

# Following Grenfell:

the right to be free

from torture and

cruel, inhuman

or degrading

treatment

This briefing focuses on the prohibition of torture and cruel, inhuman or degrading treatment, including the meaning of these terms, case law and relevance to Grenfell. The briefing forms part of a series explaining human rights issues raised by the Grenfell Tower fire: the right to life, adequate and safe housing, inhuman or degrading treatment, access to justice, equality and non-discrimination, and children's rights.

## What is the right to be free from torture and cruel, inhuman or degrading treatment and what is its source in international law?

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The survivors of the Grenfell Tower fire and many of those who witnessed it, or were otherwise affected by it, have suffered great harm, potentially reaching the threshold of inhuman and degrading treatment. The right to be free from torture and cruel, inhuman or degrading treatment ('c/i/d treatment') or punishment is established in the UN Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), at an international level, and the European Convention of Human Rights (ECHR), at a regional level.<sup>1</sup>

The UK Government has ratified CAT, ICCPR and the ECHR. By doing so, it has committed to the human rights standards set out in these treaties under international law. This means that all UK governments and public bodies – central, local and devolved – and all public officials, have to take appropriate measures to protect people from torture and c/i/d treatment. The right not to be tortured or subjected to c/i/d treatment is absolute; it must never be limited or restricted in any way.

The UK has incorporated the ECHR into domestic law, through the Human Rights Act 1998 (HRA), but not the CAT or the ICCPR. This means people cannot rely on the provisions of CAT or ICCPR to bring claims in UK courts. However, the UK's domestic legal framework reflects many of the provisions/standards in these international human rights treaties, including the duty to investigate acts of torture and c/i/d treatment as well as providing reparation to survivors of such acts.

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<sup>1</sup> The prohibition against torture is also a pre-emptory norm of customary international law (*ius cogens*), and there is a presumption that customary international law forms part of the common law of England and Wales and is enforceable as such by courts.

## What does the right to be free from torture and inhuman or degrading treatment mean in practice?

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### What is torture and inhuman or degrading treatment?

Torture and c/i/d treatment must attain a minimum level of severity.

**Torture** occurs when someone causes serious and cruel suffering (physical or mental) to another person. This might be to punish someone, or to intimidate or obtain information from them. Torture usually involves action by a public official deliberately intended to cause very serious suffering.

**Inhuman treatment** or punishment is treatment that causes intense physical or mental suffering. **Degrading treatment** means treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors, such as the physical or mental effects of the treatment, and the sex, age, vulnerability and health of the survivor.

Some examples of circumstances where prohibited conduct might arise include:

- use of force by police to regulate protests, during arrest and during interrogation
- use of restraint techniques in education, health, social care and prisons
- prison overcrowding and other inadequate detention conditions
- poor healthcare in hospitals and mental health units
- abuse and neglect of children or older people in residential care
- the treatment of migrants and asylum seekers held in detention
- race discrimination as a result of immigration law or practice
- deportation where there is a real risk of torture or c/i/d treatment in the country concerned (known as 'non-refoulement')
- gender-based violence
- child sexual abuse and exploitation, and
- threatening to torture someone, if the threat is real and immediate.

### What are the obligations on the state under international human rights law?

The right to be free from torture and c/i/d treatment gives rise to both negative and positive obligations on the state:

The **negative** duty requires the state (that is, all public bodies) **not to interfere** with the right to be free from torture and c/i/d treatment. For example, it must prevent public authorities and officials from inflicting torture or c/i/d treatment on individuals.

The state may also bear responsibility for acts of torture or other forms of ill-treatment committed by private individuals, if it knows or has reasonable grounds to believe that torture is taking place in a private setting, and if it has not taken sufficient steps to prevent and investigate the acts, provide the survivors with adequate protection and prosecute and punish the perpetrators.

