

1 March 2019

**Submission by the Human Rights Implementation Centre (HRIC) of the University of Bristol to the UN Committee against Torture (CAT) 66<sup>th</sup> Session on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1. The Human Rights Implementation Centre (HRIC) is based in the Law School of the University of Bristol, and aims to enhance the implementation of human rights worldwide through research, education and discussion. It is recognised as one of the leading institutions for expertise on national mechanisms to prevent torture and in particular on the Optional Protocol to the UN Convention Against Torture (OPCAT). It has been working, since the coming into force of OPCAT, with a number of national preventive mechanisms (NPMs) across the world and specifically with the UK NPM and its members.
2. Our submission addresses the following paragraphs with respect to the List of Issues Prior to Reporting (CAT/C/GBR/QPR/6) adopted by CAT on 7 June 2016. It draws upon our long-standing research we have conducted on OPCAT and its implementation in the UK, as well as recent work requested by and in collaboration with the UK NPM, which attempts to identify the level of Article 3 violations taking place within the UK.<sup>1</sup>

**Independence of the UK NPM (para 10)**

3. Despite the UK NPM being one of the longest-standing NPMs, and the requirement by the SPT that ‘the mandate and powers of the NPM should be clearly set out in a constitutional or legislative text’<sup>2</sup> this has not yet occurred. The UK NPM was designated by a written ministerial statement to parliament in 2009 but its mandate has never been consolidated in legislation. The UK NPM itself has consistently called upon the government to ensure such protection as a necessary part to its independence,<sup>3</sup> and indeed the SPT has responded by stating unequivocally that ‘the lack of a clear legislative basis for the NPM has long been a matter of concern to the SPT. We are aware that some take the view that this is not legally necessary under the OPCAT. The SPT disagrees with this position, and should the SPT visit the UK on an official basis it is incontrovertible that this

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<sup>1</sup> Laing, J & Murray, R, 2017, ‘Measuring the incidence of Article 3 ECHR violations in Places of Detention in the UK: Implications for the National Preventive Mechanism’, *European Human Rights Law Review.*, pp. 564-588.

<sup>2</sup> SPT Guidelines on National Preventive Mechanisms, CAT/OP/12/5, para 7.

<sup>3</sup> See e.g. UK NPM, Monitoring places of detention Ninth Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2017 – 31 March 2018, CP 17, p.5. See also numerous correspondence on its website: <https://www.nationalpreventivemechanism.org.uk/publications-resources/>

failing would feature in its report and recommendations – as it has in all other countries where there are similar shortcomings’.<sup>4</sup>

4. *We would request that the UN Committee Against Torture in the Concluding Observations calls on the UK government to protect the mandate of the UK NPM and its constituent members in legislation.*

## Statistics and data on incidents of Article 3 violations

### Article 11 (paras 26) and Articles 12 and 13 (para 32)

5. CAT has requested information on *‘the frequency of inter-prisoner violence, including any case involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome’*. The government, responding to the Committee’s paragraph 23 notes that *‘statistics on the prison population in England and Wales are mainly collected in the Offender Management Statistics Quarterly. Statistical information on youth justice is also available on the UKG’s portal’* (para 121 of the government’s submission). The government also gives numbers from *‘SPS data on inter-prisoner assaults per financial year’* (para 175 of the government’s response). Further, the government is asked to provide *‘updated statistical data, disaggregated by sex, age, ethnic origin or nationality, and place of detention, on complaints of acts of torture and ill-treatment recorded during the reporting period’*. The government answers (paragraphs 221-225) do not provide any statistical data, nor information on where this can be found.
6. The HRIC has carried out work searching for statistics and data from a range of publicly available government sources in a number of different detention contexts including prisons, police custody and immigration/psychiatric facilities.<sup>5</sup> These include basic data on the detention population in the four nations of the UK; data on complaints or incidents mechanisms and how these were recorded, whether these were complaints to local/internal bodies (lay, prison, etc.); the grounds for the complaints and how they were categorised; and data from independent and other organisations (such as HMIP, other statutory bodies, charitable civil society organisations).
7. ‘Torture’, ‘ill-treatment’, ‘cruel’, ‘inhuman’ or ‘degrading’ are not terms used frequently or consistently in the data we identified.<sup>6</sup> Instead what is recorded (and this varied depended on the detention context) are instances of ‘assault’, ‘bullying’, ‘harassment’, for example, and records are kept of the use of restraint, the use of force, violence and ‘safety’. Data on assaults in prisons, for example, did not always differentiate between prisoner-on-prisoner and prisoner-on-staff assaults.<sup>7</sup>

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<sup>4</sup> Letter from the UN SPT, 29 January 2018, available at: <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/2.-2018.01.29-reply-to-the-NPM-of-UK-copy-002.pdf>.

