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Victims and Prisoners BBll - Repressive Laws Target Prisoners

John Bowden, FRFI: In the midst of deepening capitalist economic crisis and increased social unrest, the repressive apparatus of the state has become even more brutal and disregarding of even a semblance of basic human rights. Former life sentence prisoner John Bowden reports on the Victims and Prisoners Bill, currently being debated in the House of Lords.

Over the past two years, the government has introduced draconian measures to curtail effective protest and target marginalised communities. The Public Order Act 2023 massively increased the power of the police to restrict and criminalise public protests, and to stop and search targeted minority ethnic groups. This hardening of the 'law and order' social and political climate inevitably finds its most vicious expression in the treatment of prisoners, especially those labelled the 'worst of the worst', mainly life sentence prisoners. The Victims and Prisoners Bill, if passed, will take the decision on whether such prisoners can eventually be released out of the hands of the Parole Board or judiciary and put it into those of a political establishment driven by a far-right 'tough on crime' agenda. This will effectively condemn many life sentence prisoners to die in prison without recourse to judicial procedure or human rights oversight.

The Bill claims to provide victims of crime with improved support and guidance but victim-based organisations say it does nothing to meet the key needs of victims despite the title of the Bill. The Domestic Abuse Commissioner has publicly said that the Bill will distract attention from the real needs of victims and actually undermine those needs. The reality is that the prime purpose of the Bill is to remove from a growing number of prisoners the human right to an independent review of their imprisonment.

The Justice Ministry had already published in 2022 a 'Root and Branch Review of the Parole System' which recommended greater 'ministerial oversight' of Parole Boards and encouraged the recruitment of more former police officers to sit on parole panels. The new Bill now totally removes the independence of the Parole Board in deciding on the release of long-term prisoners. Long term imprisonment is already on the rise in Britain: tariffs (minimum terms, set by the courts) are increasingly lengthy, and many lifers are held for decades beyond their original tariff. Britain holds more life sentenced prisoners than any country in Europe, in both absolute terms and in proportion to overall population: in 2016 the United Kingdom had 8,554 life sentenced prisoners (equivalent to 13 people per 100,000 of population. The next highest countries were France - 489 (0.7 per 100,000), Russia 1,766 (1.20), Germany - 1,863 (2.3) and Turkey 7,303 (9.3). These lifers are warehoused in a prison system which is massively overcrowded and in which gaols resemble penal slums.

The Victims and Prisoners Bill takes forward the proposal in the Root and Branch Review that release decisions related to a significant 'top-tier' cohort of life sentence prisoners will be subject to 'ministerial oversight'. Effectively, they will be prevented from leaving prison ever. Inevitably in an institutionally racist criminal justice and prison system, the 'top tier' of life sentence prisoners will be disproportionately black, Asian and minority ethnic, with young men the most clearly targeted for this labelling. The government's own Equality Impact Assessment for the Bill admits as much, stating that there is 'a higher proportion of Asian, Black, and those aged 18-20 in those sentenced to a top-tier offence'.

The Bill will also considerably lessen the hope of almost 3,000 prisoners serving terms of Indefinite Imprisonment for Public Protection (IPP) of ever being freed. In the face of a sustained anti-IPP campaign and UN condemnation of the psychological torture of those serving the sentence, the Bill throws a crumb to the liberal reformists by agreeing to reduce the time those IPP prisoners who manage to be released on parole will then be subject to supervision on licence in the community. At the same time, the government has continued to adamantly reject the parliamentary Justice Committee's recommendation last year that all IPP prisoners should be resentenced to more appropriate determinate sentences.

The Victims and Prisoners Bill, along with the Public Order Act and Illegal Migration Act, is a testing ground for more fundamental changes in Britain's human rights framework, and as always it is the most socially marginalised and demonised groups who are used to fuel the eradication of human rights generally for the working class. The treatment of prisoners, especially, has always been an accurate barometer of the social and political climate of capitalist society, and by condemning an increasing number of prisoners to die in prison without proper judicial process reveals what contempt the state has for the human rights of the poor generally. In June 2023, following a flawed consultation process, the government announced legislation to repeal the Human Rights Act, which imports the European Convention on Human Rights into domestic law, and replace it with a so-called Bill of Rights. Although this Bill was subsequently dropped, the government has continued to do everything possible to avoid compliance with European or international human rights law. People in prison are already feeling the brutal consequences of this, and there are more attacks to come on the working class in general as the veneer of social democracy and 'equal rights for all' disappears in the wake of a deepening social and economic crisis.

