



# REDRESS

Ending Torture, Seeking Justice for Survivors



**The UK's  
Implementation of the  
UN Convention against  
Torture and Other  
Cruel, Inhuman or  
Degrading Treatment  
or Punishment**

Civil society alternative report  
March 2019



Children in Wales  
Plant yng Nghymru



Children's  
Rights Alliance  
for England



LIBERTY

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## Supporting organisations

This report has been endorsed by the 74 NGOs, civil society groups and individuals listed below. Not all of the organisations work across all areas addressed or necessarily support all of the recommendations.

- Action by Christians Against Torture
- Anti Trafficking and Labour Exploitation Unit (ATLEU)
- Anti-Slavery International
- Anti-Trafficking Monitoring Group
- Association of Visitors to Immigration Detainees (AVID)
- Asylum Matters
- Bahrain Institute for Rights and Democracy
- Bail for Immigration Detainees
- Birmingham Methodist District's Adavu Project
- Black Country Women's Aid
- Caritas Bakhita House
- Centre for Crime and Justice Studies
- Changing Perspectives
- Children in Wales
- Children's Rights Alliance for England, part of Just for Kids Law
- Criminal Justice Alliance
- Dimensions
- Disability Rights UK
- Disabled People Against Cuts
- Dr Elizabeth Stubbins Bates, Junior Research Fellow in Law, Merton College, University of Oxford
- Dr Simon Flacks, Senior Lecturer in Law, University of Westminster
- ECPAT UK (Every Child Protected Against Trafficking)
- Freedom from Torture
- Freedom United
- Friends, Families and Travellers
- Gatwick Detainees Welfare Group
- Global Diligence LLP
- Global Initiative to End All Corporal Punishment of Children
- Helen Bamber Foundation
- Hestia
- Hope at Home
- Howard League for Penal Reform
- Human Rights Implementation Centre
- Human Trafficking Foundation
- Imkaan
- INQUEST
- International Truth and Justice Project
- Joint Council for the Welfare of Immigrants
- JUSTICE
- Kalayaan
- Lewisham Refugee and Migrant Network
- Liberty
- Medical Justice
- Mind

- National Survivor User Network
- Olallo Services, Saint John of God Hospitaller Services
- Omega Research Foundation
- Persons Against Non-State Torture
- Prison Reform Trust
- Professor Gary Craig, Convenor, Co-Modern Slavery Research Consortium, Professor of Social Justice, School of Law, University of Newcastle upon Tyne, Chair, North East Race Equality Forum.
- Professor Nick Hardwick, Royal Holloway University of London; Lutz Oette, Centre for Human Rights Law, SOAS, University of London; Par Engstrom, the UCL Institute of the Americas; Tom Pegram, UCL Global Governance Institute, as conveners of the UK Prohibition of Torture Network's 2019 workshop: The UK Prison System: Compliance with International Human Rights Law.
- Professor Ruth Blakeley (University of Sheffield) and Dr Sam Raphael (University of Westminster), Directors, The Rendition Project.
- Quaker Concern for the Abolition of Torture
- REDRESS
- Refugee Action
- Refugee Council
- René Cassin
- Reprieve
- Rights Watch (UK)
- Robin Brierly Consultancy
- Room to Heal
- Runnymede Trust
- Shiva Foundation
- Sophie Hayes Foundation
- Southall Black Sisters
- Standing Committee for Youth Justice
- Stop Slavery Today
- The AIRE Centre
- The Challenging Behaviour Foundation
- The Zahid Mubarek Trust
- Wales Assembly of Women
- West Midlands Anti Slavery Network
- Women in Prison
- Women's Resource Centre

## About this report

The United Kingdom (UK) ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988.

States Parties are required to periodically report on the measures they have taken to implement their obligations under the Convention.

This report is submitted to the UN Committee against Torture as an alternative (or shadow) report to the UK's sixth periodic report submitted in November 2017.

The UK will be examined by the Committee in May 2019.

This report follows four consultation events and a call for evidence across England and Wales as part of the UK Torture Review project in which over 90 civil society organisations and individuals participated in the consultations or provided written evidence to inform the report.

The report takes a thematic approach, based on the information received and the List of Issues Prior to Reporting published by the Committee in June 2016.<sup>1</sup> It is divided into the following chapters:

- The UK context;
- Legislative, administrative, judicial or other measures to prevent torture or ill-treatment;
- Asylum and immigration;
- Prisons and other forms of detention;
- Policing, the use of equipment and the criminal justice system;
- Other forms of deprivation of liberty and ill-treatment in health settings;
- Ill-treatment of children;
- Sexual and gender-based violence;
- Human trafficking and modern slavery;

- Hate crimes;
- Redress;
- The use of torture evidence;
- Accountability for allegations of torture overseas;
- Safeguards against torture overseas; and
- Universal jurisdiction.

This report covers the situation in England and Wales. The situation in Northern Ireland and Scotland will be covered in other civil society reports.

## Devolution

The UK is made up of four countries: England, Wales, Scotland and Northern Ireland.

The UK Parliament remains responsible for legislating in “reserved” matters, or areas which are not devolved which includes: foreign affairs, defence and national security; macro-economic and fiscal matters.<sup>2</sup>

In Wales, the Government of Wales Act 2006 formally separated the National Assembly (legislature) and the Welsh Assembly Government (executive). The National Assembly for Wales has powers to pass laws in all the devolved areas as set out in the 2006 Act.<sup>3</sup> This includes:<sup>4</sup>

- Health and health services, including the promotion of health and the provision of health services;
- Social welfare, including social services, the protection and well-being of children and young adults, the care of children, young adults, vulnerable persons and older persons, including care standards;
- Housing, including homelessness; and
- Education and training.

There is no devolution in England. Devolved issues will be indicated throughout the report.

