The UN Convention Against Torture: How civil society organisations can help hold the Government to account
When we hear the word ‘torture’, our minds generally conjure up images of people being mistreated in police or military detention, often in far-away places. But the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is not just about prisons, police custody and allegations of war crimes. It is also about our care homes and hospitals, and how some of society’s most vulnerable groups – children, disabled people and asylum seekers – are treated in our institutions. It’s also about human trafficking, gender-based violence and hate crimes.

In Spring 2019, the UK Government is going to be examined on its record under the Convention by the United Nations Committee Against Torture. At the end of this process, the Committee will make recommendations to the UK and devolved governments setting out the actions they need to take to comply with the Convention. We want to ensure that a wide range of civil society organisations engage in this process to share their evidence and experiences with the Committee, and to set out what must be done to eliminate torture and other forms of ill-treatment.

The aim of this guide is to highlight the range of issues covered by the Convention and to provide civil society organisations with the information they need to use the Convention effectively to hold the Government to account given its international commitments to prevent torture and ill-treatment.

At the Equality and Human Rights Commission we are profoundly aware of the fundamental role that civil society plays in holding the Government to account on its international human rights obligations. We hope that the publication of this guide will allow more civil society organisations to understand the relevance of the Convention to their work, to participate actively in the UN monitoring and reporting process, and to help create a society where everyone’s rights are respected and protected.

David Isaac
Chair of the Equality and Human Rights Commission
1. What this guide covers

This guide explains the issues covered by the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘the Convention’).

It aims to provide civil society organisations in the UK with the information they need to use the Convention to hold governments to account on their commitments to prevent and protect against torture and ill-treatment, bring its perpetrators to justice and provide redress to victims.

The guide explains how civil society organisations can get involved in monitoring the implementation of the Convention and outlines the roles and responsibilities of the participants involved in this process.

2. Why should civil society organisations get involved now?

The UK Government’s next examination under the Convention is expected to take place in the spring of 2019. It will be the UK’s sixth examination by the UN Committee Against Torture (‘the Committee’) – the body which leads the examination process.

The effectiveness of the examination will depend significantly on the involvement of civil society organisations in terms of their capacity to:

• ensure the Committee gets the evidence it needs on the current implementation of the Convention
• hold the Government to account for its international human rights obligations, and
• push for the implementation of the Committee’s recommendations.

Section 5 outlines how civil society organisations can get involved

This includes:

• submitting written information to the Committee
• briefing the Committee in private, face-to-face meetings
• raising awareness of the Committee’s findings and recommendations, and
• using the Committee’s recommendations to inform campaigning and advocacy work.
3. What is the Convention Against Torture?

The Convention is an international legal agreement that aims to tackle and prevent the use of torture and other forms of cruel, inhuman or degrading treatment or punishment.

Many countries around the world have ratified the Convention, including the UK in 1988. This means they have made a commitment to ensuring their laws, policies and practices are in line with its provisions.

Although several provisions of the Convention are reflected in UK domestic legislation, including the prohibition of torture or inhuman or degrading treatment or punishment, the Convention has not been incorporated into domestic law. So people cannot invoke the provisions of the Convention directly before the UK courts.1

The Convention defines torture as any setting where state officials may be involved in inflicting ‘severe pain or suffering, whether physical or mental’ on an individual. (Article 1 of the Convention has more information on the definition of torture).

In addition, the state is obliged to prevent other forms of cruel, inhuman or degrading treatment or punishment which may fall short of ‘torture’.2 The term ‘ill-treatment’ is used in this guide to refer to treatment that might amount to conduct that is prohibited but does not amount to torture as defined by Article 1 of the Convention.

Some examples of circumstances where conduct prohibited by the Convention (as either torture or ill-treatment) 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, prisons or where children are in custody
- prison overcrowding and other inadequate detention conditions
- poor healthcare in hospitals and mental health units that could be degrading, or amount to torture
- abuse and neglect of children or older people in residential care
- the treatment of migrants and asylum seekers held in detention
- deportation where there is a risk of torture (known as ‘non-refoulement’)  
- modern slavery and human trafficking
- gender-based violence (including rape, domestic violence and female genital mutilation)
- child sexual abuse and exploitation
- hate crimes
- conduct of UK forces overseas, in particular their treatment of prisoners and their use of evidence gathered under torture in other countries (for example, in decisions about deportations and control orders).