Update: Campaign That Defeated A Banning Order On Sex-Work In Newham

English Collective of Prostitutes: In December 2022 Newham Council issued a consultation on its proposal to bring in a Public Space Protection Order (PSPO) in the Romford Road. The justification for the PSPO was that sex workers were: "Offering sexual services to passersby, engaging in sexual activities in public spaces" and that clients were kerb-crawling and that this was causing "harassment, alarm or distress." Anyone attempting to sell or buy sex would face on the spot £100 fines, and if taken to court could be fined up to £1000. A lively campaign co-ordinated by the English Collective of Prostitutes (ECP) saw the PSPO scrapped in late April 2023.

Newham Council announced instead that it would be: "Developing a new Sex Work Strategy which will place public health at the centre of approaches to support vulnerable people and reduce the stigmatisation and exploitation of street and off-street sex workers. " (Newham Council Statement). Currently the Council is conducting a needs assessment which will conclude in May 2024. The ECP and National Ugly Mugs (NUM) pressed the Council -- in the meantime – to provide emergency help to sex workers in crisis.

The ECP Co-Ordinated Campaign highlighted evidence that the PSPO would undermine sex-worker's safety, dangerously expand police powers and criminalise women during a cost-of-living crisis, all the while doing nothing to address the issues of rising poverty, hunger and homelessness in the area. An action alert and open letter was used to build the campaign and bring in support from hundreds of people and organisations, including groups like Newham Copwatch, which worked to gather support from people in the borough. The ECP worked with a few principled Labour and Green councillors. Human rights organisations like Amnesty and Liberty wrote letters of protest and Liberty started to

strategise a legal challenge should the council decide to proceed with the proposed PSPO.

After it was raised that Newham council hadn't consulted sex workers about the PSPO, the ECP was invited to two meetings with the Mayor, councillors, people from health, adult social care and crime and community safety departments. Women Against Rape (WAR), NUM, local residents and an academic who had conducted research in the area of the proposed zone, were part of the ECP's delegation at these meetings. The ECP pointed to research conducted by academics on behalf of the Doctors of The World NGO that showed that 82% of the women working the streets in the area were homeless.[1] Many have been made destitute by benefit sanctions. We pressed the Council to address the poverty and homelessness which pushes so many women, particularly single mothers, into prostitution.

National Ugly Mugs (NUM), a national charity, wrote to the Council reinforcing that: "If you wish to prevent sex workers from working, it is necessary to direct efforts and resources to ensure they have what they need to survive. Placing financial penalties on those trying to survive during one of the worst cost-of-living crises in living memory is cruelty." Backed by WAR, the ECP raised that sex workers' safety would be undermined and that those of us who are women of colour and migrant women would be especially targeted under the PSPO. ECP cited evidence from a report conducted by the London School of Hygiene and Tropical Medicine that 42% of street sex workers in the area had experienced violence from the police.[2] Considering evidence of widespread criminality, misogyny, corruption and racism in the Met police, any expansion of police powers is unacceptable and dangerous. Worryingly, it would be officers at Forest Gate police station that would bear responsibility for enforcing the PSPO and officers at this station have recently been convicted of sharing selfies of two murdered sisters Nicole Smallman and Bibaa Henry. Layla Omar from WAR said that women are furious at the police's refusal to investigate violence against women and the cover up of police rape and racism: "A report just last week said that 150 officers are under investigation for sexual misconduct and racism. How dare the Council try and give police more powers over women! Those of us who are Muslim women, immigrant women, women of colour and sex workers already suffer from the hostilities of the police, and this will make things worse for us."

Comparing Our Criminal Records Policy With Five USA States

"It is clear that criminal record disclosure requirements in England and Wales are much more punitive than the five U.S. states we have researched." - Reed Smith LLP

One in six people in England and Wales have a criminal record. But 27% of UK employers wouldn't hire someone with a conviction. Criminal records checks are requested by employers as part of the recruitment process and these checks reveal offences and sentences, from prison sentences to police warnings for minor crimes. Employment is a key factor in preventing future offending. But people with criminal records are often trapped in the past, unable to find stable work and contribute their talents to society because of their record. Other countries, like the US, have begun taking steps to solve the issue and help people with criminal records into employment by changing what is revealed on checks and for how long. So how do we compare?

A new report from the FairChecks campaign compares what appears on criminal record checks in England and Wales and five US states: California, Connecticut, Utah, New Jersey, and Oklahoma. The information listed on criminal record checks depends on the type of offence someone has committed and the type of check a job is eligible for. Therefore, to get a clear and comparable view of each system, researchers explored the criminal record implications of five specific scenarios in each jurisdiction.

