EHRC Submission to the UN Committee Against Torture: response to list of issues on the UK's 5th periodic report

April 2013

Introduction

The Equality and Human Rights Commission (the EHRC / the Commission) submitted a full and comprehensive report to the Committee in August 2012 in response to the UK's 5th periodic report[1]. A great many of the issues we raised in that report have been included in the Committee's list of issues for the forthcoming examination. We do not repeat here everything we said in our earlier report; but we have taken this opportunity to provide the Committee with further information on some of those issues, updated where appropriate, and to summarise or highlight the most relevant evidence from our earlier report. We also raise two issues for the Committee's consideration that are not raised in the Committee's list of issues.

We are fortunate in Britain to live in a democratic country where people are generally free to live without fear. The state operates within a clear and comprehensive legal framework which protects citizens' rights and seeks to punish those who commit crimes, including torture. However, as in all societies, there is always room for improvement. In this report, the EHRC, as the NHRI for Great Britain and one of the three 'A' status NHRIs for the UK, sets out evidence on the issues, addressed to the government, which the Committee Against Torture has selected to be the basis of the forthcoming examination of the UK. In doing so we necessarily focus on areas of possible non-compliance with UNCAT where the government could act to improve the situation. We do not list the far more numerous ways in which the UK does comply with the requirements of the Convention which are outside the scope of this report, and are set out in the UK's 5th periodic state report[2] and in the government's own response to the Committee's list of issues.

This report covers the legal framework, policies and practices in Britain (England, Scotland and Wales) that under the UK's constitutional arrangements are the responsibility of the UK Government or have been devolved to the Welsh Assembly. This means that it includes issues that affect Britain and also issues that are specific to England and Wales. For clarity we explain in the subject headings issues that are restricted to England and Wales.

The report does not cover matters that the UK Government has devolved to the Scottish Parliament, or that relate solely to Northern Ireland. Those are within the statutory remit of the Scottish Human Rights Commission and Northern Ireland Human Rights Commission.

The EHRC has no remit in the Crown Dependencies or Overseas Territories so issues specific to those countries and regions are not covered in this report.

[1] Available to download at http://www.equalityhumanrights.com/human-rights/our-human-rights-work/international-framework/un-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment/

[2] Available at http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GBR.5.pdf

Articles 1 and 4

Q1. Are there any plans to formally incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Convention) into domestic law as was done for the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA)? If not, how does the State party ensure that the Convention is fully applicable in the domestic legal system, and that its provisions are fully incorporated into national legislation?

The UK has ratified several international conventions that are not part of domestic law, but by ratifying them, the UK commits itself to being legally bound by their obligations, and respecting and implementing their provisions. These include the two specific conventions which prohibit torture and inhuman and degrading treatment: UNCAT and the European Convention Against Torture.

The UK has also ratified a number of international treaties that provide further protection against torture and ill-treatment. For example, it has ratified the four Geneva Conventions and their two additional protocols,[3] which are the international laws that define the basic rights of civil and military prisoners and civilians during war and the obligation not to torture prisoners in armed conflicts.

Importantly, the legal protections provided for by UNCAT are also supported by the provisions of the European Convention on Human Rights (ECHR) which has been incorporated into UK domestic law via the Human Rights Act 1998 (HRA). Any failure to adhere to the Articles of UNCAT will almost inevitably also breach Article 3 ECHR. This means that individuals are able to seek a human rights remedy through the national courts for any action which may constitute torture or inhuman, cruel or degrading treatment or punishment (CIDT), in addition to any compensation claim they may have under the common law (such as for assault or false imprisonment) even though they are unable to rely directly on UNCAT itself in the UK courts as the Convention has not been incorporated into domestic law.

On the Commission's analysis the provisions of the Convention are largely incorporated into the domestic legislative framework. With the exception of a few issues (such as section 134(4) of the Criminal Justice Act 1988[4]) issues with full compliance with the Convention derive from imperfect adherence to existing laws and standards rather than the need for legislative reform.

[3] Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea. Convention (II) relative to the Treatment of Prisoners of War. Convention (IV) relative to the Protection of Civilian Persons in Time of War.

[4] see answer to question 6 below at page 7

Article 2

Bill of Rights (Q2)

Q2. Given the national debate about the drafting of a Bill of Rights and the possible repeal of the Human Rights Act 1998, please confirm that the Bill of Rights will not, if enacted, repeal the incorporation of the ECHR into domestic law, weaken the mechanisms for its enforcement nor undermine the prevention of torture, cruel, inhuman or degrading treatment or punishment.

Neither the criminalisation of torture in the UK, nor the systems for preventing torture or CIDT are dependent on either UNCAT or ECHR being directly incorporated into domestic law.

Where a victim has suffered a disabling physical or mental injury as a result of any criminal act, they may be able to claim compensation under the Criminal Injuries Compensation Scheme.[5] However, awards under that scheme are relatively low and victims will usually also need to rely on their Article 3 ECHR rights in order to gain adequate compensation for a violation. They are also able, in areas of law within European Union competence, to rely on their rights under the EU Charter of Fundamental Rights. If the HRA were to be repealed the availability of a human rights remedy in relation to some types of violation of the right to be protected from and not subjected to torture and CIDT could be compromised, depending on whether there is a comparable provision in any replacement Bill of Rights that might in the future be enacted. The potentially relevant common law remedies are framed in a totally different way, so that for instance, a victim claiming compensation for degrading treatment might not have a cause of action at common law.

The EHRC submitted its views to the consultations on the Green Paper on a Bill of Rights and Responsibilities[6] and the Commission on a Bill of Rights.[7] We have argued that we already have a Bill of Rights embodied in the HRA and should therefore keep the HRA. The Commission believes the HRA is essential for the protection of human rights and is well crafted to balance Britain's international obligations with our constitutional conventions.

The Commission on a Bill of Rights published its conclusions in December 2012[8] but was not able to reach any consensus on a way forward. The government does not plan to respond to the Commission's report.[9]

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[5] Details available at http://www.justice.gov.uk/downloads/victims-and-witnesses/cic-a/how-to-apply/cica-guide.pdf.

[6] Equality and Human Rights Commission, 2010. *HRA Plus: Human Rights for 21st-century Britain*.

[7] Equality and Human Rights Commission, 2011. *The case for the Human Rights Act*.

[8] Available from http://www.justice.gov.uk/about/cbr

For the duration of this parliament however there is no longer any proposal to repeal the Human Rights Act or enact replacement human rights legislation.

Extraterritoriality

Q4. The European Court of Human Rights has ruled in two judgments (Al-Skeini and others v. the UK, and Al-Jedda v. the UK, Grand Chamber Judgment, 7 July 2011) that the United Kingdom had jurisdiction in relation to acts committed abroad1 under Article 1 of the European Convention on Human Rights. Please provide information on steps taken to abide by these judgments, including any public acknowledgement made and amendments of rules and regulations. Please also indicate whether the interpretation of the State party on the extraterritorial applicability of the UN Convention against Torture has been revised accordingly and in light of the General Comment No. 2 (para.7).

The EHRC agrees with the Committee's interpretation of the extent of the jurisdiction of UNCAT as expressed in its General Comment No 2 and in its 2004 Concluding Observations:

"the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the de facto effective control of the State party's authorities."

Our legal opinion is that the extent of the applicability of UNCAT will mirror that of other international treaty obligations. There is guidance from the European Court of Human Rights (ECtHR) as to the applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), most recently in the Al-Skeini case in 2011. The ECtHR found that the UK had jurisdiction over the city of Basra in Iraq in 2003. Therefore, the UK's human rights obligations applied to its behaviour in that territory.[10]

The government continues to litigate cases concerning the extent of the jurisdiction under the ECHR, and thus the Human Rights Act (HRA). *Pritchard v the UK* is pending before the European Court of Human Rights. It concerns whether a UK soldier, off-base and on duty in Iraq is covered by the protections of the HRA. Following a request from the UK government that case is currently stayed pending the outcome in *Susan Smith and others v Ministry of Defence* which was heard in the UK Supreme Court in February 2013. Judgment is awaited. In that case the court will determine the extent of Article 1 ECHR jurisdiction and Article 2 protection afforded to UK armed forces when they are on operations abroad during a conflict.

The EHRC has intervened in both *Pritchard* in the European Court of Human Rights and *Smith* in the UKSC to argue that soldiers are subject to the UK's jurisdiction as a

[9] HC Deb, 22 January 2013, c215W

[10] *Al-Skeini v. the United Kingdom*, European Court of Human Rights Grand Chamber (55721/07).

matter of domestic and international law. When exercising state powers extraterritorially they remain subject to the jurisdiction of the state, and so covered by the HRA.

UK businesses operating abroad

Q5. Please indicate how the State party means to reconcile its obligations under the Convention with the guidance given by the State party to business enterprises that "the UK does not owe legal obligations to ensure that UK companies comply with UK human rights standards overseas". Are transnational corporations registered in the State party held accountable for violations of the Convention outside of the United Kingdom? Are remedies provided to the victims? Please indicate whether private military companies acting overseas and contracted by the United Kingdom receive a human rights training similar to that of British military forces before deployment and whether they abide by the same set of Standard Operating Procedures.

In June 2012 the Commission made a statement to the UN Human Rights Council on the International Coordinating Committee of National Human Rights Institutions Working Group on Business and Human Rights Action Plan[11].

The Commission supports:

- using the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (hereafter Guiding Principles) as a common reference point in a rapidly developing field;
- using the Guiding Principles to promote accountability;
- building an environment that is receptive of the Guiding Principles.

The Commission supports the commitment of the UK government to implementing the Guiding Principles as well as promoting international compliance with the Principles. We welcomed the opportunity to comment on the Government's draft strategy on business and human rights in 2012, and its commitment to involving and consulting NHRIs and civil society in developing and implementing further plans. We also welcome the publication of a toolkit designed to help UK overseas missions promote good conduct by UK companies operating overseas and the Overseas Business Risk service, which in conjunction with UK Trade and Investment the alerts companies to the possible risks of operating in certain overseas markets and which included human rights issues.

To implement the action plan of the ICC Working Group on Business and Human Rights, the Commission has engaged in a series of activities to:

(a) Provide guidance and tools to national institutions on business and human rights.

[11] A/HRC/20/NI/9

(b) Engage with stakeholders on human rights and the role of national institutions in implementing international and regional initiatives on business and human rights.

(c) Produce and deliver awareness and outreach activities and products.

(d) To develop, pilot, implement and evaluate regional training and tools in collaboration with regional networks.

In September 2012 the House of Commons Foreign Affairs Committee also welcomed the Government's intention to develop a Business and Human Rights Strategy. It commented however that "the Strategy will be couched exclusively in terms of guidance and voluntary initiatives, which do not on their own meet the spirit of the UN Guiding Principles on Business and Human Rights, which envisage a mix of policies, legislation, regulation and adjudication. We recommend that the Government should not dismiss out of hand the extension of extra-territorial jurisdiction to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. We recommend that the Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights records overseas."[12]

Sections 134(4) and 134(5) Criminal Justice Act 1988

Q6. Please explain what steps has the State party undertaken to review its statute and common law, including Sections 134(4) and 134(5) of the Criminal Justice Act (CJA) 1988, to ensure full consistency with the obligations imposed by the Convention, as recommended by the Committee in the last concluding observations (CAT/C/CR/33, para. 4(a)(ii)).