The Convention is therefore relevant to civil society organisations working with people who may have experienced ill-treatment in a wide range of settings.

States that have ratified the Convention must establish all acts of torture as distinct crimes in accordance with international law and must ensure appropriate penalties are imposed. States must investigate alleged offences, detain suspects and prosecute where appropriate. If required, the state must extradite the alleged offender. States are also obliged to provide redress to persons who have experienced torture, including both adequate compensation and rehabilitation.

1 However, people can directly invoke in UK courts Article 3 of the Council of Europe’s European Convention on Human Rights, given further effect in the Human Rights Act 1998, which states that no-one shall be subjected to torture, inhuman or degrading treatment or punishment.

2 The state’s duty to prevent such ill-treatment extends to any territory under its jurisdiction and where such acts are by instigation, consent or acquiescence of a public official (Article 16 of the Convention).
Under the Convention, the state has an obligation to implement measures to prevent torture and ill-treatment. These measures include:

- education and training on protection against torture and ill-treatment to all public officials with caring responsibilities
- reviews of all interrogation rules, instructions, methods and practices of public officials, with a view to preventing torture and ill-treatment
- complaint mechanisms that are accessible to people who may have suffered torture or ill-treatment
- assistance and support to minimise the hardship experienced by complainants and their representatives
- independent bodies for investigating and, where relevant, prosecuting alleged offenders
- an enforceable right for all victims of torture or ill-treatment, and in certain cases their families, to redress, including fair and adequate compensation and rehabilitation.

The state’s duty to combat and prevent torture and ill-treatment extends to private settings, too. This could include, for example, domestic violence or ill-treatment of patients in private care homes, where it occurs with the consent or knowledge of a public official. If a state knows, or has reasonable grounds to believe, that torture or ill-treatment is being committed in private settings, it must prevent and investigate these acts, provide the victims with adequate protection and prosecute and punish the perpetrators.

The Convention and the international human rights framework

Within the UN system, torture and ill-treatment are explicitly prohibited under a number of international treaties which the UK has ratified.

The International Covenant on Civil and Political Rights (ICCPR) includes an absolute prohibition of torture and ill-treatment and establishes a positive right for persons deprived of liberty to be treated with respect.

The Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) require state parties to implement safeguards to prevent torture and ill-treatment of women, children and disabled people.

At the European level, the prohibition against torture and ill-treatment is enshrined in Article 3 of the European Convention on Human Rights, which is directly legally enforceable in the UK through the Human Rights Act.

In 1988, the UK ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which focuses on the treatment of persons in detention.

Under this Convention, the Committee for the Prevention of Torture (CPT) has the power to conduct periodic and ad hoc visits to any places of detention in the UK, including prisons, police stations, mental health units or detention centres for asylum seekers.

The CPT’s most recent periodic visit to the UK took place in April 2016. The CPT’s report on its visit can be found here: bit.ly/CPT-report. The UK Government’s response can be found here: bit.ly/gov-response-CPT-report. The CPT held high-level talks with UK authorities on the implementation of its recommendations in April 2017.

The UN and Council of Europe have also adopted several recommendations on the treatment of prisoners and the conduct of law-enforcement officials, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted in 2015.

The full text of the Convention can be viewed on the UN website.
4. How is the implementation of the Convention monitored?

The UN has a specific body to monitor how the Convention is being put into practice in countries that have ratified it.

The body is known as the Committee Against Torture. It is made up of 10 independent human rights experts nominated by and elected to the Committee by state parties to the Convention. Committee members typically serve a four-year term and are eligible for re-election if re-nominated.

The Committee performs its monitoring role through state party examinations. These take place in Geneva approximately every four years.

Before each examination, the state submits a ‘state report’ to the Committee. This sets out the laws and policies it has put in place to implement the Convention, together with information on new developments, complaints, inquiries or other relevant issues.

