that other issues in the criminal justice system affecting the number held in prison whether under sentence or on remand impacts on the health and social care provided. The Commission therefore address these issues as well as the direct health and social care matters with the strategy. The Commission notes that whilst an initial human rights assessment has been carried out the consultation document does not refer to the breadth of human rights obligations relevant to the subject matter.

2.2 The right to health is protected by way of ICESCR, Article 12 which states:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

...

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

2.3 The ICESCR Committee has elaborated on Article 12 by way of General Comment 14 which states:

States are under the obligation to *respect* the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs.¹¹

2.4 The right to health is also protected by UNCRPD, Article 25.

2.5 As recorded within the consultation document health and social care

¹¹ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)

provision for prisoners in Northern Ireland is delivered in a range of settings including hospitals and secondary care facilities. Ensuring adequate resources, personnel and staffing stability alongside effective linkages between the prison and hospital and community services is essential to ensuring prisoners enjoy the highest attainable standard of physical and mental health.

2.6 Human rights law has recognised the vulnerabilities of prisoners. The European Court of Human Rights (ECt.HR) has often considered the implication of prison conditions on an individual's Article 3 right to freedom from torture and inhuman or degrading treatment. In the case of *Kudla v Poland* the ECt.HR stated:

under this provision [Article 3] the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.¹²

2.7 In *Keenan v UK* the ECt.HR stated:

the authorities are under an obligation to protect the health of persons deprived of liberty. The lack of appropriate medical care may amount to treatment contrary to Article 3.¹³

2.8 International human rights law similarly recognises the vulnerable position of prisoners. The ICCPR, Article 10 states:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults

¹² *Kudla v Poland* (App no. 30210/96), 26 October 2000 para 94

¹³ *Keenan v United Kingdom* (App no. 27229/95), 3 April 2001 para 111

and be accorded treatment appropriate to their age and legal status.

2.9 By way of General Comment No. 21 the UN Human Rights Committee has elaborated on the requirements of Article 10:

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in Article 7... Thus, not only may persons deprived of their liberty not be subject to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty shall enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.¹⁴

2.10 The UN Treaty Bodies have made a number recommendations relating to prisons in the United Kingdom, most recently the UN Human Rights Committee recommended that the UK Government and devolved administrations:

take robust measures to prevent self-inflicted deaths (suicides), including suicides and self-harm in custody, inter alia by¹⁵:

- (a) Studying and addressing the root causes of the problem, continuing improving the identification of persons at risk of suicide and self-harm and operating effective early prevention strategies and programmes;
- (b) Providing adequate training to prison officials on suicide and self-harm prevention;
- (c) Ensuring adequate protection of, and appropriate mental health and other support services to, prisoners;
- (d) Combating bullying in custody facilities effectively;
- (e) Ensuring that cases of suicide and self-harm are independently and thoroughly investigated and lessons learned ...

¹⁴ Human Rights Committee, 'General comment No. 21: Article 10 (Human treatment of persons deprived of their liberty)', Forty-fourth session, 1992 para 3

¹⁵ UN Human Rights Committee 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' Adopted by the Committee at its 114th session (29 June–24 July 2015), UN doc. CCPR/C/GBR/CO/7/21192.

2.11 In 2013 the UN Committee against Torture welcomed the adoption of the Supporting Prisoners At Risk procedures but raised concerns regarding the 'steady increase in the prison population' and recommended reforms to reduce the reoffending rate and address self-harm.¹⁶ The UN Committee against Torture also recommended the construction of a separate custodial facility for women prisoners.¹⁷

2.12 The Commission advises the Department of Health and Department of Justice to include references to the NI Executive's human rights obligations within the strategy and to specifically address the relevant aspects of the recommendations of the UN Human Rights Committee (2015) and UN Committee against Torture (2013) through the strategy.

Strategy

3.1 The Commission notes that the strategy is formulated around seven key strategic priorities. Whilst an action plan has been provided the strategy does not contain more specific outcomes to address the priority issues.¹⁸ The inclusion of specific outcomes which are measurable, verifiable through performance indicators and time-bound will facilitate effective monitoring and evaluation. The Commission welcomes the proposed Implementation Group and provision for service user feedback and independent oversight.