In the most recent Concluding Observations to the UK the Committee was concerned that the 'lawful authority excuse' in section 134(4) of the Criminal Justice Act 1988 leaves a gap between the requirements of the Convention and UK domestic law.

The Commission noted the government's position in the State Report to the Committee in September 2011, that it believes s.134 is compatible with the Convention, but that it wouldl reconsider the issue following the conclusions of the Detainee Inquiry.[13] This consideration was not part of the Terms of Reference of the Inquiry, but in any event the Inquiry has since been halted.

In the Commission's view there can never be a "lawful authority, justification or excuse" to any charge of intentional infliction of severe pain or suffering and we

[12] House of Commons Foreign Affairs Committee Third Report of Session 2012-13, the FCO's human rights work in 2011, HC 116. Available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf

[13] State report para 28.

cannot envisage any situation in which the defence is intended to operate. The Commission's view is that s.134(4) should be repealed. Should any action be taken in response to an immediate threat the common law defence of 'self-defence' would be available in any event.

Consolidated Guidance

Q7. The Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees (Guidance) retains the possibility for Ministerial approval in some cases where torture may be required to extract information "crucial to saving lives". In light of the fact that "no exceptional circumstances […] may be invoked as a justification of torture" (art. 2(2)), please explain whether the State party intends to review the Guidance. Has Ministerial approval been sought since the last concluding observations?

Following allegations of complicity by the security and secret intelligence services in torture abroad[14], the UK government published guidance setting out the approach that British intelligence officers should take to obtaining information from individuals detained overseas.[15]

The guidance sets out the steps which must be taken by intelligence officers before they interview detainees held by other states, seek intelligence from detainees in the custody of foreign countries or solicit the detention of a person by a foreign country.

The Commission and a victim of hooding in Iraq, Alaa' Nassif Jassim Al-Bazzouni, brought legal challenges against the guidance. In Al-Bazzouni's case the courts found that this guidance did not properly reflect international legal obligations. The Commission argued that to determine whether an individual officer or the state could be responsible for a breach of Article 3 ECHR, the correct legal test is whether officers were aware or had reason to believe that there was a 'real risk' of torture. This would be the case according to both domestic criminal law and international human rights law. The guidance prohibits officers from acting when there is a 'serious risk', which the Commission argued was a higher threshold and therefore legally incorrect. The judges found that the distinction between the two terms was 'elusive' and dismissed the claim. Mr Al-Bazzouni's claim was based on the contention that the guidance permitted hooding of detainees in certain circumstances

[14] As described in detail in our August 2012 report to the Committee at pages 12 – 16.

[15] HM Government, 2010.*Consolidated guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees*. London: Cabinet Office. Available at: http://www.parliament.uk/deposits/depositedpapers/2011/DEP2011-1796.pdf.

when the UK's law and policy prohibit hooding at all times. His claim succeeded and the guidance has been amended accordingly.[16]

The proceedings were not able to challenge directly compliance of the guidance with Art.2 as UNCAT has not been incorporated directly into UK law.

Pre-charge detention

Q8. The Protection of Freedoms Act 2012 allows for a 14 day pre-charge detention period for persons suspected of terrorism-related offences and the Home Secretary retains a power to extend this to 28 days. Please explain how the State party ensures that all individuals enjoy fundamental legal safeguards, including the right to be brought promptly before a judge, from the very outset of the de facto deprivation of liberty.

The Protection of Freedoms Act 2011 retains the 14-day limit for terrorism suspects, with judicial authorisation, which means pre-charge detention for people suspected of terrorism-related offences are longer than are usually allowed to detain suspects under English[17] and Scots criminal law.

It is also significantly longer than pre-charge detention periods in other countries, such as the US (2 days), Canada (1 day), Germany (2 days) and Spain (5 days).[18] The Home Secretary retains a limited power in an emergency when parliament has been dissolved or at the start of a new Parliament (i.e. before the Queen's speech) to extend pre-charge detention to 28 days.[19]

The EHRC has argued that the maximum period of pre-charge detention in terrorism cases should be four days, the same as under English criminal law[20]. The EHRC considers any extension to 28 days, even in an emergency, would risk breaching Article 16 UNCAT as well as Article 5 ECHR.[21] Both the UN Human Rights Committee and the UN Human Rights Council have expressed concerns about the extended pre-charge detention periods.[22] They recommend strict time limits, strengthened guarantees and that, on arrest, terrorist suspects should be promptly

[16] *Equality and Human Rights Commission v. the Prime Minister & Ors and Alaa' Nassif Jassim Al Bazzouni v. the Prime Minister* [2011] EWHC 2401 (Admin)

[17] English law applies in England and Wales

[18] Liberty, July 2010. *Terrorism pre-charge detention comparative law study* . It should be noted that direct comparisons of periods of detention are difficult due to the differing criminal justice systems.

[19] Terrorism Act 2000 Schedule 8 paragraph 38 (as amended by the Protection of Freedoms Act 2012)

[20] In Scotland the initial period is 12 hours, with the possibility of extending to a maximum of 24 hours (Criminal Procedure (Legal Assistance, Detention and Appeals)(Scotland) Act 2010.

[21] See also: JUSTICE, December 2011. *Protection of Freedoms Bill, Briefing for the House of Lords Grand Committee Stage*.

[22] ICCPR Concluding Observations – 93rd Session UK review, 30 July 2008.

informed of any charge against them, and tried within a reasonable time or released.[23]

The UK independent reviewer of counter terrorism measures has recommended that bail be available to those detained under the Terrorism Acts.[24]

Use of force during immigration removals

Q9. In light of the death of Jimmy Mubenga in 2010 (while being forcibly removed by a private contractor), and considering the numerous allegations of abuse by private contractors, will the State party consider ending the use of private contractors for enforced removals? Please provide information on the investigations and prosecutions against those responsible for the death of deportees?

An independent review commissioned by the UK government in 2010 to investigate alleged abuse of detainees by contractors of the UKBA found that: 'There should be a review of the training provided for the use of force, and of the annual retraining, to ensure that, in any case in which force is used, officers are trained to consider constantly the legality, necessity and proportionality of that use of force'.[25]

In October 2010, Jimmy Mubenga died while being deported to Angola. He died 'while being heavily restrained by security guards'[26] employed by G4 Security, a private firm, and that 'he complained of breathing difficulties before he collapsed'.[27] On 17 July 2012 the CPS announced that none of the security guards would be prosecuted.

In its report published on 26 January 2012, the House of Commons Home Affairs Select Committee found that potentially lethal head-down restraints may still be used, even though they are not authorised. The Committee recommends urgent guidance be given by the Home Office to all staff in enforced removals about the dangers of seated restraint techniques in which the subject is bent forward. It also

[23] UN Human Rights Council Universal Period Review, 7-18 April 2008. ICCPR concluding observations – 93rd Session UK review, 30 July 2008.

[24] Report on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. David Anderson QC; June 2012

[25] N. O'Loan, 2010. *Report to the United Kingdom Border Agency on "Outsourcing Abuse."* Available at: http://www.gla.ac.uk/media/media_147177_en.pdf..

[26] Investigations are also ongoing against G4S security guards involved in the violent restraint of Cameroonian Ludovic Paykong on a flight in March 2010, and of Colombian Jose Gutierrez, just days before Jimmy Mubenga's death.

[27] See The *Guardian*, 16 March 2011. *Jimmy Mubenga: security firm G4S may face charges over death*. Available at: http://www.guardian.co.uk/uk/2011/mar/16/mubenga-g4s-face-charges-death..

recommends that the Home Office commission research into control and restraint techniques which are suitable for use on aircraft.[28]

Reports of abuses since the change of contractor continue.[29] In its recently published Annual Report for 2011 -2012 the UK's OPCAT National Preventative Mechanism recommended that "An accredited system of restraint should be developed for use on board aircraft. All escorting staff should receive accredited training in the approved restraint techniques."[30]

Violence against women (England and Wales)

Q10. What steps have been taken to ensure that all cases of violence against women are swiftly investigated, prosecuted and punished and that their victims receive immediate protection, redress and compensation?

Since the IPCC was created in 2004, it has recorded 26 cases of women who had prior contact with the police about domestic violence incidents, who were subsequently killed by their partners or ex-partners.

The 2009/10 annual report of the Independent Police Complaints Commission (IPCC) noted an increasing number of deaths in domestic violence cases in England and Wales where the victim was in prior contact with the police.[31] The 2011/12 report notes 'a steady increase in the number of referrals and complaints made to the IPCC has highlighted incidences of violence and abuse against women[32], and the IPPC retain the issue as a high priority in its current workplan. .In 2010, the IPCC carried out an investigation into the way Lancashire Constabulary failed to respond to calls from Ms A, a woman that the police knew was a repeat victim of domestic violence. The IPPC's investigation concluded that the police failed to identify the vulnerability of the victim and opportunities were missed to give her the protection she needed.[33]

There have also been cases of so-called 'honour' killings reported where the police knew of threats to the victim but did not respond adequately. The most well-known of those cases is that of Banaz Mahmod who was gang-raped and killed in a brutal

[28] House of Commons, 2012. Home Affairs Committee Rules governing enforced removals from the UK – Eighteenth Report of Session 2010-12. London: The Stationery Office.

[29] See also See the House of Commons Home Affairs Committee Eighteenth Report of Session 2010-2012 *Rules governing enforced removals from the UK* (17 January 2012) and House of Commons Home Affairs Committee, *The Work of the UK Border Agency*, 4th Report of Session 2010-11, 21 December 2010, for evidence of the Independent Police Complaints Committee about Reliance, the company that now holds the contract.

[30] National Preventative Mechanism Third Annual Report page 22

[31] Independent Police Complaints Commission, 2010. *Annual Report 2009/2010.*

[32] Independent Police Complaints Commission 2012, *Annual Report 20011/2012 p. 25*

[33] Independent Police Complaints Commission, 2010. *Investigation into contact with Lancashire Constabulary regarding the safety of Ms A on September 2010*.

'honour' killing in January 2006. Five men including her father and uncle were convicted of the killing. However, the IPCC investigation into the way the police handled her complaints identified that opportunities may have been missed to prevent the tragedy and that Banaz Mahmod was let down badly by the service she received from the police.[34]

The Stern Review (2010) into the handling of rape allegations in England and Wales exposed areas in which criminal law is not being enforced by the police. It noted that although 58% of people charged with rape are convicted, only 6% of rapes initially reported to the police get to the point of conviction.[35] In 2006 statutory charging was introduced in England and Wales. Under this scheme, police officers are provided with access to Crown Prosecution Service (CPS) prosecutors for advice and charging decisions. Since its introduction, around half of all cases reported to the police have been referred to the CPS. This still suggests that a large proportion of cases reported to the police do not progress any further.[36]

The Home Office review on the criminal justice system's response to rape victims was heavily critical of the way police handled and prosecuted rape complaints. For example, it found that several women believed that the police had not properly investigated their cases; and many women reported that the police did not believe them, particularly if they had previous criminal convictions or had been drinking.[37]

The Stern Review also argued that the CPS's current policies are the right ones, but that the policies have not been fully implemented. The CPS's target for reducing 'unsuccessful outcomes,' influences their decisions to take forward to trial only cases with the strongest evidence. The Review found that cases were not properly prepared, as prosecution lawyers were often not ready for what might be disclosed about the complainant, and did not respond effectively to material presented by the defence.

