

# Torture in the UK

Submission to the UN Committee Against Torture 57th session on the sixth periodic report of the UK on compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## List of acronyms

CAMHS	Child and Adolescent Mental Health Services
DFT	Detained Fast Track
ECHR	European Convention on Human Rights
EHRC	Equality and Human Rights Commission
IHAT	Iraq Historical Allegations Team
ISC	Intelligence and Security Committee of Parliament
LASPO Act	Legal Aid, Sentencing and Punishment of Offenders Act 2012
MMPR	minimising and managing physical restraint
NHRI	National Human Rights Institution
NIHRC	Northern Ireland Human Rights Commission
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to CAT
UK	United Kingdom
UNCAT	United Nations Convention Against Torture
VAWG	violence against women and girls
YOI	Young Offender Institution

# Introduction

1. The Equality and Human Rights Commission (EHRC) is one of the United Kingdom's (UK) three 'A' status accredited National Human Rights Institutions (NHRIs). The EHRC's jurisdiction covers England, Wales and also Scotland in relation to equality, and those human rights matters outside the legislative competence of the Scottish Parliament. The EHRC's remit does not extend to Northern Ireland, which is therefore outside the scope of this report. The Northern Ireland Human Rights Commission (NIHRC) has made a separate submission.
2. This submission addresses the following key issues which we recommend as priorities for inclusion in the list of issues for the UK:
  - incorporation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) into domestic law: the proposed British Bill of Rights (Article 2)
  - detainee inquiry (Article 2)
  - Iraq Historic Allegations Team (IHAT) (Article 2)
  - the national preventive mechanism (NPM) (Article 2)
  - access to justice: closed material procedures (Articles 2, 15 and 16)
  - detention and restraint (Articles 2, 11 and 16), including:
    - preventing violence and self-harm in places of detention
    - women offenders
    - restraint of children, and
    - preventing vulnerable asylum seekers being detained for immigration purposes and the need for a statutory time limit
  - highest attainable standard of health (Articles 11 and 16), including:
  - preventing ill-treatment of patients receiving mental and physical health services and social care services, and
  - directing children with mental health conditions to appropriate health institutions rather than detaining them in police custody
  - human trafficking and modern slavery (Articles 2, 12, 13 and 16), and
  - violence against women and girls (VAWG) (Articles 2, 12, 13 and 16).

## Key recommendations

3. The Committee Against Torture ('the Committee') should ask the UK to:
  - clarify whether it plans to change the application of human rights protection in the UK so that it is limited to territory under the UK's legal jurisdiction
  - clarify whether it accepts that its obligations in international law under UNCAT extend to the operations of British forces overseas, and to foreign nationals when they are under de facto effective UK jurisdiction
  - outline what actions it is taking to ensure the allegations of complicity of British military personnel, security and intelligence services in the ill-treatment of detainees and civilians overseas are being investigated within a reasonable timeframe
  - state when the Intelligence and Security Committee (ISC) will report its findings in relation to detainee treatment and rendition, and what resources are devoted to this work
  - outline what action is being taken to ensure prompt investigation of torture allegations in Iraq, in compliance with the UK's investigative duties under Articles 2 and 3 of the ECHR, and Articles 12 and 16 of UNCAT
  - outline what steps are being taken to ensure that the NPM is adequately resourced and has access to all places of detention and their installations and facilities, including overseas, to regularly examine the treatment of the persons deprived of their liberty in places of detention
  - outline how it ensures that state powers under its anti-terrorism legislation are necessary and do not interfere with its obligations under UNCAT, in particular:
    - what the impact has been of extending the use of closed material proceedings into civil litigation through the Justice and Security Act 2013, and
    - where material is to remain closed, how it ensures the excluded party is given sufficient information to enable them to give effective instructions to their Special Advocate

- outline what steps are being taken to:
  - reduce the number of people being incarcerated in prisons and the number of hours prisoners are locked in their cells in favour of improved purposeful activity and rehabilitation
  - identify offenders with mental health conditions, and
  - ensure that staff have the skills and resources to treat appropriately detainees with mental health issues
- outline the timetable for carrying out the commitments made by the Secretary of State for Justice to improve mental health services in prisons
- provide its assessment of the success of efforts to ensure effective diversion from the criminal justice system of petty non-violent women offenders and implementation of changes to the prison regime to further reduce deaths and incidents of self-harm
- outline what provision has been made in England and Wales to ensure that the use of restraint of young people in custody is consistent with young people's rights to freedom from cruel, inhuman or degrading treatment or torture
- provide data on the number of young people restrained in custody
- outline how it is ensuring that reforms to the detained fast track system are fully compliant with the UK's obligations under UNCAT and the International Covenant on Civil and Political Rights
- provide its response to the 64 recommendations in the 'Review into the Welfare in Detention of Vulnerable Persons' by Stephen Shaw
- confirm whether it will commit to using immigration detention only as a last resort and not detaining vulnerable persons, including torture survivors
- set a statutory time limit of 28 days for holding an individual in immigration detention
- outline what steps it has taken to prevent ill-treatment of patients receiving mental and physical health and social care services
- outline what improvements have been made to Child and Adolescent Mental Health Services (CAMHS) and to increase access to therapies for children, and what action the Scottish Government will take to ensure waiting targets relating to access to specialist CAMHS are met
- outline what action it is taking, including through regulations, to address gaps in the Modern Slavery Act 2015 that may impact on the State's fulfilment of its obligations to prevent cruel, inhuman or degrading treatment and to protect victims

- outline the extent to which UK law, policy and practice are compliant with the Council of Europe Convention on preventing and combating VAWG and domestic violence (the 'Istanbul Convention'), and what more needs to be done to enable the UK to ratify this Convention and ensure its effective implementation
- demonstrate what action is being taken to ensure that local authorities, police and crime commissioners, and health commissioners have the information they need to commission support services to combat VAWG, and
- supply information about how the UK Government works with the Scottish and Welsh Governments to monitor the delivery of VAWG strategies and services by local authorities to ensure compliance with the UK's international human rights obligations.

## Incorporation of UNCAT into domestic law: The proposed British Bill of Rights (Articles 1 and 2)

4. In 2013, the Committee acknowledged that the Human Rights Act 1998 incorporates the European Convention of Human Rights (ECHR) into domestic legislation, including the prohibition of torture or inhuman or degrading treatment or punishment. However, the Committee noted that ‘incorporation of the Convention against Torture into the State party’s legislation and adoption of a definition of torture in full conformity with article 1 of the Convention would strengthen the protection framework and allow individuals to invoke the provisions of the Convention directly before the courts.’<sup>1</sup>
5. The Committee also stated that it was concerned by criticism of the Human Rights Act 1998 by public figures. The Committee concluded that the UK should ensure that public statements or legislative changes, such as the proposed establishment of a Bill of Rights, did not ‘erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.’<sup>2</sup>
6. In December 2015, the UK Government reiterated its intention to consult on the proposal to replace the Human Rights Act 1998 with a British Bill of Rights.<sup>3</sup> The Prime Minister provided an update to Parliament in February 2016 that the UK Government would shortly be developing proposals ‘to change Britain’s position with respect to the European Court of Human Rights by having our own British Bill of Rights.’<sup>4</sup>

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<sup>1</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 7. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 1 February 2016].

<sup>2</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 8.

<sup>3</sup> This consultation is scheduled for 2016. Revised transcript of evidence taken before the Select Committee on the Constitution, oral evidence session with the Rt. Hon. Michael Gove, Lord Chancellor and Secretary of State for Justice, 2 December 2015. Available at: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/> [accessed: 1 February 2016].

<sup>4</sup> Prime Minister David Cameron, 3 February 2016. Available at: Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)



7. The EHRC considers the Human Rights Act 1998 to be well crafted and reflective of and embedded in the constitutional arrangements for the UK. Changing our human rights laws would have significant constitutional and social consequences, and should only be considered as part of a broad and participative public process.<sup>5</sup> We welcome a debate on such an important issue and look forward to contributing to the development of ideas, but would not support a reversal of the leading global role Britain has long played in protecting and promoting human rights.<sup>6</sup>
8. While the UK Government is yet to publish its consultation document, it is likely to consider the extent of the jurisdiction of the State's human rights obligations, for example their applicability to the actions of British Forces abroad. The EHRC agrees with the Committee's interpretation of the extent of the jurisdiction of UNCAT, as expressed in its General Comment No 2: 'the Convention protections extend to all territories under the jurisdiction of a State party and [this Committee] considers that this principle includes all areas under the de facto effective control of the State party's authorities.'<sup>7</sup>
9. **Recommendation: The Committee should ask the UK Government to clarify whether it plans to change the application of human rights protection in the UK so that it is limited to territory under the UK's legal jurisdiction. The Committee should also ask the UK Government to clarify its view on whether it accepts that its obligations in international law under UNCAT extend to the operations of British forces overseas and to foreign nationals when they are under de facto effective UK jurisdiction.**

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[http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160203/debtext/160203-0002.htm#160203-0002.htm\\_spmi2](http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160203/debtext/160203-0002.htm#160203-0002.htm_spmi2) [accessed: 11 February 2016].