3.2 With respect to the data upon which the strategy is developed it is welcomed that a preliminary Equality Screening and a review will be carried out following the consultation exercise. Nonetheless a number of gaps in the data collection arrangement are acknowledged within the draft strategy, in particular a lack of reliable data around the number of homeless people coming into contact with the criminal justice system is a source of concern given their diverse needs. The lack of clear data on the numbers of people from the LGBT community in contact with the criminal justice system is also a source of concern given the vulnerable position of members of the LGBT community when held in custody.

3.3 The Commission advises that the strategy would be strengthened by the inclusion of concrete, deliberate and targeted outcome measures attached to each strategic

¹⁶ Committee against Torture, 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)', UN doc. CAT/C/GBR/CO/5, 24 June 2013 para 6 & 31

¹⁷ Ibid para 32

¹⁸ See , OHCHR, Developing National Action Plans against Racial Discrimination: A Practical Guide (New York & Geneva: 2014). p. 95

priority. This should be accompanied by a detailed timeframe and the establishment of robust monitoring and evaluation mechanisms. The Department of Health and Department of Justice must ensure the strategy is formulated on the basis of a reliable data set.

Strategic Priority 4: Diversion

4.1 The Prison Review Team recommended the introduction of a statutory presumption against prison sentences of three months or less, with commensurate investment in robust and effective community alternatives.¹⁹ This recommendation remains outstanding. At its final meeting the Prison Review Oversight Team noted a lack of support within the NI Assembly for the introduction of diversionary disposals.²⁰ The Commission considers that a range of diversionary disposals are required to ensure those convicted of criminal offences are dealt with appropriately and in a manner reflective of the principle of rehabilitation which addresses their offending behaviour.²¹ As part of its forthcoming examination process the UN Committee against Torture has recently asked the UK Government, including the NI Executive to provide detail on “measures taken by the State party to reduce prison overcrowding, including alternatives to imprisonment, both before and after trial”.²²

4.2 It is noted that the strategy acknowledges the need for appropriate diversionary disposals and acknowledges that a ‘good service’ would include a sentencing framework which supports diversion. However, specific details on how diversionary disposals and the sentencing framework will be developed are not presented.

4.3 The Commission advises that this strategic priority should be further developed by outlining the specific objectives that the strategy will deliver and the desired outcome. This should include analysis of the existing sentencing framework with consideration of whether it can be utilised to ensure effective diversion or if law reform is required to ensure an appropriate range of disposals.

4.4 The Department of Health and Department of Justice will be aware of concerns regarding the overuse of imprisonment of children in Northern Ireland. In 2015 the National Preventative Mechanism designated under the Optional Protocol to the UN Convention against Torture published a

¹⁹ Prison Review Team’ Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons’ Recommendation 3 October 2011 Recommendation 3

²⁰ Prison Review Oversight Group : Justice Committee Summary Report May 2015

²¹ See for discussion United Nations Office of Drugs and Crime ‘Handbook of basic principles and promising practices on Alternatives to Imprisonment’

²² Committee against Torture List of issues prior to submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland May 2016 para 22

report of an announced inspection of Woodlands Juvenile Justice Centre.²³ It recorded that only 9 percent of children imprisoned at Woodlands in 2013-14 were there as a result of being sentenced following a conviction. Of the remainder, 47 percent were formally remanded to custody and 44 percent related to proceedings under the Police and Criminal Evidence (NI) Order 1989 (PACE).²⁴ During 2014/15 there were 233 PACE admissions to Woodlands JJC involving 130 individual children.²⁵ The National Preventative Mechanism found that the rate of PACE admissions to Woodlands JJC has almost trebled between 2008–9 and 2013–14 and has described this as ‘disproportionately high’. It recommended that the Youth Justice Agency and its statutory partners should set targets to improve the current arrangements for children who do not have a suitable bail address.²⁶

4.5 In July 2015 the UN Human Rights Committee called for actions to:

ensure that detention on remand of child defendants is used only as a measure of last resort and for the shortest possible period of time and that suitable bail packages are available to child defendants in Northern Ireland.

4.6 In June 2016 the UN Committee on the Rights of the Child recommended that the UK Government including the NI Executive take measures to bring the juvenile justice system into line with UN CRC standards including, inter alia, by:

Establish[ing] the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.²⁷

4.6 The Commission advises that significant investment in the development of alternatives to pre-trial detention is required as a matter of priority and considers that legislative and administrative measures, including the development of bail arrangements such as accommodation should be expedited to ensure children are held in detention only as a measure of last resort.

