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Prison suicide:

A role for human rights indicators?

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Are human rights indicators for prison suicide a potential development? We pose this question because of recent trends in the human rights field — and, perhaps more obviously, because of the culture of measuring 'performance' which is embedded within the English and Welsh prison system. In particular, we ask: if a human rights standard was to be expressed as numbers, what might this mean for existing modes of measurement within the penal realm? Equally, what might be the implications for prisoners' rights?

To give an example: what if the quantification of levels of prisoner distress, or numerical indicators of prison environments such as cell dimensions, were to be considered relevant to interpreting the duty to minimise suicide risk under Article 2 ECHR's right to life? There are, to be clear, no such human rights indicators in the European detention context at present. But, as we explain in this article, there are trends that could generate these and other human rights indicators, both for detention in general and for prison suicide in particular. In describing these trends, the article does not advocate for or against such indicators; the aim instead is to point to the importance of ongoing critique of measurement trends within prison governance and, in more recent years, within the human rights field.¹

Why prison suicide?

We have chosen to focus on human rights indicators for prison suicide for three reasons. First, in the prison system in England and Wales, both suicide and the risk of suicide are a constant reality. The risk affects all categories of detainee, but especially female, young offender and asylum populations. Where a

prisoner commits suicide, it causes distress to fellow prisoners and to prison staff. Bereaved families are deeply affected too — a suicide in prison can 'traumatize families'.² A prison suicide also raises hard questions: in particular, questions about whether the state has complied with its *positive* duty under human rights law to protect life (and minimise risk). These questions are often left to be addressed through inquests and investigations, or by campaign groups and media coverage.³

It has also been argued that suicide risk will increase as a result of the growth in indeterminate sentences and the time being served in conditions of maximum security. It is also relevant that prisoners are changing too: imported vulnerability (a term used to capture the elevated suicide risk a person brings into prison) is now at higher levels than in the past. Thus, prompted by one prisoner's admission that he did not intend to serve his 28-year tariff ('One day I'll save up my pills'), Alison Liebling has drawn attention to 'a new and distinctive development': long and indeterminate sentences under maximum security conditions have made '[t]he very structure of the environment *un-survivable*'.⁴

Second, studies of prison environments indicate that 'some prisons are more survivable than others'.⁵ This difference between prisons comes through clearly in the Measuring the Quality of Prison Life (MQPL) survey — described as a mode of 'moral measurement' — wherein prisoners and prison staff rank their own experiences in relation to a number of factors, including: respect, humanity, staff-prisoner relationships, fairness, support, trust, order, safety, well-being, personal development, family contact, power, meaning, and decency.⁶ The survey, which has been adopted by the Standards Audit Unit within the National Offender Management Service (NOMS) and by

1. Carlen, P. (2001) Death and the triumph of governance: Lessons from the Scottish Women's Prison, *Punishment and Society*, 3(4): 459–471; Merry, S.E. (2011) Measuring the world: indicators, human rights and global governance, *Current Anthropology*, 52(3) S83–S95.
2. Liebling, A. (2007) Prison suicide and its prevention, in Y. Jewkes (ed.) *Handbook on Prisons*, Cullompton: Willan Publishing, 423–446, 424.
3. See e.g. www.inquest.org.uk.
4. Liebling, A. (2011) Moral performance, inhuman and degrading treatment and prison pain, *Punishment & Society*, 13(5): 530–550, 532.
5. Ibid 533, emphasis added.
6. See e.g. Liebling, A. assisted by Arnold, H. (2004) *Prisons and Their Moral Performance: A Study of Values, Quality and Prison Life*, Oxford: Clarendon Press; Liebling, A., Hulley, S. and Crewe, B. (2012) Conceptualising and measuring the quality of prison life, in D. Gadd, S. Karstedt and S. Messner (eds) *The Sage Handbook of Criminological Research Methods*, London: Sage, 358–372.

