



People who are imprisoned do not cease to be human beings, no matter how serious their crime. The Court which dealt with their case decreed that they should be deprived of their liberty, not their humanity.

*The Equality & Human Rights
Commission St Helena*

CONDITIONS OF DETENTION AT HMP JAMESTOWN 2018

THE EQUALITY & HUMAN RIGHTS
COMMISSION INQUIRY REPORT

1. Foreword

1.2 About St Helena

- 1.2.1 Saint Helena is a volcanic tropical island in the South Atlantic Ocean, 4,000 kilometres (2,500 mi) east of Rio de Janeiro and 1,950 kilometres (1,210 mi) west of the border between Namibia and Angola.
- 1.2.2 It is part of the British Overseas Territory of Saint Helena, Ascension and Tristan da Cunha and one of the most remote inhabited islands in the world. The 122 square km island, has a population of 4,534 (2016 census) mainly descended from people from Britain (settlers and soldiers), from liberated African slaves and imported Chinese labourers. The Island is probably most famous for having Napoleon exiled and imprisoned by the British. Its links with prison do not end there as more than 5,000 Boers taken prisoner during the Second Boer War, were detained here and many others.
- 1.2.3 The citizens of Saint Helena hold British Overseas Territories (BOT) citizenship. On 21st May 2002, full British citizenship was restored by the British Overseas Territories Act 2002.

1.3 The Prison – A brief history

- 1.3.1 The prison was built in c.1827 and is still in use today. The building remains largely unaltered despite being declared unsuitable for further use in the 1850s. Governor Gore Brown built a replacement at Rupert's in 1853. This was a model prison constructed mainly of timber and sent out from England in kit form. Construction was completed towards the end of 1854 and the prisoners were re-located. But the Rupert's Prison was short lived - in 1867 a military prisoner who was confined there burnt it to the ground, and the prisoners had to be moved back to the old prison. This was reported in The 'Blue Book' for 1867 with the following comment:

"With the present claims upon the Government I see but little hope of commencing a new jail for the next two or three years."

1.3.2 Over 150 years later the nearly 200-year-old prison remains in use. The prison does not conform to modern standards and various plans have been drawn up to relocate or build a new prison in various places around the island. During the course of this Inquiry another site for a new purpose-built prison was identified.

1.3.3 Issues with the current prison are many, and the cells have been a continual problem, in particular overcrowding, ventilation and natural light. Attempts have been made, over the years, to improve some of these issues, in particular the ventilation problems, however in 2009 the Overseas Territories Prison Advisor reported:

“The physical condition of the cells for adult male prisoners is unacceptable. There are 3 cells, each one able to hold up to 4 prisoners, but the cells have no sanitation facilities and no windows. Fresh air and natural light is negligible and I do not consider that the accommodation would withstand a challenge under Article 3 of the Human Rights Act 1998. (Article 7 of our Constitution). I believe that the cells need quickly to be taken out of use or significant changes made to them to make them habitable.”

1.3.4 Now, in 2018 we are still a long way from having a new prison and little seems to have been done, structurally, to improve the conditions. In the light of this, the three reports from the Overseas Territories Prison Advisor that the Commission had seen and over 50 contacts from prisoners past and present and their families received by the Commission during the financial year 2017/18 the Commission called an Inquiry.

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2 Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPT	European Committee on the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention Against Torture
OTPA	Overseas Territories Prison Advisor
PVC	Prison Visiting Committee
SHG	St Helena Government
SMR	United Nations Standard Minimum Rules for Prisons
The Commission	Equality & Human Rights Commission St Helena
The Constitution	The Constitution of St Helena, Ascension and Tristan da Cunha
UK	United Kingdom
UKG	United Kingdom Government
UN	United Nations

3 Executive Summary

- 3.1.1 It is not the role of the Equality and Human Rights Commission (the Commission) nor is it its intention to hold any individual responsible for the current physical conditions in which arrested persons, remand and convicted prisoners are held and the prison staff work.
- 3.1.2 This Inquiry was established following a series of complaints to the Commission from prisoners both past and present and in the light of the three reports written by the Overseas Territories Prison Advisor to the South Atlantic (OTPA) that the Commission had then seen.
- 3.1.3 These reports and complaints alleged potential human rights abuses that the Commission have a statutory duty to investigate see section 8.1 below.
- 3.1.4 The Commission found that the staff, staff prisoner relations, medical service and basic education all met or exceeded the standards defined by United Nations Standard Minimum Rules for Prisons (SMR) and the human rights instruments extended to St Helena. The Commission has have nothing but respect and regard for how the people involved have created such success in very difficult surroundings.
- 3.1.5 The Commission found many aspects of the prison building fail to meet the standards set by the SMR and the human rights instruments extended to St Helena. In particular, SHG is failing in its positive obligation to protect the right to life protected *inter alia* under Clause 6 of The Constitution of St Helena, Ascension and Tristan da Cunha (The Constitution), The European Convention on Human Rights (ECHR) Article 2 and the International Covenant on Civil and Political Rights (ICCPR) Article 6. A full list of the findings appears below.
- 3.1.6 The Commission also found issues that would engage other rights of prisoners under the instruments listed above and the United Nations Convention Against Torture (CAT), the International Covenant of Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

- 3.1.7 This report relates to Conditions in the prison during the period February – July 2018. Subsequent updates are footnoted.
- 3.1.8 As early as the 1850's the prison was recognised as being unfit for purpose. While running water, flush toilets and electricity have been added over the years the prison structurally is basically the same 1820's building and remains unfit for purpose.
- 3.1.9 In his (2010) report the OTPA states, "it remains my view that the existing prison is insecure, unsafe, and breaches human rights legislation (recently enshrined into the Island's Constitution) and is consequently not fit for purpose. I believe that Saint Helena Government is highly vulnerable to legal challenge by any of the prison's occupants or their representatives, and that the cost of a successful challenge would be significant."¹
- 3.1.10 The Commission understands that at some time between 2013 and 2015, along with the decision to relocate the prison to the Sundale House site, a decision was taken not to spend any significant sums on the infrastructure of the current prison.
- 3.1.11 With a target project period of two years it made some sense not to spend unnecessary money. However, the decision to abandon that plan did not trigger an easing of the policy on spending money on the existing prison.
- 3.1.12 With the future plans for the prison still in the early stages of development the Commission believes the prisoners will remain housed in unacceptable accommodation for several years to come.
- 3.1.13 Some parts of the Prison's Ordinance are incompatible with Human Rights standards and legislation. As The Commission found no evidence that the clauses in question are being used and as the Constitution would override these clauses, the Commission will not report on them here, despite the Ordinance being included in the terms of reference for the Inquiry. The Commission will make recommendations for changes to the Ordinance through the appropriate channel.

¹Overseas Territories Prison Advisor Report 2010, Para 1.4

4 The Commission's main findings

Finding 1 – St Helena Government and its Senior Officials have demonstrably known since 2009 that the prison is a serious risk to life due to the realistic danger of fire. SHG is failing in its positive obligation to protect the right to life. Under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6.

Finding 2 – The Station Officer reported in 2009 that the lack of ventilation in the day room would have an adverse effect in a fire. There has been no evidence that anything has been done to address this. The Commission has been told that the situation has been made worse due to the extension at the rear of the nearby hotel. This situation is very unlikely to withstand a challenge under the Constitution as SHG is knowingly housing prisoners in an unsafe environment and any serious fire is likely to result in loss of life. This engages ECHR Article 2 and ICCPR Article 6.

Finding 3 - The Station Officer's recommendation to install a fire suppression system has not been followed, the Commission has been unable to establish why. SHG is failing in its positive obligation to protect the right to life. Under Clause 6 of The Constitution, ECHR Article 2 and ICCPR Article 6.

Finding 4- The Commission found that some fire prevention measures are in place. In recent weeks, prisoners have been stopped from smoking cigarettes and e-cigarettes have been provided. The chargers for these e-cigarettes are controlled. Prisoners have not been allowed access to lighters or matches for several years. The Commission welcomes this initiative.

Finding 5– The more information that responsible bodies have about the risks of harm to life, the greater the obligation to take action to prevent those risks from occurring.² A key issue in any legal action or inquiry will be the extent to which warnings have been raised in the past, and the steps that were taken in response to those warnings. In the Commission's considered view many warnings have been given but few positive and productive steps have been taken to remedy the situation in the current prison and protect those people living and working in the prison now. This engages the right to life and may amount to a violation of the procedural obligations protected by under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6.

² Rezmiveş and Others v. Romania 25 April 2017 (pilot judgment 2)

Finding 6 – The lack of regular fire drills and practice evacuations coupled with the knowledge that there is a serious risk of fire and a resulting loss of life is a breach of SHG's obligation to protect the lives of those in its care and engages Clause 6 of the Constitution, ECHR Article 2 rights and ICCPR Article 6.

Finding 7 – The Commission found that both prisoners and staff feel unsafe due to the risks of fire. The feeling of safety is almost as important as being safe. At best the lack of peace of mind may have a bearing on the mental health of the prisoner or staff member. Genuinely living in fear and anxiety every day may have long term serious repercussions and is inhumane. This, depending on the length of time and severity of the suffering. This engages ICESCR Article 12, The Constitution Clause 7, and their European and international rights as outlined in Part 2 Section 13.4.

Finding 8 – The loss of the use of both Ogborn House and Sundale House leaves the prison with no secure muster point and no temporary accommodation should the prison be damaged by fire or rock fall. This lack of consideration along with the lack of a Health and Safety policy may indicate to a court that the prison is a low priority.

Finding 9 – A Cell Temperature Guidance Note was written in April 2017 but staff and prisoners were unaware of the document and the thermometers needed to follow the guidance were not purchased. No evidence was provided of any attempts to purchase thermometers. This engages ICCPR Article 7 and Article 10, ECHR Article 3 and Clause 11 of the Constitution and potentially the right to life.

Finding 10– The Commission heard that complaints about high temperatures were being ignored and received documentary evidence that such complaints had been made. Failure to address the complaints about temperature would in the Commissions view meet the threshold for a successful ECHR Article 3 challenge. See *Slyusarev v Russia* 20.04.2010³.

Prisoners have the right to be treated with humanity and with respect for the inherent dignity of the human person this engages Clause 11 of the Constitution. ICCPR Article 7 and Article 10, ECHR Article 3 and ICESPR Article 12. (For a discussion on the rights involved in complaints procedures please see Finding 37 below)

Finding 11– The Commission believes that the practice of locking sick prisoners in their cells, without adequate light, ventilation, in cell water or sanitation is

³ Available at <https://www.legal-tools.org/doc/ccaf82/pdf/>

unacceptable. In the Commission's considered opinion it amounts to a breach of ICESCR Article 12 (the right to the highest attainable standard of healthcare) and engages Clause 11 of the Constitution, ECHR Article 3 and Article, ICCPR Article 7 and CAT.

Finding 12 – Death or illness as a result of heat stroke are a risk in the prison; high temperatures and high humidity combined with contra- indicated factors (some types of mental health medication, diabetes and age) are all factors which come together in the prison. Should there be a challenge with regard to cell temperatures and ventilation SHG would have difficulty with some lines of defence. The prisoners, the OPA, the PVC and The Commission, have raised these issues and this is documented. This engages Clause 11 of the Constitution, ECHR Article 3 and Article, ICCPR Article 7 and CAT.

Finding 13 – Without accurate measurements no one can say whether the accommodation in the men's section is too hot. But the indications are that it is hot, the prison houses older men, with mental health and other contra-indicated medical conditions (see finding 12 above). The threshold for ECHR Article 3 is low⁴ and no practical attempt has been made to reduce temperatures or increase ventilation. This engages Clause 11 of the Constitution, ECHR Article 3 and Article, ICCPR Article 7 and CAT

Finding 14 –A child under the age of 16 was held in the prison for two weeks in 2015. He was held in the remand unit alone. He had contact with prison officers and was allowed visits. Some of the convicted prisoners spoke to him through the bars at the window of the remand unit. The UK has reserved the right under ICCPR (Art 10) for the separation of juvenile prisoners/detainees where there is a lack of suitable facilities but the detention of children is unacceptable and a breach of the Constitutional right afforded by Clause 11(3) & (4) and engages Articles 37 & 40 of the CRC.

Finding 15 – Most male prisoners on remand chose to go into main population because they prefer company. Remand prisoners have a right to segregation from convicted prisoners. It is argued by officials that this right is not protected in the UK so

⁴ European Court of Human Rights. ECHR 2010/15 Case of Slyusarev v. Russia, 20 April 2010, no. 60333/00 (third section)

it is alright to not protect it on St Helena. In The Commission's considered opinion the right to segregation for remand prisoners is protected by Clause 11(4) of the Constitution, provided there is no female prisoner. This right is also protected by ECHR Article 3, and would very likely result in a successful challenge if a remand prisoner wished to assert their right to segregation.

Finding 16 – Female prisoners cannot be wholly separated from male prisoners, as they can communicate with the prisoners in the West Wing and those using the workshop. They are in the care of male staff and at times this is a male officer working alone. Both the female prisoners and the male staff expressed concerns about this. There is a significant risk to male staff and they are concerned that they could be accused of inappropriate behaviour and would have no witnesses to protect them. This engages the Clause 11 of the Constitution rights of dignity and humane treatment; however, the Clause details the protections for un-convicted or juvenile prisoners but it is silent on the segregation of women prisoners. This engages CEDAW Article 1.

Finding 17 – Cells 1-3 in the men's section are too small to be occupied by more than two prisoners and would be unlikely to withstand a challenge under Clause 11 of the Constitution / ECHR Article 3 with three or more prisoners occupying them, despite the time out of the cell. The longer a prisoner serves in too small a cell the greater the ECtHR deems the degradation to be.

The lack of space, light, ventilation and sanitation taken together with the length of sentence some of the prisoners are now serving in prison engages ECHR Article 8 and CAT Article 16

Finding 18 – The Commission accepts that the Prison Management are making efforts to mitigate the cell conditions by allowing the men out of their cells from 6.30am to 10pm each day (unless they are sick or on basic privileges). However, the cells in the men's section are too small for four men to sleep in comfortably. They are very hot, there is no ventilation with the fans off and excessive noise with the fans on. The more people in the cell the higher the temperature. Sleep deprivation may be regarded by the Courts as inhumane treatment depending on the duration of the treatment and any long term ill effects. This engages Clause 11 of the Constitution, ECHR Article 3 ICCPR Article 7 and CAT Article 1

Finding 19 – In 2009 the OTPA recommended the removal of the concrete plinth being used as the base for the bed in the women's cell. The recommendation made

was that it should be replaced with a wooden bed. It is still in use and is the only bed available to women prisoners. Male prisoners have wooden bunks. This engages CEDAW Article 1, EHRC Article 14 and ICESCR Article 11.

Finding 20 – In 2009 the OTPA said he considered that the female unit accommodation should not be used for a woman with over three months to serve in prison. In the Commission's considered opinion that is an arbitrary time period. This is a ruling only a judge can make. Despite this, women have served sentences in excess of 3 months. This engages CEDAW Article 1, EHRC Article 14 and ICESCR Article 11.

Finding 21 - The concrete plinth on which female, remand prisoners and children have slept is degrading. Culturally the concrete plinth has two connotations. First of all, the practice on St Helena is for respects to be paid on the death of someone, this is done at the mortuary where the body is in a coffin on a similar plinth. Secondly it is associated with the Island's slave history, some of the island's more traditional people still feel a certain amount of shame at being descended from slaves and been made to sleep on concrete like a slave is an unacceptable insult.

This engages Clause 11 of the Constitution and ECHR Article 3 and CEDAW Article 1 for prisoners who have served a sentence since CEDAW was extended in March 2017

Finding 22 – Women prisoners have less freedom of movement within the prison than male prisoners in the same category. Deprivation of liberty must be proportionate and not affect one group more than another. A woman sentenced to prison experiences an extra level of deprivation of liberty as she cannot leave the women's section (two small rooms) at will unlike the male prisoners. This is not proportionate, all women prisoners in effect get treated more harshly than the men; it is disproportionate and discriminatory. This engages The Constitution Clauses 11 and 21, CEDAW Article 1 and ECHR Article 5.

Finding 23 - Women prisoners have no access to TV for news and current affairs. The men in both sections do; this is discriminatory. This engages Clause 21 of the Constitution ECHR Article 14 and CEDAW Article 1 & 15

Finding 24 – Arrested persons should not be held on prison premises. This engages Clause 11 of the Constitution and ECHR Article 3.

Finding 25 – The failure to provide food to arrested persons is unacceptable. This engages ICESCR Article 11 which provides for an adequate standard of living; this includes the right to food. Destitution engages ECHR Article 3 which is an absolute right.

Finding 26 - The 2 police cells are a breach of the arrested person's right to be kept separately from convicted prisoners, Clause 11 (4) of the Constitution. All those held in those cells, who gave evidence, reported being spoken to through the bars, questioned; some reported feeling intimidated or ashamed. Clause 11 (1) of the Constitution, ECHR Article 3 and ICCPR Article 10 are engaged as SHG is not fulfilling its positive obligation to protect the dignity of the arrested persons.

Finding 27– While some improvements have been made since the OTPA's 2009 report there is still little privacy for arrested prisoners to use the toilet. Prison staff both male and female and other prisoners from the yard and day room can view the arrestee. Engages the Right to Privacy Clause 13, ECHR Article 8 and ICCPR Article 17

Finding 28 – The condition of the police cells is unacceptable, their location within the prison equally so. The disturbance to the convicted and remand prisoners by those intoxicated by excess alcohol shouting all night engages The Constitution Clause 13, ECHR Article 8 and ICCPR Article 17

Finding 29 - Young arrested persons (sometimes under 18 years) old are placed in contact with convicted prisoners. (ECHR Article 5). They appear to be forgotten by the police, on at least one occasion remaining without food for 7 hours engaging Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10.

Finding 30 – The limited number of toilets (2) available for 12 prisoners, the very public and insanitary toilets in the police cells and time taken to respond to buzzers during the night and at times of illness are, in the Commission's considered opinion, an affront to the dignity of the person. This engages Clause 11 of the Constitution, ECHR Article 3, ICCPR Article 10 and ICESCR Articles 11 & 12.

Finding 31 – The toilets in the police cells are unhygienic and inadequately screened from both the rest of the cell and the outside areas. This engages Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10 and ICESCR Article 11

Finding 32 – The Commission notes that work was progressed with the dietician to develop healthy and nutritious menus. The dietician has now left and is not to be

replaced. The Commission remains concerned that the timing of meals and high level of carbohydrates served will have negative outcomes for longer term prisoners who are diabetic. This engages Clause 11 of the Constitution, ECHR Article 3, ICCPR Article 10 and ICESCR Article 12 but those prisoners serving very long sentences the effect may engage the right to life.

Finding 33 – The health service in the prison is excellent and should be held up as one of the prison’s successes. It is an exemplary service. It is mandated to achieve a prison health care service equivalent to that available to St Helena as a whole and it does.