## **Overseas Territories and Crown Dependencies**

The UK is responsible for the international relations and defence of the fourteen British Overseas Territories<sup>5</sup> and the three Crown Dependencies.<sup>6</sup> British Overseas Territories and Crown Dependencies do not have the authority to become party to international treaties in their own right. The UK can extend the territorial scope of its ratification of treaties to include them, upon their request.<sup>7</sup>

This report does not cover the situation in the British Overseas Territories and the Crown Dependencies.

## **Recommendations**

The recommendations in this report are addressed to the 'UK'. This means the UK Government and the Welsh Government, where relevant and within their powers.

Unless otherwise stated, all recommendations are for the consideration of the Committee against Torture as part of the UK's state examination process.

## **Acknowledgments**

This report has been produced by REDRESS with the support of a large number of organisations and individuals. We are very grateful to all those who submitted evidence for this report and participated in the consultation process. For a full list of organisations who contributed information please see our website ([www.redress.org](http://www.redress.org)).

We would like to gratefully acknowledge the members of the steering group responsible for producing this report. The steering group has representatives from:

- Children in Wales
- Children's Rights Alliance for England
- Disability Rights UK
- Freedom from Torture
- Liberty

REDRESS would like to thank the Equality and Human Rights Commission for its contribution in funding for this project. The report does not necessarily reflect the Commission's views.

## **About REDRESS**

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility.

Through our victim-centred approach to strategic litigation we can have an impact beyond the individual case to address the root causes of torture and to challenge impunity. We apply our expertise in the law of torture, reparations, and the rights of victims, to conduct research and advocacy to identify the necessary changes in law, policy, and practice. We work collaboratively with international and national organisations and grassroots victims' groups.

## Acronyms

<b>Committee or UNCAT Committee</b>	The Committee against Torture
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CSO</b>	Civil Society Organisation
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>FCO</b>	Foreign and Commonwealth Office
<b>FOIA</b>	Freedom of Information Act 2000
<b>HMIP</b>	HM Inspectorate of Prisons
<b>HO</b>	Home Office
<b>HRA</b>	Human Rights Act 1998
<b>Ill-treatment</b>	Cruel, inhuman or degrading treatment or punishment
<b>JCHR</b>	UK Parliament Joint Committee of Human Rights
<b>MOD</b>	Ministry of Defence
<b>MOJ</b>	Ministry of Justice
<b>NHS</b>	National Health Service
<b>NPM</b>	National Preventive Mechanism
<b>OPCAT</b>	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland
<b>UNCAT</b>	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## Foreword

REDRESS is pleased to present this alternative report to the United Nations Committee against Torture as part of its review of the UK. The report and its recommendations are the result of a widespread consultation with civil society throughout England and Wales that took place in late 2018, and is endorsed by a broad range of groups and individual experts. The production of the report has been led by a dedicated steering committee of NGOs: Children in Wales, Children's Rights Alliance for England, Disability Rights UK, Freedom from Torture, Liberty, and REDRESS. Many of the issues that are raised in this report are also relevant to Scotland and Northern Ireland, which are reported on by other NGOs.

Five years ago, in their last review of the UK, the Committee was concerned with threats to the human rights framework, the treatment of refugees, and accountability for violations of the Convention committed overseas. Unfortunately, many of the same issues remain and have not been resolved.

Torture and ill-treatment can happen anywhere. As the report makes clear, there are serious concerns relating to the excessive use of solitary confinement, overcrowding in prisons, the treatment of children and of those detained under the Mental Health Act. There has been a significant increase in the use of 'Tasers', which are potentially lethal weapons that control people through the infliction of extreme pain, and are used disproportionately against minority groups. Reports have found serious deficiencies in the way that the police respond to domestic abuse and sexual violence. Survivors of trafficking who are initially supported by the National Referral Mechanism report that they are left with very little once that help comes to an end. Hate crimes have doubled since 2012, and often include physical assaults on the basis of someone's religion, race, disability, or sexuality. Significant cuts to legal aid since 2012 mean that it is much more difficult for people to obtain legal representation to challenge and expose such abuses.

Many survivors of torture are granted refugee status in the UK and are supported by a vibrant network of civil society groups providing essential services. However, the process by which these survivors claim asylum has become highly adversarial, an inevitable result of the "hostile environment" introduced by the UK to dissuade such claims. A recent report suggested that half of those in immigration detention are torture survivors – profoundly vulnerable people who need help, rather than being locked up indefinitely. Home Office administrators routinely reject expert medical statements produced in accordance with the Istanbul Protocol, preferring their own view, with the barest justification.

In the last five years there have been no successful prosecutions for torture, despite the presence in the UK of hundreds of people who the Home Office believes are connected with human rights violations. Given that the units within both the Crown Prosecution Service and the Metropolitan Police who have responsibility for prosecuting torture are also responsible for counter-terrorism, they have unsurprisingly been forced at times to focus their limited resources on the most immediate dangers, even going so far as to temporarily suspend all war crimes investigations in 2017. The courts have recently upheld Special Mission Immunity, a 'get out of jail free' card for war crimes suspects travelling to the UK, which will make prosecutions even less likely. As the UK seeks to do post-Brexit trade deals with countries with poor human rights records, there is a risk that such arrangements will become more frequent.

There remain serious concerns relating to the lack of accountability where the UK is involved in torture overseas, directly or indirectly. A 2018 report from the UK Parliament's Intelligence and Security Committee found 19 allegations of direct involvement by UK personnel in acts of torture, nearly 200 occasions where they received intelligence knowing that it was as a result of ill-treatment, and attempts by the intelligence agencies to block reporting of such incidents to the oversight body. A full public inquiry into these allegations has been promised, but not yet delivered.



The issues in this report fall under a number of different government departments, as well as local authorities and devolved administrations. In 2015, the UK dropped the FCO Strategy for the Prevention of Torture, which was the UK's central torture prevention policy that coordinated the actions of these disparate structures. As part of the Strategy the government acknowledged that in order to achieve torture prevention work overseas, the UK itself must have a good record on torture and ill-treatment itself. As the government stated at the time, *"our reputation on torture prevention worldwide is boosted by showing how the UK achieves compliance with our legal obligations to prevent, prohibit and punish torture"*. As the breadth and complexity of the issues raised in this report demonstrates, there is a clear need for a new cross-government policy response that is capable of involving many different parts of the UK administration.

