



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

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## Committee against Torture Fiftieth session

### Summary record of the first part (public)\* of the 1136th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 7 May 2013, at 10 a.m.

*Chairperson:* Mr. Grossman

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*Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*

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\* No summary record was issued for the second part (closed) of the meeting.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention**

*Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/5; CAT/C/GBR/Q/5 and Add.1; HRI/CORE/GBR/2010; HRI/CORE/GBR/2011)*

1. *At the invitation of the Chairperson, the delegation of the United Kingdom of Great Britain and Northern Ireland took places at the Committee table.*
2. **Mr. Sweeney** (United Kingdom), reviewing developments since the consideration of the fourth periodic report, said, with reference to procedures for deporting terrorist suspects, that the British authorities did not deport anyone to a country where that individual faced a real risk of torture or ill-treatment, but they took the view that diplomatic assurances offered a valid means of protecting the public in accordance with the United Kingdom's international obligations. Arrangements were in place to verify that those assurances were respected.
3. The inquiry chaired by Sir Peter Gibson, which had been opened in response to serious allegations about the ill-treatment of detainees held by other countries and the illegal transfer of detainees, had been closed by the Government following the launch in January 2012 of a police investigation of complaints filed by two former Libyan detainees. In June of that year Sir Peter had submitted a report on the findings of the above-mentioned inquiry. The Government was examining that report with a view to publishing substantial extracts from it.
4. In early 2013 Parliament had adopted the Justice and Security Act which was designed to broaden the powers of the security and intelligence services and to strengthen their independence from the Executive. The Act introduced closed material procedures in civil proceedings, which would enable the courts to reach fully informed findings in cases that hinged on sensitive information and in cases where allegations of misconduct were levelled against Government agents.
5. With regard to the implementation of the Convention in devolved administrations, he explained that a wide-ranging reform of the criminal justice system was under way in Scotland and that a legislative framework had been adopted which was directed towards eradicating violence against women. The Scottish Government was considering the recommendations which had been made by the European Committee for the Prevention of Torture (CPT) after visiting Scotland in 2012 and was planning to respond to them in 2013. The European Convention on Human Rights had been embedded within the Scotland Act and within the Government of Wales Act. A bill had been drafted with a view to combating violence against women, domestic abuse and sexual violence more effectively and to offering victims support throughout Wales. In Northern Ireland the Department of Justice had launched several policy initiatives which included programmes to reform the prison service.
6. The first anniversary of the Foreign Office's strategy for the prevention of torture 2011–2015 had been celebrated in 2012; to mark the occasion an event had been held to take stock of the impact of the strategy. The Government was continuing to pursue the three goals of that strategy, namely to put in place and enforce legal frameworks, to eradicate torture, and to give local organizations skills to ensure its eradication.
7. The United Kingdom had pledged financial support for the secretariat of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and had contributed to the Special Fund set up under the Optional

Protocol. It continued to play an active role in multilateral organizations combating torture and had fully cooperated with the CPT during its inspection in 2012.

8. **Mr. Bruni** (Rapporteur for the United Kingdom) was pleased to note the very full replies and information supplied by the State party. He saw from paragraphs 7 and 8 of the report that the United Kingdom was still refusing to recognize the Committee's competence to receive and consider communications from individuals in pursuance of article 22. The purpose of that procedure was to check that domestic courts' decisions complied with the Convention. At the end of that procedure, the Committee could either conclude that the decision was consistent with the Convention, which made it possible to dispel any doubts on the matter, or it could find that a breach had occurred, in which case its decision enabled the State to remedy the injury caused. In either case, the purpose of the Committee's decision was to ensure that the Convention was duly applied. He invited the delegation to clarify the State party's position on the issue.

