



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

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## Committee against Torture

### List of issues in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its forty- ninth session (29 October-23 November 2012)

#### I. Metropolitan territory – England, Scotland, Wales and Northern Ireland

##### Articles 1 and 4

1. Are there any plans to formally incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) into domestic law as was done for the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA)? If not, how does the State party ensure that the Convention is fully applicable in the domestic legal system, and that its provisions are fully incorporated into national legislation?

##### Article 2<sup>1</sup>

2. Given the national debate about the drafting of a Bill of Rights and the possible repeal of the Human Rights Act 1998, please confirm that the Bill of Rights will not, if enacted, repeal the incorporation of the ECHR into domestic law, weaken the mechanisms for its enforcement nor undermine the prevention of torture, cruel, inhuman or degrading treatment or punishment.

3. Please provide updated information on the development of a Bill of Rights for Northern Ireland.

4. The European Court of Human Rights has ruled in two judgments (*Al-Skeini and others v. the UK*, and *Al-Jedda v. the UK*, Grand Chamber Judgment, 7 July 2011) that the

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<sup>1</sup> The issues raised under article 2 could also involve other articles of the Convention, including but not limited to article 16. As stated in paragraph 3 of general comment No. 2(2007) on the implementation of article 2 by States parties: “The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chapter V of the same general comment.

United Kingdom had jurisdiction in relation to acts committed abroad<sup>2</sup> under article 1 of the European Convention on Human Rights. Please provide information on steps taken to abide by these judgments, including any public acknowledgement made and amendments of rules and regulations. Please also indicate whether the interpretation of the State party<sup>3</sup> on the extraterritorial applicability of the United Nations Convention against Torture has been revised accordingly and in light of paragraph 7 of general comment No. 2.<sup>4</sup>

5. Please indicate how the State party means to reconcile its obligations under the Convention<sup>5</sup> with the guidance given by the State party to business enterprises that “the UK does not owe legal obligations to ensure that British companies comply with UK human rights standards overseas”.<sup>6</sup> Are transnational corporations registered in the State party held accountable for violations of the Convention outside of the United Kingdom? Are remedies provided to the victims? Please indicate whether private military companies acting overseas and contracted by the United Kingdom receive a human rights training similar to that of British military forces before deployment and whether they abide by the same set of Standard Operating Procedures.

6. Please explain what steps has the State party undertaken to review its statute and common law, including Sections 134(4) and 134(5) of the Criminal Justice Act (CJA) 1988<sup>7</sup>, to ensure full consistency with the obligations imposed by the Convention, as recommended by the Committee in the last concluding observations (CAT/C/CR/33/3, para. 4(a)(ii)).

7. The Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees (Guidance) retains the possibility for Ministerial approval in some cases where torture may be required to extract information “crucial to saving lives”.<sup>8</sup> In light of the fact that “no exceptional circumstances [...] may be invoked as a justification of torture” (art. 2, para. 2), please explain whether the State party intends to review the Guidance. Has Ministerial approval been sought since the last concluding observations?

8. The Protection of Freedoms Act 2012 allows for a 14 day pre-charge detention period for persons suspected of terrorism-related offences and the Home Secretary retains a power to extend this to 28 days.<sup>9</sup> Please explain how the State party ensures that all individuals enjoy fundamental legal safeguards, including the right to be brought promptly before a judge, from the very outset of the de facto deprivation of liberty.

9. In light of the death of Jimmy Mubenga in 2010 (while being forcibly removed by a private contractor), and considering the numerous allegations of abuse by private contractors, will the State party consider ending the use of private contractors for enforced removals? Please provide information on the investigations and prosecutions against those responsible for the death of deportees?

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<sup>2</sup> CAT/C/GBR/5, para. 210.

<sup>3</sup> Ibid., para. 29.

<sup>4</sup> CAT/C/GC/2.

<sup>5</sup> See in particular CAT/C/GC/2, paragraphs 15 and 16.

<sup>6</sup> The Foreign and Commonwealth Office’s *Business and Human Rights Toolkit: How UK overseas missions can promote good conduct by UK companies*, October 2009, p. 4.

<sup>7</sup> CAT/C/GBR/5, para. 28.

<sup>8</sup> Ibid., para. 281.

<sup>9</sup> Ibid., para. 162.

10. What steps have been taken to ensure that all cases of violence against women are swiftly investigated, prosecuted and punished<sup>10</sup> and that their victims receive immediate protection, redress and compensation?