In three out of five scenarios, the England and Wales system is more punitive than any of the five US states. In the other two scenarios, the England and Wales system is similarly punitive to certain states, and more punitive than others. Researchers from Reed Smith LLP concluded: "It is clear that criminal record disclosure requirements in England and Wales are much more punitive than the five U.S. states we have researched. In Oklahoma, Utah and New Jersey, convictions can often be expunged or pardoned, meaning that a background check will not reveal them. "In other states, such as California and Connecticut, employers cannot access information on childhood convictions and many offences are sealed automatically so that employers cannot see them. This allows individuals with past convictions a degree of comfort in knowing that future career prospects will not be hindered by the past. Neither position is replicated in England and Wales."

What does this look like in real terms? One of the scenarios explored in the report is Rich's story. Rich was convicted of drug possession 12 years ago. In all five US states explored, he can delete the conviction from his record after a maximum of 10 years and move on with his life. In England and Wales, Rich's conviction will show for the rest of his life on the detailed checks required for many roles such as teacher, nurse, accountant, or taxi driver. He will constantly face the fear, and very real prospect, that employers will discriminate against him based on his record.

What needs to change? People with criminal records need a fair chance to fulfil their potential. FairChecks is calling for a full review of the criminal records disclosure system in England and Wales. In the short-term, FairChecks has three stepping stone policy recommendations which would free thousands of people from the enduring impact of a criminal record: Wipe the slate clean for childhood offences - Remove cautions from criminal record checks - Stop revealing short prison sentences forever.

USA: McDonald's, Kroger and Coca-Cola Linked to Forced Prison Labor

Sharon Zhang, Truthout: A sprawling new investigation has found that forced prison labor feeds into the supply chains of a wide and dizzying range of food and grocery companies, ranging from small local brands and restaurants to major conglomerates like Tyson, Coca-Cola and Kroger. The two-year Associated Press investigation, published Monday 29th Januaary, found that widespread abuse of prison workers has become a multibillion dollar industry due to partnerships between prisons, corporations and lawmakers. While prisoners, often forced to work, make pennies on the dollar or sometimes no money at all while facing physical and mental abuse on the job, states, prisons and companies make tens of millions of dollars of profits. The reporters sifted through public information requests in all 50 states and followed nearly $200 million of goods and livestock from harvest to sales from the past six years — sometimes literally following vans from yards where prisoners are working to where the goods are delivered.

Interviews with current and former prisoners revealed that they were put through horrific conditions for the sake of profits for the brands that contracted their labor or the states that imprisoned them. Prisoners, who are disproportionately Black, have died and lost limbs on the job and have been abused by the prison staff. And because they're not considered employees under labor laws, they don't have the same rights as workers classified as employees do to strike or form unions. The reporters found that prison labor is part of the supply chain of companies spanning across nearly the entire food industry, including grocers like Aldi, Costco, Kroger, Target, Walmart, and Whole Foods; restaurant companies like Burger King, Chipotle, Domino's and McDonald's; and industry conglomerates like Cargill, Coca-Cola, General Mills, Pepsi and Tyson, which together own such a large variety of brands that they are nearly impossible to avoid in retail settings.

Even local restaurants or smaller brands that market themselves as ethical or selling a specialty food, like Eggland's Best or Belgioioso Cheese, have received the goods, as reporters found. Hickman's Family Farms, which supplies Eggland's Best and Land O'Lakes, had housed 140 women in a warehouse on its property in Arizona as the COVID-19 pandemic set in in March 2020; the women made just $3 an hour after deductions, with the state taking 30 percent for "room and board." One inmate transport van that reporters followed stopped at a former slave plantation in St. Francisville, Louisiana, that has now been turned into a wedding venue and tourist site, where two Black men entered the site's restaurant; one of them told reporters he washed dishes there. "You can't call it anything else. It's just slavery," Calvin Thomas, who was imprisoned for over 17 years at the Angola state penitentiary in Louisiana, told The Associated Press. Workers there are often forced to work the fields just days after arriving at the prison, which sits on a former antebellum plantation, making as much as 40 cents an hour. Thomas described how the prisoners would be forced to work through oppressive heat that would even make the guards' horses collapse.

"Slavery has not been abolished," Curtis Davis, who was imprisoned for over 25 years in the Louisiana State Penitentiary and who now advocates against forced prison labor, told The Associated Press. "It is still operating in present tense," Davis continued. "Nothing has changed." Another worker, Faye Jacobs, told reporters that her only pay for working on Alabama prison farms was two rolls of toilet paper a week, and toothpaste and some menstrual pads each month. In Alabama, as in several other Southern states, prisoners aren't paid anything for their work for most jobs. Even when workers are paid, the state severely garnishes their wages; in the past five years, Alabama brought in $32 million by garnishing 40 percent of its prisoners' wages, the investigation found. Proponents of prison labor say that they view the low cost of prison labor as a good thing. "It's a win-win," said Sheriff Wayne Ivey of Brevard County, Florida. "The inmate that's doing that is learning a skill set… They are making time go by at a faster pace. The other side of the win-win is, it's generally saving the taxpayers money."