<sup>5</sup> EHRC, Statement on the UK's implementation of the International Covenant on Civil and Political Rights, June 2015. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 1 February 2016].

<sup>6</sup> EHRC, Changes to the human rights framework, 19 February 2016. Available at: <http://www.equalityhumanrights.com/your-rights/human-rights/changes-human-rights-framework> [accessed: 23 March 2016].

<sup>7</sup> UN Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, January 2008. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en) [accessed: 1 February 2016]; EHRC, Submission to the UN Committee Against Torture: list of issues on the UK's 5th periodic report, August 2012, p. 9. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 1 February 2016].

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## Overseas detainee inquiry (Article 2)

10. In 2013, the Committee recommended the UK Government ‘establish without further delay an inquiry on alleged acts of torture and other ill-treatment of detainees held overseas committed by or at the instigation of or with the consent or acquiescence of British officials.’ The UK Government should ensure that the new inquiry is ‘designed to satisfactorily address the shortcomings of the “Detainee Inquiry” identified by a broad range of actors.’ The Committee encouraged the UK ‘to give due consideration to the report of the UN Special Rapporteur on Torture on best practices for commissions of inquiry into allegations of this nature.’<sup>8</sup>
11. In December 2013, the Detainee Inquiry published a report on its preparatory work.<sup>9</sup> The UK Government announced the same day that the Prime Minister had ‘discussed and agreed with the Intelligence and Security Committee of Parliament that it will inquire into the themes and issues that Sir Peter has raised, take further evidence, and report to the Government and to Parliament on the outcome of its inquiry. Additional resources will be provided to the Committee to undertake that work.’<sup>10</sup>
12. In 2015, the UN Human Rights Committee stated that it was ‘concerned about the slow progress in proceedings before the Intelligence and Security Committee of Parliament (ISC) in relation to the Detainee Inquiry and also the adequacy of the ISC as an investigation mechanism, given concerns about its independence from the executive power and the power of the government to withhold sensitive information from it.’<sup>11</sup>

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<sup>8</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 15. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 3 February 2016].

<sup>9</sup> The Detainee inquiry. 2013. About the inquiry.[ONLINE] Available at: <http://www.detaineeinquiry.org.uk/about/index.html> [accessed: 3 February 2016].

<sup>10</sup> Secretary of State for Justice Kenneth Clarke, 19 December 2013. Available at: [http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm#131219-0002.htm\\_spmi0](http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm#131219-0002.htm_spmi0) [accessed: 3 February 2016].

<sup>11</sup> UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom, July 2015, para 9. Available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20\(1\).pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20(1).pdf) [accessed: 3 February 2016].

13. In October 2015, the ISC stated that the inquiry into the role of the UK Government and security and intelligence agencies in relation to detainee treatment and rendition was its 'longer-term priority.'<sup>12</sup> The EHRC and NIHRC wrote to the Chair of the ISC noting that we consider it vital that 'a properly resourced inquiry is carried out within an expedited timetable.' We received a response on 16 December 2015, stating that 'whilst the Committee will make every effort to report in a reasonable timeframe, we can only do so once we have considered all of the evidence...it is preferable for us to take our time and follow the evidence rather than rush to meet a particular deadline' (see Appendix 1).
14. **Recommendation: The Committee should ask the UK Government to outline what actions it is taking to ensure the allegations of complicity of British military personnel, security and intelligence services in the ill-treatment of detainees and civilians overseas are being investigated within a reasonable timeframe. It should state when the ISC will report and what resources are devoted to this work.**

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<sup>12</sup> Intelligence and Security Committee of Parliament. News Archive, 29 October 2015. [ONLINE] Available at: <http://isc.independent.gov.uk/news-archive/29october2015> [accessed: 3 February 2016].

## Iraq Historic Allegations Team (Article 2)

15. In 2013, the Committee noted the establishment of the IHAT, which was set up in 2010 to investigate allegations of abuse of Iraqi citizens by British Service personnel. The Committee was concerned that the IHAT's 'composition and structural independence' was 'challenged, as close institutional links with the Ministry of Defence remain.' The Committee also expressed its deep concern that 'to date, there have been no criminal prosecutions for torture or complicity in torture involving State's officials, members of the security services or military personnel, although there have been a number of court martials of soldiers for abuses committed in Iraq against civilians.' The Committee urged the UK to 'take all necessary measures, including setting up a single, independent public inquiry, to investigate allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003 to 2009, establish responsibilities and ensure accountability.'<sup>13</sup>
16. In 2015, the UN Human Rights Committee expressed its concern about 'the slow progress of the Iraq Historical Allegations Team (IHAT) and the very small number of criminal proceedings completed so far.'<sup>14</sup>
17. The IHAT updated the information on its website about its investigations in November 2015, reporting that 1,514 victims had been allocated to them for investigation.<sup>15</sup> The EHRC does not consider current progress to be consistent with the prompt investigative duty under Article 12 of CAT and Articles 2 and 3 of the ECHR. As of the November 2015 update, IHAT had still only completed investigations into 18 cases, and had ordered only one fine against a British soldier.<sup>16</sup>

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<sup>13</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 16. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 2 February 2016].

<sup>14</sup> UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom, July 2015, para 9. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 2 February 2016].

<sup>15</sup> November update statistics reference 30 September 2015. Ministry of Defence (2014), The Iraq Historic Allegations Team quarterly update: July to September 2015. Available at: <https://www.gov.uk/government/publications/iraq-historic-allegations-team-quarterly-updates> [accessed: 2 February 2016].

<sup>16</sup> EHRC, Statement on the UK's Implementation of the International Covenant on Civil and Political Rights, June Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)  
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- 18. Recommendation: The Committee should ask the UK Government to outline what action is being taken to ensure prompt investigation of torture allegations in Iraq, in compliance with its investigative duties under Articles 2 and 3 of the ECHR, and Articles 12 and 16 of UNCAT.**

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2015. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 2 February 2016]; Ministry of Defence (2013), 'IHAT work completed'. Available at: <https://www.gov.uk/government/publications/ihat-work-completed> [accessed: 2 February 2016].

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## National Preventive Mechanism (Article 2)

19. The UK ratified the Optional Protocol to CAT (OPCAT) in December 2003 and the UK's NPM was established in March 2009. The NPM was not explicitly established through a single piece of legislation. On 31 March 2009, in a written ministerial statement to Parliament, the UK Government designated multiple, existing bodies to form the NPM, and noted that their existing powers were compatible with those required under OPCAT. The UK Government designated HM Inspectorate of Prisons (England and Wales) to coordinate the NPM.<sup>17</sup> In coordination across the four nations of the UK, the NPM 'focuses attention on practices in detention that could amount to ill-treatment, and works to ensure its own approaches are consistent with international standards for independent detention monitoring.'<sup>18</sup>
20. In 2013, the Committee noted that while 'fully cognizant of the State party's willingness to promote experience sharing... the practice of seconding State officials working in places of deprivation of liberty to National Preventive Mechanism bodies raises concerns as to the guarantee of full independence to be expected from such bodies.' The Committee recommended that UK 'end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism bodies.' The Committee also recommended that 'the State party continue to provide bodies constituting the National Preventive Mechanism with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.'<sup>19</sup>
21. In March 2014, HM Chief Inspector of Prisons (England and Wales), on behalf of the NPM, stated that 'UK NPM members agree to work towards a reduction in their reliance on seconded staff allocated to NPM activities.'<sup>20</sup> The NPM also

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<sup>17</sup> National Preventive Mechanism. Background. [ONLINE] Available at: <http://www.nationalpreventivemechanism.org.uk/about/background/> [accessed: 25 February 2016].

<sup>18</sup> National Preventive Mechanism. Welcome to the UK NPM. [ONLINE] Available at: <http://www.nationalpreventivemechanism.org.uk/> [accessed: 7 March 2016].

<sup>19</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 33. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 11 February 2016].

<sup>20</sup> Nick Hardwick, HM Chief Inspector of Prisons, to Claudio Grossman, Chairperson of the UN Committee Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

committed to developing a set of principles to reduce the possibility of conflicts of interest of seconded staff across the NPM and to safeguard the independence of personnel.<sup>21</sup>

22. The NPM 2014-15 annual report found that some NPM members in England were 'subject to welcome calls from parliamentary committees and other bodies for their independence from their sponsoring departments to be reviewed and strengthened' and that it was 'disappointing that the government did not accept these recommendations.' Additionally, the recruitment of an independent chair for the NPM as the first step in establishing its own board – capable of holding members to account for their work, ensuring appropriate consistency and developing a distinct NPM identity – was delayed because of concern by the Ministry of Justice, the responsible department.<sup>22</sup> To date, this appointment still has not been made.
23. The UK has ratified OPCAT, which requires (under Articles 19–23) NPMs to have access to all places of detention, and their installations and facilities, to regularly examine the treatment of the persons deprived of their liberty in places of detention.<sup>23</sup>
24. In March 2014, the UK Government announced that it had given 'careful consideration to the possibility of an independent inspection of the UK's Afghan detention facilities by Her Majesty's chief inspector of prisons', as recommended by the Baha Mousa inquiry.<sup>24</sup> The UK Government stated that 'UK detention facilities in Afghanistan continue to be inspected by the Provost Marshal (Army) every six months, and annually by the Army Inspector; they are also visited regularly by the International Committee of the Red Cross to ensure compliance

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Against Torture, 5 March 2014. Available at: [http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/05/NPM-response\\_UN-Committee-Against-Torture\\_2014.pdf](http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/05/NPM-response_UN-Committee-Against-Torture_2014.pdf) [accessed: 16 February 2016].