However, the Commission is concerned that this service, is at times of staff shortage within the Health Service, withdrawn from the prison albeit to meet the needs of the general population who have a right to equal access to healthcare too. This practice is discriminatory. Mental health is also to be considered as outlined in 13.2.3 failure to protect those known to be at risk of suicide is a breach of ECHR Article 2.

Finding 34 –The lack of exercise opportunities available for prisoners is a risk to their health and mental wellbeing. Category A and B prisoners have no outdoor exercise; female prisoners can only tend the church garden but that offers little real physical exercise. This may infringe their rights under Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10, ICESCR Article 12 and ECHR Article 8, but those prisoners serving very long sentences the effect may engage the right to life.

Finding 35– There is a lack of provision for visitors who are elderly or disabled and a lack of facilities for children. The loss of the Ogborn House facility has exacerbated the situation. This is a potential challenge under Clause 13 of the Constitution ECHR Article 8, ICCPR Article 17. Children have a right of access to their parents this right is protected by CRC Articles 3, 8 and 9.

Finding 36 – The positive reinforcement of the work ethic that the farm offered has been diminished by the change in funding practice The Prisoners no longer benefit from the proceeds of their work, funds are returned to SHG. This potentially reduces the effects of the rehabilitation process. Anything that reduces the effects of rehabilitation increases the chances of recidivism thereby potentially compromising the rights of future victims. This engages ICCPR Article 10(3)

Finding 37 – The Commission is also concerned at while agriculture and carpentry are useful trades they are not for everyone. Computer skills like CAD and Databases

may be more beneficial for some and for those with physical or sensory disabilities. This engages The Constitution Clause 21 and ICESCR Article 6

Finding 38 – More needs to be done to provide work for the prisoners who cannot go to the farm and to give women prisoner's work of value. Lack of such work is detrimental to the dignity of the individual and is indirect discrimination towards female prisoners who have the same rights as men to work but their opportunities are limited by a combination of policy and practice and limited staff. This engages Clause 11 and 21 of The Constitution, ECHR Article 3, ICCPR Article 10, ICESCR Article 6 and Article 1 of CEDAW.

Finding 39 – The Incentive and Earned Privileges scheme is a motivational tool to encourage engagement with the prison regime. However, for those without personal funds or families to support them it fails in two ways.

1. The maximum a prisoner can earn per week is £8.25. This does not cover the prisoner's basic expenses; the prison does not provide more than 1 litre of milk per prisoner per week, deodorant or an alternative for those allergic to soap. A phone card is a minimum of £5.
2. The incentive for those prisoners with no additional funds to achieve enhanced status is reduced.

There is a potential for this to be divisive and have a detrimental effect on the poorer prisoners or those whose families cannot help them. The State has a duty to ensure the prisoner's basic needs are met. This engages Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10

Finding 40 – The prison achieves remarkable success with basic literacy and numeracy education. Prisoners are encouraged to carry on learning outside prison and are supported in doing so.

Work has been carried out recently in the basement to make better use of the space for the library and IT area.

Finding 41 – The Inquiry found that without exception the prisoners felt management did not listen to their complaints, the Commission considers that the complaints handling and monitoring procedure is unsatisfactory. This engages Clause 11 of the Constitution. ICESCR is also engaged because it protects the right to have a complaint heard and makes the monitoring of complaints is a core obligation on States.

Finding 42 – The lack of an anti-bullying policy is a failure to protect prisoners and engages Clause 11 (1) of the Constitution and ECHR Article 3.

Finding 43 - The Commission is concerned that staff expressed the view that they are under resourced, undervalued and under pressure. Many members of staff said they felt like second class citizens compared to their colleagues in the police. They gave examples to illustrate this which cannot be detailed in this report due to the need to protect the anonymity of witnesses.

Finding 44 –The requirement for the prison staff to operate the out of hours call centre is an unfair burden on the two people on duty. If staff are distracted by non-prison tasks they cannot adequately protect the prisoners or themselves in an emergency. Not only does it mean staff may be unable to get the help they require in an emergency at the prison but it is also putting the rights of the public at risk who may themselves need help in an emergency of their own. This engages the right to life and may amount to a violation of the procedural obligations protected by under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6

Finding 45– Women prisoners and potentially prisoners with disabilities are discriminated against by the prison regime. This engages ECHR Article 14, ICCPR Article 26 and items 20.1.2 – 20.1.8 female prisoners are also protected by Article 1 of CEDAW.

Finding 46 – There is a dichotomy between the role of the police in investigating crime, dealing with victims and bringing perpetrators to justice and the role of prisons in the rehabilitation and care of offenders. This causes specific problems in the decisions around release on temporary licence (ROTL) and risk management. The Commission believes that the prison should be a separate entity from the police. It is a potential conflict of interests. There should be political oversight and responsibility for the prison. The prison holds almost exclusively St Helenians and they have the right to political oversight. This is the opinion not only of The Commission but that of the United Nations⁵ and UKG⁶

⁵ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <https://www.refworld.org/docid/3ae6b36e8.html> [accessed 27 November 2018]

⁶ Coyle – A Human Rights Approach to Prison Management
http://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_2nd_ed_eng_8.pdf

Finding 47 – The current Prison Visiting Committee (PVC) as a body, has insufficient powers under the current Prisons Ordinance to effectively monitor the prison.

5 Recommendations

5.1 Introduction

- 5.1.1 The recommendations listed below have been categorised according to the urgency of the action required and allocated to the responsible Official/Directorate.
- 5.1.2 The Commission will follow up at toward the end of each deadline to assess progress.
- 5.1.3 Recommendation 1 stands alone as this is the only satisfactory, sustainable long term solution to the issues raised.

Recommendation 1 –The current prison to be replaced with a new, fit for purpose facility which meets international human rights standards and fire safety standards. SHG should secure adequate funding without delay (Prison Project Board)

5.2 High priority – to be completed by 1st June 2019

Recommendation 12 – Children must not be held in the current prison; it is not suitable for anyone under 18. (Police Directorate)

Recommendation 2 – A senior Fire Station Officer to review the effects of the lack of ventilation in the prison (particularly in the main day room) and advise on any remedial action to mitigate the situation until the move to the new prison. (Police Directorate)

Recommendation 3 - Desk top and actual fire drills be carried out using different scenarios to identify potential problems and solutions. Fire drills including a full evacuation be carried out as recommended by the Station Officer. All new prisoners are briefed on procedures on admission and prisoners moved to the West Wing be briefed on procedures there. (Police Directorate)

Recommendation 4 – The role of emergency overnight contact must be removed from the prison staff. (Police Directorate)

Recommendation 5 – Arrested persons must be properly searched by the police before they are placed in the custody cells and any means of starting a fire or other potentially dangerous items must be removed. (Police Directorate)

Recommendation 6 - The storage and allocation of keys be reviewed to ensure it meets both the security need and the evacuation needs. (Prison Manager)

Recommendation 7 – Satisfactory longer term solutions must be identified for use as potential evacuation facilities. (Police Directorate)

Recommendation 8 – Good quality, accurate thermometers must be purchased and the Cell Temperature Guidance Note followed at least until a satisfactory solution is found to the underlying ventilation/heat issues. (Prison Manager)

Recommendation 9 – Sick prisoners should not be locked in cells without access to water, efficient ventilation and light unless the prisoner is a real and imminent danger to others. (Prison Manager)

Recommendation 10 – If there are to be rules about when the fans switched on they must be clear and consistent so that the prisoners and the staff understand them and follow them. (Prison Manager)

Recommendation 15 - maximisation of time out of cells should continue both in the current prison and in the new facility. (Police Directorate)

Recommendation 17 – The concrete plinth should be removed or a wooden bed built around it. (Police Directorate)

Recommendation 18 – the female unit accommodation should not be used until the bed is replaced and women have the same freedom of movement as their male counterparts. (Police Directorate)

Recommendation 22– The Police must take full responsibility for the management of their Arrestees in their cells. Where a person under 18 or a vulnerable adult is arrested and placed in either of the cells an officer or responsible adult must be present at all times. (Police Directorate)

Recommendation 25– The Prison Nurse's role not only be continued but that the time allocated to the prison be protected. The prison population is made up of some of the most vulnerable members of our society and their mental and physical health and wellbeing plays a fundamental role in their chances of successful rehabilitation. Reducing the risk of re-offending protects society as a whole. (Health Directorate)

Recommendation 31– A fit for purpose health and safety policy must be developed within the next 3 months. All staff and prisoners to be briefed on its operation and the policy included in the Prisoner Induction Pack. (Police Directorate)

Recommendation 34 - An Anti-Bullying Policy be implemented within 3 months, briefed to all staff and prisoners and included in the Prisoner Induction Pack. (Police Directorate)

5.3 Medium priority to be complete by 1st December 2019

Recommendation 11 – Until such time as the new facility is available fans or air conditioning must be available and the temperature guidelines followed. Prisoners must have access to their personal space outside of working hours for private time, study and recreation. The space should be ventilated and lit and not be damaging to their wellbeing. (Prison Manager)

Recommendation 16 –The issues of light and ventilation must be addressed within the cells both in the men’s section and the West Wing. (Police Directorate)

Recommendation 23– The toilets in the police cells must be screened adequately from view, lids should be provided to prevent the spread of germs. (Police Directorate)

Recommendation 24– A healthier diet and more regular eating patterns must be established and the budget for food should be on a per prisoner per day basis, calculated on the requirements of the prison demographic. (Prison Manager)

Recommendation 26– The Psychologist’s role must continue and a replacement psychologist should be appointed within the next six months. (Health Directorate)

Recommendation 33– The Complaints procedure to be reviewed and a monitoring mechanism implemented **in line with SMR Rule 57**. (Prison Manager)

Recommendation 35 –The Commission recommends that staffing levels be increased to three at night and that where possible these shifts should include a Senior Officer. This is the minimum staffing level required for the proper management of the restraint procedures. (Police Directorate)

5.4 Long term actions to be achieved within 2 years.

Recommendation 14 – The Constitution be amended to cover the segregation of women detainees. Male staff should not deal with a female prisoner alone and vice versa. (Elected Members)

Recommendation 29 – The prison to set up a social enterprise for projects that produce funds (farm, workshop etc.). Income produced to be used to develop the amenities of the prison so the prisoners all benefit from their work. (Prison Manager)

Recommendation 32– Distance learning opportunities for prisoners and staff to be explored with the Community College staff. (Prison Manager)

Recommendation 37– The Prison to be a stand-alone directorate of SHG falling under the relevant Council Committee. (Elected Members)

Recommendation 38 – The PVC to be replaced by an NPM with the level of responsibility prescribed in OPCAT and OPCAT to be extended to ST Helena. (Elected Members)

5.5 Recommendations for the new facility. (For project group)

Recommendation 13 – The new Facility must meet the Constitutional requirement for segregation and the requirement of ECHR & ICCPR regardless of UK practice

Recommendation 19 – The new facility should provide suitable accommodation activities, work, education and exercise for female and disabled prisoners

Recommendation 20 – The new facility should provide for equal access and equal treatment of female prisoners

Recommendation 21– If the new facility is to also be the site for the Police cells, they must be separate from the main prison and managed by the police not the prison. They must be in the purview of the custody sergeant at all times.

Recommendation 27– The new prison must have adequate space for all prisoners to exercise properly outdoors and afford equal opportunities for women prisoners

Recommendation 28– The new prison must have adequate space for prisoners to receive visits from their family whatever their age or ability. Suitable toilets and amenities should be provided.

Recommendation 30– The new prison must have adequate facilities for the education and skills development of all prisoners whatever their age or ability

Recommendation 37 – The Plans for the new facility to be reviewed by persons with disabilities, the Occupational Therapists and someone with expertise in women's prisons to ensure that the new prison meets the needs of all potential users.

6 Why are Prisoners' Rights Important?

- 6.1.1 States have a duty to promote and protect the rights of all members of society. That means everyone has an equal right to life, safety and property for example.
- 6.1.2 When an individual commits a crime they are infringing the rights of the victim and it is then important that the perpetrator is dealt with.

The United Nations Minimum Standard for Prisons Rules 4 and 5

Rule 4

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

2. 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.

- 6.1.3 The way the perpetrator is dealt with must be **reasonable** and **proportionate** and for more serious crimes this is usually depriving the offender of the right to liberty.
- 6.1.4 The European Court of Human Rights (ECtHR) has made it clear that just because prisoners have been deprived of their liberty, it doesn't follow that they forfeit their other rights under the ECHR.
- 6.1.5 In fact, research is demonstrating that respecting prisoners' rights improves the chances of them not committing further crimes on their release. This not only improves the prisoner's access to their rights but also protects everyone in the community from the threat of further crime. What is good for the prisoners is good for us all. ⁷

7 About this Report

7.1 Structure

- 7.1.1 The body of this report falls into four sections
- 7.1.2 **Part 1** explains the Commission's legal standing and that of this Inquiry.
- 7.1.3 **Part 2** explains the various human rights instruments, which apply in the case of the prison, a discussion of their application and the latest jurisprudence (court decisions).

⁷ See http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Prevention_of_Recidivism_and_Social_Reintegration_12-55107_Ebook.pdf

- 7.1.4 **Part 3** is a detailed discourse on the evidence collected during the Inquiry. Where appropriate it is prefaced by the text of the relevant United Nations Minimum Standard rules (often referred to as the Nelson Mandela Rules)⁸. These rules are not directly justiciable, they are not laws that can be tested in court, but would form part of the criteria a Court would be asked to consider when hearing a case either under the Constitution of St Helena, Ascension Island & Tristan da Cunha 2009 (the Constitution) or in deed the European Court of Human Rights.
- 7.1.5 The rules are not intended to describe in detail a model system of prison institutions. They represent, as a whole, the minimum conditions that are accepted as suitable by the United Nations.⁹ They are generally accepted as being good principles and practice in the treatment of prisoners and prison management.
- 7.1.6 Section 3 outlines where the prison meets these standards as well as where it fails.
- 7.1.7 The Inquiry has identified potential risks of legal challenge to Saint Helena Government (SHG) and by extension to the United Kingdom Government (UKG).
- 7.1.8 Part 3 also includes recommendations for changes to the current prison in order to mitigate some of the risks identified on a short-term basis until the new prison is in operation. Recommendations have also been made in regard to the new prison to assist in its planning and development.

7.2 Definitions in this report

- 7.2.1 The word 'prisoner' is used to denote past and present inmates, those on remand and arrested persons being held in the police cells, unless their status has a specific bearing on the context.
- 7.2.2 Likewise, 'staff', official or officer refer to past and present post holders

⁸General Assembly resolution 70/175, annex, adopted on 17 December 2015.

⁹ Ibid Preliminary Observation 1& 2

7.3 Note on the ECHR and The Constitution

- 7.3.1 The Constitution would be the first port of call for a prisoner wishing to challenge their treatment or conditions of detention in the prison if they were not covered by local Ordinance.
- 7.3.2 The Constitution has not been tested in the Supreme Court of St Helena in respect of the prison, so there is a lack of legal precedent available on which to base a challenge.
- 7.3.3 In order to understand how human rights may apply, the discussions below are based on the European Court of Human Rights (ECtHR) decisions as these would be the arguments placed before the Supreme Court on the Island.
- 7.3.4 The Chief Justice would take ECtHR decisions into account in making decisions here on island.
- 7.3.5 In order not be repetitive where an ECHR Article is discussed it implies also that similar arguments and findings would apply under the Constitution in the Courts on Island.

Part 1: Background

It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens but its lowest ones¹⁰

8 Legal Background

8.1 Investigatory Powers of The Commission

8.1.1 The Commission is established by the Equality and Human Rights Ordinance 2015¹¹.

8.1.2 Section 15 of this Ordinance allows The Commission to conduct an Inquiry into a matter relating to any of its duties. The Inquiry must be carried out as detailed in procedures set out in Schedule 2 of the Ordinance, which empowers The Commission to conduct inquiries and to compel evidence.¹²

¹⁰ Long Walk to Freedom. Mandela, N. (1994) London: Little Brown

¹¹ COMMISSION FOR EQUALITY AND HUMAN RIGHTS ORDINANCE, 2015, Ordinance 11 of 2015 In force 1 August 2015 (L.N. 21/2015) No amendments to 1 November 2017 available at <http://www.sainthelena.gov.sh/wp-content/uploads/2017/11/Commission-for-Equality-etc-Ordinance.pdf>

¹² Ibid Schedule 2

- 8.1.3 The Commission promotes and protects those human rights to which the United Kingdom (UK) is legally committed and which are extended to St Helena, some of which are enshrined in The Constitution of St Helena, Ascension Island and Tristan da Cunha¹³. It does so in full conformity with the United Nations (UN) Principles relating to the Status of National Institutions (the Paris Principles).¹⁴
- 8.1.4 The findings and recommendations in this report are presented in line with The Commission's statutory duty to review the adequacy and effectiveness of law and practice relating to the protection of human rights in St Helena¹⁵ and in particular sections 5, 10 and 15 of the 2015 Ordinance.

8.2 Terms of Reference (ToR)

- 8.2.1 The full ToR of the Inquiry were issued to everyone who was put on notice to give evidence to the Inquiry, circulated to the media and published on the Commission's website and on its Facebook page. There were no questions or objections to the ToR.
- 8.2.2 A full copy can be found annexed to printed copies of this document or can be found at <http://humanrightssthelena.org/torforprisoninquiry20180315.pdf>

9 Methodology

9.1 Areas of Investigation

- 9.1.1 The Commission examined the protection of the human rights of prisoners, with a particular focus on their conditions of detention including, *inter alia*:
1. the physical infrastructure of the building;
 2. the size and conditions of cells;

¹³The St Helena, Ascension and Tristan da Cunha Constitution Order 2009.

¹⁴A/RES/48/134, 'UN General Assembly Resolution: National Institutions for the Promotion and Protection of Human Rights', 4 March 1994.

¹⁵ COMMISSION FOR EQUALITY AND HUMAN RIGHTS ORDINANCE, 2015 Section 5

3. sanitisation;
4. temperature control and ventilation;
5. access to food and water;
6. access to sanitation, hygiene, medical treatment; and
7. protection from violence.

9.1.2 The conditions of detention in the prison were assessed against relevant human rights standards, including *inter alia*:

The European Convention on Human Rights¹⁶

- Article 2 – the right to life;
- Article 3 – the prohibition of torture, inhuman and degrading treatment or punishment;
- Article 8 – the right to respect of private and family life;
- Article 14 – the prohibition on discrimination.
- The Constitution¹⁷, Part 2 Fundamental Rights and Freedoms of the Individual, with a specific focus on Clause 11 – Protection of right of prisoners to humane treatment.

9.1.3 In addition, The Commission considered the relevant international standards that apply to St Helena, by virtue of ratification by the United Kingdom Government and their further extension to the jurisdiction.

9.1.4 Such standards include, the United Nations Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) any relevant instrument of the Council of Europe.

9.1.5 A full discussion of the application of these instruments and how they may be considered in St Helena is set out in Part 2 of this report.

9.2 Evidence Gathering

9.2.1 Members of The Commission visited the prison and were given access to all areas.

¹⁶Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

¹⁷The St Helena, Ascension and Tristan da Cunha Constitution Order 2009.