The **positive** duty requires **action** by the state. The UK Government must put in place, and enforce, legislation to protect people from torture and c/i/d treatment, to prevent torture and c/i/d treatment and to investigate, and prosecute where appropriate, violations of the right and provide redress. All of these elements are relevant in the context of the Grenfell Tower fire:

- **Protection by law:** states are required to enact statutory rules that ensure the protection of people's right to be free from torture and c/i/d treatment. In addition, under CAT, states are required to criminalise torture. The UK's domestic law prohibits torture and inhuman or degrading treatment.<sup>2</sup>
- **Prevention of torture and c/i/d treatment:** in its jurisprudence, the European Court of Human Rights (ECtHR) has held that states are required to take steps to avoid a risk of torture or c/i/d treatment to individuals, or groups of individuals, about which public authorities knew or ought to have known. This includes threats from private individuals, businesses and organisations. The decision on which measures to take is left to the judgment of the state, as long as they are reasonable and effective. Such steps may include:
  - basic guarantees to persons deprived of their liberty, that is, adequate conditions of detention, monitoring of the conditions, accessible complaint mechanisms and provisions against incommunicado detention
  - review of all interrogation rules and practices
  - education and training to law enforcement staff
  - prohibition of medical or scientific experiments without free consent of person concerned
  - exclusion by law of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment, and
  - independent bodies to investigate and prosecute.

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<sup>2</sup> However, the definition of torture and corresponding penalties in UK domestic law are not in full conformity with CAT. See 2013 Concluding Observations on the UK, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/GBR/CO/5&Lang=En) [accessed: 5 October 2018].

In line with the requirements of the Optional Protocol to CAT, which the UK is a party to, the **UK National Preventive Mechanism (NPM)** was established in 2009 to strengthen the protection of people deprived of their liberty. It comprises 21 member bodies, and is mandated to independently visit, monitor and inspect places of detention and secure accommodation across all four nations of the UK.

- **Investigation:** as soon as there are reasonable grounds to believe that a violation of the right has happened, an investigation must be instigated. This must be prompt, thorough, impartial and effective, and undertaken by competent authorities (see our [briefing on the right to life](#) for further information).
- **Redress** for survivors of torture and c/i/d treatment: the UK Government is under an obligation to remedy a violation of the right by providing effective remedies to the survivor(s), including legal aid where this is necessary. Survivors' right to redress entails, under international law, an enforceable right to fair and adequate compensation, including 'the means for as full rehabilitation as possible' (CAT Article 14(1)). While it is within the Government's discretion to determine which remedies to provide, the ECtHR has stated in its case law that remedies must be effective and must include compensation for both actual and moral (that is, psychological and emotional suffering) damage. The participation of survivors, their families and witnesses is crucial in the redress process.
- **Compensation:** UN bodies and the ECtHR have indicated that appropriate compensation should also cover both pecuniary (for example, legal and medical expenses, the loss of earnings) and non-pecuniary losses (that is, physical and mental suffering) caused by torture or c/i/d treatment, and can involve restitution,<sup>3</sup> rehabilitation<sup>4</sup> and measures of satisfaction.<sup>5</sup> The provision of monetary compensation only is deemed insufficient to meet international standards.

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<sup>3</sup> This means to re-establish the victim's situation before the violation took place.

<sup>4</sup> Rehabilitation measures may require, among other things, the provision of funds to cover medical and psychological care, as well as legal and social services for survivors, to restore the dignity, physical and mental ability, and social independence of the individuals concerned, as well as their full re-inclusion in society. This may either be done through the direct provision of these services by the state, or by support or funding to private or non-governmental programmes.

<sup>5</sup> Such as public apologies, public memorials, guarantees of non-repetition and changes to relevant laws and practices.

## **The right to be free from torture and inhuman or degrading treatment in action**

There is important case law on the prohibition of torture and c/i/d treatment, which demonstrates how it applies to different groups and in different circumstances. A few examples are provided below.

In 2018, the **UN Human Rights Committee** found Belarus to be under an obligation to provide adequate compensation and appropriate measures of satisfaction, including reimbursement of any legal costs and medical expenses, as well as for non-pecuniary losses (that is, physical and mental suffering) (see *Maya Abromchik v Belarus*). In previous cases, the Human Rights Committee held that states are under an obligation to adopt measures of rehabilitation, for example, the provision of free and specialised medical assistance and adequate psychological rehabilitation (see *María Cruz Achabal Puertas v Spain*, *Shanta Neupane et al v Nepal*, *Vide Lale and Milojka Blagojević v Bosnia and Herzegovina*, *Mevlida Ičić v Bosnia and Herzegovina*).

In 2017, the **UK High Court** found in the matter of X that ECHR Article 3 (prohibition of torture and inhuman and degrading treatment) was engaged by the failure to provide proper mental health provision for a suicidal teenage girl (see *X (A Child) (No 3) [2017] EWHC 2036 (Fam)*).