<sup>21</sup> National Preventive Mechanism (2015), 'Ensuring the independence of NPM personnel: guidance for members of the UK National Preventive Mechanism'. Available at: [http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/05/NPM-guidance\\_Ensuring-the-independence-of-NPM-personnel.pdf](http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/05/NPM-guidance_Ensuring-the-independence-of-NPM-personnel.pdf) [accessed: 16 February 2016].

<sup>22</sup> National Preventive Mechanism (2015), 'Monitoring places of detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2014 – 31 March 2015', pp. 5-6. Available at: <http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf> [accessed: 11 February 2016].

<sup>23</sup> UNHCR, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx> [accessed: 29 March 2016].

<sup>24</sup> Minister for the Armed Forces, Mark Francois, 27 March 2014. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140327/wmstext/140327m0001.htm> [accessed: 16 February 2016].

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with international humanitarian law' and that the inspection regime was 'already fit for purpose and does not require further amendment.'<sup>25</sup>

25. In July 2014, HM Chief Inspector of Prisons wrote to the Secretary of State for Defence on behalf of the NPM, expressing disappointment with the announcement and stressing that the principle of independent inspection of UK-controlled places of detention overseas should be established and applied on future occasions where this occurs. HM Inspectorate of Prisons actively sought the inclusion of powers to inspect military detention into the five-yearly Armed Forces Bill 2015–16, in order to put existing arrangements on a statutory footing. HM Inspectorate of Prisons was informed by the UK Government that Ministers no longer intended to put the inspection of military detention onto a statutory footing.<sup>26</sup>
26. **Recommendation: The Committee should ask the UK Government to outline what steps are being taken to ensure that the NPM is adequately resourced and has access to all places of detention and their installations and facilities, including overseas, to regularly examine the treatment of the persons deprived of their liberty in places of detention.**

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<sup>25</sup> Minister for the Armed Forces, Mark Francois, 27 March 2014.

<sup>26</sup> National Preventive Mechanism (2015), Monitoring places of detention: Sixth Annual Report of the United Kingdom's National Preventive Mechanism, 1 April 2014 – 31 March 2015', pp. 5-6.



## Access to justice: closed material procedures (Articles 2, 15 and 16)

27. 'Closed material procedures' deal with cases involving the use of sensitive material that the UK Government considers cannot be made public without damaging the public interest. This means that some evidence is heard in secret; neither the person involved in the proceedings nor their representatives are told what it is. Instead, a 'special advocate', appointed by the Attorney General, examines the closed material and represents the interests of the person affected in closed sessions. After viewing the closed material, communication between the special advocate and the person whose interests they represent is prohibited without the permission of the court or notification of the UK Government.<sup>27</sup>
28. The Justice and Security Act 2013 extends the use of closed proceedings to any civil case in which the Justice Secretary certifies that it involves sensitive material that would not be in the public interest to disclose because of national security.<sup>28</sup>
29. In 2013, the Committee stated its 'concern' that the Justice and Security Act 2013 'extends the use of Closed Material Procedures in civil proceedings where "national security" is at risk.' The Committee also noted that 'the decision was made despite severe criticisms, including from the UN Special Rapporteur on Torture and the majority of Special Advocates (Memorandums to the Joint Committee on Human Rights on the Justice and Security Bill, June 2012 and February 2013).'<sup>29</sup>

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<sup>27</sup> EHRC. 2014. Article 6: The right to a fair trial. [ONLINE] Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/human-rights-review-2012/articles/article-6> [accessed: 11 February 2016].

<sup>28</sup> HM Government (2011), 'Justice and Security Green Paper', para 2.7. Available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228860/8194.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228860/8194.pdf) [accessed: 29 March 2016]. The Justice Secretary's decision would be reviewable by the trial judge on 'judicial review principles' but any challenge to this decision would itself necessarily involve closed proceedings. See our full comments in our 2014 submission to the Human Rights Committee: EHRC, Submission to the United Nations Human Rights Committee Pre-Sessional Working Group on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, July 2014. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [29 March 2016].

<sup>29</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6 -31 May 2013), para 12. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-Equality and Human Rights Commission – www.equalityhumanrights.com>

30. In February 2015, House of Lords Government Whip Lord Ashton of Hyde stated that ‘the closed material provisions contained within Part 2 of the Justice and Security Act 2013 are already by their very nature subject to robust oversight. Each application for a closed material procedure is scrutinised in detail by a judge. The judge then keeps that application under review as necessary throughout the proceedings, to ensure that there is no detriment or unfairness to any party.’<sup>30</sup>
31. The Ministry of Justice’s 2014–15 annual report on the use of closed material procedures found that, during the reporting period, nine applications were made by a secretary of state and two by the Chief Constable of the Police Service of Northern Ireland for a declaration that a closed material procedures application may be made in proceedings.<sup>31</sup>
32. The EHRC maintains the view that the use of closed material proceedings in the UK is inherently problematic because one party is not permitted to take part in all, or part of, the proceedings. This means that the right to a fair trial may be compromised and other human rights violations may not come to light.<sup>32</sup>
33. **Recommendation: The Committee should ask the UK Government to outline how it ensures that the powers under its anti-terrorism legislation are necessary and do not interfere with its obligations under UNCAT. In particular, the Committee should ask the UK Government:**
- **what the impact has been of extending the use of closed material proceedings into civil litigation through the Justice and Security Act 2013, and**
  - **where material is to remain closed, how it ensures the excluded *party is given sufficient information to enable them to give effective instructions to their Special Advocate.***

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[against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment](#) [accessed: 2 February 2016].

<sup>30</sup> Lords Whip Lord Ashton of Hyde, 4 February 2015. Available at:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150204-0003.htm> [accessed: 11 February 2016].

<sup>31</sup> Ministry of Justice (2015), Report on use of closed material procedure (from 25 June 2014 to 24 June 2015). Available at: <https://www.gov.uk/government/publications/use-of-closed-material-procedure-report-25-june-2014-to-24-june-2015> [accessed: 19 February 2016].

<sup>32</sup> EHRC, Submission to the UN Human Rights Committee on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights, May 2015, p.19. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 4 March 2016].

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# Detention and asylum (Articles 2, 11 and 16)

## Preventing violence and self-harm in places of detention

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34. In 2013, the Committee highlighted concerns regarding the ‘steady increase in the prison population throughout the past decade and the problem of overcrowding, and its impact on suicide rate, cases of self-injuries, prisoner violence and access to recreational activities.’ The Committee urged the UK to ‘strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules).’<sup>33</sup>

### Deaths in detention

35. The EHRC conducted an inquiry into deaths in detention of adults with mental health conditions. It covered a three-year period between 2010–13, during which time in England and Wales: 350 adults with mental health conditions died of non-natural causes while detained in psychiatric wards; 17 adults died in police cells; and another 295 adults died in prison, many of whom had mental health conditions.<sup>34</sup>

36. Matters in relation to adult deaths in detention in Scotland are primarily devolved. The EHRC found that 19 non-natural deaths of detained patients in hospital and 6 non-natural deaths of adults in police custody occurred in Scotland between 2010–12. In 2010–13, there were 31 non-natural deaths in prison.<sup>35</sup>

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<sup>33</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 31. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 2 February 2016].

<sup>34</sup> EHRC (2015), ‘Preventing Deaths in Detention of Adults with Mental Health Conditions’. Available at: <http://www.equalityhumanrights.com/publication/preventing-deaths-detention-adults-mental-health-conditions> [accessed: 2 February 2016].