REDRESS is grateful to the many human rights lawyers and activists who have contributed to this report, and to the survivors of torture who have let us share their stories. We believe that it presents a constructive analysis of the current situation in the United Kingdom, and we are confident that the UK will wish to engage in a genuine dialogue that can lead to concrete reforms.

**Rupert Skilbeck**  
Director, REDRESS

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## Chapter 1: Context



A number of manifestations of the 'hostile environment policy' introduced in 2010 raise human rights concerns under the Convention against Torture. © Steve Eason/CC BY-NC-SA 2.0.

## Chapter 1: Context

Torture and ill-treatment are prohibited under international law. There are no circumstances whatsoever in which torture and ill-treatment can be justified, including in conflict, for counter-terrorism purposes or other threats of crime, or other religious or traditional justification.

However, there remain several direct challenges to the prohibition against torture and ill-treatment.<sup>1</sup> States often lack an effective national institutional framework or the political will to enforce the prohibition. There are increasing attempts by States to reinterpret coercive interrogation practices as outside the prohibition of torture and ill-treatment, particularly in the counter-terrorism context. There has been a rise in rhetoric and in practice in which certain groups, particularly in the contexts of counter-terrorism and irregular migration, should not be granted human rights protections that are perceived to pose an obstacle to the protection of public security.

There are also increased risks of torture or ill-treatment for other circumstances of vulnerability, including socioeconomic marginalisation, persons deprived of their liberty, health-care settings, and groups such as children, women and girls, lesbian, gay, bisexual, transgender and intersex persons, older persons, disabled people or undocumented people.

### Torture and ill-treatment in the UK

As a State Party to UNCAT the UK must:

- Criminalise torture and ill-treatment under national law, including establishing universal jurisdiction over torture and ill-treatment (Articles 2, 4, 5-9);
- Ensure that persons are not returned to countries where they are at risk of being subjected to torture and ill-treatment (Article 3);
- Ensure that officials are trained and that detention procedures are kept under review (Articles 10 and 11);
- Investigate allegations of torture and ill-treatment (Articles 12 and 13);
- Provide for reparation and rehabilitation (Article 14);
- Ensure that any statement made as a result of torture or ill-treatment is not used as evidence in any proceedings (Article 15).

Torture is defined under Article 1 UNCAT as: “...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Ill-treatment is not defined under UNCAT but generally denotes any other cruel, inhuman or degrading treatment or punishment which does not necessarily require the intentionality and purposefulness of the act.

States are legally obliged to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment by private or non-state actors. This principle has been applied in cases of gender-based violence, such as rape, domestic violence, female genital mutilation and human trafficking and modern slavery.<sup>2</sup>

The UK has not made a declaration under article 22 UNCAT to allow the right of individual petition to the UN for breaches of UNCAT (see p.18).

The UK ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2003. States Parties to OPCAT are required to establish a National Preventive Mechanism (NPM) to carry out visits to places of detention in order to prevent torture and other ill-treatment. In the UK, the NPM is comprised of 21 bodies.

The Human Rights Act 1998 (HRA) incorporates the European Convention on Human Rights 1950 (ECHR) into domestic law in the UK and is therefore the only mechanism through which a person can directly enforce their right to not be tortured or ill-treated. Article 3 of the ECHR prohibits torture or inhuman or degrading treatment or punishment.

The UK has also ratified the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. The European Convention set up the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which organises visits to places of detention to assess how persons deprived of their liberty are treated.

In the UK, the issues that are relevant to UNCAT fall under the remit of multiple government departments, including the Ministry of Justice (MOJ), the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MOD), the Home Office (HO) and the Department of Health and Social Care (DOHSC), as well as local authorities and devolved administrations.

In 2015, the UK dropped the FCO Strategy for the Prevention of Torture, which described itself as “*The UK’s central torture prevention policy*” and acknowledged that in order to achieve torture prevention work overseas, the UK must have a good record on torture and ill-treatment itself, stating “*Our reputation on torture prevention worldwide*

*is boosted by showing how the UK achieves compliance with our legal obligations to prevent, prohibit and punish torture*”.<sup>3</sup> The strategy also emphasised coordinating with the MOJ and other government departments. As the breadth of issues raised in this report demonstrates, there is a clear need for a cross-government policy response that is capable of involving many different parts of the UK administration.

## **Brexit**

The UK is due to withdraw from the European Union (EU) on 29 March 2019. At the time of writing the UK and the EU have not concluded negotiations and there remains the possibility that the UK will leave the EU without a deal, which may have the potential to cause significant hardships in the UK in the short term.

However, under the European Union (Withdrawal) Act 2018, once the UK has left the EU:

- Future EU law will no longer apply to the UK;
- The European Court of Justice will no longer have jurisdiction over the UK;
- The EU Charter of Fundamental Rights will not be transposed into UK law alongside the body of retained EU law, which will become part of UK law after exit day (although the General Principles will be retained for a limited period and in limited circumstances after Brexit).

The European Union (Withdrawal) Act 2018 confers sweeping powers on Ministers to create secondary legislation to “*correct deficiencies*” arising in domestic law following the UK’s exit from the EU.<sup>4</sup> The unprecedented breadth of Executive powers conferred has led to concerns that rights currently enjoyed through membership of the EU could be diluted without adequate parliamentary scrutiny.

There are concerns that human rights could be deprioritised in the UK’s pursuit of trade deals, export-licensing and other international agreements following

Brexit. In February 2019, it was reported that the International Trade Secretary had said that “*some countries*” had requested the UK to drop human rights elements that had been incorporated into EU deals in order to roll trade agreements over.<sup>5</sup> The International Trade Secretary stated that he is “*not inclined to do so*”.