the Independent Monitoring Boards, has now been used at a range of prison sites and in a range of ways, including in a 12-prison evaluation of a suicide prevention initiative. In the latter study, there was a strong and significant correlation between institutional suicide rates and mean levels of distress among prisoners. Furthermore, differences in levels of distress among prisoners could be explained by differences in quality of life across the 12 local prisons in the study — specifically, by differences in the levels of respect and fairness and, above all, feelings of safety experienced by prisoners.⁷ More recently, there were similar findings from an adapted MQPL survey of immigration removal centres: detainee perceptions of the quality of life in detention were correlated to levels of depression, distress and isolation, and to the quality of relationships.⁸

Third, within prison management in England and Wales, modes of measurement — from MQPL surveys to conventional tools such as audit processes, key performance indicators (KPIs) and key performance targets (KPTs) — are deeply embedded. The MQPL surveys are seen as an essential complement to the conventional measures: NOMS, for instance, has said that the survey has ‘taken the [Prison] Service beyond the measurement of quantity, beyond the measurement of quality of process, and into the measure of the quality of relationships, which the Board recognises lie at the moral heart of imprisonment’.⁹ More significantly, in recent work Liebling, the driving academic force behind the survey, has asked: ‘Can the two worlds of ‘moral measurement’ and apparently abstract ‘human rights standards’ in penology be brought together in a way that deepens the conversation about, and reform efforts around, prison life and experience?’¹⁰

Quantifying human rights

Liebling’s question is interesting in part because measures and measuring — more accurately, *better*

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measures and *better measuring* — are a growing preoccupation within the human rights field. Evidence of this can be seen both within the United Nations (UN) and regional human rights organisations, and also within individual courts, non-governmental organisations (NGOs) and national human rights institutions (NHRIs). Academic commentary bears its traces too, with some offering strong support to the better-measurement boom, others who are best described as curious, and others again who urge caution and care.¹¹ Admittedly, part of what divides opinion is that there are numerous measurement options either in development or already in play. That said, amidst the expanding range of options, there is one measurement mode — the *quantitative indicator* — that continues to claim more attention than its counterparts.

Quantitative indicators, their supporters claim, are a new frontier in human rights compliance: they have the capacity to pinpoint violations, to assess the enjoyment of rights and to calculate rights-realisation over time (which is especially pertinent with respect to economic and social rights which call for ‘progressive realisation’). The aim, their supporters say, should be to use these indicators to help with the move from human rights advocacy and standard-setting towards implementation and monitoring; from rights ‘in principle’ to rights

in practice, and relatedly to reduced opportunities for what Cohen once described as ‘magic legalism’¹² — that is, the tendency on the part of some states to present their signature and ratification of international instruments as proof of their human-rights credentials.

At the UN, quantitative indicators have the active support of both individual Special Procedures (e.g., the Special Rapporteur on the right to health) and some of the treaty bodies (the quasi-judicial committees charged with checking on state compliance with the core international human rights treaties). The Office of the High Commissioner for Human Rights (OHCHR), the UN’s lead agency for

7. Liebling, A., Durie, L., Stiles, A. and Tait, S. (2005) Revisiting prison suicide: The role of fairness and distress, in A. Liebling and S. Maruna (eds) *The Effects of Imprisonment*, Cullompton: Willan Publishing, 209–231.
8. Bosworth, M., Kellezi, B. and Slade, G. (2012) Quality of life in detention, Oxford Centre for Criminology.
9. NOMS, Race Review 2008: Improving race equality in prison—5 years on, 102–103.
10. Liebling (2011), n. 4, 533.
11. See e.g. Davis, K.E., Fisher, A., Kingsbury, B. and Merry, S.E. (eds) (2012) *Governance by Indicators: Global Power through Classification and Rankings*, Oxford: Oxford University Press; Langford, M. and Fukuda-Parr, S. (eds), (2013) Quantifying human rights, *Nordic Journal of Human Rights*, 30(3): 222–394; Murphy, T. (2013) *Health and Human Rights*, Oxford: Hart Publishing, 126–158.
12. Cohen, S. (2001) *States of Denial: Knowing About Atrocities and Suffering*, Oxford: Polity Press, 108.

human rights, is also on board. Recently it issued a detailed guide on the subject in which it tackles what might be called 'what', 'why' and 'how' questions concerning human rights indicators. In so doing, it emphasises a series of key points which we outline below. It also offers both a definition of a human rights indicator and a set of illustrative indicators (covering, for instance, the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment).