²³ National Preventative Mechanism ‘An announced inspection of Woodlands Juvenile Justice Centre’ May 2015 . 20 statutory bodies make up the UK National Preventive Mechanism

²⁴ Ibid., para 2.5

²⁵ AQW 50671/11-16

²⁶ National Preventative Mechanism ‘An announced inspection of Woodlands Juvenile Justice Centre’ May 2015 . 20 statutory bodies make up the UK National Preventive Mechanism Ibid., para 2.18

²⁷ CRC/C/GBR/CO/5 3 June 2016; UN General Assembly resolution 40/33, ‘UN Standard Minimum Rules for the Administration of Juvenile Justice (‘the Beijing Rules’), UN doc. A/RES/40/33, 29 November 1985, rule 5.1; UN General Assembly resolution 45/113, ‘United Nations Rules for the Protection of Juveniles Deprived of their Liberty (‘the Havana Rules’), UN doc. A/RES/45/113, 14 December 1990, para 1

4.7 In September 2015 prisoners held on remand accounted for just under 25% of the overall prison population.²⁸ This represents an improvement on previous years, but remand prisoners continue to be disproportionately represented in the overall prison population.²⁹ A report by the European Commission for the Efficiency of Justice into justice systems in 33 European countries ranked the NI justice system as the second most inefficient on the basis of criminal prosecution clearance rates.³⁰

4.8 The UN Human Rights Committee in 2015 recommended the introduction of:

concrete measures to reduce avoidable delays in the criminal justice system in Northern Ireland, including by introducing custodial time limits.³¹

4.9 The Commission has recommended on a number of occasions the introduction of custodial time limits in the NI criminal justice system. These were first introduced to England and Wales in 1991.³² The Criminal Justice Inspector for NI has stated that failure to introduce statutory custodial time limits in NI “consigns the justice process here to continuing unacceptable delay in processing cases”.³³

4.10 The Commission advises that the strategy refer to the acknowledged need to address the high number of prisoners on remand for lengthy periods within the prison system, the impact of this issue on our criminal justice system including the pressure it places on health and social care services and the proposals to address it.

Strategic Priority 5: Health Promotion and ill health prevention

5.1 The UN General Assembly resolution 43/173, on the ‘Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment’, principle 24 states:

²⁸ NIPS ‘Analysis of NIPS prison Population from 01/07/2014 to 30/09/2015’ October 2015

²⁹ The prison population in England and Wales as of 30 June 2014 was 85,509 of which 12,197 were on remand representing just over 14% See Ministry of Justice Offender Management Statistics Bulletin, England and Wales Quarterly – January to March 2014

³⁰ The European Commission for Efficiency of Justice ‘Evaluation of Judicial systems’ 5th Report – Edition 2014 (2012 data) The Clearance rate is calculated by dividing the number of cases closed by the number of cases received. Thirty three states were included in the study. The average time from committal to hearing for April to June 2015 was 90 days.

³¹ UN Human Rights Committee ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ Adopted by the Committee at its 114th session (29 June–24 July 2015). CCPR_C_GBR_CO_7_21192. para 22

³² NI Assembly Research ‘Statutory Time Limits’ 125-12 (31 March 2012)

³³ Official Report (Hansard) Session: 2013/2014 Date: 25 June 2014

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.³⁴

5.2 In relation to women prisoners, the UN General Assembly resolution 65/229 on the treatment of women prisoners ('the Bangkok Rules') contains obligations concerning gender-specific health care and suicide prevention:

[rule 9] Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.

[rule 16] Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialised support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.³⁵

5.2 The Commission notes that the Prisoner Ombudsman's 'death in custody' investigation reports routinely raise concerns and make recommendations relating to the Supporting Prisoners at Risk Procedures (SPAR). For instance, in the case of Joseph Rainey concerns were raised regarding SPAR handovers, suspensions and observation logs.³⁶ The Commission further notes that the Prisoner Ombudsman wrote to the Ministers of Justice and Health in November 2014 raising concerns regarding the need to repeat recommendations within deaths in custody reports, which perhaps indicates failings at managerial and operational levels and possibly also systemic failings.³⁷ In light of these reports the Commission welcomes the intention to develop a suicide and self-harm strategy to cover NI Prison Service including SPAR procedures.