<sup>35</sup> EHRC (2015), ‘Preventing Deaths in Detention of Adults with Mental Health Conditions’, p. 83

37. The EHRC's 'Preventing deaths in detention of adults with mental health conditions' contained four overall recommendations:

- Structured approaches for learning lessons in all three settings should be established for implementing improvements from previous deaths and near misses, as well as experiences in other institutions. As part of this, there should be a statutory obligation on institutions to respond to recommendations from inspectorate bodies and to publish these responses.
- Individual institutions, for example prisons, police cells and hospitals, should have a stronger focus on meeting their basic responsibilities to keep detainees safe, including implementing recommendations, improving staff training and ensuring more joined-up working. Where this is not currently the situation this should explicitly be part of the inspection regimes.
- In prisons, police cells and hospitals there needs to be increased transparency to ensure adequate scrutiny, holding to account and the involvement of families.
- The EHRC's Human Rights Framework should be adopted and used as a practical tool in all three settings. Adopting it as an overall approach as well as ensuring compliance with each individual element will reduce non-natural deaths and should help to inform and shape policy decisions.<sup>36</sup>

38. In the 12 months to December 2015, there were 257 deaths in prison custody: an increase of 14 compared to the 12 months ending December 2014. These deaths comprise of:

- 89 apparent self-inflicted deaths – no change on the same period in 2014
- 146 deaths due to natural causes, consistent with 145 on the same period in 2014, and
- eight apparent homicides, up from three on the same period in 2014.<sup>37</sup>

## Overcrowding

39. The Chief Inspectors of Prisons for England and Wales and for Scotland reported, in 2015 and 2014 respectively, that overcrowding continued to be a significant problem in prisons.<sup>38</sup>

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<sup>36</sup> EHRC (2015), 'Preventing Deaths in Detention of Adults with Mental Health Conditions', p. 26.

<sup>37</sup> Ministry of Justice (2016), 'Safety in Custody Statistics England and Wales: Deaths in prison custody to December 2015, Assaults and Self-harm to September 2015', p. 6. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/495665/safety-in-custody-statistics-september-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495665/safety-in-custody-statistics-september-2015.pdf) [accessed: 19 February 2016].

<sup>38</sup> EHRC (2015), 'Is Britain fairer? The state of equality and human rights 2015', p. 78. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 2 Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

40. In the 12 months to September 2015, there were:
- 30,706 reported incidents of self-harm, up by 5,945 incidents (24%) from the same period in 2014, and
  - 18,874 assault incidents, up 19% from 15,886 incidents in the same period of 2014.<sup>39</sup>
41. The EHRC welcomes the UK Government's commitment in September 2014 to building a national system of liaison and diversion services. The Government stated that these services 'would mean the mental health condition of an offender could be identified during the court process and a decision taken at that stage on where to detain him'.<sup>40</sup> The Minister committed to 'every prisoner who needs it to have access to the best possible treatment'.<sup>41</sup> Considerable challenges remain, however, in protecting the human rights of those detained by the prison service, particularly for offenders with mental health conditions who are at risk of self-harm and self-inflicted deaths.<sup>42</sup>
42. **Recommendation: The Committee should ask the UK to outline what steps are being taken to: reduce the number of people being incarcerated in prisons and the number of hours prisoners are locked in their cells in favour of improved purposeful activity and rehabilitation; identify offenders with mental health conditions; ensure that staff have the skills and resources to treat detainees with mental health issues appropriately; and outline the timetable for carrying out the commitments made by the Secretary of State for Justice to improve mental health services in prisons.**<sup>43</sup>

## Women offenders

43. In 2013, the Committee raised concerns about the conditions of detention for female prisoners, in particular the 'unprecedented increase of women in prison

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February 2016].

<sup>39</sup> Ministry of Justice (2016), 'Safety in Custody Statistics England and Wales: Deaths in prison custody to December 2015, Assaults and Self-harm to September 2015', p. 6.

<sup>40</sup> Guardian, 2014. Chris Grayling plans network of mental health centres in prisons, [online] 16 September. Available at:

[www.theguardian.com/society/2014/sep/16/chris-grayling-mental-health-prisons](http://www.theguardian.com/society/2014/sep/16/chris-grayling-mental-health-prisons) [accessed: 4 March 2016].

<sup>41</sup> Guardian, 2014. Chris Grayling plans network of mental health centres in prisons, [online] 16 September.

<sup>42</sup> EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 56. Available at:

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 2 February 2016].

<sup>43</sup> EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 57.

over the last 15 years', the fact that about half of them have severe and enduring mental illness, and the disproportionate rate of self-harm.. The Committee urged the UK to implement a strategy for women offenders in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The Committee also recommended that the UK should 'pay due attention' to the recommendations contained in the Corston Report (England and Wales) and, in particular, ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.<sup>44</sup>

44. The EHRC welcomes the piloting of liaison and diversion services for people with mental health problems in the criminal justice system in England and Wales, with women-specific provision as an integral element.<sup>45</sup> We maintain that there needs to be sufficient investment in community initiatives tailored to address the offending and rehabilitation of women, as well as to reduce the female prison population further. This includes:

- greater leadership to ensure that gender-specific responses to offending are understood and implemented
- a coherent funding strategy to reduce the uncertainty around the funding of these voluntary and private sector organisations working with women offenders and those at risk of offending
- increased women-specific community orders across England and Wales to provide sentencing bodies with a viable alternative to custodial sentences, and
- improved information sharing about local services to increase the take-up of services which are available.<sup>46</sup>

45. The Chief Inspector of Prisons for England and Wales reported in October 2014 that there have been improved safety outcomes in women's prisons following the introduction of improved support procedures, including better substance misuse

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<sup>44</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 37. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 2 February 2016].

<sup>45</sup> EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 55. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 2 February 2016].

<sup>46</sup> Prison Reform Trust and Soroptimist International (2014), Transforming Lives: reducing women's imprisonment. Available at: [www.prisonreformtrust.org.uk/Portals/0/Documents/Transforming%20Lives.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Transforming%20Lives.pdf) [accessed: 19 February 2016].



services and better mental health care.<sup>47</sup> However, he also noted that some of the most vulnerable women are also the most challenging and their care is less developed than it would be in a men's prison.<sup>48</sup>

46. The House of Commons Justice Committee's 'Women Offenders: Follow-Up Report' recognised progress had been made in meeting the needs of female offenders.<sup>49</sup> On 6 March 2015, the female prison population stood at 3,866, a 1.6 per cent decrease on the previous year.<sup>50</sup>
47. In the 12 months to end of September 2015, there were 7,415 incidents of self-harm by female prisoners in England and Wales, up 11% on the same period in 2014.<sup>51</sup>
48. In January 2015, the Scottish Government announced that plans for a purpose-built female prison in Inverclyde would not go ahead. The Scottish Government committed to undertaking 'a period of extensive engagement' alongside the Scottish Prison Service 'with key partners with a view to investing in smaller regional and community-based custodial facilities across the country.' This would 'involve looking at international models of best practice.'<sup>52</sup> Community justice services are being reformed, with current plans including the establishment of a national agency, Community Justice Scotland, to provide assurance to Scottish Ministers on the collective achievement of community justice outcomes across Scotland, as well as the creation of a National Hub for Innovation, Learning and Development.<sup>53</sup>
49. **Recommendation: The Committee should ask the UK Government to provide its assessment of the success of efforts to ensure effective diversion from the criminal justice system for petty non-violent women**

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<sup>47</sup> HMIP (2014), Annual Report 2013–14. Available at: [www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR\\_2013-141.pdf](http://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf) [accessed: 19 February 2016].

<sup>48</sup> HMIP (2014), Annual Report 2013–14.

<sup>49</sup> House of Commons Justice Committee (2015), Women offenders: follow-up report,. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/women-offenders-report-published1/> [accessed: 19 February 2016].

<sup>50</sup> Ministry of Justice (2015), Population and Capacity Briefing for Friday 06/03/2015. Available at: [www.gov.uk/government/collections/prisons-and-probation-statistics](http://www.gov.uk/government/collections/prisons-and-probation-statistics) [accessed: 19 February 2016].

<sup>51</sup> Ministry of Justice (2016), 'Safety in Custody Statistics England and Wales: Deaths in prison custody to December 2015, Assaults and Self-harm to September 2015', p. 13. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/495665/safety-in-custody-statistics-september-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495665/safety-in-custody-statistics-september-2015.pdf) [accessed: 19 February 2016].

<sup>52</sup> Scottish Government, 2015. Plans for female prison in Inverclyde will not go ahead, [online] 26 January. Available at: <http://news.scotland.gov.uk/News/Plans-for-female-prison-in-Inverclyde-will-not-go-ahead-14ef.aspx> [accessed: 25 February 2016].

<sup>53</sup> Criminal Justice Voluntary Sector Forum. A future model for Community Justice. [ONLINE] Available at: <http://www.ccpscotland.org/cjvsf/hot-topics/redesigning-community-justice-system/> [accessed: 25 February 2016].