In 2005, the **House of Lords** found that a failure by the state to provide social support which exposes an individual to a real risk of becoming destitute will, in cases where the risk of such ill-treatment is the responsibility of the state, constitute 'inhuman and degrading treatment' (see *R (Limbuella) v Secretary of State for the Home Department*).

In 1996, an Indian Sikh living in the UK claimed he would be tortured if deported to India because he was a high-profile supporter of Sikh separatism. The UK sought to deport him on suspicion of being a terrorist. The **European Court of Human Rights** held that Article 3 prohibited his removal as he faced a real risk of torture or inhuman or degrading treatment. The Court stressed that his suspected involvement in terrorism was irrelevant – the protection afforded by Article 3 is absolute and extends to every human being, regardless of their conduct (*Chahal v United Kingdom*).

## How is the right to be free from torture and inhuman or degrading treatment relevant to Grenfell and the work of the Grenfell inquiry?<sup>6</sup>

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### **The UK Government's duty to take preventative measures**

The survivors of the fire and many of those who witnessed it, or were otherwise affected by it, will have suffered great harm, potentially reaching the threshold of 'inhuman and degrading treatment'. As with the right to life, the state is required to take steps to avoid a risk of torture or c/i/d treatment to individuals, or groups of individuals, about which public authorities knew or ought to have known. Therefore, many of the issues addressed in our [right to life briefing](#) also give rise to issues under the right to be free from c/i/d treatment.

These include:

- (i) the adequacy of the building regulations, and the system of monitoring and supervising compliance with the regulations
- (ii) the extent to which the UK Government was aware of the dangers posed by the cladding system
- (iii) the adequacy of information and advice given to residents on fire safety
- (iv) the availability of complaint mechanisms for residents, and
- (v) the adequacy of the preventative measures adopted by the UK Government to prevent a further tragedy.

In the context of the Grenfell fire, if it is established that the UK Government has failed to satisfy its obligation to protect life, it will also be likely that the UK Government will have failed in its obligation to protect against c/i/d treatment.

### **The UK Government's duty to provide for adequate rehabilitation measures**

It is possible that people's experience after the fire may have increased the harm that they suffered. In light of the obligation to provide full rehabilitation to victims of c/i/d treatment as soon as possible, the response of the UK Government in respect of medical treatment, particularly in relation to mental health, adequate housing, financial support and other care and assistance, is relevant to the right to be free from c/i/d treatment. We hope and anticipate that these issues will be explored in

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<sup>6</sup> The scope of the inquiry is set out in the terms of reference and list of issues, both of which are available online at: <https://www.grenfelltowerinquiry.org.uk/key-documents> [accessed: 18 September 2018].

phase two of the inquiry, and we have also been in [correspondence](#) with various public bodies in the aftermath of the fire on these issues.

### **The UK Government's duty to investigate**

In order to satisfy the UK Government's investigative obligation, the Grenfell Tower inquiry must consider potential violations of the right to be free from torture and *c/i/d* treatment, which may raise questions relating to state responsibility.<sup>7</sup> A critical aspect of this investigation is the proper and effective participation of the survivors, bereaved and former residents of Grenfell Tower and surrounding blocks. This is necessary to make sure all relevant evidence is heard, and to ensure the legitimacy of the process.

### **The UK's duty to provide compensation for material and moral damage caused by torture or *c/i/d* treatment**

As outlined above, both the CAT and the ECHR require the UK Government to pay compensation to survivors of torture and *c/i/d* treatment. The standard of compensation required under each treaty is slightly different, but both involve compensation for economically assessable damage (for example, medical expenses, loss of earnings, cost of legal assistance). Compensation should therefore include reimbursements for past and future medical expenses, loss of earnings, as well as the cost of legal or specialist assistance and other costs associated with bringing claims for redress.

Further information on our work following the Grenfell inquiry is available on our website at: <https://www.equalityhumanrights.com/en/following-grenfell>.

If you have any queries on human rights in relation to the Grenfell Tower fire, please contact [grenfell@equalityhumanrights.com](mailto:grenfell@equalityhumanrights.com).

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<sup>7</sup> See our briefing on the right to life for further detail: <https://www.equalityhumanrights.com/en/publication-download/following-grenfell-right-life> [accessed: 18 September 2018].



## Contacts

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