- 9.2.2 Copies of reports, policies, prisoner complaints and other relevant documentation were requested from the officials on Notice both here and overseas.
- 9.2.3 With the exception of the Foreign and Commonwealth Office representative who communicated by email all the above also gave oral evidence to the Inquiry.
- 9.2.4 The Inquiry was advertised in the press and on radio inviting those who wished to give evidence. The prison staff and current inmates were invited personally but not compelled.
- 9.2.5 For the purpose of the Inquiry the Commission considered both documentary and oral evidence from relevant persons, in accordance with the procedural requirements set out in Schedule 2 Clause 8 and 9 of the 2015 Ordinance.
- 9.2.6 A critical aspect of the fieldwork was access to prisoners and staff at the prison for interview. The Commission is grateful to those that contributed for their time, honesty and genuinely balanced views.
- 9.2.7 Access to all parts of the prison was also freely given and again our thanks go to both the prison management and staff for their cooperation.
- 9.2.8 The Commission sought and received information from the following:
 1. the United Kingdom Foreign and Commonwealth Office;
 2. the Office of the Governor of St Helena;
 3. the Police Directorate of the St Helena Government (including Her Majesty's Prison Service; Investigations, Public Protection and Probation Teams);
 4. the Prison Visiting Committee, St Helena;
 5. the Safeguarding Directorate of St Helena Government;
 6. the Office of the Attorney General of St Helena (for information only); and
 7. the Health Directorate of St Helena Government.

9.3 Representations

- 9.3.1 The Commission, subject to Schedule 2 Clause 5, of the 2015 Ordinance made arrangements for giving persons an opportunity to make representations in relation to its Inquiry. This included personal invitations and media adverts.
- 9.3.2 Visits were made to homes or other locations, as requested, to meet with ex-prisoners, their family members and those who have previously worked in or visited the prison.
- 9.3.3 The Commission has taken and will continue to take all reasonable steps to protect those who gave evidence including providing anonymity.

9.4 Reporting and recommendations

- 9.4.1 In compliance with the 2015 Ordinance, before completing its Inquiry report the Commission provided public authorities on Notice (as listed in 3 above) and any specified or identifiable person with a draft of this report, inclusive of its findings. They had twenty-eight days to make written representations about the draft and the Commission considered the representations made.
- 9.4.2 Copies of this final report including recommendations will be submitted to St Helena Government (SHG), the United Kingdom Government (UKG), The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment(CPT) and the United Nations Committee Against Torture (CAT), pursuant to Commission's functions as a National Human Rights Institution operating in accordance with the provision of the United Nations General Assembly resolution 48/134 (the Paris Principles).

10 The Case for an Inquiry

10.1 History

- 10.1.1 The Commission was aware of the prison's history as outlined in the forward (section1.2). The prison was declared unfit for use over 150 years ago and remains in use today.

10.2 Reports & complaints

10.2.1 Over the last decade various reports have been written on the state of the prison with those of the Overseas Territories' Prison Advisor and a Senior Fire Officer suggesting that human rights were not being protected.

10.2.2 Since 2009 there have been four visits by the Overseas Territories Prison Advisor who has written 5 reports in which he has repeatedly stated that (inter alia):

- *The prison should be taken out of use as quickly as possible and an alternative location used.*
- *If use is to continue the following is the minimum work required.¹⁸*
 - *Male cells fitted with air conditioning and electricity*
 - *Cells to have natural light through tubular sky lights*
 - *Internal sanitation (bathroom facilities in cells),*
 - *solid floors and ceilings be installed*
 - *Female cells need similar improvements*
 - *Police custody cells to be taken out of use and moved to Ogborn House*
 - *Space created to be made into an exercise yard*
 - *Secured brick or metal access routes to workshop*
 - *Wooden perimeter doors to be bricked up or replaced with metal doors*
 - *Class 1 and 2 locks to replace padlocks*
 - *Refurbishment of internal accommodation to provide a fit for purpose visiting room*

10.2.3 In addition, in the financial year 2017/18 alone there were fifty contacts made to The Commission from prisoners past and present or their families. These covered topics such as quality of food for people with medical conditions, excessive heat, lack of ventilation, sanitation, access to fresh air and exercise.

10.2.4 The men, women and on one occasion in the last three years, a child of 15, who are remanded or sentenced to detention the prison are human beings and entitled to the same right to respect, dignity and safety as those of us outside. The removal of the right to freedom of movement is the only human right which may be removed as punishment; that and no more.

¹⁸ OTPA Report 2009 section 4.7

11 Levels of Cooperation

11.1 Inquiry Process

- 11.1.1 The Inquiry did not always receive the cooperation it expected under the legislation and this has, in part, led to the delay in publishing the report. This may have been due to a lack of understanding of the process as this was the first Inquiry of this nature they had faced.
- 11.1.2 There were unacceptable delays in receiving information from some of those on Notice.
- 11.1.3 The Commission believes that some of the evidence received was redacted unnecessarily. Some of the information is well known across the island due to its small size and population. The method of transporting prisoners to the farm for example is witnessed by many of us every day as they are driven past, yet this was redacted for security reasons.

11.2 The Draft Report

- 11.2.1 The draft report was sent to those on notice and they were given 28 days to comment and provide additional evidence. Despite this it was decided within SHG that all responses would go through the Attorney General's Office. This was not what was requested or wanted, the response was therefore late and not in the format requested.
- 11.2.2 However, the comments received have been noted and where necessary discussed with the official concerned for clarification. Where evidence was provided changes were made.

Part 2: Human Rights Laws and Standards

12 Introduction

12.1 Sources

- 12.1.1 The main sources of human rights laws and standards are the international and regional human rights treaties. These are agreements between States¹⁹ who freely choose to adhere to the provisions of a treaty through a ratification process.
- 12.1.2 In the case of an Overseas Territory, like St Helena, the UK Government will ratify the treaty and SHG will request that it be extended to cover St Helena. The Constitution²⁰ enshrines some of the basic, fundamental rights into law.
- 12.1.3 Most human rights treaties are not directly enforceable in our domestic courts. Once extended to the Island by the UK they do impose international legal obligations with which St Helena is bound to comply in good faith.²¹
- 12.1.4 The provision and regulation of the Criminal Justice System, which includes the prison, is a devolved matter; it is the responsibility of SHG.
- 12.1.5 The reporting to the various treaty bodies is the responsibility of UKG. Any recommendations for improvement or criticism will be made to them by the European or UN Treaty Bodies.
- 12.1.6 Implementing human rights laws and standards relevant to the Prison and the conditions of detention is a responsibility of the following public authorities:
1. HE The Governor
 2. The Superintendent of Prisons
 3. The Prison Visiting Committee

¹⁹Article 2(1)(a), Vienna Convention on the Law on Treaties 1969.

²⁰ The St Helena, Ascension and Tristan da Cunha Constitution Order 2009, Section 5.

²¹Article 26, Vienna Convention on the Law on Treaties 1969.

- 12.1.7 Before starting this Inquiry The Commission considered whether it should be comparing the standards in the Prison here to those in the UK as often UK prisons fail to meet the inspector's standards too.
- 12.1.8 The Commission believe that the rights of all prisoners the world over are protected by various human rights treaties and it should be to these we look to judge the Human Rights protections in HMP Jamestown, not to any one country.
- 12.1.9 There are relevant international standards that apply in St Helena, by virtue of ratification by the UKG and their further extension to this jurisdiction.
- 12.1.10 The Commission assessed the conditions of detention in the prison against these human rights standards, including but not limited to:
- The Convention Against Torture (CAT)²²
 - The International Covenant on Civil and Political Rights (ICCPR)²³
 - The International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁴
 - The Convention on The Elimination of all Forms of Discrimination Against Women (CEDAW)²⁵
 - Article 1 – freedom from direct or indirect discrimination
 - The Convention on the Rights of the Child (CRC)

²² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 27 November 2018]

²³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 27 November 2018]

²⁴ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <https://www.refworld.org/docid/3ae6b36c0.html> [accessed 27 November 2018]

²⁵ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> [accessed 27 November 2018]

- Article 3 - Best Interests of the Child
- Article 9 – Right of access to parents
- The European Convention on Human Rights²⁶
 - Article 2 - the right to life,
 - Article 3 - the prohibition of torture, inhuman and degrading treatment or punishment;
 - Article 8 - the right to respect of private and family life;
 - Article 9 Freedom of thought, conscience and religion
 - Article 14 - the prohibition on discrimination.
- And The Constitution of St Helena, Ascension Island and Tristan da Cunha²⁷
 - Part 2 Fundamental Rights and Freedoms of the Individual, with a specific focus on Clause 11 - Protection of right of prisoners to humane treatment and 13 the right to privacy.

12.1.11 The European Convention on Human Rights (ECHR) can be used in court and therefore jurisprudence is also relevant.

- The above are general statements on human rights. For a more detailed definition of what should be expected in a prison the Inquiry has used the United Nations Standard Minimum Rules for the Treatment of Prisoners (2015)

12.2 United Nations Standard Minimum Rules for the Treatment of Prisoners (2015) (SMR)

12.2.1 For over 50 years, the United Nations has explored ways in which criminal justice systems can operate more effectively and humanely. The United Nations Standard Minimum Rules for the Treatment of Prisoners, was adopted in 1955. These were last updated in 2015 and are now referred to as the Mandela Rules.

²⁶Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

²⁷ The St Helena, Ascension and Tristan da Cunha Constitution Order 2009.

- 12.2.2 Although not legally binding, the Minimum Standards provide guidelines for international and domestic law and for citizens held in prisons and other forms of custody. More than 100 countries worldwide have relied on these standards and norms in writing their national laws and policies in crime prevention and criminal justice including the UK.
- 12.2.3 The rules recognise the vast differences in legal, social and economic conditions worldwide; so can be used as a guide on St Helena. They represent the minimum conditions, which are accepted as suitable by the United Nations.
- 12.2.4 This Inquiry has taken those standards as its minimum and it is to these standards that the evidence will be compared.

SMR Rule 1 - All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.

SMR Rule 3 - Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore, the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

12.3 Other International Mechanisms

- 12.3.1 This report has also considered “A Human Rights Approach to Prison Management, Handbook for Prison Staff” written by Professor Andrew Coyle (2002 revised 2009) and sponsored by the FCO.

13 Application of Instruments

13.1 Introduction

- 13.1.1 In this section each right will be examined in turn looking at how each instrument applies the positive and negative duties on the state, in this case St Helena.
- 13.1.2 In the absence of any directly applicable case law stemming from the Constitution, European and UK case law is used to discuss the potential risks and challenges under each right.

13.2 The right to life

- 13.2.1 The right to life is one of the fundamental guarantees in international human rights law. The right to life is protected under international and European human rights treaties, including Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the European Convention on Human Rights (ECHR). The UKG has signed up to these treaties and has to abide by them at all times.
- 13.2.2 In turn the rights and duties bestowed by these treaties are extended to St Helena and SHG is responsible for ensuring our rights are protected here.
- 13.2.3 Article 2 of the ECHR is particularly important as it has been incorporated into domestic law here by our Constitution. All government departments and all public officials, have an obligation to take appropriate measures to safeguard life.
- 13.2.4 This obligation includes making laws to protect people and, taking active steps to protect people if their lives are at risk. If SHG don't do this, they can be taken to court.

- 13.2.5 The first sentence of Article 2 says “everyone’s right to life shall be protected by law”. In *LBC v UK*²⁸ the Court held that this establishes a legal obligation on the State to take appropriate steps to safeguard the lives of those within their jurisdiction and a primary duty to put in place the appropriate legal and administrative framework to protect the lives.
- 13.2.6 Activities which may cause threat to life must be properly regulated, for example the level of force police or prison officers may use to restrain a prisoner must be defined and officers should be properly trained.
- 13.2.7 Fire precautions and protection also fall under this right. The Grenfell Tower fire in London last year has brought into focus the responsibility of Governments when housing people and this applies to those housed in prison as well as in state housing.
- 13.2.8 The right to life applies equally to everyone including prisoners. It is often referred to as an ‘absolute right’ that cannot be interfered with. However, there are strictly defined situations when the use of force is absolutely necessary and the right to life does not apply.
- 13.2.9 The right to life is of direct relevance this inquiry in that aspects of this right could be compromised by a fire in the prison.
- 13.2.10 The right to life imposes both a negative duty and a positive duty on SHG, public bodies and officials.
- 13.2.11 The negative duty requires that the state does not interfere with the right to life. This means that the state cannot kill people, unless it is strictly necessary and in accordance with the law.
- 13.2.12 The positive duty requires the state to take proactive steps to enable people to enjoy their right to life, and create conditions that enable this. If individuals or groups of individuals are at risk of having their right to life violated, for example, as a result of the refusal of vital medical treatment or the lack of escape routes in a public building, the state must take steps to ensure those risks do not occur.

²⁸LCB V United Kingdom: ECHR 9 JUN 1998

13.2.13 This means that the SHG must protect life by enforcing criminal laws, regulating the delivery of public services in line with international human rights standards, protecting life under immediate threat, and taking steps to avoid accidental deaths.

13.2.14 To comply with the positive duty to protect the right to life, international human rights law requires SHG to do the following:

- Put in place a legal framework to protect everyone's right to life. For example, the Government must introduce laws which criminalise all forms of unlawful killing.
- Pass laws to ensure that private corporations do not put their employees or customers at risk of harm to their lives.
- Adopt preventative measures to protect life from all foreseeable threats. For example, take steps, such as having an effective police force, in order to protect individuals from being murdered.
- Provide avenues for redress where preventative measures fail.
- Investigate potential violations of the right to life. For example, the state must investigate any death that occurs in prison.

13.2.15 The positive duty to protect life is important because it means that the state may infringe the right to life not only because of what the state has done but also what it has failed to do. Importantly this duty also means that a state may be adjudged to have violated the right to life even where the failure to act has not actually resulted in a loss of life.²⁹

²⁹ See *Osman v United Kingdom*, 23452/94, Case No 87/1997/871/1083, ECHR 1998-VIII, [1998]

13.3 Case Law

- 13.3.1 In 2005, the European Court of Human Rights held that Turkey had violated the right to life, after 39 people had died as a result of an explosion and subsequent fire in a municipal rubbish tip. This was located close to slum dwellings where the victims lived.³⁰ Prior to the explosion, the state had been told that the tip contravened relevant regulations and posed a major health risk. The court confirmed that the state must do everything within its power to protect individuals from immediate and known risks to which they were exposed.
- 13.3.2 In *Osman v UK* (1998) the European Court created an obligation on States to take reasonable measures to protect people from being killed by others. This applies to detained persons who must be protected from other inmates who the authorities know, or ought to have known are a real and immediate danger of committing life-threatening acts.
- 13.3.3 This ruling was extended in *Keenan v UK* to also cover the real and immediate risk of suicide.
- 13.3.4 A failure to protect a detainee from other risks to health by monitoring their condition or providing medical care resulting in death may also be a breach of this article.³¹ Prisoners should have access to healthcare equivalent to people in the general population.
- 13.3.5 In 2012, the Inter-American Court of Human Rights held that Honduras had violated the right to life, after 107 prisoners lost their lives in a fire. This was because the prison's electrical system represented a latent risk of fire, and the prison lacked adequate mechanisms to prevent and deal with fires³²

³⁰ *Oneryildiz v. Turkey*, 48939/99, Council of Europe: European Court of Human Rights, 18 June 2002, available at: <http://www.refworld.org/cases,ECHR,3f2650b54.html> [accessed 13 October 2018]

³¹ (Harris, 2009)p 45-46

³² *Pacheco Teruel et al. v. Honduras, Report on Merits, Report No. 118/10, Inter-Am. Comm'n H.R., Case No. 12.580, ¶ 27 (Oct. 22, 2010).*

- 13.3.6 The more information that responsible bodies have had about the risks of harm to life, the greater the obligation to take action to prevent those risks from occurring. A key issue will be the extent to which warnings have been raised in the past, and the steps that were taken in response to those warnings.³³

13.4 The right to be treated with humanity, respect and the inherent dignity of the human person.

- 13.4.1 This right is protected by CAT Article 16, ICCPR Article 7 ICCPR Article 10, ECHR Article 3 and Clause 11 in the Constitution
- 13.4.2 These articles all provide an absolute right there are no exceptions; they cannot be derogated from even in times of war or emergency. Put simply no one can be subjected to torture, inhuman and degrading treatment or punishment
- 13.4.3 Torture is defined as deliberate inhuman treatment causing very serious and cruel suffering inflicted for a purpose such as obtaining evidence, punishment or intimidation.³⁴
- 13.4.4 Where an act is not deliberate or without underlying purpose or it causes less serious or cruel suffering is considered to be inhuman treatment. It must however result in actual bodily harm or intense physical or mental suffering beyond that inevitable element of suffering that results from a legitimate form of treatment or punishment.³⁵
- 13.4.5 Recent ECtHR cases have lowered the threshold for inhumane treatment where assaults on prison inmates are concerned.³⁶

³³ https://www.equalityhumanrights.com/sites/default/files/following-grenfell-the-right-to-life_0.pdf

³⁴ (Harris, 2009) p72

³⁵ Ibid p75

³⁶ Ibid p76

- 13.4.6 Historically cases concerning the conditions of detention were considered by the European Commission and the ECtHR as inhuman treatment but more recently they have been defined as degrading treatment emphasizing the humiliation involved.³⁷
- 13.4.7 Degrading treatment is defined as treatment that is such as to arouse in the victims feelings of fear, anguish, and inferiority capable of humiliating or debasing them (the victim)' ³⁸
- 13.4.8 The treatment does not have to be intentional but the humiliation involved must be more than that which follows inevitably from accepted forms of treatment.
- 13.4.9 The ECtHR considers cases in the light of current jurisprudence in conjunction with the reports and conclusions of the European Committee on the Prevention of Torture (CPT).
- 13.4.10 The Court will also consider the cumulative effects of the conditions and the length of time over which they have occurred; for example, in *Rezmiveş and Others v. Romania*,³⁹ below. There have been many cases involving the Conditions of detention but of particular relevance to this Inquiry are:
- 13.4.11 *Rezmiveş and Others v. Romania* 25 April 2017 (pilot judgment 2) this case concerned the conditions of detention in Romanian prisons and in detention facilities attached to police stations. The applicants complained, among other things, of overcrowding in their cells, inadequate sanitary facilities, lack of hygiene, poor-quality food, dilapidated equipment and the presence of rats and insects in the cells.
- 13.4.12 The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that the conditions of the applicants' detention, also taking into account the length of their incarceration, had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention.

³⁷ Ibid p79

³⁸ Ibid p92 see also *Pretty v UK* 2002-111; 35 EHRR1 which includes lack of respect for or diminishing of human dignity.