The UK Parliament’s Joint Committee on Human Rights (JCHR) has launched an ongoing inquiry into the UK’s compliance with human rights standards in relation to new international agreements entered by the UK post-Brexit. The JCHR is considering whether a specific mechanism within parliament should be set up to ensure adequate scrutiny in future arrangements.<sup>6</sup>

## The impact of austerity in the UK

In 2010 the Conservative and Liberal Democrat coalition government introduced a programme of austerity to eliminate the budget deficit. As part of this the UK substantially reduced public expenditure.

The Welfare Reform Act 2012 formed part of this programme of austerity. Prior to it passing into legislation the JCHR raised concerns of its compatibility with the UK’s human rights obligations, stating “*...we believe there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR, if the individual concerned was genuinely incapable of work*”.<sup>7</sup>

Following a visit to the UK in November 2018, the UN Special Rapporteur on extreme poverty and human rights found that a fifth of the UK population live in poverty (14 million), and that 4 million of these live more than 50% below the poverty line. 1.5 million are destitute and unable to afford basic essentials.<sup>8</sup>

The Special Rapporteur found that there had been “*dramatic reductions*” in the availability of legal aid in England and Wales since 2012.<sup>9</sup> There have been

large cuts in funding to local authorities, particularly in England, as well as to the Welsh Government.<sup>10</sup> The National Audit Office has found that in England there have been real-terms cuts of 49% between 2010-11 to 2017-18.<sup>11</sup> In Wales, local authorities have experienced £1 billion worth of cuts.<sup>12</sup>

It was also found that the impact of austerity has fallen disproportionately upon women, racial and ethnic minorities, children, single parents, disabled people, pensioners, asylum seekers and migrants, and rural dwellers. Within the UK, Wales has the highest relative poverty rate with almost one in four people living in relative income poverty.<sup>13</sup>

## The impact of the hostile environment in the UK

The HO introduced what became known as the hostile environment policy in 2010.<sup>14</sup> The hostile environment policy is a set of administrative and legislative measures designed to make staying in the UK as difficult as possible for undocumented people in the hope that they may “*voluntarily leave*”. It is primarily implemented through the 2014 and 2016 Immigration Acts.

The policy has come under sharp and consistent criticism from civil liberties groups and opposition politicians.<sup>15</sup> There have been several scandals arising from the policy, including revelations of secret agreements between bodies that provide public services (such as healthcare, policing, or education) and the HO for the sharing of personal data which is then used for immigration enforcement.<sup>16</sup> Further, civil society and the UK Parliament’s Home Affairs Committee (HAC) have argued that the horrible suffering of the ‘Windrush Generation’ and the 2018 Windrush scandal (which broadly refers to Commonwealth citizens who arrived in the UK prior to 1973, some without paperwork, and some of whom ended up being wrongfully detained or removed from the UK) were an inevitable product of the hostile environment.<sup>17</sup>

A number of manifestations of the hostile environment raise human rights concerns under the UNCAT. For example, the cumulative effect of “*Right-to-rent*” checks, in which a landlord is required to check their tenants right to rent or face a fine or imprisonment,<sup>18</sup> the ban on undocumented people opening bank accounts<sup>19</sup> and the ban on asylum seekers’ right to work<sup>20</sup> have led to destitution resulting from an inability to access basic services and/or employment, which in individual cases is likely to constitute degrading treatment (for further information see Chapter 3 and Chapter 9).

The failure to adequately investigate crimes which may amount to torture or ill-treatment due to the referral of victims and witnesses of crime to immigration enforcement authorities may be in contravention of the investigative obligations under the UNCAT. For example, in 2017 a pregnant woman who reported being kidnapped and raped over a sixth month period to the police was arrested on immigration charges whilst seeking care and protection from the authorities.<sup>21</sup>

The refusal of basic health care through upfront charging for use of the National Health Service (NHS) in England has, in some cases, led to the risk of serious illness or death.<sup>22</sup> For example, the Windrush case of Sylvester Marshall, who was refused free cancer treatment as he was unable to provide officials with sufficient documentary evidence showing that he had lived in the UK continuously since arriving from Jamaica as a teenager in 1973.<sup>23</sup>

Furthermore, there are concerns that survivors of torture, abuse, and trafficking are subsequently liable to be charged for secondary healthcare (specialised healthcare rather than general practice) at 150% of the cost dependent on their immigration status, and that accruing a debt of over £500 could be reported to the HO and impact their immigration claim.<sup>24</sup> There are different arrangements in Wales, particularly regarding asylum seekers. For example, in Wales refused asylum seekers are exempt from NHS hospital charges.<sup>25</sup>

These examples are indicative of a wider set of issues. The hostile environment policy is expressly designed to make

life unbearable for undocumented people in the UK. The policy turns frontline service providers into border guards, undermining their ability to carry out their public duties; whether safeguarding vulnerable members of society, policing and protecting the community, or the provision of basic health care. The consequences of this policy clearly fall on the spectrum of inhuman and degrading treatment.

**1.1 The Committee should take into account the impact, and potential impact, of Brexit, austerity and the ‘hostile environment’ policy when assessing the UK’s implementation of the UNCAT.**

**1.2 The UK should introduce a single cross-government anti-torture policy that applies to all the issues raised in this report.**



**Chapter 2: Legislative,  
administrative, judicial or other  
measures to prevent torture  
and other ill-treatment**



The drastic reduction in legal aid since 2012 has threatened access to justice for asylum seekers and other vulnerable groups.  
© Abbie Trayler-Smith/Panos Pictures.

## Chapter 2: Legislative, administrative, judicial or other measures to prevent torture and other ill-treatment

### Article 2

In its 2016 List of Issues Prior to Reporting (LoIPR) the Committee requested information about the prevention of torture and ill-treatment in the UK, including the UK's plans to repeal the HRA, any measures taken to repeal ambiguities in the legislation that criminalises torture in the UK, the impact of legal aid reforms on access to justice, the use of closed material procedures and information on the resources available to the UK's NPM.