How civil society organisations can get involved

The Committee considers each state report, drawing on other information from a wide range of sources. Civil society organisations and national human rights institutions (NHRIs), like the Equality and Human Rights Commission, can also submit information to this process in what is known as a ‘shadow report’.

What is a ‘state party’?

A state party to a treaty is a country that has ratified the treaty and is therefore obliged in international law to comply with its provisions.

‘The Committee Against Torture is made up of 10 independent human rights experts nominated and elected by state parties to the Convention.’
Section 5 of this guide provides more information on the examination process and how civil society organisations can get involved.

### Three other ways the Committee monitors the Convention

In addition to the state examinations, there are three other ways the Committee can monitor the implementation of the Convention:

1. **By considering complaints from individuals.** This mechanism can only be used in countries where the Government has recognised the Committee’s competence to receive individual complaints. Sixty-seven states have done so, but the UK has not.3

2. **By initiating an inquiry** if they receive reliable information that rights are being systematically violated by a state. In these cases, the Committee invites the state to cooperate by submitting information before and in response to the inquiry. The inquiry procedure is confidential and could apply to the UK as it has not opted out of this procedure.

3. **By considering inter-state complaints.** Article 21 of the Convention includes a procedure for the Committee to consider complaints from one state party against another, for not upholding the aims of the Convention. This procedure could apply to the UK, but to date, this procedure has never been used against a state party.

The Committee may also issue ‘general comments’ to all state parties on themes relating to the Convention.

General comments provide the Committee’s interpretation of specific articles of the Convention, including certain measures that states need to put in place to align their laws, policies and practices to the articles.

So far, the Committee has issued four general comments.4

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3 The UK has ratified the Optional Protocols of CEDAW and CRPD, which establish individual complaint procedures under these treaties.

4 General Comment No. 1 (1997) focuses on Article 3 of the Convention, which prohibits state parties from expelling or returning a person to another state where there are substantial grounds for believing they would be in danger of torture. General Comment No. 2 (2007) focuses on Article 2 of the Convention, and explains among other things the wide-ranging nature of the state’s preventative obligations, which apply to torture and ill-treatment. General Comment No. 3 (2012) focuses on Article 14 of the Convention, which provides victims of torture and ill-treatment with a right to obtain redress. General Comment No. 4 (2017) amends and replaces the Committee’s General Comment No. 1.

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### Optional Protocol to the Convention

Another mechanism that holds state parties to account is the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which entered into force in June 2006. Optional protocols are treaties in their own right, which are open to signature and ratification by state parties.

OPCAT is designed to strengthen the protection of people deprived of their liberty. It acknowledges that such people are particularly vulnerable to torture or ill-treatment and advocates that efforts to end torture or ill-treatment focus on prevention through a system of independent and regular visits to all places of detention.

Under OPCAT, state parties need to establish an independent national preventive mechanism (NPM). The NPM’s role is to regularly examine the treatment of people deprived of their liberty, with a view to strengthening their protection against torture and ill-treatment and making recommendations to the authorities to improve the treatment and conditions of detainees.

The UK NPM was established in March 2009. It is made up of 21 statutory bodies that independently monitor the treatment of people in a range of settings (including prison, youth justice, police, mental health, immigration, customs, court custody and, by invitation, military detention) across all four nations of the UK. The UK NPM publishes an annual report documenting its work. More information on the NPM can be found here: bit.ly/national-preventive-mechanism.

OPCAT also established the Subcommittee on the Prevention of Torture (SPT). This is an international body with both operational functions, such as visiting places of detention and making recommendations regarding the protection of detainees from torture and ill-treatment; and advisory functions, such as providing assistance and training to states parties and NPMs.

The SPT can visit any place of detention in any state that has ratified the OPCAT, without invitation by the state. After the SPT visits a state, it submits a confidential report to the state with its findings and recommendations on measures needed to improve conditions of detention. States are encouraged to make those reports public.

The SPT has yet to visit and report on the UK.
5. What are the key stages of the Convention monitoring process?