Despite these limitations, since the CPS adopted its own Violence Against Women and Girls (VAWG) strategy the volume of prosecutions for all VAWG offences rose from 68,930 in 2006-07 to 95,257 in 2011, with a fall to 91,466 in 2012 - although this is in the context of a fall in volume across all Crown Prosecution Service cases

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[34] http://www.ipcc.gov.uk/news/Pages/10122008_mahmoddisciplineoutcome.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Releases

[35] Government Equalities Office, 2010. The Stern Review: a report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales.

[36] Equality and Human Rights Commission, 2010. *Triennial Review: How fair is Britain?* Page 139.

[37] S. Payne, 2009. *Rape: The Victim Experience Review,* London: Home Office. Available at: http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/vawg-rape-review/rape-victim-experience2835.pdf?view=Binary.

prosecuted of 6.5 per cent. Convictions fell by 2% in 2012 to 66,860, although this follows a rise of around 50% in convictions since 2006-07.

In addition, domestic violence attrition has fallen by 1.5%, achieving over 73% successful outcomes and rape attrition has fallen by 4% achieving 62.5% successful outcomes[38]. This demonstrates that practices can be improved by adopting a strategic approach and with strong leadership.Sentencing guidelines recognising the seriousness of domestic violence were issued in 2006, and the law on murder was reformed to limit the scope of the 'provocation defence' as an excuse for domestic homicide in 2009. The key issue is not in the law or the policies themselves, but in their effective implementation.

Article 3

Transfers in Afghanistan

Q12. In view of the risk of torture that detainees face in Afghanistan, please explain whether the State party considers extending on a long term basis the current moratorium on the transfer of prisoners detained by UK military forces in Afghanistan to Afghan authorities.

Following an court application brought by Serdar Mohamed to prevent his transfer in Afghanistan from UK to Afghan custody in November 2012 the government reinstated the moratorium blocking transfers of detainees from UK to Afghan custody on the grounds that they would be at a real risk of torture in the Afghan prison in Lashkar Gah. The Secretary of State has given an undertaking to give 21 days notice before resuming transfers.[39]

Diplomatic assurances

Q13. Please provide updated information on the total number of cases of extradition or removal subject to the receipt of diplomatic assurances or guarantees that have occurred since 11 September 2001, disaggregated by receiving State1. Please explain if the monitoring of persons removed under Memoranda of Understanding or diplomatic assurances to Algeria, Ethiopia, Jordan, Lebanon, Libya or Morocco1 includes the possibility of unannounced and unrestricted visits and private meetings with the person deprived of his liberty and if independent medical expertise is granted1. Please describe how the State party assures itself of the independence, effectiveness, and impartiality of monitoring conducted by third parties?

[38] Attrition refers to the process by which reported cases are lost from the legal process, and do not result in a criminal conviction. Violence against women and girls crime report 2011-12, Crown Prosecution Service http://www.cps.gov.uk/publications/docs/cps_vawg_report_2012.pdf

[39] R (Mohamed) v Secretary of State for Defence [2012] EWHC 354 (Admin).

Q14. Please indicate whether similar Memoranda have been or are being elaborated with other States since the submission of the State party's periodic report and explain how these are compatible with the State party's obligations under article 3 of the Convention.

The UK government uses memoranda of understanding and diplomatic assurances (in individual cases) to try to mitigate risks of torture and other ill-treatment that would otherwise prevent the transfer of people, in particular terrorist suspects.[40]

The UK government has signed an exchange of letters with the Algerian president to deport individuals on a case-by-case basis.[41] The agreement with Libya was held to be invalid by the UK courts in 2008 and has not been relied on since then. Ten people have been effectively deported from Britain following the receipt of diplomatic assurances. Nine were to Algeria, and one to Jordan.

In January 2012, the European Court of Human Rights approved the memorandum of understanding between the UK and Jordan, deciding that despite some room for improvement the agreement would ensure that Abu Qatada would not be exposed to a real risk of torture if he were deported. However, it held that his deportation would be in breach of Article 6 ECHR (the right to a fair trial), in that evidence obtained through the use of torture would be admitted in his retrial in Jordan.[42] The government sought further assurances from the Jordanian government about the prospect of a fair trial. It is making strenuous efforts to deport Abu Qatada as soon as the courts rule it may do so.[43] On 27 March 2013 the Home Secretary lost her appeal in the Court of Appeal, the judges finding that he remains at risk of being tried using evidence obtained by torture[44]. The Home Office announced that the government remains determined to deport Abu Qatada[45].The government has also been seeking to rely on assurances obtained from Ethiopia to deport 'J1' who had been connected to a group of Islamist extremists. However, on 27 March 2013 the Court of Appeal determined that the Special Immigration Appeals Commission had erred in allowing an undertaking from the Secretary of State regarding the timing of deportation to cut down the appellant's legal protection, and that deportation would be a violation of Article 3 ECHR.

[40] Redress, 2008. *The United Kingdom, torture and anti-terrorism: where the problems lie*. London: Redress. Page 51..

[41] The exchange of letters can be viewed on the FCO website. See Foreign and Commonwealth Office, 'Targeting Terrorist Activity'. Available at: http://www.fco.gov.uk/en/global-issues/counter-terrorism-policy/deportation-with-assurances/.

[42] *Othman (Abu Qatada) v. the United Kingdom* (Application no. 8139/09) 17 January 2012.

[43] Court of Appeal, 20 March 2013.

[44] http://www.bbc.co.uk/news/uk-21955844

[45] Othman (aka Abu Qatada) v Secretary of State for the Home Department [2013] EWCA Civ 277

As well as the UN Committee Against Torture, both the UN Human Rights Committee and the Special Rapporteur have repeatedly asked the UK government to review the memorandum of understanding procedure.[46]

The latest review on the use of these assurances took place in 2010 as part of the Home Office review of counter-terrorism and security powers. They rejected submissions from human rights organisations requesting the abolition of these assurances, and the government decided that the assurances should remain in place.

In September 2012 the House of Commons Foreign Affairs Committee was critical of the government's continued reliance on deportation with assurances, concluding "that DWA arrangements would command greater confidence if both parties to the agreement were to have signed the Optional Protocol to the UN Convention Against Torture (OPCAT), which would signify that the states concerned permitted regular independent monitoring of places and conditions of detention. We recommend that Parliament should be informed of the names of those responsible for monitoring conditions, and the arrangements made for follow-up monitoring. We also believe that DWA arrangements are of such significance that the text of each future arrangement should be laid before Parliament and should not come into force before 14 sitting days have elapsed, during which time Members may signify any objection."[47]

Deportations to Sri Lanka

Q15. According to information before the Committee, several Tamil asylum seekers were subjected to torture upon their return to Sri Lanka. Please explain if deportations of Tamil asylum seekers have been halted since then? How many Tamil asylum seekers have been removed and deported to Sri Lanka since 2010?

On 28 September 2011 UK Border Agency (UKBA) returned 50 people, including 42 who had previously made asylum applications, to Sri Lanka. A further charter flight operation took place on 15 December 2011 when 50 Sri Lankans were removed. A further charter flight took place on 28 February 2012.

Investigations by Human Rights Watch have found that some failed Tamil asylum seekers from the UK and other countries have been subjected to arbitrary arrest and torture upon their return to Sri Lanka. Human Rights Watch has documented 13 cases in which Tamil failed asylum seekers were subjected to torture by government

[46] United Nations, 2008. *Human Rights Committee: Consideration of reports submitted by States parties under Article 40 of the Covenant.*

[47] House of Commons Foreign Affairs Committee Third Report of Session 2012-13, the FCO's human rights work in 2011, HC 116. Available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf

security forces on return from various countries, most recently in February 2012 and have called on the UK to suspend deportation flights to Sri Lanka.[48]

In September 2012 the House of Commons Foreign Affairs Committee was critical of the government's lack of urgency and transparency on the issue, stating:

"…there are persistent allegations that asylum-seekers who have been returned to Sri Lanka by the UK have suffered torture and ill-treatment. When we tried to explore the issue, the Government was not particularly forthcoming about its efforts—in general and in specific cases—to assess the level of risk to the safety of those who are removed from the UK. We found this unsatisfactory. "[49]

Freedom form Torture reported that between the period May 2009 to September 2012 the UK granted refugee status to at least 15 people who were previously removed from the UK to Sri Lanka where they claim to have been tortured or otherwise harmed.[50]

In October 2012 a number of deportations to Sri Lanka were prevented when interim orders were issued by the High Court.[51]

Asylum process - the Detained Fast Track

Q16. The UN High Commissioner for Refugees and the Council of Europe's Commissioner for Human Rights (among others) made important recommendations to improve the quality of first-instance asylum decisions made in the Detained Fast Track (DFT) process. Please explain what measures has the State party taken to implement these recommendations.

Routing asylum seekers who claim to be survivors of torture into fast track detention is inappropriate, because the process is designed to deal with cases that can be resolved quickly.[52] However, torture survivors may enter the system because the information needed to assess suitability for fast track is usually only available at the asylum interview which takes place once the person is in detention. Torture survivors are unlikely to realise that they will need to produce 'independent evidence of torture' at the screening interview to avoid being routed into the fast track process, or in order to establish their protection claim. The majority will have arrived in Britain

[48] http://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka

[49] House of Commons Foreign Affairs Committee Third Report of Session 2012-13, the FCO's human rights work in 2011, HC 116. Available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf

[50] UKBA response to FOI request by Freedom from Torture, 12 February 2013. http://www.freedomfromtorture.org/news-blogs/7104

[51] Reported at http://www.guardian.co.uk/uk/2012/oct/23/sri-lanka-asylum-seekers-deportation-halted

[52] Human Rights Watch, 2010. Fast-Tracked Unfairness Detention and Denial of Women Asylum Seekers in the UK. Page 34.

following a long journey and will not have received legal advice, or sought independent evidence of torture before the interview.

The Independent Chief Inspector of Borders and Immigration observed interviews taking place in an open plan environment, with applicants in the queue being able to hear interviews taking place and thus compromising confidentiality. In addition, an applicant may not mention that they have been tortured in a brief interview when they may have feelings of shame about what they have experienced and when they need time to build some level of trust. Some will also have been tortured by authority figures, which can make it difficult for a UKBA officer to elicit such information, even if they were trained to do so.[53]

In 2006, the Home Office acknowledged that the fast track procedure was not sufficiently robust to identify complex claims.[54] In 2008, the UN Refugee Agency reported that many unsuitable cases were fast tracked due to a lack of clear guidance about which cases could be 'decided quickly'.[55]

In 2010, the UNHCR found that there are inadequate screening processes which lead to complex cases and vulnerable applicants entering the fast track system.[56] It found that the UKBA did not always follow the appropriate methodology for assessing each element of an asylum applicant's case.[57]

The Commission recommends that the screening process is extensively reviewed to ensure that vulnerable people and torture survivors are not routed incorrectly into the DFT.

