



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CR/33/3
10 December 2004

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-third session
15-26 November 2004

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

**United Kingdom of Great Britain and Northern Ireland,
Crown Dependencies and Overseas Territories**

1. The Committee considered the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories (CAT/C/67/Add.2) at its 624th and 627th meetings, held on 17 and 18 November 2004 (CAT/C/SR. 624 and 627) and has adopted the following conclusions and recommendations:

A. Introduction

2. The fourth periodic report of the United Kingdom of Great Britain and Northern Ireland was due on 6 January 2002 and was received on 6 November 2003. Like the previous report, it conformed to the guidelines of the Committee pertaining to the preparation of such reports, including the point by point replies to the Committee's previous recommendations. The Committee welcomes the comprehensive information provided by the State party, and the inclusive participation in the reporting process of institutions and non-governmental organizations concerned with the protection of human rights. The Committee commends the exhaustive written responses provided to the List of Issues, as well as the detailed responses

provided both in writing and orally to the questions posed by the members during the examination of the report.

B. Positive aspects

3. The Committee notes:

(a) the responsiveness of the State party to some of the previous recommendations of the Committee, in particular the closure of certain prison facilities previously found to be problematic, the confirmation that no baton rounds have been fired by either the police nor the army in Northern Ireland since September 2002 and the dissolution of the Royal Ulster Constabulary;

(b) the entry into force in 2000 of the Human Rights Act 1998;

(c) the entry into force of the Female Genital Mutilation Act 2003 covering acts committed by United Kingdom nationals or residents either in the State party or abroad; and the State party's commitment to preventing British companies from manufacturing, selling or procuring equipment designed primarily for torture or other cruel, inhuman or degrading treatment or punishment;

(d) the judgment of 24 March 1999 of the Judicial Committee of the House of Lords in the case of R. v. Bartle and the Commissioner of Police for the Metropolis, ex parte Pinochet holding that the State party's courts have jurisdiction over acts of torture committed abroad and that a former Head of State does not have immunity for such crimes;

(e) the establishment of an independent Police Complaints Commission for England and Wales and, in Northern Ireland, the office of Police Ombudsman, and the Northern Ireland Human Rights Commission;

- (f) the State party's assurance that the United Kingdom Armed Forces, military advisers, and other public servants deployed on operations abroad are "subject at all times to English criminal law" including the prohibition on torture and ill-treatment;
- (g) the State party's affirmation that "evidence obtained as a result of any acts of torture by British officials, or with which British authorities were complicit, would not be admissible in criminal or civil proceedings in the United Kingdom," and that the Home Secretary does not intend to rely upon or present "evidence where there is a knowledge or belief that torture has taken place";
- (h) with respect to the British Virgin Islands, the establishment of the Human Rights Reporting Coordinating Committee; with respect to Guernsey, the enactment of the Human Rights (Bailiwick of Guernsey) Law 2000; with respect to Isle of Man, the enactment of the Human Rights Act 2001; and with respect to Bermuda, the complaint mechanism introduced by the Police Complaints Act 1998; and
- (i) the State Party's reaffirmation of its unreserved condemnation of the use of torture; the early ratification by the State party of the Optional Protocol to the Convention; and its active pursuit through diplomatic activity, practical projects and research funding in support of universal ratification of the Convention and its Optional Protocol.

C.Subjects of concern

4. The Committee expresses its concern at:

(a) remaining inconsistencies between the requirements of the Convention and the provisions of the State party's domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; notably:

(i) article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained; notwithstanding the State party's assurance set out in paragraph 3 (g), supra, the State party's law has been interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit; and

(ii) article 2 of the Convention provides that no exceptional circumstances whatsoever may be invoked as a justification for torture; the text of Section 134(4) of the Criminal Justice

Act however provides for a defence of “lawful authority, justification or excuse” to a charge of official intentional infliction of severe pain or suffering, a defence which is not restricted by the Human Rights Act for conduct outside the State party, where the Human Rights Act does not apply; moreover, the text of section 134(5) of the Criminal Justice Act provides for a defence for conduct that is permitted under foreign law, even if unlawful under the State party’s law;

