

Equality and Human Rights Commission

Torture in the UK: update report

Executive summary

May 2019



**Equality and
Human Rights**
Commission

The UK Government will shortly be examined by the UN Committee against Torture in respect of the implementation of its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In preparation for the examination, the Equality and Human Rights Commission has published a report identifying key aspects of law, policy or practice in England and Wales that may be non-compliant with CAT. The report covers England and Wales for all issues and Scotland for issues that are reserved to the UK Parliament.

The report contains 14 chapters, focusing on separate policy issues and settings where torture, cruel, inhuman or degrading treatment may occur. A recurring theme running through several chapters is our concern about possible non-compliance with the duty to conduct an effective investigation enshrined in Article 12 CAT. This concern relates in particular to the UK Government's response to allegations of torture and/or ill-treatment of:

- overseas detainees
- people held in immigration removal centres
- children and adults in prisons and police custody
- people receiving health and social care services, and
- victims of violence against women and girls, human trafficking and modern slavery, hate crime and child sexual abuse.

The [full report](#) is available on our website. Below we set out a summary of our key concerns.

1. Incorporation of CAT into domestic law

The UK has not directly incorporated CAT into domestic law, and there are potential risks to the protection of human rights in the continued uncertainty about the future of human rights legislation, as well as the UK's planned withdrawal from the EU. Derogation from the extra-territorial principle of the Human Rights Act 1998 would contravene the UK's international obligations under CAT, which extend to the operations of British forces overseas. There remain inconsistencies between some domestic legal provisions and the UK's international obligations under CAT, including the retention of 'defences' for torture in the Criminal Justice Act 1988.

2. Overseas detainees

Steps taken to investigate allegations of UK involvement in the torture and ill-treatment of overseas detainees continue to fall short of the investigative duty in Article 12 CAT. This includes the recently published inquiry by the Intelligence and Security Committee and the settlement of claims against individual British soldiers who served in Iraq. The 'Consolidated guidance to intelligence officers and service personnel on the detention and interviewing of detainees overseas' remains unclear, particularly around the obligation to cease engagement when there is a 'risk/serious risk' of torture.

3. Impact of legal aid reforms

Most areas of law where claims are likely to arise for protection against torture or ill-treatment - including family problems where there is a risk of domestic abuse - remain within the scope of civil legal aid. However, the adoption of the LASPO 2012 Act saw an unexpected drop in the volume of successful grants for legal aid in domestic abuse cases. LASPO also excluded some categories of people who are particularly at risk of ill-treatment, including statelessness applicants. The exceptional case funding scheme has not functioned as expected and may not provide the 'safety net' for matters otherwise outside the scope of legal aid.

4. Human trafficking and modern slavery

Weaknesses in the Modern Slavery Act 2015 hinder the UK Government's efforts to prevent and combat trafficking in England and Wales. These include insufficient safeguards for non-prosecution of child victims, absence of a specific legal duty to provide support to victims and insufficient remedies for victims of trafficking. There remain concerns about the powers and resources of the Independent Anti-Slavery Commissioner.

5. The National Preventive Mechanism

The UK National Preventive Mechanism (NPM) is made up of 21 statutory bodies that monitor the treatment of people deprived of their liberty in a range of settings. There is, however, no legislation setting out the mandate of the NPM, no statutory guarantees of its independence, and there are limited resources available to the NPM secretariat to coordinate the work of its members.

6. Conditions of detention

Conditions in prisons, the youth custodial estate, immigration detention and mental health detention are inadequate and risk violating the obligation to take effective measures of prevention in respect of torture and ill-treatment.

6.1 Prisons and the youth custodial estate

Conditions in adult prisons have deteriorated significantly in recent years, including increasing crowding rates and rising levels of self-harm and assaults. The number of non-natural deaths in custody remains a serious concern and raises questions about the treatment of prisoners with mental health problems. Violence is an increasing problem across the youth custodial estate. Detainees with ethnic minority backgrounds continue to be disproportionately represented in the prison estate and increasingly so in parts of the youth custodial estate.