³⁹ Available at https://www.echr.coe.int/Documents/CP_Romania_ENG.pdf

- 13.4.13 *Orchowski v. Poland* 22 October 2009.⁴⁰ Serving a prison sentence since 2003, the applicant, for most of that time had less than 3 square metres of personal space inside his cells, which was the minimum prescribed under Polish law and less than the 4 square metres stipulated by the CPT. In a letter of March 2005 the prison administration acknowledged the problem of overcrowding, but dismissed the applicant's complaint as ill-founded.
- 13.4.14 The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention finding that, having regard to the cumulative effects of the conditions in which the applicant was detained, the distress and hardship he had endured had exceeded the unavoidable level of suffering inherent in deprivation of liberty. In addition, this lack of space had been made worse by aggravating factors, such as lack of exercise, particularly outdoor exercise, lack of privacy and insalubrious conditions.
- 13.4.15 *Muršić v. Croatia* 20 October 2016 (Grand Chamber)⁴¹ The applicant complained that he had been held in poor conditions at Bjelovar Prison. He alleged that he had disposed of less than 3 sq. m of personal space in his cell for a number of non-consecutive periods of a total duration of 50 days and personal space of between 3 and 4 sq. m in other periods. He also complained that the sanitary facilities, conditions of hygiene, food, the possibility of engaging in prison work and access to recreational or educational activities in the prison had been insufficient.
- 13.4.16 The Court confirmed that 3 sq. m of surface area per detainee in a multi-occupancy cell was the prevalent norm in its case-law, being the applicable minimum standard for the purposes of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. When that area fell below 3 sq. m, the lack of personal space was regarded as so serious that it gave rise to a strong presumption of a violation of Article 3.

⁴⁰ *Orchowski v Poland*, App no 17885/04, IHRL 3623 (ECHR 2009), 22nd October 2009, European Court of Human Rights [ECHR]

⁴¹ *Muršić v. Croatia* 20 October 2016 available at <file:///C:/Users/Human%20Rights%20Admin/Downloads/CASE%20OF%20MURSIC%20v.%20CROATIA.pdf>

13.4.17 In addition, having regard to the documents produced by the Croatian Government and to the applicant's statements, the Court found that the conditions in which the applicant had been held in Bjelovar Prison were generally appropriate, but that there had been a violation of Article 3 of the Convention for the consecutive period of 27 days during which he had been confined in less than 3 sq. m of personal space. On the other hand, the Court held that there had been no violation of Article 3 in respect of the other, non-consecutive, periods of detention during which the applicant had less than 3 sq. m of personal space or in respect of the periods in which he had personal space of between 3 sq. m and 4 sq. m in Bjelovar Prison. It found in particular that the other periods during which he had disposed of less than 3 sq. m could be regarded as short and minor reductions of personal space, while at the same time the applicant had sufficient freedom of movement and activities outside the cell and was being held in a generally appropriate detention facility.

13.4.18 On 20 April 2010 the European Court found a violation of Article 3 in the case of *Slyusarev v. Russia*. The man, who suffers from severe short-sightedness, was arrested by police in Moscow in 1998 and was held in pre-trial detention, during which his damaged glasses were taken away from him for five months. The authorities then took another further two months to repair the said item. Given the degree of the applicant's suffering and its duration caused by his inability to read or write, the Court concluded that the applicant had been subjected to degrading treatment.

13.4.19 Other breaches of Article 3 have included

- little access to daylight;
- limited access to running water at night;
- heavy smells from toilets;
- quantity and/or quality of food;
- discrimination;
- treatment of disabled prisoners;

13.4.20 This is the premier law of St Helena and Clause 11 defines the level of treatment prisoners can expect to receive here. It stipulates:

1. All persons deprived of their liberty shall have the right to be treated with humanity and with respect for the inherent dignity of the human person.

2. Every un-convicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as such.
3. Every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an un-convicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.
4. Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, or the facilities available for the detention of prisoners do not permit, or segregation would be detrimental to the well-being of a prisoner, un-convicted prisoners shall be segregated from convicted prisoners, and juvenile prisoners shall be segregated from adult prisoners.

13.4.21 This section of the Constitution has not, to our knowledge been tested in the Courts therefore there is no jurisprudence on which to assess the risks to SHG other than by looking at case that have gone before the ECtHR and the decisions taken by the Court that would be considered in argument in the Supreme Court of St Helena.

13.5 The right to respect of private and family life

13.5.1 This right is protected by ICCPR Article ECHR Article 8 and the Constitution Clause 13.

13.5.2 ECHR Article 8 covers the right to contact with family and friends during a sentence as this plays an important role in the prisoner's ability to settle back into society. It also covers prisoner's correspondence.

13.5.3 This is a qualified right, which means that it can be limited or taken away if it is decided that it is necessary to do so.

13.5.4 The ECtHR has found that it is correct to do so when it is a matter of:

- National security;
- Public safety; and
- Crime prevention.

13.5.5 Prison staff can also listen to some calls or read some letters if they have concerns about security.

- 13.5.6 Prison officers can legitimately search the prisoners, their cells and any other areas of the prison. The UN states that this should be carried out by officers of the same gender as the prisoner especially in the case of body searches.⁴²
- 13.5.7 The courts have heard a number of cases about cell searches and human rights. In the case of *R (Daly) v Secretary of State for the Home Department* [2001] it was decided that policies of searching legal mail without the prisoner being present was a breach of ECHR Article 8 because it interfered with Mr Daly's right to privacy more than was necessary.
- 13.5.8 ECHR Article 8 may also be breached by prolonged segregation or solitary confinement⁴³

13.6 The prohibition on discrimination

- 13.6.1 This right is covered by ICCPR Article 2, ECHR Article 14 and Clauses 5 and 21 of The Constitution protect individuals from discrimination by the State or its agents on the grounds of certain protected characteristics among them are gender, race, religion, sexual orientation and disability.
- 13.6.2 CEDAW Article 1 specifically protects women from discrimination.
- 13.6.3 Prison is a State institution and the prison staff its agents. It is therefore incumbent upon the State to ensure that prisoners are not treated differently within the prison because of their characteristics.
- 13.6.4 Of relevance to this Inquiry is the case of *X v. Turkey* (no. 24626/09) 9 October 2012.⁴⁴
- 13.6.5 This case concerned a homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over eight months in total.

⁴² United Nations Standard Minimum Rules for the Treatment of Prisoners (2015) Rule

⁴³ <https://www.supremecourt.uk/cases/docs/uksc-2014-0273-judgment.pdf>

⁴⁴Factsheet – Detention conditions and treatment of prisoners, European Court of Human Rights, May 18. Available at file:///X:/Subject%20Files/EHR%2001-%20Prison/Prison/FS_Detention_conditions_ENG.pdf

13.6.6 The Court took the view that these detention conditions had caused him mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus representing “inhuman or degrading treatment” in breach of Article 3 of the Convention. It further found that the main reason for the applicant’s solitary confinement had not been his protection but rather his sexual orientation. It thus concluded that there had been discriminatory treatment in breach of Article 14 (prohibition of discrimination) of the Convention.

13.7 The Convention on Economic, Social and Cultural Rights⁴⁵

13.7.1 The States Parties to this Covenant recognise the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing. This Covenant recognises that the wealth of nations varies, some being able to afford more than others. It therefore works on the principle of progressive realisation; the continuous improvement of living conditions.

13.7.2 The right to have a complaint heard and the monitoring of complaints is a core obligation under ICESCR (and other human rights mechanisms) as an absolute minimum public bodies must collect data and have a plan to progress.

13.7.3 The key Articles in the context of this report are:

- Article 11 which recognises the right to an adequate standard of living, including food, shelter and clothing.
- Article 12, the right to the enjoyment of the highest attainable standard of physical and mental health

⁴⁵ Available at <https://www.legal-tools.org/doc/ccaf82/pdf/>

13.8 The Convention on the Rights of the Child (CRC)

- 13.8.1 CRC Article 3 states: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- 13.8.2 Article 9 1. 3. Places an obligation on States Parties to respect the right of the child who is 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.

Part 3 Evidence Findings and Recommendations

14 Introduction

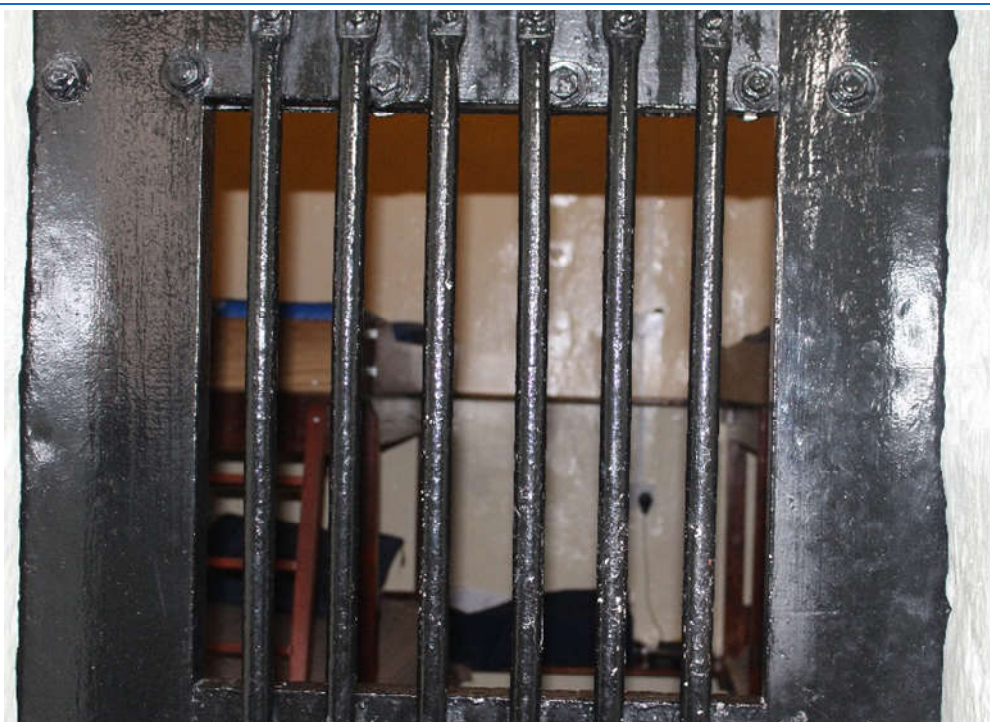


Figure 1. The only natural daylight enters the cell through this space

- 14.1.1 In this section the areas of concern are taken one by one, the evidence laid out and discussed. The rights engaged and therefore potential legal challenges and risks to SHG and by extension to UKG are detailed in the finding printed in blue and recommendations made printed in r.
- 14.1.2 The recommendations fall into four groups short, medium and longer-term recommendations relate to the current prison. These are followed by some recommendations for the new prison.

- 14.1.3 Human Rights Challenges by prisoners and ex-prisoners in the UK have increased in the last 10 years.⁴⁶ There is no reason to expect that as prisoners learn more about their rights here that they will not become more litigious too.
- 14.1.4 The Commission accepts that many of the points below may not constitute a breach of human rights if considered alone, however as outlined in section 13.4 above the combined effects of the conditions coupled with the length of or frequency of exposure to the risk or treatment could in the Commissions view constitute a breach of human rights.
- 14.1.5 The Commission would like to stress that it believes the staff do everything within their remit to assist prisoners. It is down to their pragmatism, good practice and the excellent working relationship they have with the prisoners that, as both prisoners and staff told us, tempers have been constrained.

15 Fire

15.1 Introduction

- 15.1.1 The prison was built in the mid-1820s and is of the standard method of construction, prevalent on island at the time; thick outer walls of mud, stone and in some parts render. Almost all of the internal structures are wood and there are no ceilings just the floorboards to the floor above and wooden doors and stairways.
- 15.1.2 The prison does not conform to modern safety standards; there are no fire doors, fire retardant materials between floors, no sprinkler system and no alternative escape route from the main prison section.

⁴⁶Rights as Risk: Managing Human Rights and Risk in the UK Prison Sector Noel Whitty
centre for analysis of risk and regulation An ESRC Research Centre DISCUSSION PAPER
NO: 57 DATE: January 2010 p10. Available at
<http://eprints.lse.ac.uk/36540/1/Disspaper57.pdf>

15.1.3 The danger of fire and the potentially life-threatening consequences were detailed in the five reports by the Overseas Territories Prison Advisor submitted to SHG between 2009 and 2015 and in a letter from the Fire Station Officer to the then Superintendent of Gaols from 2009.

15.1.4 The fear of a fire and its potential outcome was also expressed by prisoners, staff and prison management and the PVC.

Finding 1 – St Helena Government and its Senior Officials have demonstrably known since 2009 that the prison is a serious risk to life due to the realistic danger of fire. SHG is failing in its positive obligation to protect the right to life. Under Clause 6 of the Constitution ECHR Article 2 and ICCPR Article 6.

Recommendation 1 –The current prison to be replaced with a new, fit for purpose facility which meets international human rights standards and fire safety standards. SHG should secure adequate funding without delay.

2.2 Fire Station Officer's Letter

15.1.5 In a report sent to the Chief of Police dated 11th May 2009 the then Fire Service Station Officer described the concerns of both the Fire Officers and the Prison Officers with regard to the safety of those living in, working in or visiting the prison should a fire break out. The Commission was not presented with any evidence of a reply to the Station Officer or any action taken directly as a result of that letter.

15.1.6 The Station Officer states that the building contains a high percentage of old dry wood and other flammable materials, which will result in toxic fumes being given off in a fire. The Commission found no evidence of anything being done to address this, nor was this statement refuted.

- 15.1.7 The Station Officer said “The lack of ventilation in the day room (discussed in further detail below) could have a dramatic effect on heat barriers and warm air currents”. There is anecdotal evidence from both prisoners and staff that the ventilation in the day room has been adversely effected by the building to the back of the nearby hotel

Finding 2 – The Station Officer reported in 2009 that the lack of ventilation in the day room would have an adverse effect in a fire. There has been no evidence that anything has been done to address this. The Commission has been told that the situation has been made worse due to the extension at the rear of the nearby hotel. This situation is very unlikely to withstand a challenge under the Constitution as SHG is knowingly housing prisoners in an unsafe environment and any serious fire is likely to result in loss of life. This engages ECHR Article 2 and ICCPR Article 6.

Recommendation 2 – A senior Fire Station Officer to review the effects of the lack of ventilation in the prison (particularly in the main day room) and advise on any remedial action to mitigate the situation until the move to the new prison

- 15.1.8 The Station Officer called attention to the lack of emergency and/or alternative escape routes particularly in the Men’s Section where there is only one way in and out. Since the Inquiry started Prison Management have met with the Fire Service and three escape routes have been identified from the women’s/West Wing side of the building but no satisfactory alternative to the front door route has been identified for the Male section and police cells.
- 15.1.9 The Station Officer recommended the installation of a fire suppression system throughout the prison which has not been installed

Finding 3 – The Station Officer’s recommendation to install a fire suppression system has not been followed, the Commission has been unable to establish why. SHG is failing in its positive obligation to protect the right to life. Under Clause 6 of The Constitution, ECHR Article 2 and ICCPR Article 6.

Finding 4 - The Commission found that some fire prevention measures are in place. In recent weeks, prisoners have been stopped from smoking cigarettes and e-cigarettes have been provided. The chargers for these e-cigarettes are controlled. Prisoners have not been allowed access to lighters or matches for several years. The Commission welcomes this initiative.

Finding 5– The more information that responsible bodies have about the risks of harm to life, the greater the obligation to take action to prevent those risks from occurring. A key issue in any legal action or inquiry will be the extent to which warnings have been raised in the past, and the steps that were taken in response to those warnings. In the Commission’s considered view many warnings have been given but no positive and productive steps have been taken to remedy the situation in the current prison and protect those people living and working in the prison now. This engages the right to life and may amount to a violation of the procedural obligations protected by under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6.

15.2 OTPA Reports

15.2.1 In his 2012 report the OTPA gives high priority to a fire evacuation exercise for prisoner’s being carried out quarterly.⁴⁷

⁴⁷ OTPA Report 2012 page 5

- 15.2.2 In evidence to the Inquiry by prison management, staff and prisoners it was stated that no evacuation had taken place since the fire in February 2015. An official stated that no fire drills were carried out during their time in post (around three years), however some desktop exercises were done.
- 15.2.3 The OTPA goes on to say “*the predominantly timber internal fabrication puts it at serious risk of fire.*”⁴⁸
- 15.2.4 Should a fire occur, there would be a very high risk to both prisoners and staff. Both groups raised concerns with the Commission over how successful an evacuation might be, particularly as difficulties have been experienced with the padlocks on the cell doors.
- 15.2.5 Changes to these locks were recommended by the OTPA in 2009⁴⁹. The Commission was told the style of lock could not be changed due the structure of the cell doors which are not fitted into a frame

Finding 6 – The lack of regular fire drills and practice evacuations coupled with the knowledge that there is a serious risk of fire and a resulting loss of life is a breach of SHG’s obligation to protect the lives of those in its care and engages Clause 6 of the Constitution, ECHR Article 2 rights and ICCPR Article 6.

Recommendation 3 - Desk top and actual fire drills be carried out using different scenarios to identify potential problems and solutions. Fire drills including a full evacuation be carried out as recommended by the Station Officer. All new prisoners are briefed on procedures on admission and prisoners moved to the West Wing be briefed on procedures there.

⁴⁸ OTPA 2010 para 1.6

⁴⁹ OTPA 2009 para 4.7 J

15.3 Direct Evidence to the Inquiry

- 15.3.1 There have been at least two fires in recent times on both occasions by arrested persons being held in the police cells. Only two members of prison staff were on duty as they happened at night. The Commission is sure that both members of staff followed procedure and that the prisoners in the cells in the men's section were not in any immediate danger.
- 15.3.2 The Commission was told in evidence that on one occasion one officer had to telephone for help and as the prison is the overnight emergency call centre they were tied up on the phone calling out the individual fire officers. The other officer was trying to get the arrested person out of the holding cell and put the fire out.
- 15.3.3 Prisoners gave the Commission graphic descriptions, from their perspective, of being locked in their cells with the fire alarm going and smelling smoke, they could hear the two staff members shouting to each other but despite banging on the cell doors and shouting to be let out they said they had to wait over 20 minutes. The Commission was also told that it was a prisoner who took the lead in the eventual evacuation to Ogborn house as the officers on duty were trying to deal with the fire.
- 15.3.4 One prisoner told the Inquiry *"This is a situation that nightmares are made of and being as I personally have been locked in a cell filled with smoke one night after a blanket was set alight by a prisoner in the security cells. I cannot emphasise enough how this has an effect on me both physically and mentally. After the huge loss of life in London at the block of flats I feel sure there is a duty of care that is most certainly not been met by SHG and the Prison Service."*
- 15.3.5 A prison officer told the inquiry *"My main fear is if someone throws a petrol bomb through the gate bars. There would be no escape for the prisoners in the male section as the main gate is their only exit."*

15.3.6 In 2009 a prisoner convicted of an arson related crime threatened to petrol bomb the prison on his release. Prison management at the time took it seriously and plans were drawn up for a security cage to be built over the main door to provide a secure area and protection. These plans were rejected by planning as the prison building is Grade 1 listed.