It is helpful to think about the Convention monitoring process as a cycle with several stages (see Figure 1).

**Figure 1. CAT monitoring cycle**

- **Follow-up activity**: 2019-2022
- **Shadow reports**: March 2016
- **Concluding observations**: Expected in 2019
- **List of issues**: June 2016
- **State report**: November 2017
- **UK state examination**: Expected in Spring 2019
- **Shadow reports**: Expected in Spring 2019
- **Against torture**

**Step 1: The list of issues**

Under a recently introduced simplified reporting procedure (which the UK has adopted), the Committee prepares a list of issues to focus on during the state examination. It is based on information received from different sources, including the previous state examination, civil society organisations and NHRIs, and recommendations from other treaty bodies.

Civil society organisations can also contribute to this step by submitting shadow reports with information on key issues it wants raised in the Committee’s list of issues.

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**Case study:**
**Using the Convention to hold governments to account**

REDRESS, an international human rights NGO that helps victims of torture obtain justice and reparation, uses the Convention to ensure the UK Government complies with its obligations to prevent and protect persons against torture and ill-treatment.

In 2016, REDRESS made a submission to the UN Committee Against Torture, drawing its attention to issues of concern in the UK. These included allegations of British soldiers committing war crimes, including the use of torture and degrading treatment in Iraq; allegations of UK complicity in torture in the context of counter-terrorism; and the use of immigration detention and ill-treatment in detention.

The aim of the submission was to encourage the Committee to examine these and other issues and to include them in the list of issues that it would request the UK Government to report on, before the state examination. The issues raised by REDRESS were included in the Committee’s list of issues.

The Committee adopted a list of issues for the UK on 7 June 2016. You can view the list here: bit.ly/committee-list-issues. It is also summarised below. The Equality and Human Rights Commission and Northern Ireland Human Rights Commission submitted a report to inform this, as did a number of civil society organisations.5

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5 These submissions can be accessed on the treaty body database. Available at: bit.ly/treaty-body-database [accessed: 8 March 2018].
Key issues for the UK examination in the Committee’s 2016 list of issues

1. The UK’s non-incorporation of certain provisions of the Convention. In particular, the absence of a definition of torture in UK domestic law consistent with Article 1 of the Convention and lack of appropriate penalties for torture or complicity in torture that reflect the seriousness of the crime.

2. The impact of legal aid reforms on access to justice and effective remedies for victims of torture and other forms of cruel, inhuman or degrading treatment.

3. The treatment of overseas detainees and concerns over the inadequacy of investigations into allegations of torture.

4. Concerns about the lack of legislative independence of the NPM, as well as the resources allocated to it.

5. Concerns about measures taken to eliminate all forms of violence against women.

6. Shortcomings in existing legislative and institutional framework for preventing, combating and criminalising people trafficking.

7. Evidence of refoulements in UK asylum procedures where there is a risk of torture. Concerns about the inadequacy of training received by law enforcement officials, prison staff and border guards, including in relation to the use of Taser.

8. Concerns about the inadequacy of training for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, on detecting and documenting the physical and psychological impact of torture.

9. Conditions of detention in prisons, pre-trial detention and court custody. In particular, overcrowding, inappropriate healthcare provision (including mental healthcare) and excessive use of force, isolation and solitary confinement, with a particular focus on children and women.

10. Concerns about inappropriate placement of children, including children with mental health conditions and learning disabilities, in police detention. Also concerns about the number of deaths in custody, including in mental health detention and police custody, and the measures taken to prevent such deaths in the future.

11. Concerns about the absence of a maximum time limit for detaining asylum seekers and migrants. Shortcomings in the provision of legal representation and the steps taken to identify those who have experienced torture to ensure they are not detained.

12. Ill-treatment of patients receiving healthcare services, including concerns about the inadequacy of measures taken to ensure effective implementation of the recommendations in the Mid Staffordshire NHS Foundation Trust Public Inquiry reports.

13. Concerns about the inadequacy of measures taken to prevent hate crimes, corporal punishment of children and child sexual abuse and exploitation.