### Article 3

11. Please provide data, disaggregated by age, sex and nationality, collected during the reporting period with regard to:

(a) The number of requests for asylum, and indicate the country of origin of the applicant;

(b) The number of asylum requests granted, and indicate the country of origin of the applicant;

(c) The number of applicants whose requests were granted because they had been tortured in, or because of a real personal risk of torture if they were to be returned to their country of origin; recent examples of any decisions in this regard would be useful.

12. In view of the risk of torture that detainees face in Afghanistan, please explain whether the State party considers extending on a long term basis the current moratorium on the transfer of prisoners detained by British military forces in Afghanistan to Afghan authorities.

13. Please provide updated information on the total number of cases of extradition or removal subject to the receipt of diplomatic assurances or guarantees that have occurred since 11 September 2001, disaggregated by receiving State.<sup>11</sup> Please explain if the monitoring of persons removed under Memoranda of Understanding or diplomatic assurances to Algeria, Ethiopia, Jordan, Lebanon, Libya or Morocco<sup>12</sup> includes the possibility of unannounced and unrestricted visits and private meetings with the person deprived of his liberty and whether independent medical expertise is granted.<sup>13</sup> Please describe how the State party assures itself of the independence, effectiveness, and impartiality of monitoring conducted by third parties?<sup>14</sup>

14. Please indicate whether similar Memoranda have been or are being elaborated with other States since the submission of the State party's periodic report and explain how these are compatible with the State party's obligations under article 3 of the Convention.

15. According to information before the Committee, several Tamil asylum seekers were subjected to torture upon their return to Sri Lanka. Please explain if deportations of Tamil asylum seekers have been halted since then? How many Tamil asylum seekers have been removed and deported to Sri Lanka since 2010?

16. The United Nations High Commissioner for Refugees<sup>15</sup> and the Council of Europe's Commissioner for Human Rights,<sup>16</sup> among others, made important recommendations to improve the quality of first-instance asylum decisions made in the Detained Fast Track (DFT) process. Please explain what measures has the State party taken to implement these recommendations.

<sup>10</sup> CAT/C/CR/33/3, para. 5(i).

<sup>11</sup> Ibid.

<sup>12</sup> CAT/C/GBR/5, paras. 43-60.

<sup>13</sup> Letter from the Committee's Rapporteur for follow-up on concluding observations to the Permanent representative of the United Kingdom, 29 April 2009, para. 5(i).

<sup>14</sup> CAT/C/GBR/5, para. 56.

<sup>15</sup> <http://www.unhcr.org.uk/what-we-do-in-the-uk/quality-initiative-and-integration.html>.

<sup>16</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1339037&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

**Article 11**

17. Her Majesty's Chief Inspector of Prisons has repeatedly found breaches of Home Office policy and Detention Centre Rules in the failure of the UK Border Agency to maintain proper systems to establish whether immigrants detained bear signs of torture. Please detail the measures taken to address this situation and explain whether an independent assessment of the progress made in implementing Rule 35 of the Detention Centre Rules was conducted.

18. Please explain why privately run prisons tend to hold a higher percentage of prisoners in overcrowded conditions.<sup>17</sup>

**Articles 12 and 13**

19. Since the last concluding observations, how many prosecutions were carried on for torture and ill-treatment whether under the HRA, the Criminal Justice Act 1988 or the Service Law? How many of these are of current and former government officials or members of the armed forces?

20. Please explain how the State party is addressing the concerns expressed, *inter alia*, by the Northern Ireland Human Rights Commission, about the investigations into deaths by lethal force that occurred during the conflict period in Northern Ireland, and the independence of inquiries conducted under the Inquiries Act 2005<sup>18</sup> due to the control that Government Ministers can exercise.

21. With reference to the previous request by the Committee's Rapporteur on follow-up to concluding observations,<sup>19</sup> please provide comprehensive information on all investigations undertaken by the State party into allegations of torture and ill-treatment by its forces in Iraq and Afghanistan; the results of these investigations; the number of resulting prosecutions before courts; and the outcomes of any such prosecutions. Please also clarify the legal means available to challenge final decisions of investigatory bodies and describe how the State party has ensured the independence of such investigations. Please indicate whether the State party has considered revising or repealing the Inquiries Act of 2005 in order to transfer control over inquiries from the government to the judiciary.

22. Please provide updated information on the return to the State party of Shaker Aamer (where he would be reunited with his British wife and four children), who, according to information before the Committee, has been "cleared for release" from Guantanamo Bay for more than four years?

23. Please provide clarification on how the State party's investigatory procedures were amended and accountability ensured following the serious allegations made by former US detainee Binyam Mohamed that the State party's intelligence agency was complicit in abusive interrogation tactics.