## **offenders and implementation of changes to the prison regime to further reduce deaths and incidents of self-harm.**

### **Restraint of children**

50. In 2013, the Committee stated its concern that the UK was ‘still using techniques of restraint that aim to inflict deliberate pain on children in Young Offender Institutions (YOIs), including to maintain good order and discipline.’ The Committee reiterated the recommendation of the Committee on the Rights of the Child that the UK should ‘ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others, and that all methods of physical restraint for disciplinary purposes be abolished. The Committee also recommended that the UK ‘ban the use of any technique designed to inflict pain on children.’<sup>54</sup>
51. In the year ending March 2015, there were 28.2 restrictive physical interventions per 100 young people in custody in the youth secure estate in England and Wales. This rate is broadly unchanged when compared with the rate in the previous year (28.4), but follows on from the general increase seen since the year ending March 2010 (when it was 17.6).<sup>55</sup>
52. In July 2015, HM Inspectorate of Prisons reported that their inspections of Werrington, Cookham Wood and Feltham, Parc and Hindley YOIs in England and Wales ‘continued to find evidence of the use of “pain compliance”, an approved technique that we regard as unnecessary and unacceptable for this age group.’<sup>56</sup> A new system called ‘minimising and managing physical restraint’ (MMPR), which aims to ‘minimise the use of restraint through the application of behaviour management techniques, de-escalation and communication’ had only been introduced in one out of five YOIs inspected by HM Inspectorate of Prisons in 2014/15.<sup>57</sup>

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<sup>54</sup> UN Human Rights Committee, Concluding Observations for the UK by the UN Human Rights Committee, July 2015, para 28. Available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20\(1\).pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20(1).pdf) [accessed: 2 February 2016].

<sup>55</sup> Defined as any occasion when force is used with the intention of overpowering or to overpower a young person. ‘Overpower’ is defined as restricting movement or mobility. Ministry of Justice and Youth Justice Board for England and Wales (2016), Youth justice annual statistics: 2014-15, p. 10. Available at: <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015> [accessed: 19 February 2016].

<sup>56</sup> HMIP(2015), Annual Report 2014-15, p. 82. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/444785/hmip-2014-15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf) [accessed: 19 February 2016].

<sup>57</sup> HMIP, Annual Report 2014-15, p. 82.



53. Schedule 10 of the Criminal Justice and Courts Act 2015 provides for the use of reasonable force on young offenders in Secure Colleges where necessary to ensure good order and discipline.<sup>58</sup> The EHRC has advised the UK Government and Parliament that this provision may not be compatible with Articles 3 (freedom from torture, inhuman or degrading treatment or punishment) and 8 (right to respect for privacy and family life) of the ECHR.<sup>59</sup>
54. In 2015, the NPM expressed concern that ‘restraint in children’s custodial settings is sanctioned to prevent non-imminent threats of injury, damage to property or escape and, in YOIs, to promote “good order and discipline.”’<sup>60</sup>
55. HM Inspectorate of Prison’s November 2015 review of the early implementation of MMPR welcomed the ‘significant improvements that it has brought to the national oversight of restraint and the greater focus on communication and de-escalation as part of a wider approach to behaviour management. The development of a consistent approach to restraint across all secure settings is itself an important improvement. However, some of what we have found has been too variable and sometimes very poor.’ HM Inspectorate of Prisons also had ‘particular concerns about the practice relating to restraining children on the floor, the application of head holds and the use of pain-inducing techniques.’<sup>61</sup>
56. On 12 January 2016, allegations were made in the press regarding the behaviour of staff at the Medway Secure Training Centre in Rochester, which is run by security firm G4S. The allegations relate to 10 boys, aged 14 to 17, and involve unnecessary force, foul language and an attempt to avoid disclosing evidence.<sup>62</sup> HM Inspectorate of Prisons and Ofsted visited Medway Secure Training Centre on 11 January 2016 and published their findings on 26 January 2016.<sup>63</sup>

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<sup>58</sup> Criminal Justice and Courts Act 2015. Available at: <http://www.legislation.gov.uk/ukpga/2015/2/schedule/10/enacted> [accessed: 19 February 2016].

<sup>59</sup> EHRC, Briefing in support of amendment relating to use of physical restraint in secure colleges, October 2014. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/criminal-justice-and-courts-bill-2014-use-physical-restraint-secure-colleges> [accessed: 19 February 2016].

<sup>60</sup> National Preventive Mechanism, Submission to the UN Human Rights Committee’s Seventh Periodic Review of the United Kingdom at the Committee’s 114th session. Available at: <http://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/07/UK-NPM-Submission-to-the-UN-Human-Rights-Committee-FINAL.pdf> [accessed: 19 February 2016].

<sup>61</sup> HMIP (2015), Behaviour management and restraint of children in custody, pp. 5-6. Available at: <http://www.justiceinspectores.gov.uk/hmiprison/inspections/behaviour-management-and-restraint-of-children-in-custody/> [accessed: 19 February 2016].

<sup>62</sup> BBC, 2016. Four sacked after Panorama investigation into G4S unit, *BBC Online*, [online] 12 January. Available at: <http://www.bbc.co.uk/news/uk-england-kent-35290582> [accessed: 2 February 2016].

<sup>63</sup> Michael Gove, Justice Secretary, Hansard, 26 January 2016. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-26/HCWS492/> [accessed: 2 February 2016].

57. On 26 January 2016, the Justice Secretary stated that Kent Police and Medway Council's child protection team had launched an investigation 'to determine whether there is any evidence to justify criminal proceedings.' Additionally, the Youth Justice Board, which is responsible for commissioning and oversight of the secure youth estate in England and Wales, has 'increased both its own monitoring at Medway STC and the presence of Barnardo's, which provide an independent advocacy service at the centre.' The Justice Secretary has 'tasked G4S with putting an improvement plan in place.' The work will be overseen by a newly appointed Independent Improvement Board 'comprised of four members with substantial expertise in education, running secure establishments and looking after children with behavioural difficulties.'<sup>64</sup>
58. According to the Youth Justice Board for England and Wales' official statistics, 318 incidents occurred between 2010 and 2014 within secure training centres where restraint led to either minor injuries that required medical treatment or serious injuries requiring hospital treatment. In February 2016, the Government stated that the actual number of injuries caused by restraint in secure training centres over that period was 1,506, almost five times as many. The comparable figure for YOIs was 631, compared with a 'new' total of 2,755 – 4.3 times as many. The Ministry of Justice stated that the increase was explained by the inclusion of a new category that included injuries that did not require medical or hospital treatment.<sup>65</sup>
59. **Recommendation: The Committee should ask the UK Government to outline what provision has been made in England and Wales to ensure that the use of restraint of young people in custody is consistent with young people's rights to freedom from cruel, inhuman or degrading treatment or torture. It should also request that the UK Government provides data on the number of young people restrained in custody.**

### **Preventing vulnerable asylum seekers being detained for immigration purposes and the need for a statutory time limit**

60. Immigration policy applies across the UK and is not devolved to the Scottish Parliament.

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<sup>64</sup> Michael Gove, Justice Secretary, 26 January 2016.

<sup>65</sup> Guardian, 2016. UK child prisons: thousands of injuries not disclosed by government, [online]13 February. Available at: <http://www.theguardian.com/society/2016/feb/13/young-offenders-institution-restraint-injuries> [accessed: 4 March 2016].

61. In 2013, the Committee stated that it was concerned about instances where ‘torture survivors, victims of trafficking, and persons with serious mental disability were detained while their asylum cases were decided.’ The Committee urged the UK to ensure that detention is used only as a ‘last resort’ in accordance with the requirements of international law and ‘not for administrative convenience.’<sup>66</sup>
62. In 2015, the UN Human Rights Committee stated that it was ‘concerned that no fixed time limit on the duration of detention in Immigration Removal Centres has been established and that individuals may be detained for prolonged periods.’<sup>67</sup>
63. The EHRC’s monitoring suggests that many of the concerns raised by the Committee in 2013 have not yet been acted upon. In July 2015, the UK’s Minister of State for Immigration told the UK Parliament he was suspending the Home Office’s Detained Fast Track (DFT) System.<sup>68</sup> Judgments in the High Court and Court of Appeal in June and July 2015<sup>69</sup> found significant deficiencies, including failure to prevent torture survivors from entering the DFT System and to provide asylum seekers with effective access to justice. The UN Human Rights Committee asked the UK Government to ‘ensure that reforms to the detained fast track (DFT) system are fully compliant with the State party’s obligations under the Covenant. It should also ensure that the system protects vulnerable persons, and provides for effective safeguards against arbitrariness and for effective access to justice, including to legal aid.’<sup>70</sup>
64. In January 2016, the UK Government published an independent review of the impact of immigration detention policies and operating procedures on the welfare of immigration detainees. This was conducted by Stephen Shaw, a former Prisons and Probation Ombudsman for England and Wales, and included 64

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<sup>66</sup> UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom, July 2015, para 21. Available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20\(1\).pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20(1).pdf) [accessed: 2 February 2016].

<sup>67</sup> UN Human Rights Committee, Concluding observations of the seventh periodic report of the United Kingdom, July 2015, para 21.

<sup>68</sup> James Brokenshire, Minister of State for Immigration, Home Office, Hansard, 2 July 2015. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-07-02/HCWS83/> [accessed: 2 February 2016].

<sup>69</sup> *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689, 12 June 2015. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/detention-action-v-first-tier-tribunal.pdf> [accessed: 2 February 2016]; *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840, 29 July 2015. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2015/07/lord-chancellor-v-detention-action-judgment.pdf> [accessed: 2 February 2016].