5.3 The Commission advises that in developing a suicide and self-harm strategy the Department of Justice and Department of Health should take stock of all relevant

³⁴ UN General Assembly resolution 43/173, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', UN doc. A/RES/43/173, 9 December 1988, principle 24; UN General Assembly resolution 70/175, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)', UN doc. A/RES/70/175, 8 January 2016, rule 24.1

³⁵ UN General Assembly resolution 65/229, 'United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)', UN Doc. A/RES/65/229, 16 March 2011, pp 10-11; See CoE Committee of Ministers recommendation R(2006)2, 'Recommendation of the Committee of Ministers to member states on the European Prison Rules', June 2006, rule 34.1

³⁶ Prisoner Ombudsman 'Investigation Report into the Circumstances Surrounding the Death of Joseph Rainey' 16th December 2015, see p 9

³⁷ Prisoner Ombudsman for Northern Ireland 'Annual Report 2014-15' 2015
http://www.niprisonerombudsman.gov.uk/publications/Annual_Report_2014-15.pdf

recommendations from the Prisoner Ombudsman and should consider how failures to operationalise safeguards within the existing procedures have been allowed to occur.

5.4 The ICCPR, Article 10(3) states:

'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation...'

5.5 The draft strategy acknowledges that the period of release from prison requires careful management and is most likely to lead to a breakdown in continuity of care and as such the strategy places an emphasis on 'discharge planning'. Appropriate discharge planning is essential to ensure the reform and rehabilitation of prisoners and to address recidivism. Some details on the arrangement for discharge planning have been provided. However further specific detail on the review of current discharge planning arrangements would provide clarity to stakeholders and contribute to the effectiveness of the review.

5.6 The Commission advises that the review of discharge planning arrangements should be focused on ensuring the reformation and social rehabilitation of the offender to ensure compliance with ICCPR Article 10(3). The review should include specific outcomes which are measurable, verifiable through performance indicators and time-bound. Key stakeholders should be involved in the review from an early stage and the review should be informed by the experiences of users.

Strategic Priority 6: Social care

6.1 The draft strategy notes that "social care provision in the criminal justice context can be confusing". This is a source of concern to the Commission. It states that the South East Health and Social Care Trust is the provider of prisoner healthcare in Northern Ireland but does not clarify which Department or agency is responsible for social care. The Council of Europe's Committee of Ministers has specifically stated in recommendation R(98)7 that

[a] clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.³⁸

³⁸ CoE Committee of Ministers recommendation R(98)7, 'Recommendation of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison', 8 April 1998, para 12

6.2 The situation of confusion must be resolved to ensure effective implementation of the strategy. As with any strategy it is essential to identify the State bodies which will be responsible for carrying out the activities.

6.2 The Commission advises the Department of Health and Department of Justice to clarify and clearly set out within the strategy the body responsible for the social care of prisoners and ensure specific actions and appropriate resources are allocated.

Strategic Priority 7: Accommodation

7.1 The Commission notes the strategic priority to “ensure a range of accommodation options is in place to meet the health and social care needs of children, young people and adults”. For some time it has been accepted that the use of Hydebank Wood to accommodate female prisoners is not suitable and impacts negatively on the health and care of female prisoners. Both the UN Committee against Torture and the UN CEDAW Committee have recommended that women should no longer be held at Hydebank Wood and that a separate custodial facility should be established.³⁹

7.2 The previous Minister of Justice indicated his support for the construction of a separate custodial facility for women in Northern Ireland. However the delivery of this commitment is subject to appropriate funding.⁴⁰

7.3 Whilst it is noted that a step-down facility for women prisoners, nearing the end of their sentence, has been established at Hydebank Wood, the obligation to construct a separate custodial facility for women has not been realised and construction is yet to commence.⁴¹

7.4 The Commission advises the Department of Justice to publish details of the construction of a separate custodial facility for female prisoners in Northern Ireland and to

³⁹ National Preventative Mechanism ` Report on announced inspection of Ash House, Hydebank Wood Women’s Prison 18 – 22 February’ October 2013. 20 statutory bodies make up the UK National Preventive Mechanism of specific reference to Northern Ireland the Criminal Justice Inspector NI, the Independent Monitoring Board (NI), the Regulation and Quality Improvement Authority and the Northern Ireland Policing Board Independent Custody Visiting Scheme are included in the list of bodies.