USA: State Laws Restrict People Criminal Convictions From Working in Many Areas

Erica Smith Ewing & Daryl James: Finding work can be difficult for anyone, but Fernando Herrera faces an extra challenge. California has banned him for life from his dream job as a firefighter because of two felonies he committed as a teenager. Herrera went to prison for assaults he committed at ages 14 and 15. But he took responsibility for his actions and turned his life around. He worked as an unpaid firefighter while in prison and found his passion. After his release, he served as a volunteer firefighter and helped put out the 2018 Camp Fire, which was the deadliest fire in California history. But despite becoming an outstanding citizen, California law prevents Herrera from obtaining EMT certification, without which he cannot become a paid firefighter. This is solely because of his criminal record.

Millions of job applicants face similar barriers nationwide. All 50 states and Washington, D.C. restrict people with convictions from obtaining a license to work. Many of these restrictions are arbitrary and unnecessary. Want to cut hair or paint nails for a living? Many states will not give you a license unless you pass a background check. Want to drive a commercial vehicle? Same drill. Pennsylvania regulators denied Courtney Haveman a license to be a skin care specialist because of two DUIs, even though she had been sober for years and had an employer eager to hire her. Haveman sued the state with representation from our public interest law firm, the Institute for Justice, and won her case. But she should not have had to hire a lawyer just to work in a spa. Worse yet,

30 states can deny a license to work if a person is arrested but never convicted. Single mom Ifrah Yassin learned this the hard way. Officers briefly arrested her on suspicion of robbery in 2013, but prosecutors declined to file charges after realizing she was innocent. Despite the vindication, Minnesota regulators still tried to use the incident to stop Yassin from working in a group home for adults with intellectual disabilities 10 years later — at a desk job no less. Our law firm again intervened.

People should be able to leave their past behind them, but far too often the government will not let them. This is a problem for nearly one-third of the adult working-age population, which has a criminal record. Over 60 percent of people leaving prison are unemployed a year later, seeking work but not finding it. Some state lawmakers are trying to change this. But rather than look inward at their own state licensing laws, they shift the blame onto employers who hesitate to hire people with criminal backgrounds. Most recently, New York Gov. Kathy Hochul signed the Clean Slate Act on November 16, 2023, which creates a path for returning citizens to have their records expunged. The premise is simple: If employers cannot see convictions, then applicants who served time are more likely to get hired. Overall, 12 states have passed legislation like this in the past five years. The approach has merit but overlooks the other half of the equation. Many employers are eager to hire returning citizens but cannot because of bad state laws. New York's Clean Slate Act does nothing to change this. The law still allows government regulators to view expunged records to determine "suitability for licensing."

Some jobs are hit harder than others. Health care careers are almost entirely unavailable for people with criminal records. A single drug conviction — tainted by judicial misconduct — upended Erma Wilson's dream of becoming a registered nurse in Texas. Colorado goes further, placing restrictions on all jobs at behavioral health institutions. People with criminal histories cannot mop floors or serve cafeteria food in these facilities in Colorado. Tennessee and Virginia target addiction recovery counselors. Role models with personal experience getting sober need not apply if previous substance abuse led to a conviction. Rudy Carey hit this wall in Virginia. The state tried to block his counseling career because of a single assault conviction in 2004.

One workaround for people with criminal records is self-employment. Yet regulators still have ways to interfere. The Federal Communications Commission tried to stop Joe Armstrong from operating a radio station in Tennessee. And the U.S. Department of Agriculture tried to stop Mark Wilks from joining the Supplemental Nutrition Assistance Program (SNAP) as a retail partner at his neighborhood stores in Maryland. Until states pass meaningful reform, litigation is the only answer for many applicants. After Haveman sued Pennsylvania, her case prompted new legislation. Now, licensing boards cannot deny applications based on someone's criminal history unless convictions are "directly related" to the occupation. Boards also must show evidence that granting the application would pose a "substantial risk" to the public.

Herrera was not so lucky in California. He went to court in 2020 to challenge his lifetime ban on being a firefighter and lost. California still has not fixed its laws. Changes are long overdue. People should not have to hire a lawyer just to get a job. New York's Clean Slate Act is one approach to reform. But eliminating unnecessary licensing laws is a better one. Many states are making progress. South Carolina passed a law in 2023 that eliminates vague terms like "good moral character" and "moral turpitude" to deny licenses. Illinois, Missouri and Oklahoma have also passed licensing reforms in recent years, and Colorado has a bill advancing in 2024. These are all steps in the right direction. People make mistakes, but they deserve a chance for a fresh start.