The guide's definition, which is designed to cover both quantitative and qualitative indicators for human rights, runs as follows:

*A human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.*¹³

The broader guidance that accompanies this definition has four key features. It emphasises, first, that designing an indicator for a human right calls for the *attributes* of that right to be identified. The guide points to the UN human rights treaties and treaty-body jurisprudence as core sources for this task.¹⁴ Secondly, it emphasises that three different types of indicators will be needed: namely, *structural* (institutional arrangements), *process* (the taking of steps) and *outcome* (the enjoyment of rights). An example might help to make this concrete: in its illustrative indicator on the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the guide highlights the legal maximum for incommunicado detention (a structural indicator); actual prison occupancy as a proportion of prison capacity (a process indicator); and the incidence and prevalence of death and physical injury in custody (an outcome indicator).

Some see a symmetry between this structure-process-outcome trilogy and what human rights legal actors refer to as the obligations on duty-bearers (typically, states) to *respect*, *protect* and *fulfil* human

rights. Others are more cautious or cynical on this issue. More generally however, as the guide explains, the hope is that by converting the narrative of individual rights into a set of key attributes, and then using these to generate the structure-process-outcome trilogy of indicators, there might be a reduction in complaints concerning the broad, often vague terminology of human rights.

The OHCHR guide emphasises, thirdly, that *universal* indicators for human rights are not the end-point. For the OHCHR, bottom-up, contextually meaningful indicators are crucial (even if, within international instruments, human rights norms are expressed as universal standards). Fourth and finally, there is a strong emphasis on disaggregation: human rights indicators must include disaggregated data,

drawing out the circumstances of a variety of vulnerable populations (e.g., children, women, migrants) so that the cross-cutting human rights principle of non-discrimination can be upheld. This need for disaggregation is also echoed elsewhere. For instance, following a review of Honduras, the UN Committee against Torture recommended that the state:

Monitor and document incidents of inter-prisoner violence with a view to revealing root causes and

*designing appropriate prevention strategies, and provide [it] with data thereon, disaggregated by relevant indicators.*¹⁵

We do not however want to give the impression that the turn towards quantitative indicators is exclusive to the UN. Regional human rights systems, NHRIs and numerous NGOs are on board as well, and certain states seem supportive too. Brazil, for instance, has committed to creating a national system of human rights indicators in the context of the review of states (called Universal Periodic Review (UPR)) undertaken by the UN Human Rights Council. In addition, in a recent UPR of Brazil, there is evidence of indicator-use by NGOs: the leading international NGO, Amnesty International, drew the Council's attention to the fact that figures released by the Brazilian prison system showed that inmate deaths as a result of homicide were six times higher than the rate observed among the

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13. OHCHR (2012) Human rights indicators: A guide for measurement and implementation, 16. Available at: <http://www.ohchr.org>.

14. As of 2015 there are 10 human rights treaty bodies.

15. UN Committee against Torture, Concluding Observations: Honduras, UN Doc CAT/C/HND/CO/1 (23 June 2009), para. 17.

general population in the country.¹⁶ Meanwhile as regards NHRI engagement with indicators, in the UK the Equality and Human Rights Commission and the Scottish Human Rights Commission commissioned a research team to develop a human rights measurement framework.¹⁷ Finally, there is a sense that national and international courts could also make use of human rights indicators — whether as evidence, or as part of a judgment, or perhaps as a mechanism for helping the court to supervise implementation of a judgment.

Problems with numbers

Alongside this interest and enthusiasm there is also, and increasingly, a range of positions *against* quantitative indicators for human rights. Some of the critics focus on conceptual problems, whereas others raise technical concerns. Viewed together however their criticisms are perhaps best seen as part of a wider phenomenon: namely, a low level of trust in numbers and, relatedly, concerns about their institutionalisation across many different parts of life today.¹⁸ To illustrate this phenomenon, we draw on research by two criminologists: Pat Carlen and Sarah Armstrong, each of whom has provided a biting critique of the effects of numbers in the UK prisons field.