<sup>70</sup> UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom, July 2015, para 21(b). Available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20\(1\).pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20concluding%20observations%20(1).pdf) [accessed: 3 February 2016].

specific recommendations for improvements.<sup>71</sup> The UK Government stated that it ‘accepts the broad thrust of his recommendations’ and would take forward three key reforms. First, the UK Government accepted Shaw’s recommendations to ‘adopt a wider definition of those at risk’ and it will also ‘introduce a new “adult at risk” concept into decision-making on immigration detention with a clear presumption that people who are at risk should not be detained, building on the existing legal framework.’ Second, the UK Government will ‘carry out a more detailed mental health needs assessment in Immigration Removal Centres, using the expertise of the Centre for Mental Health’ and ‘NHS commissioners will use that assessment to consider and revisit current provision’. Third, the UK Government will ‘implement a new approach to the case management of those detained, replacing the existing detention review process with a clear removal plan for all those in detention.’<sup>72</sup>

65. The EHRC is concerned in particular that ‘Rule 35’ is not being implemented effectively. A key element of this is that ‘the medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.’ Section 55.8A of the Enforcement Instructions and Guidance states the Rule’s purpose is ‘to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention. The information contained in the report needs to be considered in deciding whether continued detention is appropriate in each case.’<sup>73</sup> The British Medical Association’s submission to the Shaw Review notes: ‘Doctors report that on completing and submitting rule 35(3) reports to the Home Office, many are disregarded as being unsatisfactory, often on the basis that the report does not constitute independent evidence of torture, or that the evidence provided is not sufficient.’<sup>74</sup>

66. The Shaw Review stated that ‘Home Office guidance (DSO 17/2012) requires a “person who is vocationally trained as a general practitioner and fully registered within the meaning of the Medical Act 1983” to complete a report under rule 35.

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<sup>71</sup> Shaw, S. (2016), ‘Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office’. Available at: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed: 2 February 2016].

<sup>72</sup> James Brokenshire, Minister of State for Immigration, Home Office, Hansard, 14 January 2016. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCWS470/> [accessed: 2 February 2016].

<sup>73</sup> HM Government (2013), Detention Rule 35 Process, version 10. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257437/rule35reports.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257437/rule35reports.pdf) [accessed: 19 February 2016].

<sup>74</sup> Shaw, S. (2016), ‘Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office’, p. 12. Available at: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed: 2 February 2016].

It is wholly unacceptable for the Home Office then to dismiss that report on the grounds that it is insufficiently informed or insufficiently independent.’ Shaw concluded that ‘rule 35 does not do what it is intended to do – to protect vulnerable people who find themselves in detention – and that the fundamental problem is a lack of trust placed in GPs to provide independent advice.’ Shaw recommended that the Home Office immediately consider an alternative to the current rule, including ‘whether doctors independent of the IRC system (for example, Forensic Medical Examiners) would be more appropriate to conduct the assessments.’<sup>75</sup> Concerns have been raised by UK non-governmental organisation Freedom from Torture that the recommendation ‘risks making the process more complex’ when the Home Office should ‘respond to the concerns highlighted by the doctors they already employ by releasing detainees where a concern is expressed and then allow time for specialist medical evidence to be provided for those cases that require it, as part of the substantive asylum decision-making process.’<sup>76</sup>

67. An Immigration Bill is currently being considered by the UK Parliament.<sup>77</sup> The EHRC has highlighted that the UK continues to be the only European Union member without a time limit on how long it can detain people subject to immigration controls. People are detained in the UK for months and even years, in contrast to the 6–12 month time limit set under European Union rules (the UK has exercised its right to opt out of these).<sup>78</sup> During the year ending September 2014, 144 people had been in immigration detention between one and two years and 30 people for two years or longer. The Home Office does not collect data on the length of time immigration detainees are held in prison. Deprivation of liberty for extended periods can have a significant impact on the mental and physical health of those detained in the immigration system, many of whom live with the uncertainty of not knowing if they are about to be deported or released.<sup>79</sup>

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<sup>75</sup> Shaw, S. (2016), ‘Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office’, p. 12.

<sup>76</sup> BMA, 2016. A longer road to freedom for torture survivors?, [online] 11 February. Available at: <http://www.bma.org.uk/news-views-analysis/work/2016/february/a-longer-road-to-freedom-for-torture-survivors> [accessed: 19 February 2016].

<sup>77</sup> Immigration Bill 2015 - 2016. Available at: <http://services.parliament.uk/bills/2015-16/immigration.html> [accessed: 2 February 2016].

<sup>78</sup> EHRC (2015), ‘Is Britain fairer? The state of equality and human rights 2015’, p. 80. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 2 February 2016].

<sup>79</sup> EHRC, Submission to the United Nations Human Rights Committee on the United Kingdom’s Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 45. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 2 February 2016].

- 68. Recommendation: The Committee should ask the UK Government to: outline how it is ensuring that reforms to the DFT system are fully compliant with the UK's obligations under UNCAT and the International Covenant on Civil and Political Rights; provide its response to the 64 recommendations in the 'Review into the Welfare in Detention of Vulnerable Persons' by Stephen Shaw; confirm whether the UK will commit to using immigration detention only as a last resort and not detaining vulnerable persons including torture survivors; and confirm whether it will commit to setting a statutory time limit of 28 days for holding an individual in immigration detention.**



## Highest attainable standard of health (Articles 11 and 16)

69. Health policy in the UK is devolved to the Scottish, Welsh and Northern Irish Governments.

### Preventing ill-treatment of patients receiving mental and physical health, and social care services

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70. In 2013, the Committee noted the findings of the Mid Staffordshire NHS Foundation Trust Public Inquiries (the 'Francis Inquiries', focused on service provision in England), which published in 2010 and 2013 and 'highlight the failure of the National Health System's managers and regulators to identify and act upon the problems at Mid Staffordshire hospital trust that led to between 400 and 1,200 deaths between 2005 and 2009.' The Committee expressed particular concern that the 'system [...] ignored the warning signs of poor care and put corporate self-interest and cost control ahead of patients and their safety.' The Committee called upon the UK to 'establish a structure of fundamental standards and measures of compliance in order to prevent ill-treatment of patients receiving health care services.'<sup>80</sup>

71. The Scottish Government announced in 2013 that it planned to examine how some of the recommendations from the Francis Inquiries could be implemented in Scotland, including looking at 'how best to introduce a criminal offence of wilful neglect, and will give full consideration to the introduction of a duty of candour for health boards.'<sup>81</sup>

72. The Welsh Government published 'Delivering Safe Care, Compassionate Care' in 2013 in response to the Francis Inquiries. The Welsh Government said the document 're-states the core values of the NHS in Wales, and how they will be

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<sup>80</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 33. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 3 February 2016].

<sup>81</sup> Scottish Government, 2013. Patient safety, [online] 19 November. Available at: <http://news.scotland.gov.uk/News/Patient-safety-652.aspx> [accessed: 25 February 2016].

preserved in the future.’ The Minister for Health and Social Services announced a number of new measures, including a commitment to update the current complaints procedures, a review of the Fundamentals of Care Standards by focusing them on individuals and their needs, and a continued ban on gagging clauses in the Welsh NHS.<sup>82</sup>

73. In 2013, the UK Government’s ‘Transforming Care’ initiative responded to failings, at all levels, in the treatment of patients with learning disabilities in hospital assessment and treatment units, and their vulnerability to violations of their right to freedom from cruel, inhuman or degrading treatment or punishment.<sup>83</sup>
74. In February 2015, the UK Government published ‘Culture Change in the NHS’ (covering England), outlining progress in implementing the recommendations of the Francis Inquiries. The UK Government states that the report shows that ‘for the overwhelming majority of recommendations, progress has either been substantial, or the relevant action is now complete.’<sup>84</sup>
75. NHS England has made a commitment ‘to a closure programme for large NHS mental health hospitals, along with a transition plan for the people with learning disabilities within these hospitals, from 2016–17.’<sup>85</sup> In March 2015, the House of Commons Public Accounts Committee stated that this closure programme must be ‘matched by the necessary growth in high-quality community services.’ It also emphasised the ‘fundamental failing’ represented by the lack of ‘an overall dataset on the population with learning disabilities and challenging behaviour’.<sup>86</sup>

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<sup>82</sup> Welsh Government (2013), *Delivering Safe Care, Compassionate Care*. Available at: <http://gov.wales/topics/health/publications/health/reports/safecare/?lang=en> [accessed: 25 February 2016].

<sup>83</sup> EHRC, *Submission to the United Nations Human Rights Committee on the United Kingdom’s Implementation of the International Covenant on Economic, Social and Cultural Rights*, August 2015, p. 40. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-economic-social-and-cultural-rights> [accessed: 8 March 2016].