<sup>5</sup> This is a summary of our findings, found in J.M. Laing & R. Murray, ‘Measuring the incidence of Article 3 ECHR violations in Places of Detention in the UK: Implications for the National Preventive Mechanism’. European Human Rights Law Review (2017), pp. 564-588

<sup>6</sup> Mentioned very briefly in: Prison Service Prison Service Order 2150 on Prisoner’s Requests and Complaints Procedure, 21 February 2002, 9.1.2.

<sup>7</sup> E.g. Ministry of Justice, Safety in Custody Statistics Bulletin, England and Wales, Deaths in prison custody to June 2016, Assaults and Self-harm to March 2016, Ministry of Justice Statistics bulletin, 28 July 2016, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/543284/safety-in-custody-bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/543284/safety-in-custody-bulletin.pdf), p.11.

8. Terms used in the complaints processes that related to grounds for complaint and official reports vary significantly and many of them (such as ‘assault’, ‘bullying’, ‘harassment’, ‘use of restraint’, the ‘use of force’, ‘violence’ and ‘safety’) are insufficiently clearly defined. There is the potential for considerable overlap between many of these categories identified and they rarely feature in isolation in the statistics/reports. The statistics and information did not often give detail on the context or substance of the complaint or incident. There may be local/ internal resolution of complaints in the first instance and no means of accessing data about these. Indeed, this informal/ internal route is positively encouraged in many of the complaints systems/policies that we found. Where figures and statistics are published, there is sometimes no detail on what precisely happened, the results, or whether incidents of ill-treatment were found/proven. As a result, the data is often too generalised and of poor quality - we have no idea how many of these complaints are made or upheld. It is therefore difficult to conduct a proper analysis of the incidence/level of ‘torture’ or ‘ill-treatment’ that is occurring.
9. One of the challenges we faced in analysing the data was being able to separate out legitimate restrictive treatment (i.e. justified use of force/segregation/restraint etc) from excessive restrictive treatment (i.e. where use of force is not justified and which could amount to torture or ill-treatment). None of the information/statistics/data on the use of force that we found could tell us this. As a result, it was not possible to come to a conclusion about the scale to which treatment in violation of UNCAT is occurring: whether it is not taking place; or whether it is occurring but is not being recorded either internally/externally; or both.
10. The Ministry of Justice and Her Majesty’s Prison and Probation Service (HMPSS), formerly the National Offender Management Service, produces figures on the prison population in England and Wales every month.<sup>8</sup> This is very basic information, giving the male and female population in total. Safety in Custody data is published quarterly and includes statistics on the total number of assaults, self-harm and deaths in custody in England and Wales.<sup>9</sup> The latest bulletin (to December 2018) reveals that there have been sharp quarter on quarter increases in the total number of deaths in custody, including self-inflicted deaths, as well as incidents of self-harm and assaults. The data on assaults includes incidents of prisoner-on-prisoner as well as assaults on staff. There appears to be much less official information/data in the public domain on incidents of ill-treatment in prisons in Scotland and Northern Ireland, in comparison to England and Wales.<sup>10</sup> In Scotland, prison population statistics are produced by the Scottish Government.<sup>11</sup> The Scottish Prison Service also produces statistics on the number of individuals in prison, on remand and sentenced,<sup>12</sup> but this does not include incidents of ill-treatment or allegations of such. In Northern Ireland, the Department of Justice publishes the ‘Northern Ireland Prison Population’ series that provides average daily prison population including under gender, age, prison type, among other factors.<sup>13</sup> The list of publications on prison statistics and

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<sup>8</sup> <https://www.gov.uk/government/statistics/prison-population-figures-2018>

<sup>9</sup> See <https://www.gov.uk/government/collections/safety-in-custody-statistics>

<sup>10</sup> See for example journalistic accounts based on FOI requests <https://www.pressandjournal.co.uk/fp/news/north-east/peterhead/1178246/shock-new-figures-reveal-superjail-assaults-on-staff/>

<sup>11</sup> Prison statistics and population projections Scotland: 2013-14, 18 December 2015, <http://www.gov.scot/Publications/2015/12/5123>; <http://www.gov.scot/resource/0039/00396363.pdf>

<sup>12</sup> <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

<sup>13</sup> Research and Statistical Bulletin 24/2016 ‘The Northern Ireland Prison Population 2015 and 2015/16’, September 2016, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/northern-ireland-prison-population-2015-2016.pdf>

reports<sup>14</sup> does not include any relating explicitly to complaints or incidents of ill-treatment or similar.

