

Equality and Human Rights Commission

Torture in the UK: update report

Full list of recommendations

May 2019



**Equality and
Human Rights**
Commission

1. Incorporation of CAT into domestic law

As the UK finalises its withdrawal from the EU, the UK and Welsh Governments, where relevant, should ensure that:

- There is no regression in the respect, protection and fulfilment of human rights as a result of changes to domestic legislation.
- The loss of EU funding does not undermine the UK's equality and human rights infrastructure, including the already scarce funding available to specialist services, such as those that support women survivors of violence and domestic abuse.

The UK Government should:

- Take steps to incorporate all of the provisions of CAT in UK domestic law, including by repealing subsection 134(5)(b)(iii) of the Criminal Justice Act 1988 which permits reliance on lower torture standards that operate outside the UK.
- Commission an independent review to consider ways to ensure the general defence for torture in section 134(4) of the Criminal Justice Act 1988 is further circumscribed and used only in exceptional situations where the defence is appropriate and necessary in the last resort.
- In any future consideration of the territorial application of the Human Rights Act, accept that its obligations in international law under CAT extend to the operations of British forces overseas and to foreign nationals when they are under de facto UK jurisdiction.

As the Welsh Government considers how it can further progress and safeguard human rights in Wales, it should:

- Consider the steps it can take to incorporate any relevant provisions of CAT in Welsh legislation.

2. Overseas detainees

To satisfy the investigative duty in Article 12 of CAT, the UK Government should set up a full, independent, judge-led inquiry into allegations of British involvement, including by means of complicity, in the mistreatment of detainees held overseas.

The inquiry should:

- Have access to key witnesses in order to secure relevant evidence.

- Have adequate powers to hold to account individual security and intelligence officers found to be at fault.
- Examine systemic issues, including shortcomings in policy, training or supervision so that lessons learned can inform future practice.

When considering proposals to revise the consolidated guidance, the UK Government should:

- Ensure that there is no ambiguity in the meaning of risk/serious risk,
- Require British intelligence and security personnel always to cease any engagement with detainees in the custody of foreign intelligence services where there is a risk of torture or ill-treatment, and
- Clarify that the Minister cannot authorise anything contrary to international law.

3. Impact of legal aid reforms on access to justice

We welcome the steps the UK Government is taking to progress matters on domestic violence evidence, unaccompanied and separated children and inquests. However, to address the negative impact that LASPO is having on access to justice and effective remedies for certain categories of individuals who have been subject to ill-treatment, the UK Government should:

- Keep under review the accessibility of legal aid for people who may be at particular risk of ill-treatment, including in relation to immigration matters and domestic violence. The Government should ensure that the review of financial eligibility and proposed measures to improve awareness of legal aid address any barriers to access for these groups.
- Bring forward proposals to address the shortcomings of the ECF scheme, including the complexity of the application process, to ensure that people who are at particular risk of ill-treatment do not face barriers to funding in cases where legal aid would not normally be available.

The Welsh Government should:

- Consider the recommendations of the Commission on Justice in Wales that aim to improve access to justice and legal aid, when they are published in 2019.

4. Human trafficking and modern slavery

The UK Government should:

- Ensure that effective remedies are available in law and in practice for all victims of trafficking and exploitation, whatever their legal status, including children who have been involved in county lines activities and domestic workers on short-term visas.
- When responding to the forthcoming independent review of the Modern Slavery Act 2015, address the full range of concerns raised in this report, including victim support entitlements and other issues which currently fall outside the review's terms of reference.

5. National Preventive Mechanism

The UK Government should:

- Ensure that the NPM has access to all places of detention and their installations and facilities, including UK-controlled places of detention overseas, to regularly examine the treatment of people deprived of their liberty.
- Introduce legislation to ensure and safeguard the independence of the NPM and provide sufficient resources to permit the effective implementation of its mandate in line with the requirements of the OPCAT.

6. Conditions of detention

6.1. Prisons and the youth custodial estate

The UK and Welsh Governments, where relevant, should:

- Address overcrowding in adult prisons by investing in appropriate alternatives to imprisonment and widening access to liaison and diversion services, while ensuring that people with mental health conditions are not unduly pressured to receive mental health treatment in order to avoid detention, and that they are required to give valid consent to treatment.
- Improve the provision and availability of mental health services in the adult and youth custodial estate – recognising the different issues women, including transgender women, children and people belonging to ethnic minority groups

experience in detention – to prevent suicide and self-harm, and to facilitate resettlement.