Article 11

Immigration Detention - Rule 35

Q17. Her Majesty's Chief Inspector of Prisons has repeatedly found breaches of Home Office policy and Detention Centre Rules in the failure of the UK Boarder Agency to maintain proper systems to establish whether immigrants detained bear signs of torture. Please detail the measures taken to address this situation and explain whether an independent assessment of the progress made in implementing Rule 35 of the Detention Centre Rules was conducted.

[53] For more info: http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf

[54] Ibid. Page 2.

[47] Ibid. Page 39 quoting from UNHCR, 'Quality Initiative Project, Fifth Report to the Minister', March 2008. Pp. 22-23.

[56] Ibid, Page 4.

[57] Ibid. Page 2.

The UKBA is subject to guidance intended to identify victims of torture and people with mental health conditions and to avoid their detention where it could exacerbate their distress. Anyone detained must be examined by a qualified GP within 24 hours of arriving in a detention centre.[58] Rule 35 of the Detention Centre Rules 2001 requires that doctors, 'report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention'.[59] Such individuals would include those whose mental health condition or disability cannot be 'satisfactorily managed' in detention.[60] Rule 35(3) also requires doctors to report to case managers any detained persons who may have been the victims of torture, who must notify the Home Office without delay. The UKBA guidance notes that independent evidence of torture should weigh strongly in favour of release.[61] An unsupported torture claim does not automatically prevent detention.

Her Majesty's Chief Inspector of Prisons has repeatedly found breaches of Home Office policy and Detention Centre Rules in the failure to maintain proper systems to establish whether detainees bear signs of torture, such as scarring or post-traumatic stress disorder.[62]In his report following the 2011 inspection of Harmondsworth IRC, HM Chief Inspector of Prisons listed as one of the 'main concerns' that "There were a number of people in the centre with mental health problems. There was no mental health needs analysis and a new mental health service. Two detainees with mental illness had recently been released after the High Court had found them subject to inhuman and degrading treatment in breach of the European Convention on Human Rights."[63]

In February 2011, the UKBA published an audit to 'address the perception among some NGOs that the UK Border Agency fails to comply with … policy and detains thousands of torture victims every year.'[64] The audit found that in a two month sample, officials responded in just 35% of cases within the two working-day time limit required by the policy. However this analysis only looked at timescales and did not cover the content of the reports, the quality of the detention review, the assessment

[58] Rule 34 Detention Centre Rules 2001.'

[59] Detention Centre Rules 2001.

[60] UKBA, Enforcement Instructions and Guidance. Para 55.10.

[61] UKBA, DFT and DNSA – Intake Selection (AIU Instruction), para 2.3.

[62] See, for example, HM Chief Inspector of Prisons reports on Harmondsworth IRC (11-15 January 2010), Brook House IRC (15-19 March 2010), Colnbrook IRC and short-term holding facility (16-27 August 2010), Tinsley House IRC (7-11 February 2011), Campsfield House IRC (16-18 May 2011) and Haslar IRC (31 May- 3 June 2011).

[63] http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2011.pdf

[64] UK Border Agency, Detention Centre Rule 35 Audit, 4 February 2011. Available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/detention-centre-rule-35-audit/.

of medical evidence or the reasons to maintain detention in 91% of the cases it examined.[65]

A separate study by the charity Medical Justice found 50 victims of torture held in immigration detention during the period of May 2010 - May 2011[66]. The charity reported on the cases of 50 people who have medical evidence of the torture they sustained, 14 of whom now have been granted leave to remain in the UK. In only one case did Rule 35 trigger a detainee's release. All but two of the 50 have now been released. Those surveyed were in detention for an average of 226 days.

Prison overcrowding (England and Wales)

Q18. Please explain why privately run prisons tend to hold a higher percentage of prisoners in overcrowded conditions.

Q34. In its report, the State party recognizes that "even if its sentencing and rehabilitation reforms are successful in reducing the prison population, it will not be possible to create enough prison places to fully address the problem of overcrowding." How will this problem be addressed when prisons are closed and plans to renew the prison estate put on hold? Please also provide information for Scotland and Northern Ireland.

In 2010-11 an average of 20,211 prisoners were held in overcrowded accommodation, accounting for 24% of the total prison population. Within this total the number of prisoners doubling up in cells designed for one occupant was 19,268 (22.7% of the total prison population) and there were on average 829 prisoners held three to a cell in cells designed for two (1% of population). [67]

The rate of overcrowding in male local establishments is still almost twice the national rate. Private prisons have held a higher percentage of their prisoners in overcrowded accommodation than public sector prisons every year for the past fourteen years. In 2011-12 the private prisons average was 30.2%, compared to an average of 23.3% in the public sector. Forest Bank, Doncaster and Altcourse have particularly high rates of overcrowding, with 39.8%, 58.6% and 69.8% of prisoners held in overcrowded accommodation respectively.[68]

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[65] See, for example, Freedom from Torture, 'UKBA review of safeguard to release torture victims from detention fails to deliver' (1 March 2012) available at: http://www.freedomfromtorture.org/news-blogs/3436. Medical Justice, March 2011. *Ignored detention centre medical reports means torture survivors left to rot.* Page 4..

[66] "*The Second Torture": The Immigration Detention of Torture Survivors'*, Medical Justice 22 May 2012; available from http://www.ein.org.uk/news/medical-justice-report-second-torture-immigration-detention-torture-survivors

[67] Prison Reform Trust. *Bromley Briefings Prison factfile.* June 2012 page 17

[68] Ministry of Justice (2012) National Offender Management Service Annual Report 2011-12: Prison performance digest 2011-12, London: Ministry of Justice

Articles 12-13

Allegations of torture and ill-treatment in Iraq and Afghanistan

Q21. With reference to the previous request by the Committee's Rapporteur on follow-up to concluding observations, please provide comprehensive information on all investigations undertaken by the State party into allegations of torture and ill-treatment by its forces in Iraq and Afghanistan; the results of these investigations; the number of resulting prosecutions before courts; and the outcomes of any such prosecutions. Please also clarify the legal means available to challenge final decisions of investigatory bodies and describe how the State party has ensured the independence of such investigations. Please indicate whether the State party has considered revising or repealing the Inquiries Act of 2005 in order to transfer control over inquiries from the government to the judiciary.

Q26. In respect of the Al Sweady Inquiry into allegations of unlawful killing and mistreatment of Iraqi nationals by British forces in 2004, please provide information on the progress made and when the report is expected. What measures has the State party taken to address allegations that the Ministry of Defence has withheld evidence of mistreatment of civilians and that not a single witness statement from any of the interrogators had been provided to the inquiry?

Q27. Following the European Court of Human Rights judgments in Al Skeini v UK (2011) founding that the State party had failed to carry out an effective investigation into the deaths and mistreatment of Iraqi civilians, the State party established a unit within the Iraq Historic Allegations Team (IHAT) to investigate those cases. Please provide updated information on the investigation process and provide information on the actions taken in response to the finding of the Court of Appeal in Mousa v. Secretary of State for Defence, that the IHAT was not sufficiently independent to satisfy article 3 of the European Convention.

Allegations have been made that British military personnel have been involved in the torture and ill-treatment of civilians and detainees in Iraq. The UK government accepts that some of the allegations are credible and investigations are being held into at least 169 different allegations.

Information has emerged from inquiries and court cases between 2003 and 2010. The inquiry into the death of Baha Mousa published its report in 2011. This outlined that, in 2003, soldiers from the Queen's Lancashire Regiment arrested 10 Iraqis, including Baha Mousa, and took them back to a temporary detention centre run by

the regiment.[69] The inquiry heard that prisoners in the detention centre were hooded with hessian sacks, handcuffed, forced to adopt a ‘stress position’ (standing up with knees bent and arms outstretched) and deprived of sleep.[70] Witnesses also claimed that during their detention, the Iraqis were beaten and kicked by soldiers from the regiment who had been given the task of ‘conditioning’ the detainees for eventual ‘tactical questioning’ by military intelligence officers. Baha Mousa died while he was in custody. A post-mortem examination found that he suffered at least 93 injuries, including fractured ribs and a broken nose, which were 'in part' the cause of his death. In 2007, a court martial found that Corporal Payne was guilty of inhumane treatment and sentenced him to one year in prison.[71]

In relation to the detention facilities, the inquiry said that they were wholly inadequate and there was no meaningful custody record, or even a log of personnel visiting the facilities. It also found that there was a: lack of clear guidance about the prohibition on the use of hessian sacks, sleep, food and water deprivation; a lack of training and clear guidance on techniques that can be used to interrogate detainees and 'tactical questioning'; and an absence of any medical policy.[72]

A second legal challenge heard allegations that British soldiers unlawfully killed a number of Iraqi nationals at Camp Abu Naji and ill-treated five Iraqi nationals detained at the camp and subsequently at the divisional temporary detention facility at Shaibah Logistics Base in 2004. The Al-Sweady Inquiry has been set up to establish the facts of those allegations, and will not report for several years. Hearings began in March 2013.[73]

In November 2010, during proceedings brought by Ali Zaki Mousa on behalf of over 100 civilians in Iraq, the High Court considered an application for judicial review into the Secretary of State's decision not to order a public inquiry into allegations of ill-treatment of Iraqi detainees at the Divisional Temporary Facility near Basra at which the Joint Forces Interrogation Team worked. It was alleged that detainees were starved, deprived of sleep, subjected to sensory deprivation and threatened with execution; that detainees were beaten, forced to kneel in stressful positions for up to 30 hours at a time, and that some were subjected to electric shocks. Some of the prisoners also claimed they were subjected to sexual humiliation by female soldiers,

[69] Rt. Hon. Sir William Gage, 2011. *The Baha Mousa Public Inquiry Report, Volume 1*. London: The Stationery Office. Para 1.24.

[70] Ibid. See for example, Liam Douglas Fredrick Felton Witness statement to the Baha Musa inquiry. and statement from Lieutenant Colonel Gavin Davies to the Baha Mousa inquiry. Available at: http://www.bahamousainquiry.org/linkedfiles/baha_mousa/hearings/transcripts/2010-29-03-day75fullday.pdf.

[71] La Hague Justice Portal. Available at: http://www.haguejusticeportal.net/eCache/DEF/12/136.html. Accessed 22/11/2011.

[72] W. Gage, 2011. *The Baha Mousa Public Inquiry Report, Volume 3*. London: The Stationery Office. Page 1287.

[73] Al- Sweady Inquiry. Available at: http://www.alsweadyinquiry.org/.

while others alleged that they were held for days in cells as small as one square metre.[74]

To investigate these allegations, the Ministry of Defence set up the Iraq Historic Allegations Team in 2010, which was originally due to complete its work in the autumn of 2012.