9. He was eager to know when the report of the independent committee of inquiry chaired by Sir Peter Gibson would be published, for in its periodic report (para. 28) the State party had said that it would look again at its position concerning a review of section 134 of the Criminal Justice Act — which the Committee deemed incompatible with article 2 of the Convention — in the light of that report's conclusions. In that connection, he asked the delegation to explain why the investigation into the allegations made by two former Libyan detainees had still not been completed more than a year after it had been launched. Were the British authorities still intending to open a fresh independent inquiry into the treatment of persons detained by British forces during operations abroad and, if that were the case, when did they expect to do so? There was a blatant contradiction between the contents of paragraph 191 of the report, where it was stated that British service personnel were subject to a disciplinary system in which offences were defined by reference to domestic criminal law and the British courts' jurisdiction wherever they were in the world and section 134, paragraphs 4 and 5, of the Criminal Justice Act which, in some cases, allowed the perpetrator of a breach of the Convention to rely on the defence that the acts in question had taken place abroad, or that they were authorized by the law of the State where they had been committed. He asked the United Kingdom delegation to comment on that situation. Since, generally speaking, the State party did not consider that it exercised *de jure* or *de facto* control over the regions of another country where its armed forces were conducting operations, but the areas in Afghanistan where British forces had seen action had not been under the control of the Afghan authorities either, he wondered who was responsible for implementing the Convention in those areas. He also wished to know how much longer the moratorium would last on handing over to the Afghan authorities some 70 detainees held in British military bases in Afghanistan who, according to NGOs, were likely to be tortured. He emphasized in that connection that, contrary to the delegation's assertions in its opening statement, diplomatic assurances were unreliable, especially when they came from a State which disregarded its obligations under the Convention. He requested the delegation to describe the supervisory mechanism that would allow members of the British armed forces to visit persons detained by the Afghan Government. He would welcome the provision of actual, recent examples of such visits, their findings and the measures taken to remedy any problems noted.

10. In its written replies (para. 7.4), the State party explained that the Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas stipulated that all abuses had to be reported to the British authorities "unless doing so might make the situation worse". He wondered if that signified that derogations could be made and that, in some circumstances, torture might be allowed.

11. After its visit to the United Kingdom in November 2008, the CPT had recommended that suspects should always be brought into the direct physical presence of the judge

responsible for deciding on the extension of their detention. The State party seemed to think, however, that a videoconference sufficed. If a detainee wished to see a judge in person, could that request be denied? Section 4 of the Prevention of Terrorism Act and the investigative measures adopted in December 2011 covered participation in acts related to terrorism, irrespective of whether it had begun before or after the passing of the act, which was contrary to the principle of non-retroactivity. He asked the delegation to comment on that point.

12. Some NGOs had criticized the Justice and Security Act, to which the delegation had adverted, on the grounds that the Act authorized the use of secret evidence which might have been obtained by torture and, as its source would not be divulged, the person against whom that evidence was used would be unable to challenge its admissibility. The delegation was invited to express its views on that issue.

13. With regard to overcrowding in prisons, he wished to know whether the State party had studied the possibility of adopting a law which would make it possible to hand down non-custodial sentences to persons who had committed minor offences. What was the explanation for the not inconsiderable difference in levels of overcrowding in public and private prisons? He asked the delegation to provide specific examples of pain-inducing restraint techniques which could be used on juveniles in secure settings, the abolition of which had been recommended by the CPT.

14. In its replies to the list of issues, the State party mentioned the High Court injunction that no Tamil whose asylum application had been rejected should be removed to Sri Lanka, because they might be subjected to torture. He asked the delegation if that moratorium was still in force and to provide information about the United Kingdom's general policy on returns to Sri Lanka.

15. In 2011 the Government had established a commission to study the possibility of adopting a Bill of Rights which would replace the current Human Rights Act incorporating the European Convention on Human Rights. Concerned NGOs unanimously condemned that plan on the grounds that it would weaken both the protection against torture and ill-treatment offered by the Act and victims' right to obtain an effective remedy. It also seemed that some leading politicians had mooted the idea of withdrawal from the European Convention on Human Rights. He would welcome clarification on those points.