6.2 Immigration detention

The practice of indefinite immigration detention is contrary to international human rights standards. Existing measures to identify and protect individuals at particular risk of harm in immigration detention, including torture survivors, are not functioning as intended. Immigration detainees with serious mental health conditions face particular barriers in asserting their right to challenge the decision to detain them.

6.3 Mental health detention

Insufficient investment in community-based mental health services is contributing to increasing rates of mental health detention. The Commission is concerned by evidence of ethnic disproportionality in compulsory detentions under the Mental Health Act 1983, by the institutionalisation of adults and children with learning disabilities and/or autism in psychiatric settings for prolonged periods, and by the insufficient safeguards against unlawful deprivation of liberty of people who are deemed to lack capacity.

7. Use of restraint

High levels of force are used on prisoners in the adult estate. There has been a substantial rise in the use of restraint in the youth custodial estate, including pain-inducing restraint and segregation. The police are increasing the use of Tasers and

spit hoods on children. Excessive use of force is disproportionately used on people from ethnic minorities and restraint is being used unlawfully on adults and children with learning disabilities in mental health and education settings. There are significant gaps in practices of recording and monitoring the use of restraint. Procedures for bringing complaints about the misuse of restraint are insufficiently accessible and lack accountability.

8. Counter-terrorism measures

Several counter-terrorism powers in UK legislation have the potential to erode important safeguards needed to prevent torture and other cruel, inhuman or degrading treatment. These include the power to question and detain individuals at airports and powers without a requirement to have a reasonable ground for suspicion, the 14-day period of pre-charge detention for terrorism suspects and the power to withhold material information in a closed material procedure (CMP), even if this might reveal evidence of human rights violations such as torture.

9. Ill-treatment of people receiving health and social care services

Steps have been taken to improve healthcare safeguards and oversight mechanisms since the publication of the Francis Inquiry report in 2013. These include new reporting requirements and a Healthcare Safety Investigation Branch (HSIB). Steps are being taken to strengthen the independence of this body but these currently fall short of the investigative requirements of Article 12 CAT. Reductions in government funding combined with increased demand for care have seen a growing number of older or disabled people not receiving the care services they require.

10. Asylum and migration procedures

10.1 Use of diplomatic assurances

The UK Government's commitment to pursuing deportation with assurances (DWA), even in cases where it may not be possible to seek independent monitoring, may contravene the non-*refoulement* principle in CAT Article 3.

10.2 Identification and determination of statelessness

The procedure for identifying and determining statelessness is not functioning as intended, in particular for individuals in immigration detention. Although detainees

have a right to apply to be recognised as stateless, the cumbersome nature of the application process makes it difficult for them to do so, especially if they do not have legal representation.

11. Violence against women and girls

The police and Crown Prosecution Service have taken steps to improve the handling of sexual offences, domestic violence and so-called ‘honour based violence’. Low referral and prosecution rates continue, however, raising questions about the criminal justice system’s ability to hold VAWG perpetrators to account. Large numbers of VAWG survivors are not receiving protection due to insufficient funding for refuges and specialist domestic abuse services.

12. Child sexual abuse

The findings of recent independent inquiries have revealed systemic barriers to the prevention of sexual offences against children and the investigation of victims’ allegations. Recent policy initiatives, including new guidelines to ensure that child victims of sexual abuse are granted compensation, are steps in the right direction. However, a lack of leadership and insufficient funding for specialised services are among the issues hampering progress in this area.

13. Hate crime

Although there continue to be inaccuracies in the recording of hate crime by the police, improved police practices have contributed to year-on-year increases in police-recorded hate crime since 2013. Yet very few cases lead to prosecutions and successful convictions. Barriers to the effective investigation of hate crimes include an excessively complicated legislative framework, insufficient support available to victims and insufficient hate crime training for the police and prosecutors.

14. Minimum age of criminal responsibility

The age of criminal responsibility in England and Wales is significantly lower than in many European countries and inconsistent with accepted international standards. The age of criminal responsibility should be raised considerably. Welfare-based services for dealing with the harmful behaviour of children below the age of criminal

responsibility should be expanded to deal with the additional numbers, and accompanied by appropriate safeguards.

Contacts

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