'Outrageous' Execution of Inmate by Nitrogen Gas Suffocation

United Nations: Experts appointed by the UN Human Rights Council unequivocally condemned the recent execution of an American inmate by nitrogen gas inhalation – the first time ever that the method has been used. Kenneth Eugene Smith, 58, was executed in the southern state of Alabama on 25 January. He had been convicted of murder in 1988. "Alabama's use of Kenneth Smith as a human guinea pig to test a new method of execution amounted to unethical human experimentation and was nothing short of State-sanctioned torture," the experts said in a statement. "The use, for the first time in humans and on an experimental basis, of a method of execution that has been shown to cause suffering in animals is simply outrageous." Painful death, experts have joined the chorus of UN officials deploring Smith's execution, including UN High Commissioner for Human Rights Volker Türk. They had previously called for a stay of execution, noting that nitrogen gas inhalation causes a painful and humiliating death. Additionally, experimental executions by gas asphyxiation are contrary to international law. They said Mr. Smith reportedly took over 20 minutes to die "instead of the 'swift, painless and humane' death predicted by authorities, who defended the use of the method despite the lack of scientific evidence". Witnesses reported that he writhed and convulsed on the gurney, gasping for air and pulling on the restraints.

Decades on death row: Mr. Smith had spent decades on death row after being convicted in the murder-for-hire killing of Elizabeth Sennett in March 1988. His first death sentence, in 1989, was dismissed on procedural grounds three years later. He was tried again in 1996, when the jury voted nearly unanimously to sentence him to life in prison. However, the trial judge overrode the decision and imposed the death penalty instead. Alabama abolished the practice of judicial overrides in 2017, yet without retroactive effects. Mr. Smith survived a botched execution by intravenous injection in 2022 that lasted hours and reportedly amounted to torture.

Ban 'Barbaric' Practice: The experts reiterated their grave concern that other US states were taking steps to use nitrogen gas inhalation as a method of execution. Calling for a ban, they reminded the US of its obligations under international treaties that uphold civil rights and prohibit cruel, inhuman or degrading treatment or punishment. "The gruesome execution of Kenneth Eugene Smith is a stark reminder of the barbaric nature of the death penalty and a powerful moment to intensify calls for its abolition in the United States of America and the rest of the world," they said. The four experts who issued the statement are all UN Special Rapporteurs appointed by the UN Human Rights Council, located in Geneva. Their mandates cover the issues of extrajudicial, summary or arbitrary executions, torture and other cruel, inhuman or degrading treatment or punishment, the independence of judges and lawyers and the right to enjoy the highest standard of physical and mental health. They are not UN staff and are not paid for their work.

Lord Chancellor's Decision Not to Fully Fund Legal Aid - Unlawful and Irrational

In a landmark judgment handed down 31/01/2024, the Divisional Court (Lord Justice Singh and Mr Justice Jay) held that the Government acted unlawfully and irrationally when deciding not to implement the full funding recommendation in Lord Bellamy's Criminal Legal Aid Review. The Court also confirmed a grim picture of a justice system which it said was "coming apart at the seams" and said that unless there is a "significant injections of funding" the justice system will soon be at the "point of collapse".

The Criminal Law Solicitors Association (CLSA) and the London Criminal Courts Solicitors Association (LCCSA), represented by Adam Wagner of Doughty Street Chambers, were

Interested Parties and fully supported the legal challenge by the Law Society to the Government response to Lord Bellamy's Criminal Legal Aid Review. Together with the Law Society, the CLSA and the LCCSA provided the Court with a large number of witness statements from solicitors up and down the country, at every level of seniority, describing the relentless, physically demanding and emotionally draining nature of criminal defence work and the chronic underfunding which has led to a crisis in the retention of solicitors who are leaving in their droves for better pay and conditions that can be found elsewhere.

Despite the Criminal Legal Aid Review recommending a 15% increase to solicitors fees as "no more than a minimum starting point", it increased fees by only 9% with a further 2% promised this year. The ruling today confirms that the Government response to the review was so flawed as to be unlawful and irrational. Lord Justice Singh and Mr Justice Jay described the evidence submitted by CLSA and LCCSA members alongside the Law Society as "a mass of convergent evidence from honest, professional people working up and down the country", which is "cogent", "impressive" and "compelling", and which "brings home [that] women and men working up and down the country at all hours of the day and night, in difficult and stressful circumstances, carrying out an essential service which depends to a large extent on their goodwill and sense of public duty".