<sup>84</sup> Ben Gummer, Parliamentary Under-Secretary of State, Department of Health, Hansard, 8 June 2015. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-06-08/1485/> [accessed: 3 February 2016]; Department of Health (2015), ‘Culture change in the NHS: applying the lessons of the Francis Inquiries’. Available at: <https://www.gov.uk/government/publications/culture-change-in-the-nhs> [accessed: 3 February 2016].

<sup>85</sup> House of Commons Committee of Public Accounts (2015), ‘Fifty-first Report of Session 2014-15: Care services for people with learning disabilities and challenging behaviour’, HC 973, p. 5. Available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/973/973.pdf> [accessed: 8 February 2016].

<sup>86</sup> House of Commons Committee of Public Accounts (2015), ‘Fifty-first Report of Session 2014-15: Care services for people with learning disabilities and challenging behaviour’, HC 973, p. 5.



- 76. Recommendation: The Committee should ask the UK to outline what steps it has taken to prevent ill-treatment of patients receiving mental and physical health, and social care services.<sup>87</sup>**

## Directing children with mental health conditions to appropriate health institutions rather than detaining them in police custody

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77. In 2013, the Committee was 'deeply concerned that children with mental disabilities can sometimes be placed in police custody in England for his or her "own interest or for the protection of others" (Articles 11 and 16)'. It concluded that the UK 'should ensure that children with mental disabilities shall in no case be detained in police custody but directed to appropriate health institutions. Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychosocial support care.'<sup>88</sup>
78. Children and young people with mental health conditions in England have sometimes experienced high referral thresholds or long waiting times for specialist services, and have in some cases been admitted to hospitals a long way from home.<sup>89</sup> As a result, the UK Government stated in 2014 that it was making improvements to CAMHS and improving access to therapies for children.<sup>90</sup>
79. In Scotland, separate targets were introduced relating to access to specialist CAMHS. The standard is for at least 90% of young people to start CAMHS treatment within 18 weeks of referral. Recent published data showed that 73% of those who started their treatment in the period July to September 2015 had been waiting less than 18 weeks, rising to 76% in September to December.<sup>91</sup>

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<sup>87</sup> EHRC. 2016. Human Rights in Health and Social Care. [ONLINE] Available at: <http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/human-rights-health-and-social-care> [accessed: 3 February 2016].

<sup>88</sup> UN Committee Against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), para 3. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment> [accessed: 3 February 2016].

<sup>89</sup> House of Commons Health Committee (2014), 'Children's and adolescents' mental health services and CAMHS'. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2010/cmh-2014/> [accessed: 3 February 2016].

<sup>90</sup> EHRC (2015), 'Is Britain fairer? The state of equality and human rights 2015', pp. 59-60. Available at: [http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Final-reports/revised/EHRC\\_IBF\\_MainReport\\_acc.pdf](http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Final-reports/revised/EHRC_IBF_MainReport_acc.pdf) [accessed: 3 February 2016].

<sup>91</sup> Scottish Government. 2016. CAMHS waiting times.[ONLINE] Available at: <http://www.gov.scot/About/Performance/scotPerforms/NHSScotlandperformance/CAMHS-LDP> [accessed: 25 February 2016].

80. The National Assembly for Wales' Children, Young People and Education Committee undertook an inquiry into CAMHS, reporting in 2014.<sup>92</sup> In May 2015, the Welsh Government announced it would invest an extra £7.6 million every year in mental health services for children and young people in Wales. The additional funding aims to improve specialist CAMHS' ability to respond out of hours and at times of crisis, expand access to psychological therapies for young people, improve provision for children and young people in local primary mental health support services, and ensure services intervene early to meet the needs of young people who develop psychosis.<sup>93</sup>
81. **Recommendation: The Committee should ask the UK to outline what improvements have been made to CAMHS and improving access to therapies for children, and ask the Scottish Government what action it will take to ensure waiting targets relating to access to specialist CAMHS are met.**

## Human trafficking and modern slavery (Articles 2, 12, 13 and 16)

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82. The Committee has adopted Concluding Observations regarding State Parties' obligations to combat human trafficking, and to 'strengthen measures to prevent and combat trafficking and domestic violence, provide protection for victims and their access to medical, social rehabilitative and legal services, including counselling services, as appropriate.'<sup>94</sup>
83. The UK uses the NRM framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support.<sup>95</sup> In 2014, the NRM received 2,340 referrals of potential victims of trafficking, a 34% increase on 2013 referral totals.<sup>96</sup> The Modern Slavery Act, which received Royal Assent

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<sup>92</sup> National Assembly for Wales. 2016. Inquiry into Child and Adolescent Mental Health Services. [ONLINE] Available at: <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=8676> [accessed: 25 February 2016].

<sup>93</sup> Welsh Government, 2016. £7.6m funding boost for children and young people's mental health services in Wales, [online] 22 May. Available at: <http://gov.wales/newsroom/healthandsocialcare/2015/10182787/?lang=en> [accessed: 25 February 2016].

<sup>94</sup> See CAT/C/UKR/CO/5, para 14, with regard to Ukraine's duty to prevent violence against women and girls, including trafficking. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/ESP/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/ESP/CO/5&Lang=En) [accessed: 3 February 2016].

<sup>95</sup> National Crime Agency. 2016. National Referral Mechanism. [ONLINE] Available at: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> [accessed: 3 February 2016].

<sup>96</sup> National Crime Agency (2015), National Referral Mechanism Statistics – End of Year Summary 2014. Available at: <http://www.nationalcrimeagency.gov.uk/publications/502-national-referral-mechanism-statistics-end-of-year-summary-2014>

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on 26 March 2015, is a major step forward. It consolidated current offences relating to trafficking and slavery, created two new civil orders to prevent modern slavery, and made provision for the protection of modern slavery victims.<sup>97</sup> In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015 clarifies and consolidates devolved civil and criminal law to disrupt trafficking networks, prosecute offenders and support victims.<sup>98</sup>

84. However, the EHRC considers there are a number of issues not covered in the Modern Slavery Act 2015 or sufficiently addressed in the review of the NRM, in particular in relation to the State's responsibility to protect the rights of the child. Issues include a lack of detail in provisions to identify and provide support to victims, gaps in criminal offences, and weaknesses in the powers of the Independent Anti-Slavery Commissioner and the resources available to them.<sup>99</sup> In addition to the UK-wide concerns regarding the working of the NRM, there remain questions on how the framework works alongside devolved agencies, policies and law.<sup>100</sup>

**85. Recommendation: The Committee should ask the UK to outline what action it is taking, including through regulations, to address gaps in the Modern Slavery Act 2015 that may impact on the State's fulfilment of its obligations to prevent cruel, inhuman or degrading treatment and to protect victims. These include:**

- the absence of a formal appeals process for individuals, in line with the view of the Council of Europe Convention on Action against Trafficking in Human Beings (monitored by GRETA)
- no clear statutory duty for public bodies to record and report trafficked children who go missing from care
- a lack of explicit requirements on tackling trafficking and slavery in the regulations of all relevant authorities that are likely to come into contact with potential victims, including health authorities, schools, prisons, probation

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[of-year-summary-2014/file](#) [accessed: 25 February 2016].

<sup>97</sup> Modern Slavery Act 2010. Available at: <http://services.parliament.uk/bills/2014-15/modernslavery.html> [accessed: 3 February 2016].

<sup>98</sup> Human Trafficking and Exploitation (Scotland) Act 2015. Available at: [www.legislation.gov.uk/asp/2015/12/enacted](http://www.legislation.gov.uk/asp/2015/12/enacted) [accessed: 3 February 2016].

<sup>99</sup> EHRC (2015), 'Children's Rights in the UK: Submission to the UN Committee on the Rights of the Child', pp. 82-86. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/Pdfs/UNtreaty/Childrens%20rights%20in%20the%20UK%20Sept%202015.pdf> [accessed: 3 February 2016].

<sup>100</sup> EHRC (2015), Justice Committee: Human Trafficking and Exploitation (Scotland) Bill - Written Submission from the EHRC. Available at: [www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/HTE16EqualityandHumanRightsCommission.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/HTE16EqualityandHumanRightsCommission.pdf) [accessed: 3 February 2016].

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services and competent authorities, as well as voluntary organisations performing a public function, and

- insufficient clarity in those regulations on whether only a credible suspicion is required to trigger this duty (as noted in the review of the NRM, and which is consistent with the State's positive obligations to investigate under Article 4 of the ECHR).<sup>101</sup>

## Violence against women and girls (Articles 2, 12, 13 and 16)

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86. The Committee has adopted Concluding Observations for addressing VAWG, for instance that 'all efforts' should be taken 'to prevent violence against women, enhance the access of victims to justice, ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress.'<sup>102</sup> The EHRC has stressed that VAWG is one of the most pervasive human rights issues in Britain.<sup>103</sup>

87. In 2015, the UN Human Rights Committee was 'concerned about continued reports of violence against women, including domestic violence and rape...affecting mainly black and ethnic minority women.' The Human Rights Committee recommended the UK should strengthen measures aimed at preventing and combating violence against women, including by 'ensuring that all domestic violence cases, in all UK territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions'. It also highlighted that the UK should ensure that victims have 'access to effective remedies and means of protection, including to strong police protection, adequate emergency shelter, rehabilitative services, legal assistance and other support services.'<sup>104</sup>

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<sup>101</sup> EHRC, Submission to the UN Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, pp. 26-7. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 3 February 2016].