11. Data about the detained population in specific detention contexts is found in a variety of sources. Information on immigration removal centres is available on the UK government's National Statistics website and captures basic information about, *inter alia*, the number of detentions; the length of detention; and number of children in detention, but details of any complaints/incidents are not included.<sup>15</sup> Short-term immigration holding facilities (STHF) present real challenges for making complaints and accessing any related data due to their short-term nature. In these cases, it is very difficult to locate any information about potential complaints/incidents of ill-treatment. For example, the Independent Monitoring Board (IMB) has commented in its annual report on the Heathrow Short-Term Holding Facilities that detainees are not able to submit comments or complaints to the IMB in the way that would be possible in an Immigration Removal Centre (IRC) or prison, because the majority would have left the country before the IMB would have time to respond. Detainees are able to contact the IMB directly, and there are leaflets in many languages in the holding rooms, but the evidence we found suggests that the facility has been rarely used.<sup>16</sup>
12. Some of the mental health monitoring bodies in the UK include data in their annual reports on the number of compulsory detentions in psychiatric facilities. It is also available from other external sources, for example, the Health and Social Care Information Centre (HSCIC) in England and Wales publishes annual statistics on the number of in-patients formally detained under the Mental Health Act 1983;<sup>17</sup> the Department of Health in Northern Ireland publishes annual statistics on inpatients and compulsory admissions in mental health and learning disability hospitals in the North of Ireland.<sup>18</sup>
13. Part of the reason why statistics may be inconsistent or lacking is that the complaints procedures capture different information in the first place. Looking at individual police forces and prison complaints procedures, for example, complaints can be about 'behaviour',<sup>19</sup> such as whether there was 'misconduct',<sup>20</sup> or 'mistreatment',<sup>21</sup> (terms which are not defined), or 'violent or threatening behaviour';<sup>22</sup> or if a police officer or staff member was 'rude, or aggressive towards you; did something inappropriate to you; caused you distress or inconvenience; caused you to suffer loss or damage; put you in danger or at risk'.<sup>23</sup>
14. In searching for these records and statistics it became clear that there is no obvious 'one-stop shop' for statistics on torture and ill-treatment related allegations or violations in detention in the UK. Information can be gathered from a range of sources, but there is no

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<sup>14</sup> <https://www.justice-ni.gov.uk/topics/prisons/prison-statistics-and-reports>

<sup>15</sup> <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2015/detention>

<sup>16</sup> *Report of the IMB on the Non-Residential Short-Term Holding Facilities at London Heathrow Airport for the year February 2015 to January 2016* para. 13.1.

<sup>17</sup> <http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

<sup>18</sup> <https://www.health-ni.gov.uk/topics/dhssps-statistics-and-research-mental-health-and-learning-disabilities>

<sup>19</sup> Cleveland Police, Complaints Procedure, <https://www.cleveland.police.uk/contact-us/Complaints-Procedure.aspx>.

<sup>20</sup> National Offender Management Service, Prisoner Complaints, Ref: PSI 02/2012, para 2.1.8.

<sup>21</sup> National Offender Management Service, Prisoner Complaints, Ref: PSI 02/2012, Annex I.

<sup>22</sup> National Offender Management Service, Prisoner Complaints, Ref: PSI 02/2012, Annex D.

<sup>23</sup> Metropolitan Police, Making Your Complaint, <http://content.met.police.uk/Article/Making-your-complaint/1400010861919/1400010861919>.

central or systematic process for data collection, or consistency in terms of the data being collated, and so comparisons between them are difficult. Yet independent inspectorates and others provide additional sources of information which evidence potential violations.<sup>24</sup> This is therefore even more concerning when their incidence cannot be elicited from official government statistics.

- 15. We would recommend that the UN Committee Against Torture, in its Concluding Observations urge the UK government to compile data and statistics that: (a) are consistent in their use of terminology; (b) are able to distinguish treatment that is lawful from that which amounts to a violation of UNCAT. The UK government should also be urged to develop effective complaints processes that use appropriate and consistent language which enable potential violations of UNCAT to be identified.**

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<sup>24</sup> HM Chief Inspector of Prisons for England and Wales, Annual Report 2013-14, Appendix five. E.g. Report on an announced inspection of HMP Liverpool 7 – 11 September 2009 by HM Chief Inspector of Prisons, section 3. <http://www.ppo.gov.uk/about/latest-statistics/complaints-investigation-statistics-201516/>; <http://www.cqc.org.uk/content/our-review-how-nhs-trusts-investigate-and-learn-deaths>. *Independent review of deaths of people with a Learning Disability or Mental Health problem in contact with Southern Health NHS Foundation Trust April 2011 to March 2015* (December 2015) Recommendation 21. CQC, *Learning, Candour and Accountability: A review of the way NHS Trusts review and investigate the deaths of patients in England* (December 2016) located at <http://www.cqc.org.uk/sites/default/files/20161213-learning-candour-accountability-full-report.pdf>; HMIP, *Report on an unannounced inspection of Yarl's Wood Immigration Referral Centre* (13 April – 1 May 2015).