This list emphasises the breadth of issues that are relevant to the Convention, and the variety of information that the Committee needs to receive from civil society organisations in order to monitor the full implementation of the Convention by the UK.

Step 2: The state report

The state report should address the full list of issues. Civil society organisations can contribute to this step in several ways, including:

- reminding the Government of its obligation to submit the state report
- participating in any consultation the Government organises during its preparation of the report, and
- making their own submissions to the Committee once the state report has been submitted, to highlight other perspectives and evidence, for example.

Step 3: The shadow reports

State reports, by definition, are based on a particular perspective of progress and performance. The Committee therefore encourages civil society organisations and NHRIs, such as the Equality and Human Rights Commission, the Scottish Human Rights Commission and the Northern Ireland Human Rights Commission, to provide them with shadow reports with evidence on:

- progress towards compliance
- the gaps and problems which exist, and
- the actions that are needed.

The shadow reports also help the Committee think about what questions to ask during the state examination. The Committee encourages civil society organisations to produce joint, consolidated reports, rather than separate submissions. However, it is also possible to submit separate reports.

The Equality and Human Rights Commission, Northern Ireland Human Rights Commission and Scottish Human Rights Commission are the UK’s three national human rights institutions.

Guidance from the Committee on how to present information in shadow reports includes:

- organising information under the respective articles of the Convention and/or thematic issues
- identifying issues or concerns which reportedly result in violations of specific rights under the Convention
- including concrete recommendations on how to improve the problems identified, and
- referring to relevant recommendations by other UN bodies, where possible.

The shadow reports should be supported by relevant evidence, such as case studies, statistical information and references to court judgments or authoritative studies. The reports should be submitted four weeks before the start of the state examination (see Step 4).

Step 4: A formal state examination in Geneva

Once the state has submitted its report, the Committee considers it and designates two members to act as ‘country rapporteurs’ to lead the examination.

The examination is a dialogue between a delegation from the UK Government and the members of the Committee. It usually takes place across two days.

During the first day, the Government delegation gives a short presentation, usually updating the information in its state report. This is followed by comments and questions by Committee members.

The second day is devoted to replies by the Government delegation to the questions of the Committee and any other follow-up issues.

Civil society organisations and NHRIs that have submitted written information to the Committee can meet Committee members in private before the state examination begins.

During the briefings, which last one hour, civil society representatives have approximately 20 minutes to address the Committee, the remaining time being used for the members of the Committee to ask questions. Civil society organisations and NHRIs can also attend the state party examination as observers.

Step 5: The concluding observations

The concluding observations are recommendations that set out what actions the Government needs to take to comply with the Convention. This public document is sent to the Government and published on the Committee’s website.

The Government is supposed to make the public aware of the last set of concluding observations as well as the state report. Concluding observations on the UK were issued in 2013. At the time, the UK Government circulated the concluding observations to officials in relevant government departments and the devolved administrations. The UK Government did not undertake any wider public dissemination of the concluding observations.

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6 The Equality and Human Rights Commission, Northern Ireland Human Rights Commission and Scottish Human Rights Commission are the UK’s three national human rights institutions.

Civil society organisations can remind the Government of its obligation to actively disseminate the concluding observations and can support dissemination directly by sharing the concluding observations across their own networks and using them in their work.

The next set of concluding observations will be issued after the UK Government’s examination expected in the spring of 2019.

Step 6: Following up the Committee’s concluding observations

This is a key stage in the process. It involves translating the Convention’s provisions and the Committee’s recommendations into concrete actions.

In its concluding observations, the Committee usually identifies a small number of recommendations it would like an update on within 12 months. The state party must provide information on the measures it has taken to implement these specific recommendations.

In its concluding observations on the UK in 2013, the Committee requested follow-up information on a number of issues, including:

- inquiries into allegations of torture overseas
- ensuring respect for the principle of non-refoulement
- ensuring the prompt release and return to the UK of Shaker Aamer, and
- conducting prompt, thorough and independent investigations into allegations of torture overseas.