Finding 7 – The Commission found that both prisoners and staff feel unsafe due to the risk of fire. The feeling of safety is almost as important as being safe. At best the lack of peace of mind may have a bearing on the mental health of the prisoner or staff member. Genuinely living in fear and anxiety every day may have long term serious repercussions and is inhumane. This, depending on the length of time and severity of the suffering. This engages ICESCR Article 12, The Constitution Clause 7, and their European and international rights as outlined in Part 2 Section 13.4.

15.3.7 Two staff members explained their concerns as to their ability to evacuate the prison swiftly, if there was a fire during the night. They said prison officers do not hold all the keys at night, some sets are stored upstairs. They are concerned that should a fire break out, it may be necessary to evacuate the prisoners from both sections of the prison.

15.3.8 If the fire was in the kitchen area it would be difficult to access the West Wing and women's section, without going past the area of the fire. A member of staff would need to go upstairs to get the correct set of keys from a room not far from the kitchen, come back down the stairs go out through the main gate and around the outside of the building to open a door from the street back to the west side of the prison

15.3.9 While that was happening the other staff member would have to phone the on-call fire officer, unlock two doors to access the day room, open the three cells and get the prisoners out, the kitchen is directly over the day room with only old dry floor boards to burn through. If there were prisoners in the police or security cells that may mean three more

Recommendation 4 – The role of emergency overnight contact must be removed from the prison staff.

Recommendation 5 – Arrested persons must be properly searched by the police before they are placed in the custody cells and any means of starting a fire or other potentially dangerous items must be removed.

Recommendation 6 - The storage and allocation of keys to be reviewed to ensure it meets both the security and evacuation needs.

padlocks to open.

15.3.10 The Commission was seriously concerned by the lack of any contingency plan should the prison be seriously damaged by fire.

15.3.11 Ogborn House was designated the initial muster point in the case of an evacuation of the prison. This is no longer a building used by the police department and cannot fulfil this function.

15.3.12 Should the prison suffer serious damage the plan had been to move the prisoners to Sundale House until such time as the prison was repaired. Sundale house is now derelict and cannot be used.

15.3.13 When questioned, senior officials could not tell the Commission of any new arrangements.

15.3.14 When the prison had to be evacuated during rock fall works, the prisoners spent the day at Half Tree Hollow Community Centre. They were able to return to the prison after working hours. Where prisoners would be housed if the prison was damaged in a rock fall or by fire and they had to be housed for several days or weeks?⁵⁰

Finding 8 – The loss of the use of both Ogborn House and Sundale House leaves the prison with no secure muster point and no temporary accommodation should the prison be damaged by fire or rock fall. This lack of consideration along with the lack of a Health and Safety policy may indicate to a court that the prison is a low priority.

Recommendation 7 – Satisfactory long term solutions must be identified for use as potential evacuation facilities.

15.3.15 The Commission noted a lack of fire evacuation and health and safety notices within the cells.

15.3.16 The cell doors are each secured with a padlock. During the interviews both prisoners and staff told us of an occasion where the officers had been unable to open a padlock to allow the prisoners out. They were released some forty minutes later as a result of another inmate sawing through the hasp with a hacksaw.

15.3.17 Staff also reported problems operating the padlocks because “left handed staff put them on the wrong way round.” Anything that hinders getting the padlocks off quickly could have implications in an emergency

15.3.18 The Commission understands that measures have now been put in place to ensure that these issues will not cause future problems.

⁵⁰ Since this Inquiry was completed a contingency plan has been put into operation which would house the Prisoners for up to 10 hours in an emergency and a second sight has been sourced which would house them for 3 or 4 days.

16 Heat and Ventilation

16.1 Introduction

- 16.1.1 There is no natural ventilation in cells apart from through a few bars in the door and a small opening above the cell door.
- 16.1.2 There is an air vent in each cell and pipe work leading to the outside. These were installed several years ago in an effort to increase airflow to the cells and reduce the heat. Some witnesses said that this helped if the fans were on, others that it did not. Some witnesses said the pipework was blocked with dust and dirt, some that it had been deliberately blocked for some reason. All agree they have not been maintained in recent years.
- 16.1.3 Each cell has a fan, which some prisoners say is too noisy. Others want the fans on as the air does not flow and the cells are too hot. The fan in cell one was put on for The Commission who agreed it was unacceptably noisy but they also found the cell very hot.
- 16.1.4 Two years ago it was decided to turn the fans off during the day. Prison officers said they had been told this was because of budget cuts and a need to save costs on electricity. The Commission saw a notice on the box that covers the switches for the fans that said the fans had to be turned off from 6.00 am to 9:30pm.

16.2 OTPA Reports

*“The main entrance [to the prison] is a solid metal gate leading to a small reception area, and opening off that on the ground floor there is an inner (solid wooden) door leading to the day room and male cells. To allow movement of air through the prison during the day, the inner door is often left open... Ideally if the prison were air conditioned it would not be necessary to leave the inner door open, but in the present circumstances despite the potential security weakness, it is not reasonable to make such a recommendation.”*⁵¹

⁵¹ OTPA 2009 para 4.44

16.2.1 All of the OTPA reports have criticised the cells in the Men's section stating that the physical condition of the cells for adult male prisoners is unacceptable, due to poor lighting, ventilation, and lack of sanitation.

1. The OTPA states, "*It [the prison] cannot easily or cost-effectively be made suitable for habitation: the costs of providing the basic requirements of natural light, fresh air and integral sanitation to the 3 main cells would be prohibitive.*"⁵²

16.3 Other Evidence

16.3.1 The prison and particularly the men's section are very hot in the summer months; both staff and prisoners complain about the heat and lack of air flowing through the prison. Both prisoners and staff told the Commission that this situation has been exacerbated by the large extension built in the development of the Mantis Hotel, which has reduced the air flowing through towards the day room and upper offices.

16.3.2 A member of staff said, "Everyone complains about the heat. Since Mantis Hotel was built the airflow into the prison has been cut off. At the present the temperatures are cool, but can be terrible on a hot day. The cell fans are noisy but I don't know how much it would cost to install new fans".

16.3.3 Commission received a Guidance note on cell temperatures, which was dated April 2017. This stated inter alia that;

"Recommendation:

It is recommended that during the warmer months the temperature is taken when the cells are opened at 1600 hours. If the temperature reaches 29 °C or above then the fans should be turned on.

The current practice of turning the fans on at 2130 prior to prisoners being locked in their cells overnight should be continued. With up to four people sharing a cell it is important that the cell is ventilated at night.

Special measures for prisoners who are ill:

⁵² OTPA 2009 Para 1.5

1. *If a prisoner is unwell during the day and confined to their cell the fan should be turned on if the cell temperature reaches 29 °C or above.*
2. *Fever in adults is defined as having a body temperature of 38 °C or above and this puts the person at risk of complications. If a prisoner has a fever then the fan should be turned on. “*

16.3.4 This guidance note had not been shared with The Commission or Commissioners who met with Superintendent of Prisons and the Prison Manager on 19th October 2017, nor was it shared with the PVC, the Prison Officers or the prisoners themselves.

16.3.5 At the October 2017 meeting senior managers agreed to monitor the temperatures in the cells particularly in the summer months. Despite this, at the time of the Commission’s visit in March 2018 the prison did not have a room thermometer.

16.3.6 At interview the same managers confirmed that no attempt had been made to monitor the cell or day room temperatures. When asked about the reason for this, one said *“It may be a big thing for The Commission, but it is not a big thing for Prison, the temperatures are not an issue for the Prison because we’ve had no complaints.”*

Finding 9 – A Cell Temperature Guidance Note was written in April 2017 but staff and prisoners were unaware of the document and the thermometers needed to follow the guidance were not purchased. No evidence was provided of any attempts to purchase thermometers. This engages ICSPR Article 7 ICCPR Article 10, ECHR Article 3 and Clause 11 of the Constitution and potentially the right to life.

Recommendation 8 – Good quality, accurate thermometers must be purchased and the Cell Temperature Guidance Note followed at least until a satisfactory solution is found to the underlying ventilation/heat issues

16.3.7 The Commission has received complaints from prisoners. These were part of the reason for the October 2017 meeting. The Commission received evidence of complaints raised by the PVC, a joint letter from the Public Solicitors Office and The Commission was sent to the Prison Manager 21st February 2017 the Attorney General replied on the manager's behalf on 21st February 2017.

Finding 10– The Commission heard that complaints about high temperatures were being ignored and received documentary evidence that such complaints had been made. Failure to address the complaints about temperature would in the Commissions view meet the threshold for a successful ECHR Article 3 challenge. See *Slyusarev v Russia* 20.04.2010¹.

Prisoners have the right to be treated with humanity and with respect for the inherent dignity of the human person this engages Clause 11 of the Constitution. ICCPR Article 7 and Article 10, ECHR Article 3 and ICESPR Article 12. (For a discussion on the rights involved in complaints procedures please see Finding 37 below)

16.3.8 A request through the Prison Council in 2014/15, had led to the purchase of some quieter desktop fans for the cells, which had improved the situation,

16.3.9 These were removed on a management change as the new manager believed they may be used as a weapon.

16.3.10 On the day of The Commission's visit a min/max thermometer was taken into the prison and the cell temperature measured. The thermometer was reset and then left in the cell for the rest of the visit. It was then read and photographed. The minimum temperature read 25°C and the maximum 36°C.

- 16.3.11 In order to verify the thermometer was accurate four thermometers were borrowed from the science department at Prince Andrew School. These were placed alongside the min/max thermometer in various positions over several days and all gave the same readings. The Commission therefore believes the reading in the cell was accurate.
- 16.3.12 Heat and ventilation problems do not just have a bearing on prisoner's rights they are also putting the staff's health at risk.
- 16.3.13 Several prisoners described being locked in their cells for several hours when they were ill; despite this the fans were not allowed. The cell temperatures were not checked in line with guidelines.
- 16.3.14 A Prison Official said prisoners are rarely locked in their cell whilst sick and prisoners can have the light on. She said it was necessary to lock the cell door because of low staffing levels and having prisoners wandering around was a security risk. However, there are always other prisoners in the day room "wandering round" as only a few prisoners go to the farm each day.

Finding 11– Finding 11– The Commission believes that the practice of locking sick prisoners in their cells, without adequate light, ventilation, in cell water or sanitation is unacceptable. In the Commission's considered opinion it amounts to a breach of ICESCR Article 12 (the right to the highest attainable standard of healthcare) and engages Clause 11 of the Constitution, ECHR Article 3. and Article, ICCPR Article 7 and CAT.

Recommendation 9 – Sick prisoners should not be locked in cells without access to water, efficient ventilation and light unless the prisoner is a real and imminent danger to others.

16.3.15 Prisoners are confused as to why the rules are imposed as they are allowed into their cells at lunch time and after the working day, while it is still very hot. Some prisoners told us that they would rather be in the cell to read, do homework and in some cases pray as it was the only time they got any peace. It is often too noisy to read in the day room as either the TV or radio is on and people are talking.

Recommendation 10 – If there are to be rules about when the fans switched on they must be clear and consistent so that the prisoners and the staff understand them and follow them

16.3.16 A prison officer said “I do not feel the prison is suitable, as it does not have proper ventilation. Since the hotel building was constructed it has cut off the breeze that used to come through to the prison. There is also an unpleasant smell of possibly sewage or bad drainage, that comes through to the prison; this smell is endured by prisoners and staff and having the main door closed the smell cannot escape. The reception area can be very hot to work in – the door to the basement is often opened to allow for cool air to come through.”

16.4 Research

16.4.1 Research carried out in the USA has concluded that for every degree over 30°C the risk of heat stroke increases steeply.

16.4.2 The risk is increased for those who are older, diabetic or on drugs for various mental health issues including depression and schizophrenia.⁵³ 20% of the population of St Helena is diabetic and mental illness is not uncommon.

⁵³ Heat in Prisons & Jails, Columbia Law School available at https://web.law.columbia.edu/sites/default/files/microsites/climate-change/holt_-_heat_in_us_prisons_and_jails.pdf

16.4.3 In the UK, prisoners at Wandsworth Prison and others, have brought successful human rights actions for excessive heat costing UKG several hundred thousand pounds.⁵⁴

16.4.4 It cannot be disputed that St Helena gets hot in the summer particularly in Jamestown ambient temperature can reach 32° C⁵⁵ outside in the shade.

Finding 12 – Death or illness as a result of heat stroke are a risk in the prison; high temperatures and high humidity combined with contra- indicated factors (some types of mental health medication, diabetes and age) are all factors which come together in the prison. Should there be a challenge with regard to cell temperatures and ventilation SHG would have difficulty with some lines of defence. The prisoners, the OTPA, the PVC and The Commission, have raised these issues and this is documented. This engages Clause 11 of the Constitution, ECHR Article 3.and Article, ICCPR Article 7 and CAT.

16.4.5 When those outside prison feel hot they can turn on a fan, in some cases adjust the air conditioning. Even the prison staff (except those confined to reception) can seek out a breeze or open a window. Prisoners cannot, they have little control over their physical environment.

Recommendation 11 – Until such time as the new facility is available fans or air conditioning must be available and the temperature guidelines followed. Prisoners must have access to their personal space outside of working hours for private time, study and recreation. The space should be ventilated and lit and not be damaging to their wellbeing

⁵⁴ <https://www.standard.co.uk/news/prisoners-claiming-for-being-too-hot-or-cold-6383461.html>

⁵⁵ <http://sthelenatourism.com/climate/>

Finding 13 – Without accurate measurements no one can say whether the accommodation in the men's section is too hot. But the indications are that it is hot, the prison houses older men, with mental health and other contra-indicated medical conditions (see finding 12 above). The threshold for ECHR Article 3 is low and no practical attempt has been made to reduce temperatures or increase ventilation. This engages Clause 11 of the Constitution, ECHR Article 3, and Article, ICCPR Article 7 and Constitution, and CAT.

17 Separation of Categories

17.1 Evidence

- 17.1.1 Remand and convicted male prisoners are housed together, there is a remand section, and this will only house one prisoner. Often there is only one remand prisoner and prisoners who had spent time on remand told The Commission they would rather be in main population than be alone all the time.
- 17.1.2 The Prison Ordinance States at 4(3) As far as reasonably possible, un-convicted prisoners must be kept apart from convicted prisoners, unless any un-convicted prisoner is willing to associate with convicted prisoners.
- 17.1.3 The remand suite is the only self-contained unit in the prison and it is therefore used for arrested women, convicted women or until recently juveniles. It has also been used to house Category A, male prisoners and to separate arrested prisoners from each other when they have both been arrested for the same offence. In addition, it is used for prisoners who may be at threat from another inmate. If required in these circumstances a remand prisoner would be precluded from using the facility if they chose to.

- 17.1.4 Recently prison management have taken the decision that they will no longer house prisoners under 18. The Commission supports this decision. But note that does not apply to the police cells as these are under police jurisdiction.

Finding 14 – A child under the age of 16 was held in the prison for two weeks in 2015. He was held in the remand unit alone. He had contact with prison officers and was allowed visits. Some of the convicted prisoners spoke to him through the bars at the window of the remand unit. The UK has reserved the right under ICCPR (Art 10) for the separation of juvenile prisoners/detainees where there is a lack of suitable facilities but the detention of children is unacceptable and a breach of the Constitutional right afforded by Clause 11(3) & (4) and engages Articles 37 & 40 of the CRC.

Recommendation 12 – Children must not be held in the current prison it is not suitable for anyone under 18.

- 17.1.5 If a woman is held in this unit she cannot be kept entirely separate from the male prisoners who need to cross the small yard in front of her cell to access the workshops and the West Wing. This means in practice that the men have relatively free movement around the prison but women are locked in the unit for the greater part of the day.
- 17.1.6 One female prisoner told the Inquiry that she could come out to clean and do her washing from around 9.00 am until 1.30 pm and after that she could not leave the small cell/dayroom.
- 17.1.7 The Prison Ordinance states 5. (1) Female prisoners must be kept entirely separate from male prisoners.

Finding 15 – Most male prisoners on remand chose to go into main population because they prefer company. Remand prisoners have a right to segregation from convicted prisoners. It is argued by officials that this right is not protected in the UK so it is alright to not protect it on St Helena. In The Commission's considered opinion the right to segregation for remand prisoners is protected by Clause 11(4) of the Constitution, provided there is no female prisoner. This right is also protected by ECHR Article 3, and would very likely result in a successful challenge if a remand prisoner wished to assert their right to segregation.

Finding 16 - Female prisoners cannot be wholly separated from male prisoners, as they can communicate with the prisoners in the West Wing and those using the workshop. They are in the care of male staff and at times this is a male officer working alone. Both the female prisoners and the male staff expressed concerns about this. There is a significant risk to male staff and they are concerned that they could be accused of inappropriate behaviour and would have no witnesses to protect them. This engages the Clause 11 of the Constitution rights of dignity and humane treatment however the Clause details the protections for un-convicted or juvenile prisoners but it is silent on the segregation of women prisoners. This engages CEDAW Article 1.

Recommendation 14 – The Constitution be amended to cover the segregation of women detainees. Male staff should not deal with a female prisoner alone.

18 Cells and Accommodation for Convicted and Remand Prisoners – Male Section

SMR Rule 12

12.1 Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room

12.2 Where dormitories are used, prisoners carefully selected as being suitable to associate with one another in those conditions shall occupy them. There shall be regular supervision by night, in keeping with the nature of the prison.

SMR RULE 13

13. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

18.1 Introduction



Figure 2 A Male Prisoner's Cell

18.1.1 The prison and in particular, the prison cell, is the prisoner's home for the duration of their sentence. In the UK, Prison Service Instruction (PSI)17/2012 requires each cell to be certified as meeting a minimum standard before it can be occupied. No prisoner may be kept in an uncertified cell. No

such rule exists on St Helena.

- 18.1.2 The three cells in the men's section are where every male prisoner is accommodated whether on remand or sentenced to prison. They will stay there until they are released or moved to the West Wing.
- 18.1.3 These cells, although generally clean, are very dark, without natural light and very hot due to the lack of ventilation. (See also section 2 Heat and Ventilation) they fall short of meeting SMR Rule 12.
- 18.1.4 Staff and prisoners alike described the cells as dark, hot, oppressive and too small.
- 18.1.5 Each of the three men's cells contains four bunks, some of the modern prison mattresses over-hang the much older locally made bunks. The space between the sets of bunks is very limited, allowing little room for dressing or other tasks.
- 18.1.6 There are four storage lockers/wardrobes and a shelf for personal possessions which is good as in-cell possessions not only help keep prisoners occupied, they also provide a much-needed link to the outside world.
- 18.1.7 To be certified as a cell in the UK the accommodation must provide the facility to sit to a desk or table⁵⁶ The cells in the St Helena prison do not have space for this. As the men spend a lot of time out of their cells they have the opportunity to sit to the table in the day room. This is not big enough to seat 12 people together.
- 18.1.8 Two small bulkhead style lights, one on the ceiling and one on the wall appeared to provide insufficient light to read (especially for those on the bottom bunk). A prison Official said it was because they use energy saving bulbs that take a while to warm up and get brighter, and "the prisoners have torches so they can use those."
- 18.1.9 In order to mitigate these conditions prisoner's spend all the working day out of their cells and are either at work on the farm or in the prison or in the day room. Prisoners spend more hours out of their cells than their counterparts in the UK and this is a very positive measure.