16. **Mr. Tugushi** (Alternate Rapporteur for the United Kingdom), referring to legal guarantees against torture, said that although in Scotland persons deprived of their liberty could consult a doctor, that access was not guaranteed by any statutory provision, a situation which called for comment. Similarly, the replies to the list of issues stated that in England and Wales arrested persons were provided with a written notice of their rights, such as the right of access to legal advice, or to have a third person informed of their arrest. What about the right to see a doctor? The Committee had information to the effect that the access of persons deprived of their liberty to legal counsel's services over the weekend left much to be desired, especially in Scotland, since contact with a lawyer was sometimes restricted to a short telephone call. Were any measures planned to correct those shortcomings?

17. Much criticism of the United Kingdom concerned prison conditions, namely serious overcrowding and the large number of deaths — by suicide — and self-harm in detention facilities. According to recent statistics, 59 per cent of detention facilities in England and Wales were overcrowded. The State party had said that it was endeavouring to address that problem by opening new facilities. Experience in many countries had shown that a measure of that kind did not offer a long-lasting solution unless it was accompanied by a coherent strategy to turn imprisonment into a last resort, where emphasis was placed on a whole set

of non-custodial sentences and measures to expedite release. He asked if the State party was contemplating the adoption of such a strategy.

18. In view of detention conditions in prisons in Northern Ireland, especially overcrowding, the inhuman conditions in which women were detained, bullying, solitary confinement and the use of methods of constraint, he asked if deadlines had been set for prison reform and if the latter would result in genuine improvements in the near future.

19. In its 2008 report, the CPT had recommended that the United Kingdom should consider all 17-year-olds to be juveniles, should treat them as such and should grant them the rights matching that status; yet the rules applying to that age group were still problematic in some regions of the United Kingdom. He therefore asked the delegation to supply up-to-date information in that issue. The Committee also noted that the number of cases where restraint methods had been used on minors aged between 10 and 17 in detention facilities in England and Wales had risen by 70 per cent. Did the State party intend to adopt measures to remedy that situation? The Committee likewise had information to the effect that minors were sometimes held for more than 12 hours in degrading conditions, together with adults, at Heathrow airport. Was that true? He asked for clarification of reports that minors who were scarcely 11 years old in some cases and who had not committed any offence were sometimes held in police custody for more than 72 hours, because the police considered that they were suffering from mental disorders or that they were disturbed or unruly.

20. Most allegations of torture referred to in the list of issues concerned acts committed by the armed forces outside the territory of the United Kingdom, mainly in Iraq. In many instances, doubts had been expressed as to the independence and effectiveness of their investigation. He asked the delegation to comment.

21. In its reply to the question raised in paragraph 30 of the list of issues, namely whether the precedent established in the House of Lords decision in the case of *A. v. Secretary of State for the Home Department (No. 2) (2006)* had been reflected in legislation or an undertaking to Parliament, the State party had stated that the decision in that case was binding. The Committee nevertheless wished to know if the State party intended legislative incorporation of the principle that evidence obtained by torture was inadmissible in any legal proceedings.

22. Under the legislation in force in the State party, migrants could be detained for an indefinite period of time, although in practice such detention rarely lasted for more than a month. He asked the delegation to say if there were any plans to revise the law by setting maximum limits to periods of detention. In Northern Ireland immigrants could be held for lengthy periods in detention centres without the protection afforded by Rule 35 of the Detention Centre Rules, which laid down that medical practitioners in those centres must report any suspected cases of torture to the management. In that connection, it had been stated that draft rules for detention centres in Northern Ireland were being studied. He asked the delegation to supply details of the progress made in that respect and if those rules would contain a provision similar to the above-mentioned Rule 35.

23. The Committee welcomed the establishment of the National Preventive Mechanism in the State party. That mechanism consisted of 18 separate bodies. One of the difficulties most frequently mentioned in connection with that mechanism was that the resources allocated to it had been cut and were sometimes inadequate. What was the exact position? The independence of some of the bodies making up the mechanism had also been queried, since some prison staff who had been seconded to them then went back to their jobs. Was that practice still being followed?