<sup>102</sup> See CAT/C/PER/CO/5-6, para 14, regarding Peru's measures to combat violence against women and girls. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/PER/CO/5-6&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/PER/CO/5-6&Lang=En) [accessed: 3 February 2016].

<sup>103</sup> EHRC, Submission to the UN Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 65. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 4 March 2016].

<sup>104</sup> UN Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom, July 2015, para 13. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/humanrights/UN/CCPRC%20GB%20c> Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

88. In March 2015, the National Assembly for Wales passed the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill, which 'requires agencies to work together to change attitudes and behaviour and to encourage earlier identification and more effective responses to all survivors of violence and abuse, so that more lives can be saved.'<sup>105</sup>
89. The Istanbul Convention was adopted by the Council of Europe Committee of Ministers on 7 April 2011.<sup>106</sup> In November 2015, the UK Government stated that it would only commit to ratification of the Istanbul Convention when it was 'absolutely satisfied' that it complied with all articles. The UK Government highlighted that primary legislation is required to comply with the extra-territorial jurisdiction provision set out in Article 44 of the Convention, and that it was liaising with the devolved administrations about ratification, including the further legislative steps required.<sup>107</sup>
90. In November 2014, the UK Government announced that it would supply £10 million in funding to support women's refuges in 100 areas across England and that it had written to England's 326 councils to remind them of their 'legal duty to house women and children who have been forced to flee their homes for fear of violence and abuse'.<sup>108</sup> However, the Joint Committee on Human Rights' Violence against Women and Girls Inquiry highlighted funding for specialist support services as a key issue, including an evidence gap on the number of refuge spaces per head in local authority areas.<sup>109</sup> Such data are essential to determine whether the required services are being provided. This is important given that the Joint Committee on Human Rights received evidence from the Women's Aid Annual Survey 2014 of domestic violence services across England, which found that nearly a third of referrals to refuges in 2013–14 were

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[oncluding%20observations%20\(1\).pdf](#) [accessed: 3 February 2016].

<sup>105</sup> Welsh Government. 2015. Assembly passes ground-breaking Violence against Women, Domestic Abuse and Sexual Violence (Wales) Bill. [ONLINE] Available at: <http://gov.wales/newsroom/people-and-communities/2015/assembly-passes-violence-against-women-domestic-abuse-sexual-violence-bill/?lang=en> [accessed: 25 February 2016].

<sup>106</sup> Council of Europe. 2016. Historical background. Available at: <http://www.coe.int/en/web/istanbul-convention/historical-background> [accessed: 3 February 2016].

<sup>107</sup> Parliamentary Under-Secretary of State, Karen Bradley, Home Office, Hansard, 23 November 2015. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-11-17/16621/> [accessed: 3 February 2016].

<sup>108</sup> Gov.uk, 2014. Government action to help eliminate violence against women and girls, [online] 25 November. Available at: <https://www.gov.uk/government/news/government-action-to-help-eliminate-violence-against-women-and-girls> [accessed: 16 February 2016].

<sup>109</sup> Joint Committee on Human Rights (2015), Violence against women and girls: Sixth Report of Session 2014-15, section 4. Available at: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/violence-against-women-and-girls-report/> [accessed: 16 February 2016].

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turned away because of lack of space.<sup>110</sup> The UK Government's March 2015 response stated that it was 'doing much more to give local authorities, police and crime commissioners and health commissioners the information they need to commission services that are appropriate to meet the needs of their communities.'<sup>111</sup>

91. In April 2013, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 narrowed the scope of civil legal aid in England and Wales. Excluded areas include: private law family cases, except where there is evidence of domestic violence; housing and debt cases where the home is not at risk; and most welfare benefits cases.<sup>112</sup>
92. In terms of UK Government's legal support to victims of VAWG, evidence from civil society organisations suggests that domestic violence victims may not be able to provide adequate proof of their experiences to qualify for legal aid for a family law case.<sup>113</sup> Rights of Women challenged the lawfulness of the regulations requiring this evidence. The Court of Appeal ruled in February 2016 that Government changes to legal aid for domestic violence victims are unlawful.<sup>114</sup> The Ministry of Justice stated that this judgment would be 'carefully considered.'<sup>115</sup>
93. **Recommendation: The Committee should ask the UK to outline the extent to which UK law, policy and practice are compliant with the Istanbul Convention and what more needs to be done to enable the UK to ratify it and ensure its effective implementation.**<sup>116</sup> **The UK Government should set**

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<sup>110</sup> Women's Aid (2015), Women's Aid Annual Survey 2014. Available at: <http://www.womensaid.org.uk/wp-content/uploads/2015/10/Womens-Aid-annual-survey-report-2014.pdf> [accessed: 16 February 2016].

<sup>111</sup> Government response to the Joint Committee on Human Rights Sixth Report, p. 15. Available at: [http://www.parliament.uk/documents/joint-committees/human-rights/Violence\\_Against\\_Women\\_Girls\\_Gov\\_response.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Violence_Against_Women_Girls_Gov_response.pdf) [accessed: 2 March 2016].

<sup>112</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012. Available at: [www.legislation.gov.uk/ukpga/2012/10/contents/enacted](http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted) [accessed: 16 February 2016].

<sup>113</sup> See Welsh Women's Aid, Rights of Women, and Women's Aid (2014), 'Evidencing domestic violence: reviewing the amended regulations'. Available at: <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf> [accessed: 29 March 2016].

<sup>114</sup> Guardian, 2016. Domestic violence victims forced to face abusers in court due to legal aid cuts, 28 January 2016. Available at: <http://www.theguardian.com/law/2016/jan/28/domestic-violence-victims-forced-to-face-abusers-in-court-due-to-legal-aid-cuts> [accessed: 16 February 2016]; Rights of Women, Harsh evidence tests for domestic violence are unlawful, rules Court of Appeal. Available at: <http://rightsofwomen.org.uk/harsh-evidence-tests-for-domestic-violence-are-unlawful-rules-court-of-appeal/> [accessed: 25 February 2016]

<sup>115</sup> Guardian, Changes to legal aid for domestic violence victims ruled 'invalid' , [online]18 February. Available at: <http://www.theguardian.com/law/2016/feb/18/changes-to-legal-aid-for-domestic-violence-victims-ruled-invalid> [accessed: 4 March 2016].

<sup>116</sup> EHRC, Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights inquiry into violence against women and girls, 23 April 2015. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality>  
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**out what action is being taken to ensure that local authorities, police and crime commissioners, and health commissioners have the information they need to commission support services. Information should also be supplied about how the UK Government works with the Scottish and Welsh Governments to monitor the delivery of VAWG strategies and services by local authorities to ensure compliance with the UK's international human rights obligations.**

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[and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against'](#) [accessed: 3 February 2016].

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# Appendix



## INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT

*Chairman: The Rt. Hon. Dominic Grieve MP*



Onora O'Neil  
Chair, EHRC, and  
Les Allamby,  
Chief Commissioner, NIHRC

ISC11.18/150

16 December 2015

Fleetbank House,  
2-6 Salisbury Square,  
London EC4Y 8JX

*Dear Onora and Les,*

Thank you for your joint letter of 15 December asking about the Detainee Inquiry currently being conducted by the Intelligence and Security Committee of Parliament.

The ISC was provided with a dedicated team of staff in June 2014 and they have been carrying out the necessary research and analysis since then. The Committee has now begun taking evidence and, as we announced in October, the Inquiry is a priority for the Committee.

It is essential that we do a thorough job: the issues involved are too important to do otherwise. A substantive inquiry takes time and therefore whilst the Committee will make every effort to report in a reasonable timeframe, we can only do so once we have carefully considered all the evidence. Knowing the importance attached to this Inquiry, I am sure you would agree that it is preferable for us to take our time and follow the evidence rather than rush to meet a particular deadline.

In terms of witnesses, as our public call for evidence in September 2014 made clear, the ISC welcomes contributions from anyone with information relevant to our Inquiry, including from detainees such as Shaker Aamer. We encourage anyone who wishes to submit evidence to contact the Committee.

**Intelligence and Security Committee of Parliament**  
35 Great Smith Street, London SW1P 3BQ  
<http://isc.independent.gov.uk/>

This information is exempt from disclosure under the Freedom of Information Act 2000 and may be subject to exemption under the Data Protection Act 1998 and to restrictions on disclosure under the Intelligence and Security Act 2013.

I am copying this reply to those to whom you copied yours.

*Yours sincerely*

**DOMINIC GRIEVE**



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