24. The Prime Minister announced in July 2010 that an independent inquiry (the Detainee Inquiry) would examine whether and to what extent State security and intelligence agencies were involved or otherwise complicit in the improper treatment or rendition of detainees held by other States in counter-terrorism operations in the aftermath of the attacks of 11 September 2001. On 3 August 2011, lawyers acting for former detainees and ten non-governmental organizations indicated that they would not participate in the Detainee Inquiry (which was concluded in January 2012) due to its lack of transparency and the lack

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<sup>17</sup> CAT/C/GBR/5, paras.518-522.

<sup>18</sup> *Ibid.*, para. 144.

<sup>19</sup> Letter from the Committee's Rapporteur for follow-up on concluding observations to the Permanent representative of the United Kingdom, 29 April 2009, para. 5(j).

of participation of former and current detainees and other third parties.<sup>20</sup> Please explain how the State party intends to remedy the structural shortcomings of the inquiry.

25. With regard to the Inquiry into the death of Baha Mousa,<sup>21</sup> please provide updated information on the implementation of the recommendations addressed to the Ministry of Defence contained in part XVII of the report<sup>22</sup> published in September 2011.

26. In respect of the Al Sweady Inquiry into allegations of unlawful killing and mistreatment of Iraqi nationals by British forces in 2004, please provide information on the progress made and when the report is expected. What measures has the State party taken to address allegations that the Ministry of Defence has withheld evidence of mistreatment of civilians and that not a single witness statement from any of the interrogators had been provided to the inquiry?<sup>23</sup>

27. Following the European Court of Human Rights judgments in *Al Skeini v. UK* (2011) finding that the State party had failed to carry out an effective investigation into the deaths and mistreatment of Iraqi civilians, the State party established a unit within the Iraq Historic Allegations Team (IHAT) to investigate those cases. Please provide updated information on the investigation process and provide information on the actions taken in response to the finding of the Court of Appeal in *Mousa v. Secretary of State for Defense*, that the IHAT was not sufficiently independent to satisfy article 3 of the European Convention.

28. Please provide updated information on the ongoing criminal investigations in relation to the possible cooperation of the British Secret Intelligence Service with the Libyan External Security Organisation in the rendition of the Libyan dissidents Sami al-Saadi and Abdul Hakim Belhaj who claim they were tortured upon their arrival in Libya.

#### Article 14

29. Please include the number of instances during the reporting period in which the State party ensured that a victim of torture or ill-treatment obtained compensation, the amount received in each case and the means for a full rehabilitation. Are migrant workers and persons subjected to trafficking in persons included in programmes of compensation and provided with appropriate rehabilitation assistance?

#### Article 15

30. Please indicate whether the decision of the House of Lords in the case of *A v. Secretary of State for the Home Department (No.2)* (2006) which makes clear that evidence obtained by torture is inadmissible in any legal proceedings<sup>24</sup> was reflected in formal fashion, such as through legislative incorporation or by undertaking to Parliament. Please also provide examples of any case in which evidence was deemed inadmissible on the grounds that it was obtained through torture.<sup>25</sup>

31. Please indicate if the State party modified the Special Advocate System<sup>26</sup> to guarantee fully effective legal representation following the determination by the European Court of Human Rights in *A et Al. v. UK* (application no. 3455/05) that the system was

<sup>20</sup> CAT/C/GBR/5, para. 21.

<sup>21</sup> Ibid., para. 496.

<sup>22</sup> [http://www.bahamousainquiry.org/f\\_report/vol%20iii/Part%20XVII/Part%20XVII.pdf](http://www.bahamousainquiry.org/f_report/vol%20iii/Part%20XVII/Part%20XVII.pdf).

<sup>23</sup> <http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/hearings/190712directionshearing.pdf>.

<sup>24</sup> CAT/C/GBR/5, para. 505.

<sup>25</sup> Letter from the Committee's Rapporteur for follow-up on concluding observations to the Permanent Representative of the United Kingdom, 29 April 2009.

<sup>26</sup> Ibid.

insufficient to safeguard detainees' rights. Given the above, please explain the rationale for the State party's proposal to extend the use of closed proceedings to civil cases involving sensitive material and indicate whether, given the forceful criticism against this proposal from Special Advocates and civil society organizations, the State party is considering its withdrawal.