The Commission argued that a prompt response by the authorities in investigating allegations of ill-treatment has been regarded by the European Court of Human Rights as essential in maintaining public confidence in the state's adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.[75]

The Court of Appeal determined that these measures do not meet the requirements of an Article 3 ECHR investigation. The Court ruled that the investigation process set up by the UK government did not have the necessary degree of independence, and as such did not meet the requirements of the investigative duty in Article 3. The Court found that because members of the Provost Branch (part of the British Army) were part of the investigation team, it compromised the institutional independence of the team. In light of that decision, the government's 'wait and see' approach to initiating a full public inquiry "could not stand".[76] The UK government's response to the Court of Appeal's judgment has been to replace members of the Royal Military Police in the Iraq Historic Allegations Team with members of the Royal Navy Police.[77]

In another case, Al-Skeini, the UK government argued that it was not obliged to carry out an investigation into the involvement of the British Armed Forces in the deaths of five civilians in Iraq in 2003. The government claimed that its activities in Iraq were outside its jurisdiction, and so Article 3 did not apply. The European Court found that the UK had effective jurisdiction in Basra in Iraq, and had failed to carry out an effective investigation into the deaths and mistreatment of Iraqi civilians between 1 May 2003 and 28 June 2004. The court found that the UK failed to investigate all but one death, that of Baha Mousa.[78] In response to the court's judgment the government is now establishing a new team with the Iraq Historic Allegations Team to investigate those cases.[79]

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[74] *Ali Zaki Mousa and others v. Secretary of State for Defence* [2010] EWHC 3304 (Admin).

[75] Equality and Human Rights intervention in *Ali Zaki Mousa and others v. Secretary of State for Defence* [2010] EWHC 3304 (Admin).

[76] *Mousa, R. (on the application of) v. Secretary of State for Defence & Anor* [2011] EWCA Civ 1334 (22 November 2011)..

[77] Written Ministerial Statement 26 March 2012 Hansard Column 87WS

[78] *Al-Skeini v. the United Kingdom*, European Court of Human Rights Grand Chamber (Application no. 55721/07)..

[79] Written Ministerial Statement 26 March 2012 Hansard Column 87WS

There have been also been some reports of abuse and ill-treatment that may amount to torture or CIDT by UK armed forces in Afghanistan, some of which have been investigated by the RMP.[80]

The Detainee Inquiry

Q23. Please provide clarification on how the State party's investigatory procedures were amended and accountability ensured following the serious allegations made by former US detainee Binyam Mohamed that the State party's intelligence agency was complicit in abusive interrogation tactics.

Q24. The Prime Minister announced in July 2010 that an independent inquiry (the Detainee Inquiry) would examine whether and to what extent State security and intelligence agencies were involved or otherwise complicit in the improper treatment or rendition of detainees held by other States in counter-terrorism operations in the aftermath of the attacks of 11 September 2001. On 3 August 2011 lawyers acting for former detainees and ten non-governmental organisations indicated that they would not participate in the Detainee Inquiry (which was concluded in January 2012) due to its lack of transparency and the lack of participation of former and current detainees and other third parties. Please explain how the State party intends to remedy the structural shortcomings of the inquiry.

In July 2010 the Prime Minister, David Cameron, announced that an independent inquiry would examine whether, and to what extent (if at all) the UK government and its intelligence agencies were involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas in the immediate aftermath of the attacks of 9/11, or were aware of improper treatment of detainees in operations in which Britain was involved. The inquiry was chaired by Rt. Hon. Sir Peter Gibson.

The government stated that the inquiry did not have to comply with Article 3 ECHR investigation requirements, as it had not been set up in order 'to examine allegations of torture and other ill-treatment, which give rise to particular requirements under Article 3 ECHR'. There was a delay in the inquiry getting formally underway as it had to await the outcome of criminal investigations which at that point were ongoing into some of the cases.

The proposed inquiry was criticised by human rights groups and by the Commission. The terms of reference and protocols of the inquiry set out that key hearings would

[80] For instance, Afghanistan: list of investigations and prosecutions of British troops. http://www.guardian.co.uk/news/datablog/2012/mar/29/afghanistan-british-army-crimes; 29 March 2012. See also: The Royal Military Police investigated allegations that two British soldiers sexually assaulted two ten year olds: http://www.bbc.co.uk/news/uk-16607304; 18 January 2012.

be held in secret; and that the cabinet secretary would have veto over what information would be made public.[81]

The Commission urged the chair of the inquiry and the government that it should be an effective investigation and compliant with international human rights obligations.[82] Lawyers acting for former detainees and 10 non-governmental organisations[83] indicated that they would not participate in the inquiry, believing that the terms of reference and protocols would not establish the truth of the allegations or prevent the abuses from happening again.[84] As further criminal investigations into rendition of individuals to Libya had recently been commenced, the government decided to conclude the inquiry in January 2012 before the inquiry had formally launched. It has committed itself to holding an independent judge-led inquiry at some point in the future.[85]

The Commission has welcomed the commitment to hold an inquiry in the future, and made recommendations for its conduct.[86]

In his most recent correspondence with the Commission, the Secretary of State says that the UK government is mindful of the reservations that were raised by us, and by others, but that it would be premature to make decisions about the conduct of a new inquiry at this stage[87].

Article 15

Use of evidence obtained by torture

Q30. Please indicate whether the decision of the House of Lords in the case of A v Secretary of State for the Home Department (No.2) (2006) which makes clear that evidence obtained by torture is inadmissible in any legal proceedings was reflected in formal fashion, such as through legislative

[81] The Detainee Inquiry, 2011. *Terms of Reference and Protocol published*. Available at: http://www.detaineeinquiry.org.uk/2011/07/news-release-terms-of-reference-and-protocol-published/.

[82] Equality and Human Rights Commission. Letter to Rt. Hon. Sir Peter Gibson. 13 September 2010.

[83] These organisations were: Liberty, Redress, Amnesty International, Cageprisoners, the Aire Centre, Freedom from Torture, Human Rights Watch, Justice, Reprieve, and British Irish Rights Watch.

[84] Liberty, Redress, Amnesty International, Cageprisoners, Address, the Aire centre, Freedom from Torture, Human Rights Watch, Justice, Reprieve and British Irish Rights Watch letter to the chair of the inquiry. Available at: http://www.amnesty.org.uk/uploads/documents/doc_21711.pdf.

[85] Statement made by the Lord Chancellor and Secretary of State for Justice (Mr Kenneth Clarke). Hansard HC, col 752 (18 January 2012). Available at: http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm..

[86] Letter Mark Hammond, Chief Executive, EHRC to the Right Honourable Kenneth Clarke QC MP, Secretary of State for Justice 21 February 2012.

[87] Letter from the Right Honourable Kenneth Clarke QC MP to Mark Hammond, CEO of the EHRC 31 May 2012

incorporation or by undertaking to Parliament. Please also provide examples of any case in which evidence was deemed inadmissible on the grounds that it was obtained through torture.

The UK government has committed in the light of the decision in *A v Secretary of State for the Home Department (No.2)* [2005] not to allow evidence obtained by torture to be admissible in legal proceedings. There is no legislative provision to this effect but under the British legal systems case law of this nature is law and does not need to be enacted in legislation to be enforceable.

Extension of the use of closed material procedures

Q31. Please indicate if the State party modified the Special Advocate System to guarantee fully effective legal representation following the determination by the European Court of Human Rights in A et Al. v. UK (application no. 3455/05) that the system was insufficient to safeguard detainees' rights. Given the above, please explain the rationale for the State party's proposal to extend the use of closed proceedings to civil cases involving sensitive material and indicate whether, given the forceful criticism against this proposal from Special Advocates and civil society organizations, the State party is considering its withdrawal.

The special advocate system has been amended to enable "gisting", that is that the person is given sufficient details of the allegations against them to instruct the special advocate. Much of the closed evidence used in cases which concern national security is heavily reliant on information from secret intelligence sources. Such evidence may contain second- or third- hand testimony or other material which would not normally be admissible in ordinary criminal or civil proceedings.[88]

A number of senior judges have noted that closed material is likely to be less reliable than evidence produced in open court because it has not been tested by thorough cross-examination[89]. The JCHR has been highly critical of the fairness of closed material procedures, as have the Special Advocates themselves, who have identified

[88] See e.g. paragraph 17(4) of the Special Advocates' response to the Green Paper on Justice and Security, referring to the use of 'second or third hand hearsay … or even more remote evidence; frequently with the primary source unattributed and unidentifiable, and invariably unavailable for their evidence to be tested, even in closed proceedings'. .

[89] In the Supreme Court case of Al Rawi, for example, Lord Kerr warned that: 'Evidence which has been insulated from challenge may positively mislead'. Although special advocates are able to cross-examine witness in closed hearing, they are prohibited from discussing their questions with the person they are representing after service of the closed material. For this reason, Lord Bingham described the task of special advocates as 'taking blind shots at a hidden target'.

a number of practical concerns as to the operation of closed material procedures, and conclude that closed material proceedings are inherently unfair.[90]

From its origins in deportation cases, the use of closed material has gradually extended across the legal systems in the UK. Legislation has been passed permitting it in new areas, including terrorist asset freezing proceedings, employment tribunals, and even planning inquiries. In recent evidence to the JCHR, the government has identified 14 different contexts in which the special advocate system has been provided for in legislation in civil proceedings.[91] However, there are also a number of situations in which special advocates have been appointed on a non-statutory basis, e.g. their use before the Security Vetting Appeals Panel.

The Justice and Security bill proposes extending the use of closed proceedings to any civil case in which a government minister certifies that it involves sensitive material that should not be disclosed in the public interest.[92] The Minister would apply to the Court who would then grant the application if one of the parties to the proceedings would be required to disclose material in the proceedings and the disclosure would be damaging to national security. The proposals have been widely criticised by Commission and by leading QCs,[93] special advocates,[94] NGOs[95] and the JCHR.

During the passage of the Bill through Parliament a number of amendments to the original Bill were made. The Commission sought a legal opinion from leading counsel on the proposals in relation the original bill's provisions on the use of closed material procedures in civil claims which concluded that aspects of the Bill were incompatible with the right to a fair trial.

The Commission's analysis suggests the Bill in its final form is more compatible with the Human Rights Act, but does not address the fundamental concern about inequality of arms. For that reason the Commission recommended that the proposals for closed material procedures should have been abandoned.

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[90] Special Advocates' memorandum on the Justice and Security Bill submitted to the Joint Committee on Human Rights

[91] Memorandum submitted by the Ministry of Justice to the Joint Committee on Human Rights, 28 November 2011.

[92] Para 2.7 of the Green Paper. The Secretary of State'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.

[93] See e.g. memorandum of Dinah Rose QC to the Joint Committee on Human Rights, 24 January 2012, at para 14: 'the Green Paper is fundamentally incompatible with our system of civil justice'.

[94] See Justice and Security Green Paper – Response to consultation from Special Advocates, 16 December 2011 and evidence to the Joint Committee on Human Rights June 2012.

[95] See e.g. responses of JUSTICE, Liberty, Amnesty International, and the Bingham Centre for the Rule of Law. Available at: http://ukhumanrightsblog.com/2012/01/31/more-secret-trials-no-thanks/.

Failing that, the Commission argued that the following amendments were the minimum that would be needed to attempt to ensure compatibility with the Human Rights Act:

- the reinstatement of a "last resort" condition, so that a closed material procedures (CMP) cannot be used except where the court has made a determination that there is no alternative means of achieving justice;
- a full judicial balancing of national security on the one hand, and the public interest in the fair and open administration of justice on the other, in deciding whether to order a CMP (the 'Wiley' balance). This is in contrast to the new government condition that it is in the interests of the fair and effective administration of justice in the proceedings to make a declaration;
- the power to make an application for a CMP to be made on the same conditions for all parties; and
- despite the inadequacy of 'gisting' as a means of ensuring equality at arms, at the very least where material is to remain closed the excluded party must be given sufficient information about it to enable them to give effective instructions to their lawyers.