- Introduce a statutory obligation on prisons and youth custodial institutions to respond to recommendations from investigations into deaths in custody by publishing an action plan.
- Ensure that children are detained only as a measure of last resort and for the shortest possible time. Children should not be held in prison-like settings – but in safe and appropriate environments, in close proximity to their families, and should be supported by a sufficient number of highly skilled and specialist staff able to meet their needs.

6.2. Immigration detention

The UK Government should:

- Introduce a 28-day time limit on immigration detention in line with the recommendations of the UNHCR¹ and ensure that detention is used only as an administrative measure of last resort.
- Ensure effective oversight, monitoring and complaints policies and procedures in the immigration detention estate to ensure that any ill-treatment is immediately identified, that steps are taken against the people who are responsible, and that lessons are learned to prevent any further ill-treatment occurring.
- Introduce independent processes, both when a decision to detain is made and during detention, for the identification of those people who may face a particular risk of harm in detention, and review detention policies and rules to ensure such individuals are detained only in exceptional circumstances.
- Ensure all detainees have effective access to fair and accessible procedures to challenge the decision to detain or deport, including by rejecting an expedited procedure for determining a detained immigration or asylum appeal.

6.3. Mental health detention

The UK and Welsh Governments, where relevant, should:

- Ensure there are sufficiently funded, appropriate and high-quality mental health services in the community to support the needs of all adults and children, including those with learning disabilities and/or autistic spectrum

¹ UNHCR (2015), '[Immigration Bill 2015: Parliamentary Briefing for House of Commons](#)' [accessed: 8 March 2019].

disorder, in order to reduce the need to resort to involuntary admission and treatment.

- Strengthen the criteria for detaining people under the MHA in order to ensure that the least restrictive intervention is used, and improve the ability of people detained to obtain a timely and meaningful review of the decision to detain/prolonged detention. In the case of people whose liberty is restricted under the Mental Capacity Act, ensure that they are supported and enabled to appeal to the Court of Protection and have access to an independent advocate.
- Collect, analyse and publish disaggregated data on the experience of people sharing protected characteristics in all mental health settings, with a particular emphasis on people from ethnic minority groups, in order to understand who is being detained and treated and in what circumstances, and take action to tackle mental health inequalities.

The Welsh Government should:

- Fully evaluate progress made under the Mental Health (Wales) Measure 2010 with a focus on preventing unnecessary detentions.

7. Use of restraint

Given the similarities and interfaces across sectors, the UK and Welsh Governments, where relevant, should:

- Promote consistent legal and policy approaches to restraint, based on human rights principles, with cross-sector learning, in line with the EHRC's human rights framework for restraint. This should include a ban on any technique that deliberately inflicts pain on children.
- Harmonise approaches to recording incidents of restraint to allow for improved monitoring, evaluation and learning, and more comprehensive and comparable data. This will help build a robust evidence base to underpin efforts to tackle restraint, particularly its disproportionate use on groups of people who share certain protected characteristics.
- Improve complaints and investigation processes so that they are effective and accessible.
- Ensure substantive action to implement recommendations and lessons learned from investigations in order to address the risk of breaches of human rights standards.

The UK and Welsh Governments should:

- Prohibit all forms of physical punishment of children, including through the abolition of the 'reasonable punishment' defence.

8. Counter-terrorism measures

The UK Government should broaden its review of current counter-terror strategy to consider the impact on human rights of existing and proposed measures. In particular, it should:

- Introduce a threshold for reasonable suspicion for arresting individuals at airports and ports, and any new powers introduced in this area.
- Reduce the limit on pre-charge detention for terrorist suspects to four days, in line with the criminal law in England and Wales.
- Use the forthcoming review of the JSA 2013 to consider whether CMPs are operating appropriately and, if CMPs are retained, to consider ways to strengthen transparency around their use to ensure they are used sparingly and only when strictly necessary.
- Conduct a full evaluation of the impact of the Prevent strategy on equality, good relations and human rights, and ensure that people responsible for Prevent in public bodies are trained in their equality and human rights obligations.
- Ensure there is no deviation from the UK practice of seeking diplomatic assurances that the death penalty will not be used when extending mutual legal assistance, and revise the relevant provisions in OSJA guidance.