#### Article 16

32. The report of the State party mentions that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has made several visits to the United Kingdom, Northern Ireland, Guernsey and Jersey since 2004<sup>27</sup>. In response to the recommendations made by CPT, the State party committed to (a) reviewing the conditions of detention at Rouge Bouillon Police Station (Jersey),<sup>28</sup> (b) amending the definition of "juvenile" to ensure that it includes all persons below the age of 18<sup>29</sup> and (c) increasing accessibility of information on rights and entitlements to detainees.<sup>30</sup> Please provide information on the steps taken to implement these and other recommendations made by CPT.

33. What steps are being taken to implement the recommendations of the Corston Report<sup>31</sup> regarding improvement in the conditions for women in prison? What efforts are being made to improve general health and mental health services for women in prison?

34. In its report, the State party recognizes that "even if its sentencing and rehabilitation reforms are successful in reducing the prison population, it will not be possible to create enough prison places to fully address the problem of overcrowding." How will this problem be addressed when prisons are closed and plans to renew the prison estate put on hold?<sup>32</sup> Please also provide information for Scotland and Northern Ireland.

35. Please provide details of cases involving mistreatment of prisoners dealt by internal complaints systems or the Ombudsman, including the nature of the allegations and the level of disciplinary or judicial award.<sup>33</sup>

36. The Human Rights Review 2012 of the Equality and Human Rights Commission found that police do not always use the minimum level of force when policing protests<sup>34</sup>. Her Majesty's Inspectorate of Constabulary (HMIC) has similarly concluded that there is no consistent doctrine around the use of force by the police.<sup>35</sup> What steps are being taken to

<sup>27</sup> CAT/C/GBR/5, para. 5.

<sup>28</sup> Response of the States of Jersey to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Bailiwick of Jersey from 15 to 18 March 2010, <http://www.cpt.coe.int/documents/gbr/2010-36-inf-eng.pdf>, Page 11.

<sup>29</sup> Response of the United Kingdom Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the United Kingdom from 18 November to 1 December 2008, <http://www.cpt.coe.int/documents/gbr/2009-31-inf-eng.pdf>, para 51.

<sup>30</sup> Ibid., para 35.

<sup>31</sup> A Report by Baroness Jean Corston of a review of women with particular vulnerabilities in the Criminal Justice system, March 2007, <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>.

<sup>32</sup> CAT/C/GBR/5, paras. 511 and 520.

<sup>33</sup> Ibid., para. 472.

<sup>34</sup> EHRC Human Rights Review 2012, <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-review/the-review/>.

<sup>35</sup> HMI Constabulary, Adapting to protest – nurturing the British model of policing, 2009, <http://www.hmic.gov.uk/media/adapting-to-protest-nurturing-the-british-model-of-policing-20091125.pdf>.

implement the recommendations of HMIC to adopt an overarching set of principles on the use of force?

37. The Home Affairs Select Committee (HASC) has recommended<sup>36</sup> that the Home Office commission research into various types of restraints and provide guidance to staff in enforced removals. Please, provide information on the implementation by the State party of the HASC's recommendations. How many detainees have sustained injuries in the last three years as a result of the use of force or restraint by UK Border Agency's employees or private contractors, both in immigration detention and during removal or attempted removal?

38. Since the introduction of the *2010 UK Border Agency Enforcement Instructions and Guidance*, the court found in three cases that the detention of mentally ill persons in immigration detention centres amounted to inhuman or degrading treatment<sup>37</sup>. Please, indicate whether the State party intends to amend its policy with regard to the detention of people with mental illness so that these people can only be detained in very exceptional circumstances, as provided previously in the 2008 Guidance.

39. Please provide information on the number of children detained for immigration related purposes in England, Scotland, Wales and Northern Ireland, including prior to deportation and on arrival in the State party, since the closure of the family unit at Yarl's Wood. Please also indicate the length and the purpose of detention and provide information on the number of immigrant children held in detention with adults due to doubts about their age.

40. Concerning corporal punishment in the home,<sup>38</sup> a 2007 review of Section 58 of the Children Act showed that the defence of "reasonable punishment" was not well understood by parents and those working with children and families. In addition, practitioners found difficult to give advice to parents as Section 58 is seen as legalizing and legitimizing smacking.<sup>39</sup> Please explain the steps taken, if any, to address the lack of understanding of the law and raise awareness of the Children Act's limits amongst the general public?

#### Other issues

41. Please respond to the issues raised by the Rapporteur for follow-up on concluding observations of the Committee against Torture in her letter dated 29 April 2009.