On 26 March 2013 the Bill was passed without further amendment and will be brought into force shortly.

Article 16

Prison conditions for women (England and Wales)

Q33. What steps are being taken to implement the recommendations of the Corston Report1 regarding improvement in the conditions for women in prison? What efforts are being made to improve general health and mental health services for women in prison?

In 2007 a review of women with particular vulnerabilities in the criminal justice system, the Corston Report[96] made detailed recommendations about fundamental reform that was needed to improve the conditions for women in prison. The many recommendations included that women's prisons should be replaced with smaller suitable and geographically dispersed multi-functional custody suites within 10 years, that in the meantime improvements to sanitation arrangements were urgently required and that strip-searching should be reduced to the absolute minimum necessary.

Baroness Corston published a second report in 2011, tracking progress on her recommendations.[97] The end of automatic strip searches for women upon reception

[96] Available from http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf/

[97] *Women in the penal system. Second report on women with particular vulnerabilities in the criminal justice system*. All Party Parliamentary Group on Women in the Penal System. Available at

to prison is a significant step. The most important recommendation which had still not been implemented is that there remain 13 women's prisons in England (and none in Wales). Women are still more likely than men to be incarcerated for non-violent offences: 68% of women are in prison for non-violent offences, compared with 47% of men.[98]

The number of women in prison has increased by 85% over the past 15 years (1996-2011). On 22 June 2012, the women's prison population stood at 4,116. Of all the women who are sent to prison, 37% say they have attempted suicide at some time in their life. 51% have severe and enduring mental illness, 47% a major depressive disorder, 6% psychosis and 3% schizophrenia.[99] In 2010, there were a total of 26,983 incidents of self-harm in prisons, with 6,639 prisoners recorded as having injured themselves. Women accounted for 47% of all incidents of self harm despite representing just 5% of the total prison population.[100]

The government has stated its intention to reduce the number of women in custody due to the impact that often has on the well being of children, and on the women themselves, and to increase the use of community sentences. It has embarked on a process of closing women's prisons[101]. However, there is evidence that prison closures lead to women being incarcerated further from their home and family ties and calls are now being made for further urgent reform[102].

In February 2012 the Chief Inspector of Prisons, Nick Hardwick gave a lecture highlighting the very shocking and distressing conditions found by the Inspectorate at Styal Prison in 2011.[103] He said, "I have seen a lot of pretty grim things in my working life but what I saw at the Keller Unit kept me awake at night. The levels of self mutilation and despair were just terrible."

On 22 March 2013 the Justice Minister announced a new strategy[104] with a greater focus on the support and rehabilitation of female offenders.

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http://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Women_in_the_penal_system.pdf

[98] Ibid

[99] Prison Reform Trust. *Bromley Briefings Prison Factfile* June 2012. Available at http://www.prisonreformtrust.org.uk/Portals/0/Documents/FactfileJune2012.pdf?dm_i=47L,UJV5,U407X,2IEO2,1

[100] Ministry of Justice (2011) Safety in Custody 2010 England and Wales,

[101] Ministry of Justice (2009) *A Report on the Government's Strategy for Diverting Women Away from Crime*

[102] http://www.guardian.co.uk/society/2012/feb/11/women-prisons-urgent-reform-needed

[103] *Women In Prison: Corston Five Years On*, Nick Hardwick, HM Chief Inspector of Prisons, 29 February 2012 Available at http://www.womeninprison.org.uk/news_show.php?id=70

[104] Strategic objectives for female offenders, Ministry of Justice March 2013.

The priorities laid out in the strategy are:

1. Ensuring the provision of credible, robust sentencing options in the community that will enable female offenders to be punished and rehabilitated in the community where appropriate. We are committed to ensuring all community orders include a punitive element. Other options such as tagging and curfews can also be used to provide greater monitoring and structure to offenders' lives.
2. Ensuring the provision of services in the community that recognise and address the specific needs of female offenders, where these are different from those of male offenders.
3. Tailoring the women's custodial estate and regimes so that they reform and rehabilitate offenders effectively, punish properly, protect the public fully, meet gender specific standards, and locate women in prisons as near to their families as possible; and
4. Through the transforming rehabilitation programme, supporting better life management by female offenders ensuring all criminal justice system partners work together to enable women to stop reoffending.[105]

To support delivery of these priorities, the Minister announced that she will chair a new Advisory Board for Female Offenders.

The Commission welcomes the intention behind this initiative but considers that the measures proposed would be more likely to have an impact if they were backed by legislation. The Commission considers that the recommendations of the Corston Report should be implemented in full, in particular to ensure effective diversion from the criminal justice system for petty non-violent offenders who can be better dealt with in the community, and to implement changes to the prison regime to further reduce deaths and incidents of self-harm.

Investigations into ill-treatment of prisoners (England and Wales)

Q35. Please provide details of cases involving mistreatment of prisoners dealt by internal complaints systems or the Ombudsman, including the nature of the allegations and the level of disciplinary or judicial award.

The Prison and Probation Ombudsman (PPO) investigates complaints from prisoners and those on probation in England and Wales and those held in immigration removal centres in the UK. The PPO lacks formal statutory independence. Unlike the IPCC, the PPO's remit is not laid out in any statute; rather it is an arm's length body sponsored by the Ministry of Justice. This led the JCHR in 2004 to state that

'…until such a statutory basis is provided, investigations by the Ombudsman are unlikely to meet the obligation to investigate under Article 2 ECHR'.[106]

[105] Ibid, page 4.

In April 2011 the government reiterated its commitment to the independence of the PPO, and said it was continuing to review whether this should be placed on a statutory basis.[107]

Clinical reviews form a key part of the investigations undertaken by the PPO. In some circumstances these reviews are commissioned by the same primary care trust that provided healthcare to the custodial setting. In these cases the level of independence has been questioned.[108]

In 2011-12, the PPO started 229 investigations into deaths in prison, immigration detention and probation service approved premises. This was the highest annual figure since the PPO took on this responsibility in 2004, and a 15% rise on the previous year.[109]

Police use of force (England and Wales)

Q36. The Human Rights Review 2012 of the Equality and Human Rights Commission found that police do not always use the minimum level of force when policing protests. Her Majesty's Inspectorate of Constabulary (HMIC) has similarly concluded that there is no consistent doctrine around the use of force by the police. What steps are being taken to implement the recommendations of HMIC to adopt an overarching set of principles on the use of force?

One of the most controversial examples of police use of force during the large scale public protests in London between 2009 and 2011 occurred in April 2009, during the course of the G20 protests. Ian Tomlinson, a 47-year-old bystander, collapsed and died after he was hit by a baton and pushed to the ground. The inquest jury decided in May 2011 that Mr Tomlinson's death was caused by 'excessive and unreasonable force' in striking him.[110] Following the G20 protests the Independent Police Complaints Commission (IPCC) received 136 complaints alleging the use of excessive force by the police.[111]

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[106] House of Lords, 2004. Joint Committee on Human Rights. Deaths in Custody Third Report of session 2004-05. London: The Stationery Office. Para 332.

[107] See letter from the secretary of state for justice to the IAP, 7 April 2011. Available at: http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/05/Forum-for-Preventing-Deaths-in-Custody-Report-on-Article-2-Compliant-Investigations.pdf.

[108] Report of the IAP's workstream considering investigations of deaths in custody – compliance with Article 2 ECHR MBDC 36.

[109] http://www.ppo.gov.uk/docs/PPO_annual_report_content_web_(17).pdf

[110] BBC, 3 May 2011. Ian Tomlinson unlawfully killed by PC at G20 protests. Available at: http://www.telegraph.co.uk/news/uknews/1561096/Parliament-war-protester-jailed-over-600-fine.html..

[111] HMI Constabulary, 2009. *Adapting to protest – nurturing the British model of policing*. Page 110. Available at: http://www.hmic.gov.uk/media/adapting-to-protest-nurturing-the-british-model-of-policing-20091125.pdf.

In its March 2011 report on facilitating peaceful protest,[112] the JCHR welcomed police training on the use of force, but expressed concern that there was no specific guidance on when a baton might be used to strike the head. The JCHR recommended specific guidance on the use of batons.

In its national review of policing protest in England and Wales, published in 2009, HMI Constabulary concluded that 'there is no consistent doctrine articulating the core principles around the police use of force'.[113] Among other recommendations, HMI Constabulary proposed that the Home Office, Association of Chief Police Officers and the National Policing Improvement Agency adopt an overarching set of principles on the use of force which should inform every area of policing and are fully integrated into all policing codes of practice, policy documents, guidance manuals and training programmes. They entrench the fundamental legal concepts of necessity, proportionality and the minimum use of force, in particular:

- In carrying out their duties, police officers should as far as possible apply non-violent methods before resorting to any use of force.
- Police officers should use force only when strictly necessary and where other means remain ineffective or have no realistic chance of achieving the lawful objective.
- Any use of force by police officers should be the minimum appropriate in the circumstances.
- Police officers should use lethal or potentially lethal force only when absolutely necessary to protect life.
- Police officers should plan and control operations to minimize, to the greatest extent possible, recourse to lethal force.
- Individual officers are accountable and responsible for any use of force and must be able to justify their actions in law.

However, this recommendation has still to be fully implemented.[114]

Restraint (England and Wales)

Q37. The Home Affairs Select Committee (HASC) has recommended that the Home Office commission research into various types of restraints and provide guidance to staff in enforced removals. Please, provide information on the implementation by the State party of the HASC's recommendations. How many

[112] Joint Committee on Human Rights, 2011. *Facilitating Peaceful Protest. Tenth Report of Session 2010-11*. London: The Stationery Office.

[113] HMI Constabulary, 2009. *Adapting to protest – nurturing the British model of policing*. Pp. 116-117. Available at: http://www.hmic.gov.uk/media/adapting-to-protest-nurturing-the-british-model-of-policing-20091125.pdf.

[114] HMI Constabulary, 2011. *Policing Public Order: An overview and review of progress against the recommendations of Adapting to Protest and Nurturing the British Model of Policing*. Available at: http://www.hmic.gov.uk/media/policing-public-order-20110208.pdf..

detainees have sustained injuries in the last 3 years as a result of the use of force or restraint by UK Border Agency's employees or private contractors, both in immigration detention and during removal or attempted removal?

The Commission's Human Rights Review found that dangerous restraint techniques, or techniques used without sufficient training, continue to put police, prison, mentally ill, and immigration detainees' lives at risk[115].

'Prone restraint', which involves holding an individual face down on the floor, is one example of a potentially dangerous restraint technique. An inquest into the death of Roger Sylvester in 2003 after he was restrained by eight police officers using this technique said that a time limit should be set.[116] In 2005 the JCHR added their concern:

'restraint in the prone position was particularly controversial because of the dangers it carried, and its implications in a number of deaths in custody ... there is a case for guidance prescribing time-limits for prone restraint, departure from which would have to be justified by individual circumstances'.[117]

Subsequently Godfrey Moyo died at London's Belmarsh prison in 2005 after he was restrained for approximately 30 minutes in the prone position. The inquest found that the use of restraint was a contributing factor in his death.[118] So far the UK government has not introduced any guidance on how long detainees should be held in the prone position.