9. III-treatment of people receiving health and social care service

The UK Government should:

- Use the process of placing the HSIB on a statutory footing to clarify and strengthen its role in conducting investigations compatible with the requirements of Article 12 of CAT into patient safety incidents in all healthcare settings.

The Welsh Government should:

- Consider establishing an independent body to investigate patient safety incidents in all healthcare settings in Wales.

The UK and Welsh Governments should:

- Monitor the impact of any reductions in the availability of adult social care on the dignity and wellbeing of older and disabled people, including their right to live independently.
- Monitor the extent of unmet needs, and develop plans to progressively close gaps in meeting needs.

10. Asylum and migration procedures

10.1. Use of diplomatic assurances

The UK Government should:

- Ensure effective verification and independent monitoring in all cases where assurances are sought in the event of a deportation, preferably in the context of both parties having ratified the Optional Protocol to the UN Convention against Torture (OPCAT).
- Lay the text of each future DWA arrangement before Parliament and ensure that no arrangement shall come into force before 14 sitting days have elapsed, during which time MPs may signify any objection.

10.2. Identification and determination of statelessness

The UK Government should:

- Adapt Home Office policies and procedures for administrative detention by obliging immigration officers to refer a person who may be stateless, or at risk of statelessness, to the statelessness determination procedure at the point of the decision to detain and at regular intervals during the detention period.
- Improve the speed and quality of the statelessness determination procedure by increasing the number of staff involved in processing applications and improving the training they receive, and by providing applicants with free legal aid and an effective right to appeal decisions in the event of refusal.

11. Violence against women and girls

The UK and Welsh governments, where relevant, should:

- Improve the reporting and recording of all forms of violence against women and girls and increase prosecution and conviction rates, ensuring police forces take a victim-centred approach.
- Ensure the sustainability of funding for support services that address all forms of violence against women and girls, including those that provide specialist services for disabled and ethnic minority women and girls.
- Put in place the remaining changes to law, policy and practice needed to enable ratification of the Istanbul Convention; and
- Fully implement and resource their VAWG strategies, undertaking co-ordinated cross-government action and reporting on progress.

12. Child sexual abuse

The UK and Welsh Governments, where relevant, should take action in response to the recommendations in the interim report of the IICSA, in particular by:

- Commissioning a joint inspection of how well the police, the CPS and other agencies comply with the Victims' Code in relation to victims and survivors of child sexual abuse.
- Strengthening the capacity of local police forces to prevent and respond to child sexual abuse by reconsidering the possibility of making progression within the police dependent on achieving accreditation and operational experience in this area.
- Establishing current levels of public expenditure, and the effectiveness of that expenditure, on services for child victims of sexual abuse.

13. Hate crime

The UK Government has introduced numerous legislative and policy measures aimed at combating hate crimes. However, there is scope to improve before these can be described as offering an effective framework to prevent hate crime and protect victims.

The UK Government should:

- Improve the reporting of hate crime, including by strengthening the initial handling and recording of hate crime reports; improving the quality of support to victims, including directing victims to support services and keeping them

informed about the progress of their case; and improving the effectiveness of hate crime training for police forces.

- Ensure its forthcoming review of hate crime law in England and Wales results in reforms that provide equal and adequate protection to different protected groups, and that improve the ability of criminal justice agencies to understand and enforce the law effectively in response to hate crime.

14. Minimum age of criminal responsibility

The UK Government should:

- Develop a welfare-based system, including early intervention and therapeutic services for dealing with the harmful behaviour of children; and significantly raise the age of criminal responsibility in line with international human rights standards, taking account of any recommendations of the forthcoming UNCRC General Comment.
- Where children under the age of criminal responsibility need to be detained because they are a risk to themselves or others, ensure that there are robust legal safeguards, including judicial authorisation of the decision to detain, access to free legal representation and frequent reviews. Detention should take place in a non-penal setting, and should be used as a last resort and for the shortest possible time.

Contacts

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