(b) the State party’s limited acceptance of the applicability of the Convention to the actions of its forces abroad, in particular its explanation that “those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the United Kingdom in Afghanistan and Iraq”; the Committee observes that the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the de facto effective control of the State party’s authorities;

(c) the incomplete factual and legal grounds advanced to the Committee justifying the derogations from the State party’s international human rights obligations and requiring the emergency powers set out in Part IV of the Anti-terrorism, Crime and Security Act 2001; similarly, with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000;

(d) the State party’s reported use of diplomatic assurances in the “refoulement” context in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention;

(e) the State party’s resort to potentially indefinite detention under the Anti-terrorism, Crime and Security Act 2001 of foreign nationals suspected of involvement in international terrorism and the strict regime applied in Belmarsh prison;

(f) the investigations carried out by the State party into a number of deaths by lethal force arising between the entry into force of the Convention in 1988 and the Human Rights Act in 2000 which have failed to fully meet its international obligations;

(g) reports of unsatisfactory conditions in the State party's detention facilities including substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of "slopping out" sanitation facilities, as well as reports of unacceptable conditions for female detainees in the Hydebank Wood prison, including a lack of gender-sensitive facilities, policies, guarding and medical aid, with male guards alleged to constitute 80% of guarding staff and incidents of inappropriate threats and incidents affecting female detainees;

(h) reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures; and

(i) allegations and complaints against immigration staff, including complaints of excessive use of force in the removal of denied asylum seekers.

D. Recommendations

5. The Committee recommends that:

(a) the State party take appropriate measures in the light of the Committee's views to ensure, if necessary explicitly, that the defences that might be available to a charge brought under Section 134 (1) of the Criminal Justice Act be consistent with the requirements of the Convention;

(b) the State party should review, in the light of its experience since its ratification of the Convention and the Committee's jurisprudence, its statute and common law to ensure full consistency with the obligations imposed by the Convention; for greater clarity and ease of access, the State party should group together and publish the relevant legal provisions;

(c) the State party should reassess its extradition mechanism in so far as it provides for the Home Secretary to make determinations on issues such as medical fitness for trial which would more appropriately be dealt with by the courts;

(d) the State party should appropriately reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, the Government's intention as expressed by the delegation not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture; the State party should also provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture;

(e) the State party should apply articles 2 and/or 3, as appropriate, to transfers of a detainee within a State party's custody to the custody whether de facto or de jure of any other State;

(f) the State party should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention, and provide for independent review of the conclusions where appropriate;

(g) the State party should re-examine its review processes, with a view to strengthening independent periodic assessment of the ongoing justification for emergency provisions of both the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000, in view of the length of time the relevant emergency provisions have been operating, the factual realities on the ground and the relevant criteria necessary to declare a state of emergency;

(h) the State party should review, as a matter of urgency, the alternatives available to indefinite detention under the Anti-terrorism, Crime and Security Act 2001;

(i) the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

(j) the State party should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction;

(k) the State party should take all practicable steps to review investigations of deaths by lethal force in Northern Ireland that have remained unsolved, in a manner, as expressed by representatives of the State party, “commanding the confidence of the wider community”;

(l) the State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 4(g) as well as take appropriate gender-sensitive measures;

(m) the State party should consider designating the Northern Ireland Human Rights Commission as one of the monitoring bodies under the Optional Protocol;

(n) the State party should consider offering, as routine practice, medical examinations before all forced removals by air and, in the event that they fail, thereafter;

(o) the State party should consider developing a means of central collection of statistical data on issues arising under the Convention in the State party’s prisons and other custodial facilities; and

(p) the State party should make the declaration under article 22 of the Convention.

6. The Committee requests that the State party provide, within one year, information in response to the Committee’s recommendations in paragraph 5, sub-paragraphs (d), (e), (f), (g), (h), (i), (j) and (l).

7. The Committee requests that the State party submits its next periodic report, due on 6 January 2006, by 2008.