42. Both the Joint Committee on Human Rights (JCHR) of the Parliament of the United Kingdom and the Equality and Human Rights Commission believe that "the UK's slow progress in accepting individual petition [...] undermines its credibility in the promotion and protection of human rights internationally".<sup>40</sup> Please, comment on the above and explain whether it intends to reconsider its position with regard to making a declaration under article 22 of the Convention?

<sup>36</sup> House of Commons, Home Affairs Committee Rules governing enforced removals from the UK – Eighteenth Report of Session 2010-12, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2010/rules-governing-enforced-removals-from-the-uk/>.

<sup>37</sup> *R(HA (Nigeria)) v. S.S.H.D. (2012)*, *R.(S.) v. S.S.H.D. (2011)*, and *R.(B.A.) v. S.S.H.D. (2011)*.

<sup>38</sup> CAT/C/GBR/5, paras. 583-586.

<sup>39</sup> Department for Children, Schools and Families, 2007, 2007. *Review of Section 58 of the Children Act 2004*, <https://www.education.gov.uk/publications/eOrderingDownload/S58ReviewReport.pdf>.

<sup>40</sup> Joint Committee on Human Rights 17th Report, session 2004-2005, <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/99/9905.htm>.

## II. Crown Dependencies and Overseas Territories

43. Please explain if corporal punishment is prohibited in the home, schools, the penal system and all care settings in the British Crown Dependencies and British Overseas Territories. If not, please explain whether there are plans to extend the prohibition to a level which is at least as protective as the one in the Metropolitan Territory.

44. Please provide information on the compliance of Crown Dependencies and Overseas Territories' legislations with article 15 of the Convention.

### Crown Dependencies

#### Guernsey

45. Please indicate how many times since the last concluding observations was the right to access a lawyer delayed<sup>41</sup> and explain if Guernsey intends to amend Section 66 of the *Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003* so as to bring it in line with international standards.

46. Please explain if the Part of the *Legal Aid (Bailiwick of Guernsey) Law, 2003* which introduces statutory legal aid scheme has been brought into force.

47. Please provide details about the number of investigations being dealt with by the Guernsey Police Complaints Commission.

#### Jersey

48. Please provide information for the last five years on the number of immigrants held in detention at HM Prison La Moye, their age, and the length of their detention. Please indicate if detained immigrants can seek judicial review of their detention.<sup>42</sup>

#### Isle of Man

49. Please provide an update on the request of the Isle of Man to the Government of the United Kingdom to extend the scope of its ratification of the Optional Protocol to the Convention against Torture to include the Isle of Man.<sup>43</sup>

### Overseas Territories

#### Anguilla

50. In Anguilla, mentally ill patients are housed in prison.<sup>44</sup> Please explain measures envisaged to remedy this situation.

51. Please provide data on breaches of the *Code of Discipline for Prison Officers*<sup>45</sup> in violation of the Convention, including the nature of the allegations and the level of disciplinary or judicial award.

52. Please provide information on measures (if any) to address overcrowding in prisons.<sup>46</sup>

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<sup>41</sup> CAT/C/GBR/5, annex I, paras. 10-12.

<sup>42</sup> Ibid., annex I, paras. 65 and 79-80.

<sup>43</sup> Ibid., annex I, para 9.

<sup>44</sup> Ibid., annex II, para. 3.

<sup>45</sup> Ibid., annex II, para. 4.

<sup>46</sup> Ibid., annex II, para. 4.

**Bermuda**

53. Please provide information on the number of cases presented to the Police Complaints Authority and the results of those investigations.

54. Please indicate how many times since the last concluding observations was the right to access a lawyer delayed<sup>47</sup> and explain if Bermuda intends to amend its legislation so as to bring it in line with international standards.

**British Virgin Islands**

55. Please, provide updated information on the review of the 1999 Prison Rules.<sup>48</sup>

56. Please provide updated information on the construction of the immigration detention facility<sup>49</sup>.

**Montserrat**

57. Please provide updated information on the construction of a permanent prison on Montserrat so that all prisoners can serve their sentences on the island and maintain their family ties.<sup>50</sup>

58. Please provide an update on the new Constitution of Montserrat envisaged in the fourth periodic report, and on the establishment of the office of Ombudsman or Complaints Commissioner.

**Turks and Caicos Islands**

59. Please provide the Committee with the State party's report from Turks and Caicos.<sup>51</sup>

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<sup>47</sup> Ibid., annex II, para. 6.

<sup>48</sup> Ibid., annex II, para. 17.

<sup>49</sup> Ibid., annex II, para. 17.

<sup>50</sup> Ibid., annex II, para. 36.

<sup>51</sup> Ibid., annex II, para. 61.