### Proposed repeal of the Human Rights Act 1998

Since 2013 there have been repeated proposals to repeal the HRA by the UK. In January 2019, the UK Government restated its commitment to revisiting the question of repeal or replacing the HRA once the “*process of EU exit*” is complete.<sup>1</sup> This is despite calls of support for there to be no repeal, including from the Welsh Government.<sup>2</sup>

Any proposal to repeal the HRA poses a fundamental threat to the human rights protections set out in the UNCAT. As a direct consequence of the UK's failure to fully incorporate the UNCAT into domestic law and to allow individual petitions to the UN, it is not possible to directly challenge state compliance with the Convention in domestic courts. The HRA, which incorporates the ECHR into domestic law, is therefore the only mechanism through which a person can directly enforce their rights under the UNCAT in the UK, through the vehicle of Article 3 of the ECHR.

**2.1 The UK should expressly state its commitment to the Human Rights Act 1998 and ensure that any changes to the current human rights framework strengthens the protection of human rights**

**2.2 The UK should make the declarations envisaged under article 22 UNCAT to recognise the competence of the Committee to receive and consider individual communications.**

### The Criminal Justice Act 1988

Sections 134(4) and (5) of the Criminal Justice Act 1988 provide for the defence of “*lawful authority, justification or excuse*” to torture. Despite the Committee's previous concerns on this issue there has been no change to this legislation.<sup>3</sup> The UK Government remains of the view that the Criminal Justice Act 1988 is consistent with the obligations undertaken by signing and ratifying UNCAT.

Although torture is not lawful in any circumstances in the UK, the application of this defence is ambiguous where alleged perpetrators are acting under the authority of foreign law. This section could be interpreted to exclude universal jurisdiction over torture where the domestic law of the state in which the acts occurred grants legal authority for torture (see Chapter 15). This result would be in violation of the UK's obligations under Articles 2(2) and 2(3) of the UNCAT.

**2.3 The UK should repeal sections 134(4) and (5) of the Criminal Justice Act.**

### Legal aid reforms

The drastic reduction in legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) remains a key threat to access to justice and effective remedies.

Civil legal matters are excluded from the scope of legal aid unless they are one of the matters listed in Schedule 1 LASPO. A 2019 MOJ review of LASPO found that “*It was asserted that many solicitors had abandoned legal aid work leading to advice deserts for certain categories of law*” such as immigration and housing issues.<sup>4</sup> A 2018 report found

that there are 26 local authorities in England and Wales with no legal aid provision which host more than 100 asylum seekers supported under section 95 of the Immigration and Asylum Act 1999, which means that they have to travel to other areas to access justice.<sup>5</sup> A report published earlier this year concluded that since the changes were introduced by LASPO, “at least 6,000 children each year have been left without access to free legal advice and representation in many areas of civil law – some estimates are as high as 15,000”<sup>6</sup>.

Some bereaved families can access legal aid through exceptional case funding for inquests, however the application process is lengthy, complicated and invasive.<sup>7</sup> Many bereaved people are not granted this type of funding, or face paying large contributions towards legal costs due to means testing. Some are forced to represent themselves, while others have to appeal to the generosity of strangers and crowdfund online for legal representation.<sup>8</sup> However, a recent MOJ review rejected proposals to introduce non-means tested funding for bereaved families following state related deaths, opting instead to introduce clearer guidance.<sup>9</sup>

**2.4 The UK should take the necessary measures to ensure that legal aid is provided to all those who would otherwise be without access to justice.**

## Closed material procedures

The Justice and Security Act 2013 introduced the use of closed material procedures (CMP) in civil proceedings involving matters related to national security. If a closed material procedure is ordered the applicant is prevented from seeing any information that is presented in closed proceedings, and the applicant must rely on an appointed special advocate to represent their interests in these. The special advocate is restricted from communicating with the claimant once they have become privy to the closed material.<sup>10</sup>

There is still little information available about the use of CMPs. A 2014 analysis found that the annual reporting

requirements on the use of CMPs which the Secretary for Justice must provide to Parliament “do not ensure that enough information will be provided so that the public can be adequately informed about the occasions when CMPs are sought and why declarations are made or not made.”<sup>11</sup> Between 2017-18 the Secretary of State for Justice made 11 applications for CMP, increasing from 8 the previous year and 5 between 2014-15.<sup>12</sup>

There are concerns that CMP is being used in increasing contexts. CMP was initially limited to specialist tribunals in the national security context (the Special Immigration Appeals Tribunal and the Investigatory Powers Tribunal). However, their availability has gradually increased, with their introduction to employment tribunals, planning inquiries, financial restriction proceedings, and other civil proceedings including family law cases. In *Belhaj and another v Director of Public Prosecutions*, in which the Appellant sought judicial review of a decision not to prosecute a former British intelligence officer for involvement in the abduction, rendition and mistreatment of a Libyan national, in which the UK Foreign Secretary had applied for the use of CMP, the Supreme Court found that closed material procedures could not be used in judicial review proceedings which included a review of “a decision made in a criminal cause or matter”.<sup>13</sup>

**2.5 The UK should ensure that all use of closed material procedures are compliant with the UNCAT.**

## The National Preventive Mechanism

There are continuing concerns about the lack of a clear legislative basis of the NPM in the UK and the resultant lack of statutory guarantee of independence, as raised in the Ninth Annual Report by the UK’s NPM.<sup>14</sup> The UK’s position is that the NPM complies with the requirements of the OPCAT.

In January 2018, the UN Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) robustly supported the NPM, stating “The lack of a clear legislative basis for the [UK] NPM has long been a matter of concern to the SPT.”<sup>15</sup> The SPT is due to visit the UK in 2019.