18.1.10 In the evenings from 4 pm and all day at the weekends prisoners have access to their cells. They are discouraged from using them as they are hot and dark.

18.2 OTPA Reports

Recommendation 15 - maximisation of time out of cells should continue both in the current prison and in the new facility.

“The physical condition of the cells is unacceptable – no sanitation, no windows, fresh air and natural light is negligible and I do not consider that the accommodation would withstand a challenge under Article 3 of the human rights act. I believe that the cells need quickly to be taken out of use or significant changes be made to them to make them habitable”⁵⁷

18.2.1 All of the OTPA reports have criticised the cells in the Men’s section stating that the physical condition of the cells for adult male prisoners is unacceptable, due to poor lighting, ventilation, and lack of sanitation.

18.2.2 The OTPA states, *“It [the prison] cannot easily or cost-effectively be made suitable for habitation: the costs of providing the basic requirements of natural light, fresh air and integral sanitation to the 3 main cells would be prohibitive and the 3 existing police custody cells are entirely unsuitable for use.”⁵⁸*

18.2.3 He further states *“Any natural light into the cells comes from the day room, rather than directly from the outside. Electric lighting inside the cells comes from one light in the ceiling and one on the back wall: the overall effect is of hot, dark, airless rooms.”*

18.3 Other Evidence

18.3.1 The three men’s cells can accommodate four people each. At the time of our visit

⁵⁷ Keith Munns 2009

⁵⁸ Ibid Para 1.5

- 1.1.1 Cell 1 was occupied by two prisoners; this was usually three but the third person was in hospital.
- 1.1.2 Cell 2 was occupied by one prisoner
- 1.1.3 Cell 3 was occupied by three prisoners

18.3.2 These cells are very small affording little personal space particularly if they are at the full occupancy. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have a minimum standard for personal living space in prisons of 6m² of living space for a single-occupancy cell or 4m² of living space per prisoner in a multiple-occupancy cell (excluding sanitary facilities).

18.3.3 While the European Convention which underpins this has not been extended to St Helena, the European Courts use these figures as their guide therefore, any challenge under ECHR Article 3 and possibly Article 8 including an instance of there being more than two people in the cells puts SHG at risk of a human rights challenge.

18.3.4 The Supreme Court of St Helena also takes into account European jurisprudence in reaching decisions and therefore these minimum personal space requirements would have the potential to be considered here.

Figure 3 Table of cell sizes by occupancy.

Personal space per prisoner by number of prisoners m ²									
	Dimensions	Number in the Cell Space per Occupant m ²							
	M	1	2	3	4	5	6	7	8
Men's Cell 1	3.05 x 3.93	11.7	5.84	3.89	2.92				
Police Cell 2	2.36 x 2.94	6.94							
Security Cell	2.53 x 3.64	9.2							
Women's cell 1	2.13 x 2.32	4.94							
Women's cell 2	2.82 x 2.66	7.5							
West Wing*	5.25 x 7.20	37.8	18.9	12.6	9.45	7.56	6.3	5.4	4.5

*The West Wing includes their day room area the other cells have separate day rooms in which the prisoners are housed during the day, if they are not working.

Finding 17 – Cells 1-3 in the men’s section are too small to be occupied by more than two prisoners and would be unlikely to withstand a challenge under Clause 11 of the Constitution / ECHR Article 3 with three or more prisoners occupying them, despite the time out of the cell. The longer a prisoner serves in too small a cell the greater the ECtHR deems the degradation to be.

The lack of space, light, ventilation and sanitation taken together with the length of sentence some of the prisoners are now serving in prison engages ECHR Article 8 and CAT Article 16

Finding 18 – The Commission Accepts that the Prison Management are making efforts to mitigate the cell conditions by allowing the men out of their cells from 6.30am to 10pm each day (unless they are sick or on basic privileges). However the cells in the men’s section are too small for four men to sleep in comfortably. They are very hot, there is no ventilation with the fans off and excessive noise with the fans on. The more people in the cell the higher the temperature. Sleep deprivation may be regarded by the Courts as inhumane treatment depending on the duration of the treatment and any long term ill effects. This engages Clause 11 of the Constitution, ECHR Article 3 ICCPR Article 7 and CAT Article 1

Recommendation 16 –The issues of light and ventilation must be addressed within the cells both in the men’s section and the West Wing.

19 The Women's Section



Figure 4 – Female Prisoner's Bed

19.1 Introduction

19.1.1 The Women's/Remand Section is a suite which includes two cells, one without a window which is never used and one with a window onto the yard. As well as the cell there is a day room, a shower room and toilet.

19.1.2 This area of the prison was, with the exception of the cell without a window, bright and airy.

Figure 5. Women's section day room.



19.1.3 There is more than adequate space for one prisoner. The cell in use is over 7m². Should the second cell ever be used it is unlikely to withstand a challenge under ECHR Article 3 as at 4.94m² it is substantially smaller than the recommended 6m² for a single cell.⁵⁹

⁵⁹ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

19.2 OPA Reports

19.2.1 In his 2009 report the OPA recommended that the female cell without window should not be used.⁶⁰

19.2.2 *“The concrete plinth, with a mattress [used] as a bed may be acceptable for an overnight, police detention prisoner, I do not consider it suitable for longer term use for a remand or convicted prisoner I recommend the concrete plinth should be replaced with a bed in the female cell.”*⁶¹ “I consider that it would be acceptable to hold a female prisoner in the cell with the window for up to 3 months, as long as appropriate activities, work, training or education were provided in the day room during the day time. I recommend that the female unit accommodation should not be used for a woman with over three months to serve in prison

Finding 19 – In 2009 the OPA recommended the removal of the concrete plinth being used as the base for the bed in the women’s cell. The recommendation made was that it should be replaced with a wooden bed. It is still in use and is the only bed available to women prisoners Male prisoners have wooden bunks. This engages CEDAW Article 1, EHRC Article 14 and ICESCR Article 11.

Finding 20 – In 2009 the OPA said he considered that the female unit accommodation should not be used for a woman with over three months to serve in prison. In the Commission’s considered opinion that is an arbitrary time period. This is a ruling only a judge can make. Despite this, women have served sentences in excess of 3 months. This engages CEDAW Article 1, EHRC Article 14 and ICESCR Article 11.

⁶⁰ OPA 2009 Para 4.28

⁶¹ Ibid 4.29

19.3 Other Evidence

- 19.3.1 One female prisoner told The Commission that the staff were “lovely” but the bed shocked her. She said it was really uncomfortable and it gave her bruises. She placed a blanket over the mattress for comfort.
- 19.3.2 On several nights she’d fallen off the bed because it was so narrow. She had complained about the bed but nothing happened. She complained verbally, not in writing and the staff didn’t appear to record her complaints. She said she was angry because the men have proper beds and she was forced to sleep on the concrete bed with a hard mattress.
- 19.3.3 Another woman described being made to sleep on the bed as being treated like the slaves in the old days. She said it was degrading and no man would stand for it, but she had to.
- 19.3.4 When asked why the bed had not been removed a prison official said personally they did not necessarily agree that sleeping on a concrete plinth is unacceptable.

Finding 21– The concrete plinth on which female, remand prisoners and children have slept is degrading. Culturally the concrete plinth has two connotations. First of all, the practice on St Helena is for respects to be paid on the death of someone, this is done at the mortuary where the body is in a coffin on a similar plinth. Secondly it is associated with the Island’s slave history, some of the island’s more traditional people still feel a certain amount of shame at being descended from slaves and been made to sleep on concrete like a slave is an unacceptable insult.

This engages Clause 11 of the Constitution and ECHR Article 3 and CEDAW Article 1 for prisoners who have served a sentence since CEDAW was extended in March 2017.

- 19.3.5 There is one barred window giving good light and ventilation to the cell and another to the day room; these open onto the yard.

Recommendation 17 – The concrete plinth should be removed or a wooden bed built around it.

Recommendation 18 – the female unit accommodation should not be used until the bed is replaced and women have the same freedom of movement as their male counterparts

19.3.6 The windows contain no glass or Perspex so the cell is exposed to the elements. The cell was described as cold in the winter.

19.3.7 This section is at the opposite side of the prison from the main male section accessed by climbing a very steep wooden staircase to the first floor passing through the visitor's room/class room/meeting room and descending a second steep wooden staircase encased in metal with a locked metal door at the bottom.

19.3.8 This part of the prison would not be accessible to a disabled prisoner; indeed, our Chairperson, who uses a wheelchair, was unable to visit any part of the prison apart from reception and the men's section.

Recommendation 19 – The new facility should provide suitable accommodation activities, work, education and exercise for female and disabled prisoners.

19.3.9 This staircase opens onto a small outdoor space from which the workshop and the male section referred to as the West Wing are accessed. This causes problems around segregation and movement of the prisoners in this unit. As men/women/juveniles should not mix.

19.3.10 This suite is used for arrested women, convicted women or juveniles. It has also been used to house Category A male prisoners and to separate arrested prisoners from each other when they have both been arrested for the same offence. In addition, it is used for prisoners who may be at threat from another inmate.

19.3.11 It is also notionally the remand section (see section 17 on Segregation above)

19.3.12 Should there be a two or more competing calls on this resource there is a contingency plan in place which would involve moving the men from the West Wing to the main prison, the convicted prisoner moving out of the women's unit to the West Wing and the arrested prisoner going into the Women's section.

19.3.13 Staff and prisoners are aware that this could happen at any time day or night; it would be very disruptive if it were to happen in the middle of the night. There does not seem to be plan for the situation where there are more people in the West Wing than spare bunks in the men's section

Finding 22 – Women prisoners have less freedom of movement within the prison than male prisoners in the same category. Deprivation of liberty must be proportionate and not affect one group more than another. A woman sentenced to prison experiences an extra level of deprivation of liberty as she cannot leave the women's section (two small rooms) at will unlike the male prisoners. This is not proportionate, all women prisoners in effect get treated more harshly than the men; it is disproportionate and discriminatory. This engages The Constitution Clauses 11 and 21, CEDAW Article 1 and ECHR Article 5

Finding 23 - Women prisoners have no access to TV for news and current affairs. The men in both sections do; this is discriminatory. This engages Clause 21 of the Constitution ECHR Article 14 and CEDAW Article 1 & 15

Recommendation 20 – The new facility should provide for equal access and equal treatment of female prisoners.

20 The West Wing

20.1 Introduction



Figure 6 West Wing recreational area

20.1.1 The West Wing is dormitory style accommodation that was created in 2014 to cater for the increase in the number of prisoners then occurring and the additions expected as a result of the reopening of cold cases and new cases stemming from the Wass Inquiry

20.1.2 It is for the use of

enhanced prisoners whose good behaviour has earned them the opportunity to apply to move to the wing. There are eight places for prisoners in bunk beds

20.1.3 This unit is a converted cellar with all natural light coming from the front. The rear of the room is quite dark and there is no ventilation to the rear.

20.1.4 During the course of the Inquiry the population of the West Wing increased to 7 and there is insufficient space in the “day room area” for everyone to sit.

21 Police Cells

21.1 Introduction

21.1.1 For historical reasons the police holding cells are within the main prison although the arrested persons are under the care of the Police Custody Sergeant.



Figure 7 Bed in police cell

21.1.2 The Police Cells are accessed via a short passageway passed the day room and are situated immediately opposite the day room separated by an outside space of 1.8m. This space is used to access the two custody cells (police holding cells), the security cell used for housing prisoners who are not behaving, the two showers

and one toilet. This space is also used for drying washing, smoking and is the only outdoor space easily accessible to the convicted prisoners.

21.1.3 Each cell has a concrete plinth as a bed base with a prison issue, flame retardant mattress on top.

21.1.4 These cells have been the scene of at least two fires one attempted suicide and one actual suicide in recent years.

21.2 OTPA Reports

21.2.1 The OTPA Reports declare the two cells for arrested prisoners as unfit for purpose.

21.2.2 The OTPA recommended that when the Police Station was moved to its new premises suitable holding cells were built.

Finding 24 – Arrested persons should not be held on prison premises. This engages Clause 11 of the Constitution and ECHR Article 3

Recommendation 21– If the new facility is to also be the site for the Police cells, they must be separate from the main prison and managed by the police not the prison. They must be in the purview of the custody sergeant at all times.

21.2.3 While an attempt was made to create one such cell in the new premises the current Chief of Police believes it to be even more unacceptable than the ones in the prison so the latter will continue to be used.

21.3 Other Evidence

21.3.1 The police cells can each accommodate one prisoner, which causes problems if there are more than two arrested persons at one time.

21.3.2 On occasions the women's section has had to be used to house male arrested persons and it is always used for arrested females.

21.3.3 One officer told us that the police had to be reminded on occasions to feed their arrestees.

21.3.4 Both male cells have an integral toilet these were without covers at the time of our visit.

21.3.5 There is a sink placed between the two cells but properly accessible only from outside. Following a suicide attempt by an arrested prisoner the flushing mechanisms are also only accessible through the bars outside the cell.

21.3.6 Arrestees used words like embarrassment and shame at being there, in full view of the convicted prisoners

21.3.7 They also told the Commission that they felt unclean and very exposed in the police cells.

21.3.8 One person who was held for a period of over 7 hours during the day told us that he had to sit on the bare mattress and felt unable to use the toilet as it was in full view of others. He was not offered any food during his stay although a prison officer made him a cup of sweet tea.

Finding 25 –The failure to provide food to arrested persons is unacceptable. This engages ICESCR Article 11 which provides for an adequate standard of living; this includes the right to food. Destitution engages ECHR Article 3 which is an absolute right.

Finding 26 - The 2 police cells are a breach of the arrested person's right to be kept separately from convicted prisoners, Clause 11 (4) of the Constitution. All those held in those cells, who gave evidence, reported being spoken to through the bars, questioned; some reported feeling intimidated or ashamed. Clause 11 (1) of the Constitution, ECHR Article 3 and ICCPR Article 10 are engaged as SHG is not fulfilling its positive obligation to protect the dignity of the arrested persons

Finding 27 – While some improvements have been made since the OTPA's 2009 report there is still little privacy for arrested prisoners to use the toilet. Prison staff both male and female and other prisoners from the yard and day room can view the arrestee. Engages the Right to Privacy Clause 13, ECHR Article 8 and ICCPR Article 17

21.3.9 Some of the younger arrested persons we spoke to talked of being frightened by being talked to by convicted sex offenders. One told us he had been made to change into prison trousers in full view of everyone and he was not told why.

21.3.10 All the arrestees interviewed said that they had not had any sort of briefing and would not have known what to do in fire.

21.3.11 Staff told us *"It would be easier if we didn't have all Categories prisoners together, it sometimes causes conflicts police prisoners mixing with convicted prisoners."* And *"It is not nice for convicted prisoners to mix with the arrested prisoners. They sometimes are subjected to verbal abuse/scuffling going on from drunken arrested persons ... I have heard drunks shouting all night. The Prisoners who are sleeping are disturbed."*

Finding 28 – The condition of the police cells is unacceptable, their location within the prison equally so. The disturbance to the convicted and remand prisoners by those intoxicated by excess alcohol shouting all night engages The Constitution Clause 13, EHRC Article 8 and ICCPR Article 17

Finding 29 - Young arrested persons (sometimes under 18 years) old are placed in contact with convicted prisoners. (ECHR Article 5). They appear to be forgotten by the police, on at least one occasion remaining without food for 7 hours engaging Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10

Recommendation 22– The Police must take full responsibility for the management of their Arrestees in their cells. Where a person under 18 or a vulnerable adult is arrested and placed in either of the cells an officer or responsible adult must be present at all times.

22 Sanitation

SMR Rule 15

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

SMR Rule 16

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

SMR Rule 17

All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.



Figure 8 Shower

22.1 Introduction

22.1.1 All prisoners get to shower at least once per day.

22.1.2 Facilities in the West Wing and the women's section are of a good standard; they appear clean and well maintained.

22.1.3 The West Wing has two toilets, two showers and two basins for a maximum of eight people.

22.1.4 The female Section has the full suite of facilities for one person.

22.2 Other Evidence

22.2.1 In the men's section there are 12 bunks therefore the potential for 12 people, all being awoken at the same time and having the same period in which to carry out their morning ablutions trying to share two toilets and one shower.

22.2.2 At times of high numbers of prisoners, we were told, this has led to tension among inmates. This had been reported to the PVC too.

22.2.3 During the course of this Inquiry a prisoner was hospitalised on three occasions having picked up a foot infection. The prisoner has been in prison over a year.

22.2.4 The source of the infection is unknown. The pathogen was identified by public health in the showers in the men's section. The showers were cleaned with special chemicals supplied by the hospital and the broken tiles in the shower area were replaced. Despite this the prisoner keeps having serious flare-ups of the infection.

22.2.5 Staff and prisoners raised concerns about access to the toilets at times of sickness and during the night. Each cell is equipped with an alarm/buzzer but difficulties have been experienced with these.

- 22.2.6 The buzzer was tested in cell one while the Commission were there and was working. They noted that when the door from reception is locked it is difficult (almost impossible) to hear a prisoner calling for assistance. This would be a problem if the buzzer became faulty.
- 22.2.7 The Commission was told that officers don't always hear the buzzer; at one point the buzzer was not working when assistance was needed and no one at reception could hear.
- 22.2.8 An officer stated "*Recently we had a sick prisoner who was secured in his cell for the day.*" When asked, "Was the door locked during that time?" the officer replied, "*The door was locked.*" The officer was then asked, "*Was he/she allowed out during the time he/she was sick?*" the officer replied, "*Prisoners can buzz to go to the toilet.*"
- 22.2.9 One prisoner said he was locked in his cell, sick with an upset stomach and had to press a buzzer (mounted high on the wall) if he required assistance. He needed to use the bathroom urgently and buzzed to be let out. He had to buzz three times over a period of several minutes before he was attended to."

Finding 30 – The limited number of toilets (2) available for 12 prisoners, the very public and insanitary toilets in the police cells and time taken to respond to buzzers during the night and at times of illness are, in the Commission's considered opinion, an affront to the dignity of the person. .This engages Clause 11 of the Constitution, ECHR Article 3, ICCPR Article 10 and ICESCR Articles 11 & 12.

22.2.10 The two toilets in the security cells are without lids and are not adequately screened either within the cell or from the other prisoners and staff. The toilets are regularly used by arrested persons and reportedly have been used occasionally (when the cells are not in use) by the remand and convicted prisoners if their allocated facilities are in use.

22.2.11 Research has shown that when a toilet is flushed without the lid in place bacteria may be sprayed into the surrounding area contaminating nearby floors and surfaces with bacteria that transmit infection. Bacteria



Figure 9 Bunk and toilet in police cell

can travel as far as two metres from the toilet (the bed and bedding are within two metres of the toilet) and can remain in the air for up to two hours after the flush. As the arrested prisoners sleep and eat within the cell they are at risk of infection.