The UK Government responded to this request in May 2014. The Equality and Human Rights Commission, Scottish Human Rights Commission and Northern Ireland Human Rights Commission also submitted a joint follow-up report.

Civil society organisations and NHRIs can use the Committee’s recommendations to help advocate for particular changes in policy or legislation – for example by:

- using the Committee’s recommendations to inform campaigning and advocacy work
- referring to the provisions of the Convention and the Committee’s concluding observations in policy briefings, consultation responses and letters to parliamentarians and ministers, and
- using the Committee’s recommendations as benchmarks for measuring progress.

Civil society organisations can also refer to other relevant UN recommendations in their advocacy work, particularly from other treaty bodies and the Universal Periodic Review (UPR).

Civil society organisations and NHRIs are invited to submit further shadow reports to inform the Committee’s list of issues ahead of the next examination. Shadow reports to inform the list of issues should be submitted three months before the given list is due to be finalised. The Committee posts the specific deadlines on their website.

‘Civil society organisations can use the Committee’s recommendations to help advocate for particular changes in policy or legislation.’


9 EHRC, NIHRC, SHRC (September 2014) Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the fifth periodic report of the UK. Available at: bit.ly/CAT-follow-up [accessed: 8 March 2018].

10 UPR is a peer review process conducted by the UN Human Rights Council to assess the human rights situation in every UN Member State.
6. Key documents and resources relating to the Convention

This section provides a list of key documents and contacts for civil society organisations that are interested in engaging with the Convention's monitoring and reporting process.

**Key documents**

- The text of the Convention can be viewed on the website of the Office of the UN High Commissioner for Human Rights (OHCHR): bit.ly/theconvention-text
- The OHCHR has also published a guide for civil society organisations that want to engage with the UN: bit.ly/handbook-civil-society
- The Committee Against Torture’s list of issues before submission of the UK’s sixth periodic report, 7 June 2016: http://bit.ly/committee-list-issues
- The Committee Against Torture’s previous concluding observations on the UK, adopted on 24 June 2013: bit.ly/cat-5th-report
- The International Service for Human Rights, an NGO, has also published a guide on the UN human rights treaties including information on how NGOs can engage with the treaty bodies: bit.ly/guide-UN-treaty-bodies

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Case study: How reporting can make a difference

The Committee on the Administration of Justice (CAJ) is a small voluntary organisation that monitors human rights in Northern Ireland.

In the 1990s, it wanted to end human rights abuses against people detained in custody on suspicion of being involved in paramilitary violence. These people were often interviewed without lawyers present, locked up without a fair hearing and subjected to physical ill-treatment.

CAJ used the reporting process under the Convention to achieve its goal of ending human rights abuses against detainees. This process helped it to generate publicity and put pressure on the UK Government. When the UK Government appeared before the Committee Against Torture in 1991, 1995 and 1998, CAJ made detailed, high quality submissions and attended the Committee meetings to brief members on each occasion.

Paul Mageean of CAJ said: ‘Almost all of the recommendations the Committee has made over the course of those years concerning Northern Ireland can be traced directly to the submissions we made. The key specific objectives and the overall goal have been achieved. It is our view that the use of this tactic had a considerable impact in changing the way the UK, and particularly the police in Northern Ireland, operated in relation to the detention of those suspected of being involved in paramilitary violence in Northern Ireland.’
Key contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

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World Organisation Against Torture (OMCT)

OMCT is an international NGO that works to strengthen the capacity of civil society organisations to address the economic, social and cultural root causes of torture and other forms of violence. It does this by supporting their actions, public outreach and campaigning at the national level, and by supporting their interaction with CAT and other UN mechanisms at the international level.

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Association for the Prevention of Torture (APT)

APT is an independent NGO working globally to prevent torture and ill-treatment. It provides expertise to international organisations, governments, human rights institutions and others. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention Against Torture (OPCAT).

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“The Convention Against Torture is not just about prisons, police custody and allegations of war crimes. It is also about our care homes and hospitals, how some of society’s most vulnerable groups are treated in our institutions, and about human trafficking, gender-based violence and hate crimes.’

David Isaac
Chair of the Equality and Human Rights Commission