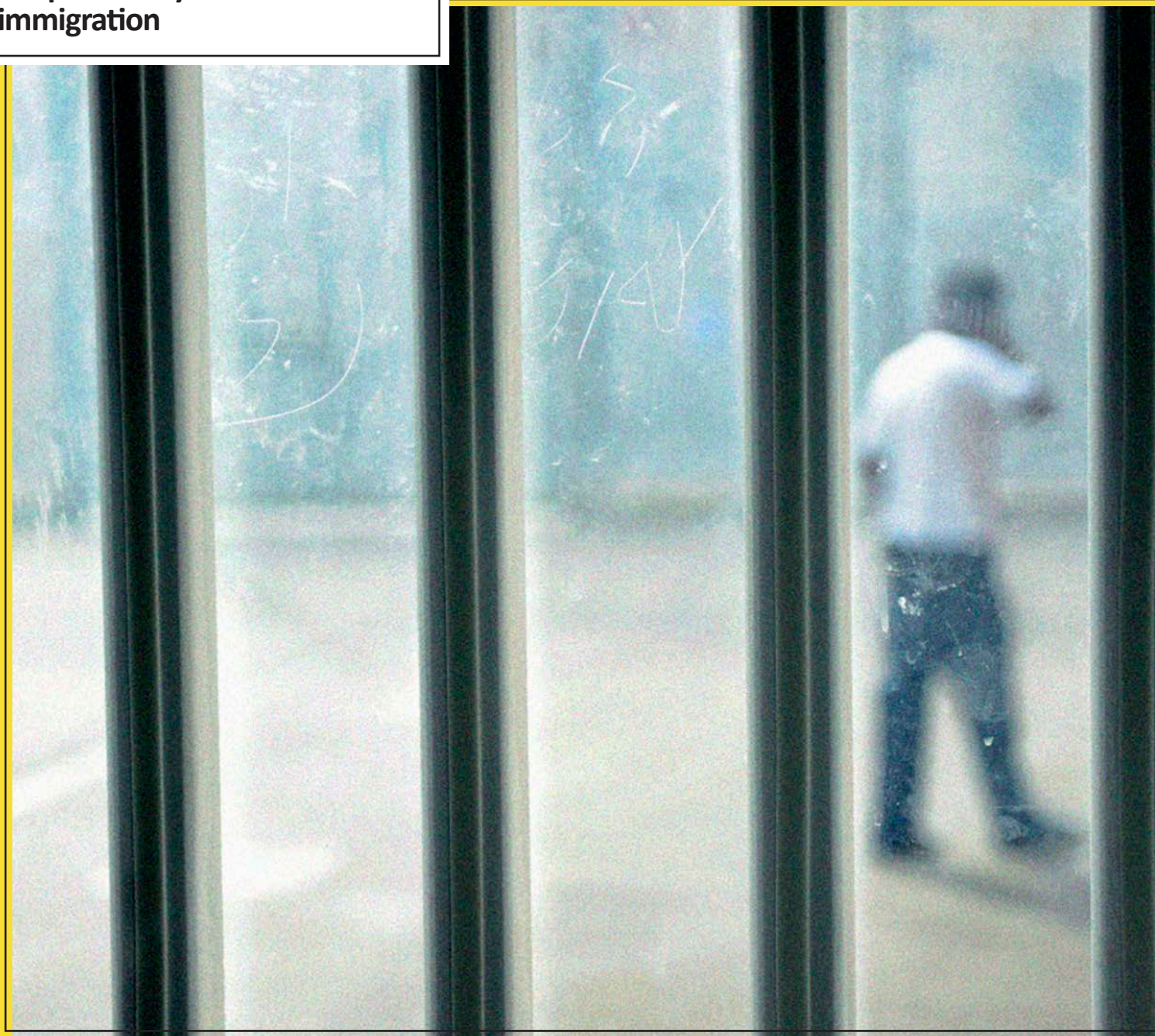
There are further concerns about the lack of sufficient funding to allow the NPM to fulfil its mandate under OPCAT. The UK NPM is comprised of 21 bodies which monitor different types of detention across the jurisdictions within the UK, which includes prisons, police custody, court custody, customs custody facilities, secure accommodation for children, immigration facilities, mental health and military detention.

However, the UK has not met requests by the NPM Secretariat for additional funding to coordinate this work and the NPM reported that several of its members were required to make cuts to their budgets for 2018-19.<sup>16</sup>

In addition, in 2014 the Minister of the Armed Forces announced that the UK would not extend the remit of HM Inspectorate of Prisons (HMIP), the UK's prison inspectorate, to include the inspection of military detention facilities overseas. This had been a recommendation of the Baha Mousa Public Inquiry into the death of an Iraqi hotel receptionist while in British Army custody in Iraq in 2003.<sup>17</sup>

**2.6 The UK should place the NPM under statutory footing to provide it with formal status and guarantee its independence. The UK should ensure that the bodies under the NPM, including the NPM Secretariat, has sufficient human, material and financial resources to operate independently and effectively, and that its mandate includes military detention facilities overseas.**

## Chapter 3: Asylum and immigration



A sample of 188 people held in immigration detention in 2018 found that more than half were either suicidal, seriously ill or victims of torture. © David Rose/Panos Pictures.

## Chapter 3: Asylum and immigration

Articles 3, 10, 11, 14

In its 2016 LoIPR, the Committee requested, *inter alia*, information on the number of asylum applications received since 2013 and the number of applications which were accepted because the applicants had been tortured, and the outcome of any appeals. The Committee also requested information on the detention of asylum seekers and migrants, including the steps taken to ensure the early identification of torture survivors, and on steps taken to end *de facto* indefinite detention. This chapter additionally highlights concerns about the conditions of immigration detention, as well as poverty within the asylum process and the risk of destitution.

Eight out of the ten immigration detention centres (which includes two short term holding facilities) are based in England. As a result, the information in this chapter largely relates to the situation in England.

### The asylum process

The HO does not collect statistics on the number of asylum claims involving torture allegations. A recent study, involving more than 12,000 participants, found that the prevalence of torture victims among migrants can be up to 76%, with the overall average being 27%.<sup>1</sup>

The determination system for asylum is notoriously arbitrary: numerous investigations have pointed out the culture of disbelief and hostility towards applicants, the routine misapplication of the standard of proof, a lack of accountability, and the poor training of those making decisions.<sup>2</sup> The UK Government has been criticised before for relying on discredited information about countries of origin.<sup>3</sup> There is clearly a need for better decision-maker training and to foster a different culture among caseworkers who make decisions.