Armstrong, in a paper that focuses on the increasing use of prison projections, notes how such numbers have both dampened debate and limited options. The ‘statistical worldview’ has, she says, ‘come to colonize the policy imagination, so that all sides articulate their positions in terms which are knowable and validated through the numerical’.¹⁹ In Carlen’s paper the focus is on the attempts made by Cornton Vale, the primary

prison for female offenders in Scotland, to prevent detainees committing suicide. Her conclusion, which resonates with her broader critique of ‘imaginary penalties’,²⁰ is that ‘faced with inmates on the edge of despair or even death’ or one of ‘the other emotionally draining experiences characteristic of prison life’, there is both necessity and value in staff-prisoner relations that *do not* fit a ‘performance and programming’ mould. In particular:

[Q]ualitative inputs from staff are called for, the value of which are not amenable to measurement as performances; and, moreover, that time consuming but life-supporting responses involving listening, kindness and comfort, together with other non-programmable therapies, may be good in themselves.²¹

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If we put these claims by Carlen and Armstrong alongside critiques of quantification’s effects within *non-prison* sites,²² the following begin to seem incontrovertible. First, that which is easy, or easier, to measure does not necessarily reflect what should be the priority; yet, that which is measurable, and measured, does tend to become the hard priority. Secondly, both the experts who craft numerical measures, and the behavioural and knowledge effects that are

produced by use of the measures, are often ‘out of view’. Relatedly, number-producing organisations achieve new status, service industries are produced, and powerful networks can emerge around shared interests in particular numbers or number-production.²³ To put that differently, numbers garner publicity, ‘numeropolitics’²⁴ do not. The upshot is that it becomes harder

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16. UNHRC, Summary prepared by the OHCHR, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Brazil, UN Doc A/HRC/WG.6/1/BRA/3 (6 March 2008), para. 28.
 17. Candler, J. et al (2011) Human rights measurement framework: Prototype panels, indicator set and evidence base, Equality and Human Rights Commission Research Report 81; Vizard, P. (2012) Evaluating compliance using quantitative methods and indicators: Lessons from the Human Rights Measurement Framework, in M. Langford and S. Fukuda-Parr (2013), n. 11, 239–278.
 18. See e.g. Porter, T.M. (1995) *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life*, Princeton, NJ: Princeton University Press; Power, M. (1997) *The Audit Society: Rituals of Verification*, Oxford: Oxford University Press.
 19. Armstrong, S. (2012) The quantification of fear through prison population projections, SCCJR Working Paper, 16. Available at SSRN: <http://ssrn.com/abstract=1991866>.
 20. Carlen, P. (ed.) (2008) *Imaginary Penalties*. Cullompton: Willan Publishing.
 21. Carlen (2001), n.1, 467.
 22. See e.g. Davis et al (2012), n. 11.
 23. See e.g. Davis et al (2012), n. 11; Sarfaty, G.A. (2013) Human rights meets securities regulation, *Virginia Journal of International Law*, 54(1), 97–126.
 24. Martin, A. and Lynch, M. (2009) Counting things and people: The practices and politics of counting, *Social Problems*, 56(2): 243–266.

to see, and to talk about, the ensuing changes in behaviour and the ways in which measures can alter the concepts they were meant to capture.

Human rights as numbers?

Proponents of human rights indicators need to engage with these concerns, even if number-use by the UN treaty bodies remains quite basic (i.e., counts, percentages and ratios, rather than composites that draw together diverse data sets and, typically, generate rankings or 'league tables'). Indicators, as the OHCHR points out, are merely a tool. More than this, they should never stand alone:

*[Indicators] cannot and should not be seen as a substitute for more in-depth, qualitative and judicial assessments which will continue to be the cornerstones of human rights monitoring.*²⁵

There are, therefore, growing questions about human rights indicators — questions such as what should be counted, what can be counted, and what effects it has to count one thing but not another, or indeed to count anything at all. There are also questions about who is, or should be, doing the counting.