The Court's damning summary of this evidence paints a grim picture. The Judges said: "In short, the evidence from solicitors working at grass-roots level is that the system is slowly coming apart at the seams. The system depends to an unacceptable degree on the goodwill and generosity of spirit of those currently working within it. New blood in significant quantities will not and cannot be attracted to criminal legal aid in circumstances where what is on offer elsewhere is considerably more attractive both in terms of financial remuneration and other benefits. Unless there are significant injections of funding in the relatively near future, any prediction along the lines that the system will arrive in due course at a point of collapse is not overly pessimistic". The CLSA and LCCSA have now called on the Government to urgently implement Lord Bellamy's full funding recommendation without delay, and before it is too late to save the country's crumbling justice system. The Government is not seeking permission to appeal.

Application for Reconsideration by Uddin - Parole Board Decision Procedurally Unfair

1. This is an application by Uddin (the Applicant) for reconsideration of a decision of a panel on the papers dated 16 February 2021 not to direct release.

2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

3. The reality of this case is that there should have been an application for a direction for an oral hearing, following the panel's decision not only not to direct release but also not to direct an oral hearing. Such an application could have been made pursuant to Rule 20 of the Parole Board Rules 2019 (the Rules). An application under Rule 20 must be served, with reasons for making it, within 28 days of the written decision. No such application was made.

4. However, a decision not to release which is eligible for reconsideration under Rule 28 remains provisional for a further 21 days. This application for reconsideration, although undated, was received in time to be considered under Rule 28.

5. Under Rule 20 there is no limitation on the discretion of the Parole Board member considering whether to direct an oral hearing despite the earlier decision. Such a discretion

must, as a matter of general principle, be exercised judicially, which I interpret to mean "in the interests of justice". The limitations on the discretion of the Parole Board member considering an application under Rule 28 are set out below. In a nutshell, reconsideration can only be granted if the decision under discussion was irrational or procedurally unfair. If the decision properly falls within one of those categories then reconsideration can be directed, notwithstanding that the more direct route to rectification under Rule 20 has not been taken.

6. I have considered the application on the papers. These are: ·The dossier, which consists of 148 numbered pages. Apart from the Decision Letter, which appears at the end of the dossier, it seems to be identical to that seen by the panel; ·The Decision Letter separately; and a Request for a Full Oral Hearing before the Parole Board, undated, and in the version I have, bearing no representative's name or profession, but received by the Parole Board on 7 April 2021.

20. The Secretary of State has not made any representations with regard to this application.

21. It is neither necessary/desirable for me to discuss matters raised on behalf of the Applicant.

22. What is not raised is a matter that in my judgement establishes a clear issue of procedural unfairness. The panel that decided not to direct the Applicant's release made no mention in its decision letter of the principles established by the case of Osborn and others, discussed at Paragraph 19 above, which gives authoritative guidance on the approach that should be taken by the Parole Board when considering whether to direct an oral hearing. The approach laid down involves consideration of issues other than the merits of a decision to release, such as fairness to the prisoner. Lord Reed said at Paragraph 2(v) of Osborn: 'The question whether fairness requires a prisoner to be given an oral hearing is different from the question whether he has a particular likelihood of being released or transferred to open conditions, and cannot be answered by assessing that likelihood.'

23. It follows, in my judgement, that if a panel assessing a case on the papers does not direct release, it is a procedural error leading to unfairness not to consider whether an oral hearing should be directed by applying the Osborn criteria.

24. I am not making a finding that the decision not to direct an oral hearing was necessarily wrong. I am making a finding that the decision not to direct an oral hearing in this case was flawed by the apparent failure of the panel to consider Osborn. I stress "apparent failure": it may very well be that the panel did consider the principles established in that case – it is second nature for a panel to do so - but in the absence of any reference to, or more importantly discussion of, those principles it is impossible to be satisfied that the panel turned its mind to the relevant issues.

25. In the circumstances decision of the panel is fundamentally flawed & must be reconsidered.

26. Accordingly, I consider, applying the test as defined in case law, that the decision not to direct release was procedurally unfair in that express procedures laid down by law were not followed in the making of the relevant decision. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh MCA panel by way of a paper hearing.

27. I have given careful consideration to whether this case should be reconsidered by the original panel or whether it should be considered afresh by another panel.

28. I have no doubt that the original panel would be fully capable of approaching the matter conscientiously and fairly. However, the question of justice being seen to be done arises. If the original panel were to adhere to its previous decision, there would inevitably be room for suspicion that it had simply been reluctant to admit that its original decision was wrong. However inaccurate or unfair that suspicion might be, it would be preferable to avoid it by directing (as I now do) that the case should be reheard by a fresh single-member panel.

We Really 'Should' Talk About the Word 'Should' - Shouldn't We?