22.2.12 As these toilets are open to the walkway used by the convicted and remand prisoners to access their toilet and showers and often within two metres of where the clean washing is hung. This is far from ideal. They are also very close to the day room and the table where the main population eat.

22.2.13 The food standards agency states that toilets should not open on to area where food is handled. Meals are taken in the day room with a toilet opening directly on to it. The Prisoners themselves have dealt with this by instituting a rule about what the inside toilet may be used for at meal times.



Figure 10 West Wing basins

22.2.14 Prisoners told us that they did not always have the proper cleaning materials to clean the showers, hand basins and toilets. This was disputed by prison management.

Finding 31 – The toilets in the police cells are unhygienic and inadequately screened from both the rest of the cell and the outside areas. This engages Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10 & ICESCR Article 11

Recommendation 23– The toilets in the police cells must be screened adequately from view, lids should be provided to prevent the spread of germs

23 Access to food and water

Rule 22

- 1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.**
- 2. Drinking water shall be available to every prisoner whenever he or she needs it.**

23.1 Introduction

23.1.1 The food in the prison is often an area of contention. With so many people to feed on a very tight budget it is impossible to keep everybody happy all of the time.

23.1.2 The Commission only considered general complaints about the food and then from a human rights perspective only.

23.2 OTPA Reports

23.2.1 The OTPA has stated that the prisoners' meals were very carbohydrate based and suggested that they be reviewed for nutritional balance.⁶² Work was carried out with the dietician but the dietician has now left the island so this work cannot be continued.

23.3 Other Evidence

23.3.1 Both prisoners and staff said that where it is possible, given the limitations of what is available on St Helena, every effort is made to meet the needs of vegetarians and those with religious or medical dietary requirements. Food is labelled to ensure it does not go to the wrong prisoner.

23.3.2 Staff members sample the food daily.

23.3.3 The prisoners complained that they are no longer provided with juice and their Incentive and Earned Privileges (IEP) spending allowance has not been increased to allow them to purchase their own. They believe the juice is necessary to increase their Vitamin C intake and to mask the unpleasant taste of the tap water. The CPN has been providing additional Vitamin C supplements to the prisoners, at his own expense.

23.3.4 The prisoners generally (like the rest of the town residents) do not like to drink the tap water, which tastes of chlorine. They are provided with water collected from an untreated water supply and stored in large plastic containers. This is decanted into individual drinking bottles, which are then stored in the fridge. The large containers sit in the heat of the day room until the next water collection.

23.3.5 This water is not tested for E. coli. The prisoners have been offered purification tablets but these are reported to taste awful. There is insufficient budget for food therefore bottled water is not an option. The choices are

1. Buy their own bottled water, but the money they are allowed to spend is insufficient to cover the cost,
2. Drink spring water which may be contaminated

⁶² OTPA Report 2015 para 1.5

3. Drink spring water with purification tablets which they dislike
4. Drink the above with added juice, but IEP will not stretch to it.

23.3.6 The prison kitchen had not been inspected by the Environmental Health Department under the current Food Safety Regulations but having brought this to the attention of prison management, an inspection was arranged for 4th July 2018⁶³

23.3.7 The Prison Ordinance says under clause 14 headed 'food':

(3) The food provided must be wholesome, nutritious, well prepared and served, reasonably varied and sufficient in quantity.

(4) The Environmental Health Officer must regularly inspect the food both before and after it is cooked, and must report any deficiency or defect to the Superintendent.

23.3.8 The Environmental Health Officer does not sample the food.

23.3.9 St Helena has a very high incidence of diabetes (approximately 20% of the population have mostly type 2 diabetes). Concerns were raised by prisoners with type 2 diabetes about the difficulties of managing their disability through diet within the prison.

23.3.10 The high incidence of carbohydrate in the diet is one issue as there is cereal or toast for breakfast, sandwiches at 10am and again at 12.30 for lunch. Dinner usually includes a large portion of rice or potato and there are sweet biscuits before bed.

23.3.11 The timing of meals also causes a problem for both insulin dependent and diet-managed diabetics. Breakfast is eaten around 8am and dinner at 4pm giving a period of 16 hours overnight without food.⁶⁴

23.3.12 The food budget is set annually and is a set total figure rather than so much per prisoner per day. This meant that during the Inquiry the prison were able to spend just over £1 per meal per prisoner.

⁶³ This was carried out and work was required which is being carried out.

⁶⁴ A decision to supply additional food has been taken since the start of this Inquiry

23.3.13 Food is sourced locally and is very expensive, while some food is produced at the prison farm, lack of resources means this is minimal. The minimum income standard (based on the requirement of a 42 year old woman) allows £30.88 per week for food which is £1.47 per meal; approximately 50% more for people who require more calories.

Finding 32 – The Commission notes that work was progressed with the dietician to develop healthy and nutritious menus. The dietician has now left and is not to be replaced. The Commission remains concerned that the timing of meals and high level of carbohydrates served will have negative outcomes for longer term prisoners who are diabetic. This engages Clause 11 of the Constitution, ECHR Article 3, ICCPR Article 10 and ICESCR Article 12 but those prisoners serving very long sentences the effect may engage the right to life.

Recommendation 24– A healthier diet and more regular eating pattern must be established and the budget for food should be on a per prisoner per day basis, calculated on the requirements of the prison demographic.

24 Access to medical treatment

SMR Rule 24

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

SMR Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.

2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

24.1 Other Evidence

24.1.1 For the last two years a pilot scheme has been in operation whereby a Community Psychiatric Nurse (CPN) has been made available by the Health Directorate to work in the prison. This has been hailed by all stakeholders as a complete success.

24.1.2 The nurse provides general medical care and a triage service which ensures the prisoner's medical needs are met while minimising trips to the hospital to see the doctors.

24.1.3 An official said *"having a Prison Nurse on a two-year trial period has been amazing and has helped the service to prisoners enormously. The CPN's service is an invaluable service for the Prison."*

24.1.4 Prison management, staff and the prisoners themselves all spoke very highly of this service and were convinced of the need for it to continue.

24.1.5 A request has been made for funding through the Funding Aid Mission (FAM). There has been no decision so far.

24.1.6 The CPN has developed terms of reference, policies and guidelines based on UN and EU best practice. He aims (an evidence suggests, succeeds) to provide a prison health care service equivalent to that available to St Helena as a whole. The CPN goes above and beyond the call of duty and supplies a service 24/7 despite only being allocated limited hours. Unfortunately, during the course of this Inquiry the CPN had to cover staff shortages within the hospital mental health team and the Islands Psychologist left on end of contract, not to be replaced

This is one of the areas where the prison really excels

Prisoners, managers and staff alike have praised the two-year pilot scheme

"A superb service"

"Amazing"

"As good as outside"

"Without the CPN's support and understanding I honestly believe I would not be alive"

Finding 33 – The health service in the prison is excellent and should be held up as one of the prison’s successes. It is an exemplary service. It is mandated to achieve a prison health care service equivalent to that available to St Helena as a whole and it does.

However, the Commission is concerned that this service, is at times of staff shortage within the Health Service, withdrawn from the prison albeit to meet the needs of the general population who have a right to equal access to healthcare too. This practice is discriminatory. Mental health is also to be considered as outlined in 13.2.3 failure to protect those known to be at risk of suicide is a breach of ECHR Article 2.

Recommendation 25– The Prison Nurse’s role not only be continued but that the time allocated to the prison be protected. The prison population is made up of some of the most vulnerable members of our society and their mental and physical health and wellbeing plays a fundamental role in their chances of successful rehabilitation. Reducing the risk of re-offending protects society as a whole.

Recommendation 26– The Psychologist’s role must continue and a replacement psychologist be appointed within the next six months.

25 Recreational facilities and opportunities for exercise

SMR Rule 23 - Exercise and sport

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

25.1 Evidence

25.1.1 There is no outdoor area suitable for exercise within the prison. There is very little outdoor space at all. Running, football, basketball etc. could not be played anywhere within the prison compound.



Figure 11 Outdoor Space

25.1.2 Most prisoners have access to a small passageway where even one person doing press-ups would cause major disruption

- 25.1.3 Only Category C & D prisoners are allowed to work outside the prison and they can work at the prison farm, litter pick and on occasions do other work in the community.
- 25.1.4 Category A and B prisoners only have access to the basement gym, which cannot be described as giving access to fresh air as there is little ventilation. Use of the gym is at the prisoner's own risk. There is currently a Category B prisoner that has not had exercise in the fresh air for over 3 years.⁶⁵

⁶⁵ At the time of writing this situation was being addressed

Finding 34 –The lack of exercise opportunities available for prisoners is a risk to their health and mental wellbeing. Category A and B prisoners have no outdoor exercise; female prisoners can only tend the church garden but that offers little real physical exercise. This may infringe their rights under Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10, ICESCR Article 12 and ECHR Article 8, but those prisoners serving very long sentences the effect may engage the right to life.

Recommendation 27– The new prison must have adequate space for all prisoners to exercise properly outdoors and afford equal opportunities for women prisoners.

Figure 11 - The Prison Gym



26 Contact with the Outside World

SMR Rule 58

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

- (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and**
- (b) By receiving visits.**

2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity

26.1 Evidence

- 26.1.1 The OTPA reports “There is little activity space, and the visits area is unsuitable. The accommodation as a whole is not suitable for a disabled prisoner, or for disabled visitors, which may again put SHG at risk of litigation.”⁶⁶
- 26.1.2 One official told the Commission, “Feedback from parents[of children visiting the prison] historically is that the current visiting arrangements for children are unsuitable due to the cramped conditions, no designated area for children’s visits and the potential proximity to sexual offenders.”
- 26.1.3 The staff are very accommodating and helpful but the design and age of the building makes it difficult for the elderly and the disabled to visit. The room that visits take place is up a steep, narrow flight of stairs.

⁶⁶ KM 2010 para 1.6

- 26.1.4 In the past allowing the use of the police offices next door at Ogborn House has mitigated this. However, this is no longer the police office and it is thought to be unlikely that the new occupants will be in a position or want to allow this to continue.
- 26.1.5 New more adaptable furniture has been purchased for the visitor room and there are now some toys available
- 26.1.6 In recent weeks an email facility for prisoners has been established this has been warmly welcomed by prisoners and their friends and family and is welcomed by the Commission. It is an excellent initiative.

Finding 35– There is a lack of provision for visitors who are elderly or disabled and a lack of facilities for children. The loss of the Ogborn House facility has exacerbated the situation. This is a potential challenge under Clause 13 of the Constitution ECHR Article 8, ICCPR Article 17. Children have a right of access to their parents this right is protected by CRC Articles 3, 8 and 9.

Recommendation 28– The new prison must have adequate space for prisoners to receive visits from their family whatever their age or ability. Suitable toilets and amenities should be provided.



Figure 12 Visitor Area

27 Work

SMR Rule 96

- 1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.**
- 2. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.**

SMR Rule 98

- 1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.**
- 2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners**
- 3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.**

SMR Rule 99

- 1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.**

SMR Rule 101

- 1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons**

27.1 Evidence

- 27.1.1 Prisoners, staff and official all agreed that there is little constructive activity and no work within the prison for Cat B/remand prisoners.⁶⁷
- 27.1.2 The same is true for any lower category prisoner unfit to carry out the heavy physical labour at the farm or walk for long distances litter picking.
- 27.1.3 Prisoners are paid 75p per session (i.e. a morning or afternoon).
- 27.1.4 Lack of access to work can cause severe problems for the prisoners, as without employment they have little or no opportunity to earn sufficient money to buy a phone card or personal items up to their IEP spending limit.
- 27.1.5 Family and friends can pay money into an account on the prisoner's behalf but often prisoners are from very low income families who are unable to contribute.
- 27.1.6 Prisoners can use their own money but most said they did not have savings of their own to use.
- 27.1.7 Prisoners said that for them this makes the IEP scheme less effective; they expressed the view that there was no incentive in having the privilege of spending up to £25 a week if you only have £2.50.
- 27.1.8 Work at the farm and in the prison has been an area of contention for some time. Until SHG changed its accounting practices, the prisoners used the prison farm to grow salad and vegetables and produce eggs and pork for consumption. Items produced in the workshop were sold and the funds along with the proceeds from the sale of surplus produce went into the Prisoners Amenity Fund. This fund was administered by the PVC and was used to purchase seed and other supplies and tools for the farm and to buy wood for the workshop and items like DVDs board games etc. for the prisoners use. This link between work and benefit is an important part of rehabilitation.

⁶⁷ OTPA 2015 para 1.7

- 27.1.9 Now the farm purchases have to be requested as part of the annual budget round and proceeds go back to SHG. The prisoners feel they get poor reward for their labour as they do not get the benefit of the amenity fund.

Recommendation 29 – The prison to set up a social enterprise for projects that produce funds (farm, workshop etc.). Income produced to be used to develop the amenities of the prison so the prisoners all benefit from their work.

- 27.1.10 A half-day working at the farm, mucking out pigs and digging heavy soil will earn a prisoner 75p. They feel they no longer get the results of their labour on their plates. There have therefore been complaints about being used as “*slave labour to put money in the government coffers*”
- 27.1.11 The Commission received documentation to show that this had been raised with prison management and the Finance Department.
-

Finding 36 – The positive reinforcement of the work ethic that the farm offered has been diminished by the change in funding practice The Prisoners no longer benefit from the proceeds of their work, funds are returned to SHG. This potentially reduces the effects of the rehabilitation process. Anything that reduces the effects of rehabilitation increases the chances of recidivism thereby potentially compromising the rights of future victims. This engages ICCPR Article 10(3)

- 27.1.12 Work on the farm and in the wood workshop has the potential to develop the inmate’s skills and increase their chances of earning an honest living on release.

- 27.1.13 An official stated that the same work opportunities are offered to male and female and prisoners. However, the policy is that female prisoners should not mix with male prisoners. It is therefore not practical for women to go to the farm as it would take too many staff hours for what is usually one person. St James Church gives female prisoners outside work in the garden. Females also have the opportunity for education classes, use of the gym, access to computers and board games.
- 27.1.14 One woman told the panel she was given cleaning activities and garden weeding (in the small flower bed within the woman's section). Because of the narrow window of time before the men had access to the yard it was for only a few hours in a morning. In the afternoon she had to stay in the small, women's day room and knit.
- 27.1.15 She believed that this not only restricted her ability to develop any vocational skills it also limited the amount of money she could make per day. She said "Males can earn twice as much as they can work two sessions per day" (75p per session).

Finding 37 – The Commission is also concerned that while agriculture and carpentry are useful trades they are not for everyone. Computer skills like CAD and Databases may be more beneficial for some and for those with physical or sensory disabilities. This engages The Constitution Clause 21 and ICESCR Article 6

Recommendation 30– The new prison must have adequate facilities for the education and skills development of all prisoners whatever their age or ability.

27.1.16 The main aim of the prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation.⁶⁸

27.1.17 The purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release.⁶⁹

27.1.18 Bored prisoners will look for ways of entertaining themselves – including trying to circumvent the prison rules – setting people up to fail both in prison and on release. Lack of activity has been shown to cause stress, anxiety, anger and depression, which have a detrimental effect on the mental health⁷⁰

Finding 38 – More needs to be done to provide work for the prisoners who cannot go to the farm and to give women prisoner's work of value. Lack of such work is detrimental to the dignity of the individual and is indirect discrimination towards female prisoners who have the same rights as men to work but their opportunities are limited by a combination of policy and practice and limited staff. This engages Clause 11 and 21 of The Constitution, ECHR Article 3, ICCPR Article 10, ICESCR Article 6 and Article 1 of CEDAW.

27.1.19 One prison officer said they would like to see the prisoners have a fair share of a rehabilitation programme. Due to space this cannot be accommodated. Although in the past prisoners were allowed to do mechanics and carpentry in the workshop it was decided that the risk of doing both in the same space was untenable so mechanics was stopped. Officers said they would like to see this provided for in new prison and additional activities like computing, academic qualifications and craftwork.

⁶⁸ICCPR, article 10, para. 3.

⁶⁹SMR, rules 65 and 66 (1).

⁷⁰ Nurse J., Woodcock, P. and Ormsby, J. (2003) ' (Nurse, 2003) (Nurse, 2003)

27.1.20 Prisoners are paid a maximum of 75p per work session, there are two sessions a day and one on Saturday. Giving an earning capacity of £8.25 per week. A Prisoner on standard IEP can spend up to £18.00 per week and an enhanced prisoner £25.00. This spending includes phone cards, deodorant, fruit juice additional milk etc.

27.1.21 In answer to the question, “Why are there no policies for H & S and Anti-bullying in place?” One official told the Commission when giving formal evidence that the prison had no health and safety policy as SHG does not have one. They went on to say that they did see the need for such policy but *“my biggest reservation would be that the policy would be breached every day. The common sense approach is used instead.”* They did however say that there would be a Health & Safety policy in the

Finding 39 – The Incentive and Earned Privileges scheme is a motivational tool to encourage engagement with the prison regime. However for those without personal funds or families to support them it fails in two ways.

1. The maximum a prisoner can earn per week is £8.25. This does not cover the prisoner’s basic expenses; the prison does not provide more than 1 litre of milk per prisoner per week, deodorant or an alternative for those allergic to soap. A phone card is a minimum of £5.

2. The incentive for those prisoners with no additional funds to achieve enhanced status is reduced.

There is a potential for this to be divisive and have a detrimental effect on the poorer prisoners or those whose families cannot help them. The State has a duty to ensure the prisoner’s basic needs are met. This engages Clause 11 of the Constitution, ECHR Article 3 and ICCPR Article 10

Recommendation 31– A fit for purpose health and safety policy must be developed within the next 3 months. All staff and prisoners to be briefed on its operation and the policy included in the Prisoner Induction Pack

new prison.

28 Education and recreation

28.1 Evidence

28.1.1 Education in prisons should be aimed at developing the whole person, taking account of prisoners' social, economic and cultural background.⁷¹

28.1.2 Education and cultural activities shall be provided and encouraged, including access to an adequate library.⁷²

28.1.3 Both Staff and prisoners agreed that work has been done to improve the educational activities for basic literacy. However for long serving prisoners and the more academic ones believed there is nothing available for them.

Finding 40 – The prison achieves remarkable success with basic literacy and numeracy education. Prisoners are encouraged to carry on learning outside prison and are supported in doing so.

Work has been carried out recently in the basement to make better use of the space for the library and IT area.

Recommendation 32– Distance learning opportunities for prisoners and staff to be explored with the Community College staff.

⁷¹BPT, principle 6; Economic and Social Council resolution 1990/20 of 24 May 1990, paragraph 3 (a).

⁷²UDHR, articles 26 and 27; ICESCR, article 13; SMR, rules 40, 77 and 78.