In 2018 it was revealed that the HO had left 17 asylum seekers waiting more than 15 years for a decision on their asylum claim.<sup>4</sup>

In its previous concluding observations, the Committee urged the UK to “*Take necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System*”.<sup>5</sup> The Detained Fast Track procedure, under which appeals were processed according to severely truncated timescales, was ruled unlawful by the High Court in June 2015.<sup>6</sup>

### Proving torture in the asylum process

Torture survivors seeking asylum in the UK can find it almost impossible to prove to the HO that they were tortured, despite exhibiting physical and mental health indicators. There is concern that HO caseworkers are misapplying the standard of proof applicable to asylum claims as a matter of law.<sup>7</sup>

The approach followed by asylum caseworkers when assessing cases of torture survivors and other asylum seekers includes: sceptical interview techniques; a failure to properly consider the available evidence, including medical evidence of torture; and flawed credibility assessments based on minute contradictions in detail or an inability to remember specific details.<sup>8</sup>

For torture survivors, these problems can be made more acute due to PTSD (post-traumatic stress disorder) and other mental health issues caused by the trauma of their detention and torture. Survivors report that they feel it is presumed from the outset they are not telling the truth, and that interviewers try to ‘trip them up’ or catch them out.<sup>9</sup>

Research into the cases of 50 torture survivors in November 2016 found systematic errors in the assessment of medical evidence of torture.<sup>10</sup> The research included the following key findings:

- In all the cases the asylum caseworker failed to apply the appropriate standard of proof to establish a past history of detention and torture;
- 74% of cases involved the asylum caseworker substituting their own opinion for that of the clinician on the cause of injuries;
- 84% of cases involved the asylum caseworker dismissing the medical evidence because they had already reached a negative credibility finding;
- 54% of cases demonstrated poor understanding by the asylum caseworker of how the Istanbul Protocol applies to torture claims; and
- 30% of cases involved the asylum caseworker disputing or questioning the qualifications and expertise of the clinician.

Civil Society Organisations (CSOs) have found that asylum claimants are only recognised as survivors of torture or other grave human rights abuses after prolonged, arduous and costly legal procedures. This requires access to quality legal representation, ongoing specialist professional support, and provision of medico-legal documentation of their psychological and physical injuries. Such CSOs have found that the majority of torture survivors in the UK do not have access to these essential services.

#### **Claims for asylum granted on appeal**

A large proportion of asylum claims are granted on appeal. The most recent figures reveal that between July-September 2018 39% of initial asylum decisions were overturned on appeal.<sup>11</sup>

A 2013 report found that four errors in applying the credibility assessment were responsible for 88% of decisions granted on appeal for the preceding three years: the use of speculative arguments or unreasonable plausibility findings; not properly considering the available evidence; using a small number of inconsistencies to dismiss the application; and not making proper use of country of origin information.<sup>12</sup>

#### **Women asylum seekers**

CSOs remain concerned that vulnerable women asylum claimants are not routinely interviewed by female interviewers. Forcing vulnerable women, who may not be comfortable in any event, to retell difficult, private, and potentially embarrassing stories to a man could constitute ill-treatment.<sup>13</sup>

#### **Case study: "Woman Y"**

Woman Y was detained for a period of 3.5 weeks at Yarl's Wood Immigration Removal Centre after her asylum application was refused because of inconsistencies in her account.

In her country of origin, she had been a victim of torture and had been gang raped. The medical practitioner inside the detention centre confirmed that a wound she had on her upper thigh was consistent with that of someone who had been stabbed with a knife which Woman Y confirmed was sustained during her gang rape. The medical practitioner described her flashbacks, nightmares and depression as being symptomatic of PTSD and referred her for further assessment by a psychiatrist.

These examinations only took place once Woman Y had been detained. Had the medical examination taken place at the beginning of the asylum process she would not have had to endure the retraumatising experience of being detained. This could also have led to an accurate decision being made on her asylum claim.

#### **Child asylum seekers**

Systemic delays in the asylum system are having a devastating impact on asylum-seeking children, with many waiting for 18 months or even two years for a decision. This leads to high levels of stress and anxiety, affecting children's mental health, education, relationships with peers and their ability to plan for their future.<sup>14</sup> The suicide of three asylum-seeking teenagers in 2018 raises serious questions about the asylum system's ability to safeguard vulnerable children and young people, especially when they are already dealing with the

trauma of fleeing to the UK and with protracted uncertainty about their status and their lives.<sup>15</sup>

In 52% of cases unaccompanied children were granted asylum or another form of protection. 18% were granted temporary leave<sup>16</sup> having been refused asylum, despite consensus that temporary leave is rarely in children's best interests as it does not provide a durable solution for them.<sup>17</sup> 30% of applications were turned down.

3.1 The UK should publish statistics relating to the number of asylum claims involving allegations of past torture and the grant rate for these applications broken down by nationality and age.

3.2 The UK should allow for an independent public audit of the application of the standard of proof in asylum decisions to be undertaken by an independent body with the requisite legal expertise, such as the Office of the United Nations High Commissioner for Refugees.

## Safeguards against the detention of torture survivors

Torture survivors are regularly detained for immigration purposes in the UK and the current safeguards fail to provide them with adequate protection. Between January 2017 and December 2018, the CSO Freedom from Torture received over 170 referrals from people who disclosed torture and were being held in immigration detention. Independent clinical evidence shows that immigration detention is profoundly damaging for torture survivors.<sup>18</sup>

The UK has two main policies and procedures in place to identify torture survivors or other vulnerable persons who should not be detained: Rule 35 of the Detention Centre Rules (Rule 35) and the Adults at Risk (AAR) policy. The AAR policy replaced Chapter 55.10 of the Enforcement Instructions and Guidelines which contained a list of those unsuitable for detention.