Andrew Stroehlein, Human Rights Watch We use the word 'Should' all the time in human rights work. It can seem like our favorite term, and you'll find it on almost every page of our website. Russia 'Should' stop forcing Ukrainians from occupied regions into its military. The dangers of Italy's refugee detention deal with Albania 'Should' prompt EU action." Global carmakers 'Should' map their supply chains" and drop suppliers found to source parts from Xinjiang, China, to avoid forced labor.

I know some folks say it can all be a bit too much sometimes. This 'Should' happen, that 'Should' happen, the authorities should do these things… To some, it can sound like wishful thinking, especially when we're talking about a government committing atrocities right, left, and center. Do abusive regimes ever have even a single thought about what they "Should" be doing?

But over the years, I've grown to like the word "Should" - we're not using it in some pie-in-the-sky way. It's not a reality-dodging "wouldn't it be nice if," but something else entirely. Every time we say "Should," it comes after a long description of events and abuses we've documented and analyzed. Far from avoiding reality, we're describing it in great detail. Then, we're looking at international and national laws to see where authorities fall short.

The word "Should" is about expectations. We expect authorities to follow the rules, to obey the law. We point out when they don't and say what they should do instead. Those who work in human rights are sometimes thought of as wooly-eyed idealists, but take it from someone on the inside: nothing is further from the truth. We know what the world is really like – maybe better than a lot of people, in fact. We know that inhumanity too often trumps human dignity. We document it and describe it every day. There's no wool over these eyes.

But we demand better. Because what else 'Should' you do? Just accept that everything is awful forever and ever? And yes, we all know it's like the Red Queen's race in Lewis Carroll's Through the Looking-Glass. Like Alice, we keep running and running just to stay in place. But if we all stopped running – if we all stopped pushing for universal human rights, stopped expecting them to be recognized – we'd all be going backwards terrifyingly quickly. So, we're going to keep reminding people how things 'Should' be, how people's rights 'should' be respected, and how we 'Should' all work toward that aim.

Allan Marshall: Prison Officer Immunity Over Death Was 'Incorrect'

Lucy Adams, BBC Disclosure: The decision to give immunity from prosecution to prison officers over one of Scotland's most high-profile deaths in custody was "incorrect", new documents seen by BBC show. Allan Marshall died at HMP Edinburgh in March 2015 after being restrained, at different times, by 17 prison officers. BBC Disclosure has seen a Crown Office review which said the police did not carry out a proper investigation. If they had, one or more officers could have been prosecuted, it said.

The Crown Office review, seen by BBC Scotland but not published, said the decision not to prosecute the prison officers, made just two months after Mr Marshall's death, was "incorrect". It said the Crown Office - Scotland's public prosecution service - should have instructed the police to carry out a more thorough investigation and should have obtained independent expert evidence. The Crown Office later decided to grant lifelong immunity from prosecution to the prison officers when they gave evidence at a fatal accident inquiry. The review said this decision was also "incorrect", especially as new evidence had emerged by then about the repeated use of feet during the restraint.

Allan Marshall, from South Lanarkshire, was 30 when he died in 2015. He had been placed on remand for 30 days before his next court date on breach of the peace charges. He was transferred to the jail's segregation unit on 24 March after officers said he had become agitated. CCTV

footage shows him being dragged into a corridor and restrained by prison officers. He died in hospital four days later. He had an underlying heart condition. The cause of death was brain injury due to cardiac arrest during physical restraint. Some 17 prison officers were involved at various points and some of them used their feet, which is not a technique that is taught for use in when restraining inmates. According to the fatal accident inquiry, one officer said he used his feet 10 or more times and also stamped on Mr Marshall. He later admitted it was totally out of order.

The Crown Office review of the case said if they had known about the "repeated use of feet" and evidence of experts like Trevel Henry, they would have made a different decision. Mr Henry is a restraint expert who has been an expert witness in more than 200 UK cases - including that of Mr Marshall. He told BBC Disclosure that normally a prison restraint should involve three officers not 17. "I was surprised when I saw feet being used. can't think of any other situations where I've seen the feet being used, certainly like that. felt there were lots of questions that needed to be addressed when I saw the CCTV footage." Asked if he believed the restraint was acceptable, he said "Large parts weren't, no."

Almost nine years on, BBC Disclosure has seen Crown Office documents detailing failings in how it handled the original investigation. We took the witness transcripts to Dr Bernadette McInerney, a forensic psychiatrist with two decades experience working with people in high security settings. She said there was no doubt Mr Marshall was behaving strangely in the days before the restraint and was psychotic. She said he "needed to see a psychiatrist". "Restraining somebody is a risky thing to do in a person who is over-aroused for any reason be it drugs or psychosis or exhaustion. They should have stopped it. It would have saved his life."