29 Access to complaints handling mechanisms

SMR Rule 54

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison

SMR Rule 57

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.
3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

29.1 Evidence

- 29.1.1 All prisoners and staff agreed that prisoners are provided with an induction pack within 24 hours of committal, which contains all the necessary information. It should be noted that the Temperature Guidelines discussed in 3.3 above were not included until 16th April 2018.
- 29.1.2 Prisoners are assigned a Personal Officer who is responsible inter alia for assisting the prisoner to understand the above and to assist through the process if required.
- 29.1.3 One prisoner told the panel *"We were required to complete a complaints form, which we were told would be recorded and dealt with but this was unsatisfying as it was a very long process so that you probably forgot your complaint in the first place. Nothing ever came of out complaints. No actions were taken."*
- 29.1.4 There is a statutory right, granted by the Prison Ordinance 1960 9 (1) & (2) for prisons to have their complaints heard by the PVC and SoP
- 29.1.5 Prisoners all stated that they were unhappy at the lack of access to the PVC. They said prison management had insisted on an on-call rota, which meant it could take days if not weeks to see a member of the committee.
- 29.1.6 Prisoners spoke of attempts to appeal to or meet with SoP being ignored/not passed on.
- 29.1.7 Longer serving prisoners remembered the Prison Council, a regular meeting between prison managers, two prisoners as representatives and a representative from the PVC, which they felt, had been very successful in resolving issues. This ceased following a change of management
- 29.1.8 Evidence presented by the PVC detailing attempts to deal with serious issues such as the heat, lack of ventilation which had been taken to senior prison managers and higher, which were not addressed.
- 29.1.9 The Commission experienced difficulties getting access to the prisoner's complaints. This was due to the way complaints are recorded and filed within the prison.

29.1.10 When requesting information on complaints the Commission asked for complaints back to 2009. The expectation was a log of the complaints or a monitoring spreadsheet, which would be necessary to spot trends and address, issues as they arose.⁷³ This is not done, the prisoner fills out a complaint form, management write a response and the paper put in the

Finding 41 – The Inquiry found that without exception the prisoners felt management did not listen to their complaints, the Commission considers that the complaints handling and monitoring procedure is unsatisfactory. This engages Clause 11 of the Constitution. ICESCR is also engaged because it protects the right to have a complaint heard and makes the monitoring of complaints is a core obligation on States

Recommendation 33– The Complaints procedure to be reviewed and a monitoring mechanism implemented in line with SMR Rule 57.

individual prisoner's file.

30 Protection from violence

30.1 Evidence

30.1.1 Prisoners like all members of society have an expectation and a right under the law and the Constitution to protection from violence.

⁷³NOMS PSI 02/2012, section 2:10

- 30.1.2 Where people are detained by the state, the state has a duty of care to protect them in the case of prisoners this could be from both other prisoners and staff.
- 30.1.3 The prison has no anti-bullying policy.
- 30.1.4 When questioned a senior official said “I do not see the need for an anti-bullying policy as the numbers of prisoners are small and prisoners will come forward if it is necessary. The alleged perpetrators would be dealt with through the IEP system. Staff would work with the victims to ascertain what they perceive as bullying.”
- 30.1.5 This response did not envisage the possibility of staff bullying each other or the prisoners. Nor did it consider the possibility of a prisoner bullying staff.
- 30.1.6 The level of violence within the prison is usually very low compared to the UK. What little there is usually dealt with very effectively by the staff, without the need for any special measures i.e. restraint.
- 30.1.7 Complaints about violence have increased in recent months mainly due the behaviour of one specific prisoner.
- 30.1.8 A prisoner said “My suggestion is these complaints be taken seriously and dealt with in a less flippant way. I also suggest that CCTV cameras be installed in the day-room and yard to monitor activities in these areas so evidence is obtained to prevent the management from ignoring these incidents.”⁷⁴

Finding 42 – The lack of an anti-bullying policy is a failure to protect prisoners and engages Clause 11 (1) of the Constitution and ECHR Article 3

Recommendation 34 - An Anti-bullying Policy be implemented within 3 months, briefed to all staff and prisoners and included in the Prisoner Induction Pack.

⁷⁴ The Commission understands that CCTV is now being installed in the main prison.

31 The Staff

31.1 General Comment

- 31.1.1 The Commission can express nothing but support and admiration for the prison staff. They are the “glue that keeps the prison together.” The areas covered by this Inquiry illustrate how complex a role the staff have to fulfil. They require a wide range of skills
- 31.1.2 Work in prison is a public service and those that carry out this work should, like education or health professionals be held in high regard and these officers deserve to be.
- 31.1.3 One Official said “Staff are very good at what they do and are really keen to learn. They have a good relationship with prisoners and there is mutual respect between both.”

Finding 43 - The Commission is concerned that staff expressed the view that they are under resourced, undervalued and under pressure. Many members of staff said they felt like second class citizens compared to their colleagues in the police. They gave examples to illustrate this which cannot be detailed in this report due to the need to protect the anonymity of witnesses.

31.2 Training

- 31.2.1 Some staff said that they had had little training in the last few years and felt that they could do more if they knew how. Some were undertaking literacy and numeracy skills development.
- 31.2.2 None of the staff had any human rights training. Senior managers agreed no training had been given on this subject, yet most if not all of the police officers have had some in the last two years.

- 31.2.3 All the prison officers have been trained on personal safety, use of restraints and first aid.

31.3 Staffing Issues and Human Rights

- 31.3.1 Staff gave evidence that, particularly at night, it is not uncommon for the checks to be carried out on female prisoners by a male staff member alone. One officer said *“two officers are on duty in the evening. Sometimes you have no choice but to check females on your own.”*
- 31.3.2 The Commission was told by prison officials that they try to get one male and one female to work on the same shift but this is not always possible.
- 31.3.3 Prison Officers said that they felt exposed by not having a senior officer on at night. One Officer said *“It has been suggested to have a Senior Officer on evening shift but this has not been agreed at the moment. It would make life easier for the Prison Officer. Sometimes it can take a while to contact a Senior Officer who is on call.”*
- 31.3.4 Another officer stated that the question of a Senior Officer on each shift has been raised before, but up to present it is a negative response. They said *“It would save time phoning around to contact them when you need assistance. It has happened on occasions that you cannot contact the ‘on call’ senior officer. It then takes time for them to get to the Prison”*
- 31.3.5 The pressures on the staff at night can be difficult. It was felt that should a prisoner need to be restrained, or removed to hospital due to sickness this could increase the risk of injury or loss of life to themselves and/or the prisoner. An officer on the phone to a senior cannot assist his/her colleague with the prisoners.
- 31.3.6 This risk is substantially increased by the fact that all calls to the police after 11.00 pm are dealt with by these same officers who then have to call the relevant on call officer/social worker etc. On top of this they may have to let police officers in and out when an arrest has been made and deal with a belligerent drunk in the police cells while the police officers go off to conduct their inquiries.

31.3.7 Phone calls have on occasions been transferred to the prison earlier than 11:00pm. We were told that if the receptionist is on their own at the police station they will transfer the calls so they can go to the toilet.

Finding 44 –The requirement for the prison staff to operate the out of hours call centre is an unfair burden on the two people on duty. If staff are distracted by non-prison tasks they cannot adequately protect the prisoners or themselves in an emergency. This engages the right to life and may amount to a violation of the procedural obligations protected by under Clause 6 of the Constitution, ECHR Article 2 and ICCPR Article 6

Recommendation 35 –The Commission recommends that staffing levels be increased to three at night and that where possible these shifts should include a Senior Officer. This is the minimum staffing level required for the proper management of the restraint procedures

32 Discrimination

SMR Rule 2

1. **The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.**
2. **In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.**

32.1 Evidence

- 32.1.1 The Commission received complaints about discrimination from female prisoners who felt they disadvantaged by their gender.
- 32.1.2 Women are made to sleep on a concrete plinth, while the men have proper bunks.
- 32.1.3 Women are unable to go to the farm to work or use the workshop as they must be separate from the men at all times. An official told the Commission that as there were always several men and only occasionally a woman it was unfair to stop the men going in order to allow one woman.
- 32.1.4 Because women prisoners cannot mix with the men they cannot move around the prison like the men and are confined to their cell/day room from 1.30pm until 9.00 am. Male prisoners are out of their cells from 6.30 am until 10.00 pm and can move around the prison.

- 32.1.5 One woman told us that for the whole of her sentence, apart from going upstairs to do her laundry and for visits, she never left the women's section and small yard. The CPN and probation officer visited her there. The men went to the farm and could visit the CPN or probation officer.
- 32.1.6 Management said they are very aware that females are disadvantaged as they are isolated, however staff do visit hourly.
- 32.1.7 As mentioned above (section 27) their earning potential is lower than that of the male prisoners.
- 32.1.8 Both Men's sections have a TV service so the men can watch their favourite programmes, live football and DVDs. The women have a small TV and a selection of DVDs. A female prisoner who wanted to watch the football was given a radio to listen to the match but was unable to watch it unlike her male counterparts.
- 32.1.9 The prison is inaccessible to the disabled. It is only possible to access parts of the ground floor in a wheelchair. Improvements were made to accommodate a prisoner on crutches for a long period but it would not be possible for a wheelchair user to access the toilets and showers and the bunks/beds would not be accessible either.
- 32.1.10 It would be impossible for anyone with a physical disability to access the gym, library, computers, medical room, workshop, kitchen or get on the transport to the farm so recreational activities and work options would also be limited.
- 32.1.11 Disabled and elderly visitors cannot manage the steep stairs to the visitor's room. As discussed above, alternative arrangements used to be available in at Ogborn House but this now appears to be unavailable and no substitute has been offered at this point in time.

Finding 45– Women prisoners and potentially prisoners with disabilities are discriminated against by the prison regime. This engages ECHR Article 14, ICCPR Article 26 and items 20.1.2 – 20.1.8 female prisoners are also protected by Article 1 of CEDAW.

Recommendation 36 – The Plans for the new facility be reviewed by persons with disabilities, the Occupational Therapists and someone with expertise in women’s prisons to ensure that the new prison meets the needs of all potential users.

33 Prison in the Government Structure

33.1 Introduction

33.1.1 In terms of separation of functions, it is important that there should be a clear organisational separation between the police and the prison administrations.⁷⁵

There is a potential conflict of interest and two different mind-sets are required.

33.1.2 As a general rule, members of the Police or Armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a police or military institution⁷⁶.

33.1.3 In the case of St Helena which does not have a military force of any kind, the police are our first line of defence; our security force. For that reason, the police service is directly managed by the Governor. Under the Constitution the Governor has special responsibility for internal and external security.⁷⁷

33.1.4 The prison is not directly a matter of internal security and even if it was the Governor has the power to delegate that authority to any member of Executive Council.⁷⁸

33.1.5 The police are generally responsible for investigating crime and arresting criminals. It is their focus to minimise the risk to the public. This is not a bad thing: it is their job and their focus.

⁷⁵ A Human Rights Approach to Prison Management Handbook for Prison Staff SECOND EDITION Andrew Coyle, 2009 p19

⁷⁶Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 2008.

⁷⁷ The Constitution of St Helena, Ascension Island and Tristan da Cunha 2009, Clause 44(1)

⁷⁸ Ibid 44(2)

- 33.1.6 Prisons and prison staff have a different role. They must supervise the detention of the prisoner but more importantly they should coordinate the rehabilitation programme for that prisoner in order to reduce as far as possible the risk to society of recidivism.
- 33.1.7 The Prison falls under the remit of the Police Directorate, which reports directly to the Governor. There is no political oversight, which is a failure to meet human rights standards.
- 33.1.8 The Prison like the schools and the hospital serve society and contribute to the public good. SHG has a duty to protect society against crime while promoting the health and wellbeing of us all (including prisoners).
- 33.1.9 The management and delivery of the prison service is as important as that of the hospital or our schools. The prison is treated differently to our hospital and schools in that our elected representatives have no oversight or responsibility for it. If our hospital does not deliver we can rely on our Councillors to look at the issue and make decisions in the best interests of St Helena.
- 33.1.10 The budget for the prison is part of the Police Directorate's budget and it would be possible to re-allocate funds from one service to the other. While recent examples of this work to the benefit of the prison a Chief of Police who saw police needs as more pressing may move funds the other way. This may potentially have human rights implications.
- 33.1.11 An Official said that the Prison is separate from Police in the UK, and that the Police do not understand prisons. They could not see any advantages to the Prison Manager reporting directly to the Governor. Sometimes prison is forgotten about.
- 33.1.12 All prisoners will one day return to life in civil society. If they are to live within the law it will be important that they have somewhere to live, that they have the opportunity of employment and that they have a proper social support structure. It is very important, therefore, that the prison administration should have close links with other public service agencies, such as the social welfare and health authorities. This is more likely to happen if the prison administration itself is separate from the police and decisions are taken from a perspective of rehabilitation of offenders.

- 33.1.13 There is also a dichotomy between the role of the police in investigating crime, dealing with victims and bringing perpetrators to justice and the role of the prison in the rehabilitation and care of offenders. This causes specific problems in the decisions around release on temporary licence (ROTL) and risk management

Finding 46 – There is a dichotomy between the role of the police in investigating crime, dealing with victims and bringing perpetrators to justice and the role of prisons in the rehabilitation and care of offenders. This causes specific problems in the decisions around release on temporary licence (ROTL) and risk management. The Commission believes that the prison should be a separate entity from the police. It is a potential conflict of interests. There should be political oversight and responsibility for the prison. The prison holds almost exclusively St Helenians and they have the right to political oversight. This is the opinion not only of The Commission but that of the United Nations¹ and UKG¹

Recommendation 37 – The Prison to be a stand-alone directorate of SHG falling under the relevant Council Committee.

34 The Optional Protocol to the Convention Against Torture (OPCAT)

34.1 What is OPCAT

- 34.1.1 All over the world there has been growing recognition that detainees are often vulnerable and so there is a need for strong, independent, accountable bodies to protect them from ill-treatment.

34.1.2 The United Nations has adopted the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to meet this need. The UK ratified OPCAT in 2003 but as yet it has not been extended to St Helena.

34.1.3 The basic premise of OPCAT is that protections for those who are detained are strengthened by a system of regular visits to all places of detention – prisons, police custody, children’s secure accommodation, immigration, military and mental health detention, and any other place where a person may be deprived of their liberty.

34.1.4 Those States which ratify OPCAT, are required to designate a national preventive mechanism (NPM) to carry out such visits and to monitor the treatment and conditions of detainees.

Finding 47 – The current Prison Visiting Committee (PVC) as a body, has insufficient powers under the current Prisons Ordinance to effectively monitor the prison.

Recommendation 38 – The PVC to be replaced by an NPM with the level of responsibility prescribed in OPCAT and OPCAT to be extended to ST Helena.

35 Conclusion

35.1.1 Imprisonment can be regarded as the final stage, the last resort for someone who commits serious crime or is a persistent offender.

35.1.2 How the prisoners are treated while in prison has a long term effect on the chances that they will reoffend.

- 35.1.3 The Prison itself is on the other hand should be influenced by the government policies and public perception. Efficient management and humane prison conditions are not dependent on the prison authorities alone. What happens in prisons is intrinsically linked to what pressures that system is under or what support comes from politicians and the public.
- 35.1.4 What has become clear during the course of this enquiry is that for the last 160 years, there has been much good intention, considerable efforts on the part of some to build a new prison. Yet it has not happened.
- 35.1.5 On St Helena our prisoners should be held in circumstances appropriate to the culture and climate of the Island with the necessary regard to security, public safety and the protection of the staff and visitors. However, one thing that cannot be different is the human rights standards and protections due to us all.
- 35.1.6 SHG and UKG cannot continue to knowingly risk the lives and wellbeing of their citizens and allow their citizens to continue to have their rights compromised.

35.2 9. Bibliography

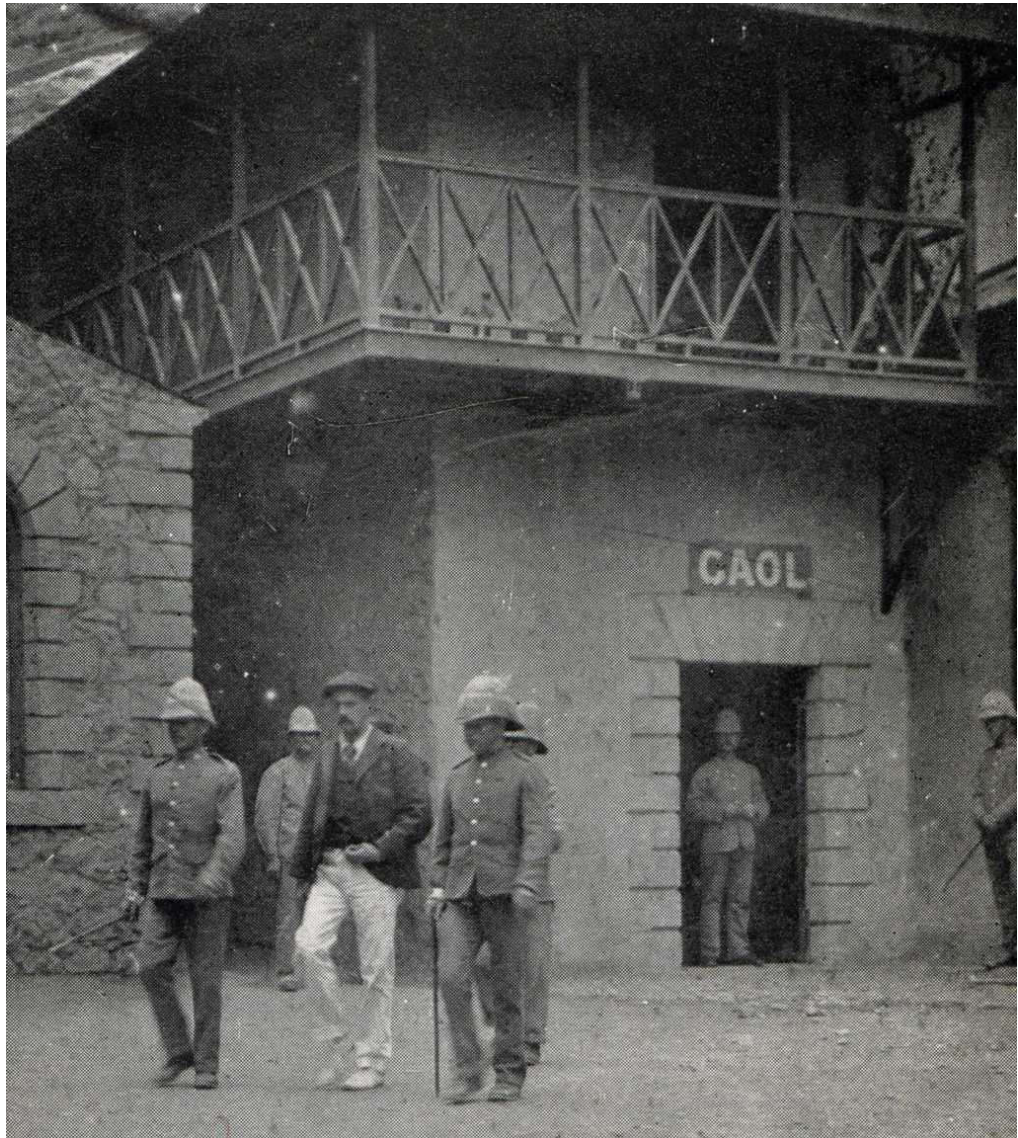
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