The nose distraction technique, in which the detainee is given a sharp upward jab under the nose, also continues to be used. It was prohibited in secure training centres after 14-year-old Adam Rickwood hanged himself in 2004 after being subjected to this technique, and the jury identified it as a factor which contributed to his death.[119] There is evidence that it continued to be used in young offender institutions for prisoners under 18 until January 2011.[120] The nose control technique,

[115] Human Rights Review (EHRC 2012) Articles 2 and 3

[116] Rule 43 Roger Sylvester. Available at: http://4wardeveruk.org/wp-content/uploads/2010/05/Roger-Sylvester-Rule-43-Recomendations.pdf.

[117] House of Lords, 2004. Joint Committee on Human Rights. Deaths in Custody Third Report of session 2004-05. London: The Stationery Office.

[118] Garden Court Chambers, 2009. *Positional Asphyxia and Restraint Death at HMP Belmarsh – Jury Find Healthcare Guilty of Neglect.* Available at: http://www.gardencourtchambers.co.uk/news/news_detail.cfm?iNewsID=504.

[119] In the second inquest into his death the jury found that '[amongst other factors] the use of the Nose Distraction Technique more than minimally contributed to Adam taking his own life'.'

[120] Youth Justice Board communication with the Equality and Human Rights Commission, received on 17 October 2011. Department for Children, Schools and Families, 2008. *The Government's Response to the Report by Peter Smallridge and Andrew Williamson of a Review of the Use of Restraint in Juvenile Secure Settings*. Available at: http://www.justice.gov.uk/publications/docs/govt-response-restraint-review.pdf.

which is very similar to the nose distraction technique, was also banned in under-18 young offender institutions in January 2011. It continues to be used in adult prisons and in young offender institutions holding 18-20-year-olds.

It is clear from the available evidence that the unsafe or inappropriate use of forcible restraint remains a problem across all forms of detention in England and Wales.[121] The Independent Advisory Panel has noted that there is 'an inconsistent approach to recording and reporting on the use of force across the custodial sectors'.[122]

See also our response to Q9 above (page 10).

Immigration detention of people with mental health conditions

Q38. Since the introduction of the 2010 UK Border Agency Enforcement Instructions and Guidance, the court found in three cases that the detention of mentally ill persons in immigration detention centres amounted to inhuman or degrading treatment1. Please, indicate whether the State party intends to amend its policy with regard to the detention of people with mental illness so that these people can only be detained in very exceptional circumstances, as provided previously in the 2008 Guidance.

Since 2004, the Prison and Probation Ombudsman (PPO) has investigated six self-inflicted deaths in immigration detention.[123] In 2011 there were three deaths in immigration removal centres, one of which was self-inflicted. These deaths are currently being investigated.

The UKBA's Enforcement Instructions and Guidance for 2008 provided that people suffering from mental illness could be detained in only very exceptional circumstances: there was a 'presumption in favour of release' for those people in immigration detention who were suffering serious medical conditions or mental illnesses.[124] The current 2010 Enforcement Instructions and Guidance allows for the detention of people with mental illness unless their mental illness is so serious it cannot be managed in detention. In such cases, exceptional reasons will be needed

[121] House of Lords, 2004. Joint Committee on Human Rights. *Deaths in Custody* Third Report of session 2004-05. London: The Stationery Office. Para 227; P. Smallridge and A. Williamson, 2008. Independent Review of restraint in juvenile settings

[122] Independent Advisory Panel on Deaths in Custody, 2011. Statistical Analysis of all recorded deaths of individuals detained in state custody between 1 January 2000 and 31 December 2010. Available at: http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/10/IAP-Statistical-Analysis-of-All-Recorded-Deaths-in-State-Custody-Between-2000-and-2010.pdf.

[123] Prisons and Probation Ombudsman Investigation reports available at: http://www.ppo.gov.uk/immigration-removal-centre-investigations.html.

[124] UKBA Enforcement Instructions and Guidance for 2008.

to justify their detention. This appears to reverse the presumption in the previous guidance.[125]

The UK government argues that there has been no change in policy, but that this clarifies the 2008 policy.[126] That argument appears to have been rejected by the court in *R(HA (Nigeria)) v SSHD* [2012] in which the court held that the detention of a mentally ill person in an Immigration Removal Centre amounted to inhuman and degrading treatment and false imprisonment, and that the change of policy had been introduced in breach of the Public Sector Equality Duty[127].

Other cases have illustrated the same problem. For instance, in *R(S.) v. S.S.H.D.* [2011], the High Court found that the detention of a seriously mentally ill man at Harmondsworth detention centre in 2010 amounted to inhuman or degrading treatment.[128] A similar finding was made a few months later in *R(B.A.) v. S.S.H.D.* in relation to the detention of another man at Harmondsworth in 2011.[129] In BA's case the judge speaks of the "callous indifference" to his suffering.

HM Chief Inspector of Prisons has commented on the unsuitable facilities for vulnerable detainees and a lack of training for healthcare staff in identifying signs of torture or trauma. It concluded in its 2010-11 annual report that:

'Mental health problems were evident for detainees in many centres, and some had reported significant trauma or torture. However the process intended to provide safeguards to detainees who were not fit to be detained, or had experiences of torture, did not appear to be effective.'[130]

In all of the centres it inspected, HMI Prisons found that official letters written by doctors to advise the UKBA of concerns about detainees' health often received cursory replies or no replies at all.

Immigration detention of children

Q39. Please provide information on the number of children detained for immigration related purposes in England, Scotland, Wales and Northern Ireland, including prior to deportation and on arrival in the State party, since the closure of the family unit at Yarl's Wood. Please also indicate the length and the purpose of detention and provide information on the number of immigrant children held in detention with adults due to doubts about their age.

[125] Ibid. See *R(B.A.) v. S.S.H.D.* [2011] EWHC 2748 (Admin), [2011] All ER (D) 219 para 179.

[126] Government comments on the Equality and Human Rights Commission's draft Human Rights Review, December 2011.

[127] *R(HA (Nigeria)) v SSHD* [2012] EWHC 979 (Admin)

[128] *R(S.) v. S.S.H.D.* [2011] EWHC 2120 (Admin), [2011] EWHC 2120 (Admin), 175 CL&J 551.

[129] *R(B.A.) v. S.S.H.D.* [2011] EWHC 2748 (Admin), [2011] All ER (D) 219.

[130] HMI Prisons, 2011. *Annual Report 2010-11*. London: The Stationery Office. Page 68.

In June 2010, the government announced it would end the detention of children for immigration purposes[131] and in December 2010 published its review on the subject, as it closed the family unit at Yarl's Wood IRC.[132] This was an important and significant step in reducing the number of children in detention and the length of time they spend there. The government's review set out a new family returns process where, 'as a last resort', families with children could be referred to new 'pre-departure accommodation', Cedars, near Gatwick Airport, for up to 72 hours, or up to one week with ministerial approval.[133] The UK government considers this facility more family-friendly than an IRC.[134]

Children can also be detained when they arrive in the UK. In response to a freedom of information request by the Children's Society, the UK government reported that 697 children were held at Greater London and South East ports between May and the end of August 2011, one-third of whom were unaccompanied.[135] The Children's Commissioner for England found that contrary to government policy, unaccompanied children arriving at Dover were not being held for the 'shortest appropriate period of time' before being transferred to the care of the Local Authority. Instead, they were 'detained whilst significant interviews took place that will inevitably bear on their prospects of being granted permission to stay in the UK'.[136]

Her Majesty's Inspectorate of Prisons inspected the short-term holding facilities at Heathrow Airport Terminals 3 and 4 in March 2011. He found that in the three months to February 2011 174 children has been detained, including 16 unaccompanied minors. The average lengths of detention were 8 hours 20 minutes (Terminal 3) and 9.9 hours (Terminal 4). 24 children had been held for over 18 hours (across both terminals), and the longest periods of detention were just under 24 hours.[137] He also observed a child being detained with his father at Terminal 4

[131] Deputy PM's speech on children and families, June 2010. Available at: http://www.dpm.cabinetoffice.gov.uk/news/deputy-pms-speech-children-and-families.

[132] Home Office, December 2010. Review into Ending the Detention of Children for Immigration Purposes.

[133] Ibid. Page 21.

[134] Children can also be held with their families in Tinsley House on arrival in the UK. The Refugee Consortium has questioned why they cannot be held in the new family returns facility which ought to be more appropriate.(Refugee Consortium, Briefing on Immigration Detention of Children, September 2011).

[135] The Children's Society. Press release: *Almost 700 children detained in four months*.

[136] Matthew A., January 2012. Landing in Dover: The immigration process undergone by unaccompanied children arriving in Kent. Children's Commissioner for England. Page 7.

[137] HM Chief Inspector of Prisons, Report on an unannounced inspection of the short-term holding facility at Heathrow Airport Terminal 4, 3 March 2011 and Report on an unannounced inspection of the short-term holding facility at Heathrow Airport Terminal 3, 3 March 2011

without the necessary authority. The child was signed in as a 'visitor', and consequently, his detention would not have been recorded.[138]

Some unaccompanied children are also detained with adults because their age is disputed either by the UKBA officials or by social services. This means that they are inappropriately detained without the increased safety provisions that a children's setting affords. This may happen either because they have had insufficient opportunity to confirm their age before detention, or because they have been wrongly assessed as adults.[139] Between October 2009 and March 2011, 24 children were held as adults and later released due to doubts about their age.[140]

Corporal punishment in the home (England and Wales)

Q40. Concerning corporal punishment in the home, a 2007 review of Section 58 of the Children Act showed that the defence of "reasonable punishment" was not well understood by parents and those working with children and families. In addition, practitioners found difficult to give advice to parents as Section 58 is seen as legalising and legitimising smacking. Please explain the steps taken, if any, to address the lack of understanding of the law and raise awareness of the Children Act's limits amongst the general public?

Section 58 of the Children Act 2004 limits the use of the defence of reasonable punishment so that it can no longer be used when people are charged in England and Wales with offences against a child, such as causing actual bodily harm or cruelty to a child. However, the reasonable punishment defence remains available when parents or guardians are charged with common assault under section 39 Criminal Justice Act 1988 and in civil proceedings for trespass to the person.

The CPS has, as a result of section 58, amended its charging standard so that only the most minor of injuries sustained by a child and inflicted by an adult can be charged as common assault under English law. The injuries must be 'transient or trifling' and no more than a 'temporary reddening of the skin', otherwise they will be charged as actual bodily harm for which the reasonable punishment defence is not available.

However, sometimes in practice it can be difficult to distinguish between common assault and actual bodily harm.[141] In 2007 the Department for Children, Schools and Families carried out a review of section 58 of the Children Act 2004. The analysis of

[138] Ibid, para 1.47

[139] Immigration Law Practitioners Association (ILPA), 2010. Written response to Home Office Review into ending the detention of children for immigration purposes.

[140] 10 October 2011, HC Reps, Col 82W. On 17 February 2012, the *Guardian* reported that over £1 million had been paid in compensation to 40 children who had been unlawfully detained as adults.