24. **Mr. Domah** drew attention to the fact that he was Mauritian and that Mauritius and the United Kingdom had a dispute regarding the forcible expulsion of the inhabitants of

Diego Garcia from that island. He would therefore not take part in the consideration of the United Kingdom's report at which he would be present only as an observer.

25. **The Chairperson** said that the Committee took note of Mr. Domah's decision.

26. **Mr. Gaye** said that overcrowding in prisons was a major issue throughout the United Kingdom. It was difficult not to posit a connection between that unsatisfactory situation and the rather large number of deaths in prisons. In that context, the general dilemma was whether to build new prisons or improve existing ones, on the one hand, or to adopt alternative measures to detention, on the other. The State party had given no indication that it might be intending to adopt such measures. He wished to know whether the human rights violations allegedly committed by the British armed forces abroad had been investigated and, if they had, what the findings had been. He looked forward to hearing the delegation's reply to the question regarding the State party's acceptance of the Committee's competence to examine communications from individuals.

27. **Mr. Mariño Menendez** asked why the State party did not take advantage of the possibility of submitting a communication to the Committee under article 21 of the Convention in order to secure the return of Mr. Shaker Aamer, who was being detained indefinitely at Guantanamo Bay without being charged or brought to trial, a situation which clearly contravened the Convention. He also wished to know if there was any prospect of that case being settled.

28. In paragraph 4.5 of its replies, the State party stated, with regard to the principle of the extraterritorial application of the Convention, that the scope of application of each article of the Convention had to be considered on its terms. He asked the delegation to explain whether the State party meant by that that each article of the Convention had its own scope and that the Convention must not be interpreted holistically.

29. The State party contracted private companies to provide services in support of military operations overseas. It had been alleged that the personnel of those companies had committed human rights violations for which the State party declined all responsibility. The Committee wished to know in what circumstances the State party considered that a private company acting on its behalf in the context of a military operation might be deemed to be one of its agents. Lastly, it seemed that the number of police officers who would be equipped with tasers would rise considerably in the future. He therefore asked the delegation whether the use of those weapons, which the Committee had always regarded as dangerous, would be restricted and hedged with conditions.

30. **Ms. Gaer** requested details of the mechanisms for ascertaining that expelled persons were not tortured in the country of return, especially in cases where the State party trusted diplomatic assurances in order to carry out expulsions. She also enquired as to the number of asylum proceedings in which allegations of post-conflict torture in Sri Lanka had been deemed credible, how many of them had concerned Tamils and to what extent the Government was amending its policy on Tamil asylum seekers in light of the facts disclosed by those cases. She asked why so many people, mainly women, had been imprisoned for the non-payment of fines in Northern Ireland.

31. The Northern Ireland Human Rights Commission had drawn attention to the widespread overuse of restraint in nursing homes for older people. She wished to know what training nursing home staff received and whether any employees had been sentenced for ill-treatment. What was the reason behind the decision not to open an inquiry into the death of Patrick Finucane? How would that decision promote the transitional justice process in Northern Ireland? Lastly, she wished to know what measures had been taken to guarantee the right to redress of women who had been subjected to ill-treatment in the Magdalene Laundries.

32. **Ms. Belmir** said that the prerogative of the Director of Public Prosecutions for Northern Ireland to decide that a case would be tried without a jury constituted a serious breach of the right to a fair trial. She asked whether an appeal could be filed against such decisions. The State party contended in its report that the use of tasers had not resulted in any deaths or serious injuries in its territory. The dangers inherent in their use, which had been illustrated by several tragic incidents in other countries, should lead the State party to be cautious.