Transferring UK Prisoners to Foreign Prisons - "Expensive and Very Complicated"

Prison Reform Trust: Plans to transfer UK prisoners to foreign prisons are a "very expensive and a very complicated" way of increasing prison capacity, PRT's deputy director Mark Day said in his oral evidence to the Justice committee's inquiry on prison population and capacity on 9 January 2024. The Prison Reform Trust's written evidence to the House of Common's public bill committee for the Criminal Justice Bill focuses on the provisions of clauses 25–29 of the bill. These proposals would allow for the transfer of prisoners held in England and Wales to an overseas prison, where a relevant agreement is in place between the UK government and a foreign country. We are concerned that these proposed powers are too wide ranging and fail to provide for adequate parliamentary oversight. As the chair of the Justice Committee, Sir Bob Neill MP stated in a recent letter to the Secretary of State for Justice: "there is a real risk that a future government could enter into agreement with a foreign country and then implement that agreement through the power in Clause 29 without either the House of Commons or the House of Lords having had the chance to decide whether to assent to the agreement." Sir Bob Neill MP, Chair of the House of Commons Justice Committee. The bill is also silent on how those subject to this proposed arrangement will be treated. The bill currently contains nothing to guarantee that the same legal standards for treatment and conditions which apply in England and Wales will be required for those held in a foreign prison. We are calling for any agreement made between the UK and a foreign country to be subject to full Parliamentary scrutiny and oversight; and to explicitly state that compliance with existing human rights standards and obligations is necessary. We were pleased to see that concerns raised in our written evidence were shared by the shadow justice minister Alex Cunningham MP during a committee debate on 18 January and we will continue our work as the bill continues its passage through Parliament.

Sentencing Disparities - Black and Asian offenders Detained Longer than White

Monidipa Fouzder, Law Gazette: Landmark sentencing guidance for blackmail, kidnap and false imprisonment offences will flag to judges that Black and Asian offenders receive tougher sentences than White offenders, under proposals put forward by the Sentencing Council. Data published by the Sentencing Council reveals that 55% of kidnap offenders between 2018 and 2022 were White. However, the average custodial sentence for White offenders was five years and four months – but six years and one month for Asian offenders, and seven years and nine months for Black offenders. For false imprisonment, 72% of offenders were White. However, the average custodial sentence length for White offenders was four years and one month, five years for Asian offenders, and six years and four months for Black offenders. Three-quarters of blackmail offenders were White. However, the average custodial sentence length was two years and eight months for White offenders, three years and one month for Black offenders, and three years and six months for Asian offenders.

The council said it was 'difficult to know what might be driving these differences' and that it could not control for factors such as whether the offender pled guilty. However, the blackmail guideline will say: 'Sentences should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black offenders receive immediate custody compared to White offenders, and that the average custodial sentence length is also higher for Asian offenders, compared with White offenders.' The kidnap and false imprisonment guideline will say: 'Sentencers should be aware that there is evidence of a disparity in sentence lengths for this offence which indicates that the average custodial sentence length is higher for Black and Asian offenders, compared with White offenders.' The council also wants to know if the draft guidance contains anything that could contribute to the disparities, such as the language used.

Prison Lockdowns More Frequent More Brutal Across the US

An exclusive, eight-month investigation for Truthout has revealed that at least 33 U.S. state prison systems and the majority of federal medium-, high- and maximum-security prisons have placed general population ("gen pop") adults under nondisciplinary lockdown at least once (but more often repeatedly or for a prolonged period) from 2016-2023. While most lockdowns are intermittent (lasting from a few days to several weeks), an increasing number of state and federal prisons keep prisoners locked down for most or even all of the year. In addition, many prisons make people suffer through constant lockdown "cycles," where prisoners get a very brief return to normal "gen pop" status before they are once again subject to several days or weeks of lockdown. For those unfamiliar with the distinction between solitary confinement and lockdown, the latter is considered far more severe, as prisoners have no routines or any real rights whatsoever under lockdown. Solitary confinement is already rightly considered a form of torture under international law, but persons in solitary have a set routine, as stark as it is. Under lockdown, there is no such routine: There is no guarantee of exercise, showers are irregular at best, and access to phone, email or visitation are nonexistent. Education, religious activities, rehabilitative programs, psychiatric intervention to crises, access to commissary ("the store," where somewhat healthier food and vitamins as well as soap can be bought) are typically denied or are nearly impossible to get. Meetings with attorneys come to a halt or are hard to obtain. Justifications for full lockdowns would typically only include prisoner escapes, murders of staff or prisoners, and large-scale violent prison riots, and they typically ended within days or a few weeks at most. Even then, they would almost always be contained to one unit or prison, not across an entire state or the whole nation.