[141] For definition in levels of severity required for common assault, actual bodily harm, and grievous bodily harm, see Crown Prosecution Service, Offences against the Person, incorporating the Charging Standard. Available at: http://www.cps.gov.uk/legal/l_to_o/offences_against_the_person/.

responses showed that health and social services professionals considered that section 58 made it difficult to give consistent advice to parents and that the lack of understanding of the law made it difficult for practitioners to work with parents.

The JCHR considered the issue of legal certainty in its nineteenth report in 2004, concluding that prohibiting corporal punishment would make the law clearer.[142] In addition, the UN Committee on the Rights of the Child (General Comment No. 8) expressly prohibits the use of physical punishment on children and urges all States to move quickly to prohibit and eliminate all corporal punishment and other cruel or degrading forms of punishment. The Committee has also recommended three times that the UK Government change its law.[143]

Article 22

Right of individual petition

Q42. Both the Joint Committee on Human Rights (JCHR) of the UK Parliament and the Equality and Human Rights Commission believe that "the UK's slow progress in accepting individual petition […] undermines its credibility in the promotion and protection of human rights internationally". Please, comment on the above and explain whether it intends to reconsider its position with regard to making a declaration under Article 22 of the Convention?

The right to individual petition is an important feature of all the international human rights treaties the UK has ratified whether codified either through an article of a treaty requiring that states make a declaration that they recognise the competence of a committee to receive complaints, or through an optional protocol requiring state ratification. Therefore the UK government should sign up to all the optional protocols and other individual complaints mechanisms.[144]

The Commission agrees with the JCHR's statement that "the UK's slow progress in accepting individual petition, as compared with other European and Commonwealth

[142] Joint Committee on Human Rights Nineteenth Report September 2004.

[143] UN Committee on the Rights of the Child. Concluding observations CRC/C/GBR/CO/4. 20 October 2008.

[144] Letter from Geraldine van Bueren, Commission lead commissioner on human rights to Lord McNally, 9 August 2011; Equality and Human Rights Commission, 'Rights to bring complaints under UN human rights treaties: accountability of the UK government for international obligations', 9 August 2011. The UK has not signed the optional protocol for the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has not yet indicated whether it will do so for the Convention on the Rights of the Child (CRC). It has not made a declaration for the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The UK has acceded to the optional protocol for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

states, undermines its credibility in the promotion and protection of human rights internationally"[145].

The 2011 state report argues that complaints mechanisms are not beneficial because those the UK has ratified in relation to CEDAW and CRPD have been little used to date[146]. However, Article 22 should be ratified regardless of the amount of complaints that are likely to be raised with the Committee by people from the UK.

Other issues not included in the Committee's list of issues

Article 2

Female genital mutilation

There are no reliable figures for how many women in Britain have experienced female genital mutilation (FGM) in the UK, but a variety of studies have attempted estimates; for example, that up to 24,000 girls under the age of 15 may be at risk of FGM.[147] FGM includes procedures that intentionally alter or injure female genital organs for non-medical reasons. The procedure has no health benefits for girls and women.

The Female Genital Mutilation Act was introduced in 2003, came into effect in March 2004 and applies in England, Wales and Northern Ireland.[148] The Act:

- makes it illegal to practice FGM
- makes it illegal to take girls who are British nationals or permanent residents of the UK abroad for FGM whether or not it is lawful in that country
- makes it illegal to aid, abet, counsel or procure the carrying out of FGM abroad
- has a penalty of up to 14 years in prison and, or, a fine.

However, there have been no prosecutions in England and Wales[149].

UK communities that are most at risk of FGM include Kenyans, Somalis, Sudanese, Sierra Leoneans, Egyptians, Nigerians and Eritreans. Women from non-African

[145] Joint Committee on Human Rights 17th Report, session 2004-2005, para 27

[146] UK state report paras 9 and 10.

[147] http://www.homeoffice.gov.uk/crime/violence-against-women-girls/female-genital-mutilation/

[148] The Prohibition of Female Genital Mutilation (Scotland) Act 2005 makes FGM a criminal offence in Scotland.

[149] The Child Protection System in England. Written Evidence Submitted by Jane Ellison MP to the Education Select Committee 11/11/11. Contrast the situation in France where there have been about 100 convictions relating to FGM, many of them resulting in parents and FGM practitioners being sent to prison. Report available from http://www.bbc.co.uk/news/world-18976217.

communities that are at risk of FGM include Yemeni, Kurdish, Indonesian and Pakistani women[150].

In 2012, the Government launched a one year pilot of the cross government declaration against FGM, plus a fund supporting frontline organisations tackling the practice. It has also announced that it will work to end FGM worldwide within a generation.[151] Figures obtained by a Freedom of Information request to London NHS hospitals indicate that over 2,100 women and girls have had hospital treatment for FGM since 2006, with 708 women needing hospital admission or surgery[152]. There is evidence that families are taking their children abroad to have the procedure done, although this has been illegal since 2004 when the original Act was amended.[153] There have also been media reports that individual practitioners in the UK are willing to perform the procedure.[154]

The passing of the law criminalising FGM in 2003 is a step forward, and shows concern about prevalence of the practise but further steps are needed to prevent FGM being carried out on women and girls resident in the UK, and increase prosecutions.

Article 16

CIDT in health and social care settings

In February 2013 the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, published a report on abuses in health-care settings that may cross a threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment.[155]

[150] http://www.homeoffice.gov.uk/crime/violence-against-women-girls/female-genital-mutilation/

[151] Girls and women: UK to help end female genital mutilation, 6th March 2013. http://www.dfid.gov.uk/News/Latest-news/2013/FGM-UK-to-help-end-female-genital-mutilation/

[152] Figures from 11 London NHS trusts, including Guy's and St Thomas', UCL and St George's in Tooting, showed a peak of 442 women seeking treatment in 2010 - a 30 per cent increase on 2007. Craig Woodhouse and James Clayton, '2,100 women seek treatment for mutilation', London Evening Standard, 16 February 2012. http://www.standard.co.uk/news/health/2100-women-seek-treatment-for-mutilation-7443780.html?origin=internalSearch See also Imkaan, Equality Now and City University, London (2011) The Missing Link: A joined up approach to addressing harmful practices in London, http://imkaan.org.uk/resources

[153] See Home Office information page on FMG, at http://www.homeoffice.gov.uk/crime/violence-against-women-girls/female-genital-mutilation

[154] The Guardian, Sunday 22nd April, 'Female genital mutilation 'offered by UK medics'', see http://www.guardian.co.uk/uk/2012/apr/22/female-genital-mutilation-uk-medics

[155] A/HRC/22/53

The Commission responded in a statement to the 22nd session of the Human Rights Council.

The Special Rapporteur's analysis of abuse in health care settings through the lens of the torture and ill-treatment framework is particularly prescient in the UK because of findings about patient experiences published on 6th February 2013 in the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry chaired by Robert Francis QC[156] ('the Francis Inquiry Report').

The Francis Inquiry Report details 'a story of terrible and unnecessary suffering of hundreds of people who were failed by a system which ignored the warning signs of poor care and put corporate self interest and cost control ahead of patients and their safety.'[157]. Responsibility for this suffering is given not just to the Mid Staffordshire NHS Foundation Trust but to the health system, including the Department of Health and regulators, as a whole who failed in their duty to protect patients from unacceptable risks of harm and in some cases from inhumane treatment.

The Francis Inquiry Report detailed cases where patients - particularly those who were old, frail and confused - were left in their own excrement and soiled bed clothes for lengthy periods, in one case at least three hours and another was found by relatives in bed totally naked, caked in excrement in full view of everyone. Patients were systematically ignored by nurses when they needed help with toileting and in one case a male patient was left sobbing loudly having soiled his bed because no help arrived despite him shouting and ringing an alarm bell. Others were left on bed-pans and commodes for up to an hour causing pain and distress. Assistance was not provided with help for patients who needed it to eat and drink causing de-hydration and weight loss. Some wards and toilets were left in a filthy condition and patients were subjected to rough and painful handling. In some cases, bodies of recently deceased people were left in side rooms for several days when they should have been moved to the mortuary and in one instance a former member of staff gave evidence about a deceased person being found in a room she was about to let other relatives into. The deceased had been there for at least 24 hours and it took several hours to establish who the deceased patient was.

In our list of issues report to the Committee we raised several instances of cruel, inhuman or degrading treatment in the context of health and social care. We noted with concern the absence of any reference to some of these well publicised events in the state report.

Article 16 UNCAT and Article 3 ECHR should protect people from severe mistreatment. However even prior to the Francis Inquiry Report there was evidence that some people who use health and social care services are at risk of abusive

[156] http://www.midstaffspublicinquiry.com/report

[157] http://www.midstaffspublicinquiry.com/sites/default/files/uploads/press_release_-_final_report.pdf

treatment by care workers. They may also be subject to abusive treatment by other residents or service users.

People living in residential care settings are particularly vulnerable. For example, in May 2011 a BBC Panorama programme exposed through secret filming how disabled residents of Winterbourne View hospital near Bristol were routinely slapped, kicked, teased and taunted by members of staff. One particularly harrowing example captured on film was that of an eighteen year old woman being verbally abused and doused with cold water while fully clothed, as a 'punishment'. The privately owned purpose built hospital was home to 24 adults with learning disabilities and autism, whose places had been commissioned by local authorities and NHS trusts. As a result of the scandal, four people were arrested, several more staff were suspended and shortly afterwards the hospital was closed down. The scandal prompted the CQC to undertake 150 unannounced inspections of similar services in England.

In February 2011, the Parliamentary and Health Services Ombudsman (PHSO) reported on 10 investigations into the care of older people by NHS institutions in England, of which several revealed ill-treatment possibly serious enough to breach Article 16 UNCAT.[158] Eighteen per cent of the 9,000 complaints made to the PHSO in 2010 were about the care of people over 65 and the organisation accepted 226 cases about older people for investigation, twice as many as all other age groups put together in 2011.[159]

In November 2011, the EHRC published the report of its formal inquiry into older people and human rights in home care. The inquiry found some evidence of good practice in the commissioning and delivery of home care services, with many care workers providing excellent care under challenging circumstances. However, there were also worrying examples of poor treatment. In a few cases this treatment appears to have been serious enough to approach or exceed the threshold for a breach of UNCAT. For example, many concerns were raised about older people not being given support they needed to eat and drink. In one case, an older woman with Huntingdon's disease suffered dramatic weight loss because care workers simply left food and drink next to her, even though she was physically unable to feed herself. In another case, an older man with dementia lost so much weight due to not being given support to eat by home care workers that he was admitted to hospital and died three days later.[160]

The EHRC therefore endorses the conclusions and recommendations of the Special Rapporteur in particular that "examining abuses in health-care settings from a torture protection framework provides the opportunity to solidify an understanding of these

[158] Parliamentary and Health Service Ombudsman, 2011. *Care and compassion? Report of the Health Service Ombudsman on ten investigations into NHS care of older people*.

[159] Ibid.

[160] Equality and Human Rights Commission, 2011. *Close to home: An inquiry into older people and human rights in home care*. Available at: http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/. See page 28.

violations and to highlight the positive obligations that States have to prevent, prosecute and redress such violations." We strongly recommend that the Committee adds this issue to those on which it has already indicated its intention to examine the UK government.

Equality and Human Right s Commission

18 April 2013