33. **Ms. Sveaass** said that retaining the defence of “reasonable punishment” in legal texts weakened protection against corporal punishment, all forms of which should be prohibited. She invited the State party to revise its legislation accordingly and to step up moves to inform and educate parents better on that subject. Scottish prisons had become severely overcrowded, because the number of women inmates had doubled in 10 years. It would be interesting to find out why that was so and what steps were being contemplated to reduce overcrowding in the prisons concerned. In view of the allegations of ill-treatment in psychiatric hospitals and care settings, she wished to know what arrangements had been put in place to ensure the effective and independent supervision of such institutions, whether complaint mechanisms existed and whether steps were taken to ensure that victims of ill-treatment obtained redress.

34. In addition to the Istanbul Protocol, there were numerous manuals on methods of recognizing signs of torture, several of which had been written by British specialists. It would be interesting to know whether those manuals were used in detention centres in order to identify possible victims of torture among asylum seekers. It would also be helpful to learn details of the nature of the settlements reached after claims of torture or ill-treatment, which the State party mentioned in its written replies (para. 29.3), to have some information about the psychological support and rehabilitation services available to victims of torture and about the measures taken to ensure that victims, especially refugees, had access to those services. According to one NGO, the State party had granted refugee status to 15 Tamils whose applications it had initially rejected and whom it had expelled to Sri Lanka where they had been tortured. She asked the delegation whether the State party had provided the persons concerned with effective redress and, if so, in what form.

35. **Mr. Wang Xuexian**, referring to the death of Baha Mousa, noted that the corporal who had been found guilty of the inhumane treatment causing the victim’s death had been sentenced to only 1 year’s imprisonment. Did the State party consider that sentence to be commensurate with the serious nature of the offence which had been committed? The Ministry of Defence had agreed to pay £2.83 million in damages to detainees who had been ill-treated by members of the British armed forces in Iraq. He would welcome details of the detainees concerned.

36. **The Chairperson** enquired about the contents of the proposals to amend the Human Rights Act and whether they sought to strengthen the protection of those rights. When would the process of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance be completed? In view of the substantial number of children under the age of 11 who had been placed in police custody in 2012, did the State party intend to raise the age of criminal liability, which was currently set at 10 years of age? Since the Police Federation intended to increase the number of police officers equipped with tasers to 36,000, what additional resources had been earmarked to train the officers concerned in the use of those weapons? The State party’s expulsion of Tamil asylum seekers to Sri Lanka, where they had been tortured after their return, showed that the evaluation of the risk of torture, which was conducted during the procedure to determine refugee status, was inadequate and in need of improvement. He would be interested to know whether the criteria which had been applied had been modified as a result.

37. He asked if it was true that, under the Justice and Security Act, the Government could rely on the protection of national security to prevent the public disclosure of evidence of its responsibility for acts of torture committed overseas. He also wished to know whether the armed forces had been trained in the 2009 interrogation rules applying to MI5 and MI6, which expressly banned torture. Lastly, he asked for an explanation of the weight attached by the State party to diplomatic assurances, including in cases where it had been established that there was a risk of torture in the country of return.

38. **Mr. Bruni** (Rapporteur for the United Kingdom) said that the State party's legislation was ambiguous in that it prohibited torture but, at the same time, it contained provisions permitting derogations from that ban. He therefore asked the delegation to comment on the 1994 Intelligence Services Act which provided that no State agent could be held liable under criminal or civil law for any act done overseas which was authorized by the Secretary of State. It was plain from certain administrative guidelines that the authorities were bound to assess the likelihood of torture when determining whether protective measures were necessary. That was contrary to the Committee's position that any person exposed to a risk of torture deserved protection. Regardless of whether that risk was great or small, he wished to hear the delegation's views on that subject.

39. **Mr. Tugushi** (Alternate Rapporteur for the United Kingdom) asked whether the Government intended to hedge the use of electroshock guns with strict rules to prevent their use against minors or vulnerable persons, as had happened in the past.

40. **The Chairperson** thanked the delegation and the Committee members and invited them to resume the dialogue at a later meeting.

*The first (public) part of the meeting rose at noon.*