The potential attractions of human rights indicators are being identified more precisely too. In part, as we have said, these indicators signal a move towards implementation and monitoring as the essential next-stage in human rights work — the stage beyond advocacy and standard-setting. In part too they signal a desire for improved communication with non-law actors and that, in turn, might enhance non-judicial mechanisms for protecting rights (thereby reducing demand for litigation). At the same time, carefully-crafted indicators might offer courts more concrete and systematic evidence on alleged rights violations, as well as a tool for monitoring the implementation of judgments.

There could be benefits for organisations too. As Philip Alston has pointed out, many NGOs see individual cases as 'time-consuming and backward-looking', perhaps even a barrier to 'the overall picture that is needed'.²⁶ Better data, moreover, could well be a pre-requisite for legal actors who have to operate in fields where measurement is already part of the

everyday — whether a prison organisation faced with different (political, financial, legal) accountability mechanisms, or an NGO which has donors who expect figures demonstrating performance and impact.

Representing and calculating prison suicide

For some, human rights indicators for prison suicide will be just another alternative — one part of an expanding menu of methods in human rights work. Equally, amidst growing questions about quantification's effects on human rights and on other fields too, it is possible that proposals for human rights indicators will either stall or drop away. In any event, the purpose of this article has not been to advocate for or against such indicators, nor to suggest how they might be developed and used. The aim has been a narrower one: first, to draw attention to two parallel streams of measurement that are relevant to detention — an established one within prison management, and an emerging one within human rights law and practice — and, second, to point to the importance of more critical engagement with these streams and their potential interactions.

One key question concerns the possible effects — both discursive and practical — of human rights indicators for prison suicide. How, for instance, will these effects be shaped by the array of other powerful 'representations and calculations'²⁷ in the penal field, including both *non-numerical* modes of human rights engagement by NGOs, lawyers, quasi-judicial bodies and courts, as well as *numerical* modes of engagement such as MQPL, KPTs and KPIs? Will disagreements over whether prison suicide is a psychiatric or environmental problem, or both, be exacerbated by expanded use of 'measurement expertise'? What will be the impact on bereaved families and friends if the death of a prisoner is represented as a question of human rights numbers? More generally, is it not obvious that there is already enough information on vulnerable individuals, the effects of imprisonment and the history of prison suicide? The key issue, in other words, is not the presence or absence of particular measurement methods but the failure to take action on what is well-known.

...carefully-crafted indicators might offer courts more concrete and systematic evidence on alleged rights violations...

25. OHCHR (2012), n. 13, iii.

26. Alston, P. (2005) Promoting the accountability of members of the new UN Human Rights Council, *Journal of Transnational Law and Policy*, 15(1): 49–96, 78.

27. Sparks, R. (2007) The politics of imprisonment, in Jewkes, n. 2, 73–94.

There are also important questions about how human rights indicators will affect the task of judgment: will they enhance it, or (if indicators become institutionalised) will they circumscribe or displace it? Equally, will the human rights emphasis on disaggregation help to bring forward gender, racial and other differences within vulnerable prison populations?²⁸ And will pro- and anti-prisoners' rights discourses be challenged or strengthened by the arrival of indicators — in particular, will the 'management' of rights within the prison sector (both public and private) alter, and in what ways?²⁹

These are just some of the reasons why the movement towards quantification within the human rights field needs to provoke critical reflection and debate within the penal field. Human rights indicators, if they materialise, will produce changes in behaviour, in ideas and in the norms that are being measured. These effects will differ across penal contexts, but where 'measurement' is already deeply embedded within prison management (as in England and Wales) the potential consequences need to be thought about now, not in the future.

28. On vulnerable prison populations and suicide risk, see Ludlow, A. et al (2015) 'Self-inflicted deaths in NOMS' custody amongst 18-24 year olds: Staff experience, knowledge and views', RAND Europe.

29. Whitty, N. (2011) Human rights as risk: UK prisons and the management of risk and rights, *Punishment & Society*, 13(2): 123–148; G4S (2013) Human rights guidance. Available at: <http://www.g4s.uk.com>