⁴⁰ AQO 5401/11-15 Ms Michaela Boyle (SF - West Tyrone) 16/01/2014

AQO 6690/11-15 Ms Bronwyn McGahan (SF - Fermanagh and South Tyrone) 18/09/2014 In 2014 the then Minister updated the NI Assembly following approval of the Strategic Outline Case by the DFP. NI Prison Service officials were in the process of appointing an Integrated Design Team, to progress the project through the business case, exemplar design and procurement processes that would lead to the construction and handover of the new facility.

⁴¹ AQO 7610/11-15

identify within the strategy how the healthcare needs of women will be addressed.

Persons with disabilities

8.1 The strategy makes numerous references to persons with disabilities and it is noted that a preliminary Equality Screening, including a Disability Duties Assessment has been carried out. The UN Standard Minimum Rules for the Treatment of Prisoners make specific recommendations relating to prisoners with disabilities Rule 5 states:

“Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis”.⁴²

8.2 In developing the strategy it is important that full consideration is given to the state’s obligations under the UNCRPD. The Commission recently welcomed the enactment of the Mental Capacity Act (NI) 2016, this Act will have particular implications in the provision of healthcare to persons with disabilities and its implications require consideration in the context of the strategy.

8.3 The Commission advises the Department of Health and Department of Justice to consider how the strategy can contribute to the effective implementation of the Mental Capacity (NI) Act 2016.

Budget

9.1 The Commission notes that a proposed budget for implementation of the strategy has not been provided, that elements of strategy appear to be contingent upon the availability of additional funding and that no significant cost projections have been provided.⁴³ The Departments’ consultation paper emphasises the ‘extremely challenging financial climate’.

9.2 Whilst the Commission appreciates the challenging financial context the protection of human rights cannot be contingent upon adequate resourcing. The Commission notes that experience demonstrates that inadequate resourcing can lead to an undermining of protections for

⁴² UN General Assembly resolution 70/175, ‘United Nations Standard Minimum Rules for the Treatment of Prisoners (‘the Nelson Mandela Rules’), UN doc. A/RES/70/175, 8 January 2016, rule 5.2

⁴³ Implementation should follow within the 5 year lifespan of the Strategy subject to business case, necessary approvals and securing additional funding.

prisoners. For instance in its 2016 inspection of HM Maghaberry the Regulation and Quality Assurance mental health provision had deteriorated as a result of staff shortages.⁴⁴

9.3 The UN Committee on Economic, Social and Cultural Rights noted in General comment No. 3 States parties' obligations under the Covenant to dedicate "maximum available resources" to the fulfilment of economic, social and cultural rights.⁴⁵ In relation to healthcare in custody, the UN Human Rights Committee, in General comment No. 21 on Article 10 stated that:

"Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party".⁴⁶

9.4 In the case of *Dybeku v Albania* the ECt.HR ruled that:

"a lack of resources cannot in principle justify detention conditions which are so poor as to reach the threshold of severity for Article 3 to apply".⁴⁷

9.5 The Commission advises that the Department of Health and Department of Justice ensure that the maximum available resources are devoted to ensure the fulfilment of the right to health for those within the criminal justice system and to ensure that persons deprived of their liberty are never treated in an inhuman or degrading manner.

⁴⁴ Inspection report into conditions at Maghaberry 2016) Regulation and Quality Improvement Authority, 'Overview of initial findings of a report on an announced inspection of Maghaberry Prison, 4-15 January 2016', February 2016, available at:

http://www.rgia.org.uk/cms_resources/Maghaberry%20Prison%20report%20%28web%29%2017.02.16.pdf

⁴⁵ CESCR Committee, 'General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)', Fifth session, 1990, paras 9-10; The CESCR Chair noted in a 2012 letter that whilst adjustments may be required in time of financial crisis, policies must nevertheless be temporary, necessary and proportionate, non-discriminatory, and must "identify the minimum core content of rights or social protection floor", see Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights.

⁴⁶ Human Rights Committee, 'General comment No. 21: Article 10 (Human treatment of persons deprived of their liberty)', Forty-fourth session, 1992, para 4; See also, CESCR Committee, 'General comment No. 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)', Fifth session, 1990, paras 9-10

⁴⁷ *Dybeku v Albania* (App. No. 41153/06), 18 December 2007 para 50