In September 2016, the HO introduced the AAR policy to address the shortcomings identified in the first independent Shaw review in 2016. The AAR policy raised the evidential threshold by introducing three levels of evidentiary burden and introducing a range of "immigration factors" against which a decision not to detain is balanced.<sup>19</sup>

CSOs have found that HO caseworkers are either too ready to disregard medical evidence or to argue that immigration factors outweigh any vulnerability. Given the weight of evidence that detention is harmful to survivors of torture, and the policy's own admission that such individuals are "at risk", this is wholly unsatisfactory.

Information obtained through a Freedom of Information Act (FOIA) request showed that between September 2017-18, there were 11,993 instances where detainees have been found to be "at risk". By contrast, there were only 1,005 decisions to release people from detention due to being identified as an adult at risk.

In 2018, the HO introduced a revised definition of torture for the purposes of assessing individual vulnerability after the original definition introduced by AAR was found to be unlawful because it excluded victims of torture who were particularly vulnerable to harm in detention and who had been covered by the previous policy.<sup>20</sup>

The revised definition was introduced following a short consultation process which was criticised as rushed and inadequate by CSOs. The definition sought to distinguish between torture and ill-treatment, which is an important distinction in international law, but is entirely unnecessary for identifying those vulnerable to harm in detention. The revised definition required an assessment of whether the perpetrator had "control" over the victim and whether the victim was "powerless to resist". Such distinctions are irrelevant for the purposes of assessing the vulnerability of an individual in detention.

The revised definition was challenged in *R (Medical Justice) v SSHD* and it is understood that it will suffice for individuals



to demonstrate severe ill-treatment in “a situation of powerlessness”, and not that the individual had to be “powerless to resist”.<sup>21</sup> New guidance introduced in February 2019 notes that “For the avoidance of doubt, please note the following guidance when considering this definition of torture: There is no difference between ‘powerless to resist’ and ‘powerlessness’. The proper approach is to consider whether the detainee was in a situation of powerlessness”.<sup>22</sup> However, concerns remain amongst some CSOs that the definition is still wholly inadequate for the purposes of identifying vulnerability in detention.

#### Case study: “Wahab”

Wahab’s Rule 35 report documents his traumatic experience of torture, and the fact that he has suffered anxiety, insomnia, low mood and fear since the event. The report, written by the doctor in detention, stated: “the scars appear consistent with his account of torture. He reports to feel unsafe in detention and is exacerbating his mental health symptoms”.

This should have indicated that continued detention was potentially injurious to Wahab’s health, and that he might have therefore been a level 3 adult at risk. Under the AAR policy the caseworker could have requested more information from the medical practitioner. Instead the response said: “Although it is accepted that you are an adult at risk, the doctor has not indicated that a period of detention is likely to cause you harm.”

CSOs have found this to be a standard response provided in circumstances where medical practitioners have not provided an explicit opinion on the likelihood of future harm in detention. Wahab spent 6 months in immigration detention.

Rule 35 requires medical practitioners to report cases of suspected torture survivors. A HO caseworker will then decide on whether continued detention is appropriate.

There have been longstanding concerns that the Rule 35 process does not work effectively.<sup>23</sup> These concerns include people waiting a long time to have a report completed; doctors poorly or partially completing Rule 35 forms; and

inadequate and ill-considered responses to the reports. Too often, medical practitioners simply write in the report what the detainee has told them, rather than giving a medical opinion to ensure the evidence level is higher,<sup>24</sup> and can be affected by the “culture of disbelief” in Immigration Removal Centres (IRCs).<sup>25</sup> Additionally, Rule 35 reports are not given adequate weight in the decision process because they are typically categorised as Level 2 evidence. This results in other immigration factors being used as reasons to not release people.

In the first quarter of 2018 only 12.5% of Rule 35 reports led to a release from detention.<sup>26</sup> In 2016, the HAC stated that “it is unacceptable that the large majority of detainees subject to Rule 35 Reports remain in detention”.<sup>27</sup> There is also significant variability in the number and quality of Rule 35 reports between IRCs.<sup>28</sup>

The UK Government has provided training to doctors on documenting injuries in victims of torture and the Rule 35 process. However, the second Independent Review in 2018 by Stephen Shaw found that despite improved training for clinicians and improved monitoring of the process, there have been no changes to the lack of trust by the HO in the Rule 35 mechanism.<sup>29</sup> Doctors in IRCs are employed as General Practitioners and are not required to have any knowledge of the Istanbul Protocol and its guidance on the assessment of victims of torture.<sup>30</sup> There are subsequently repeated failures to properly assess the complex healthcare needs of torture survivors and prevent them from being further harmed by unnecessary detention.

Furthermore, even if doctors have completed a Rule 35 report, IRC healthcare do not appear to have a system in place for reviewing those who have alleged torture to identify if they are being harmed by continued detention.

In addition, HMIP has repeatedly identified areas of poor practice regarding interpreting services. This includes not using professional interpreting services enough during arrival and healthcare consultations, including for confidential matters;<sup>31</sup> staff using hand gestures to

communicate rather than the telephone interpreting services;<sup>32</sup> and using other detainees to translate during confidential interviews, including in reception, for medical interviews,<sup>33</sup> assessment, care in detention and teamwork reviews<sup>34</sup> and for highly sensitive Rule 35 reports.<sup>35</sup> Such poor practice compromises accuracy and confidentiality and, as noted by HMIP, “hindered their [detainees’] ability to communicate concerns to staff”.<sup>36</sup>

**3.3 The UK should take the necessary measures to ensure that vulnerable people and torture survivors are not detained by: reviewing the screening process for administrative detention of asylum seekers upon entry; lowering the evidential threshold for torture survivors; ensuring that there is access to interpreting services where needed.**

**3.4 The UK should take the necessary measures to provide adequate training to judges, prosecutors, forensic doctors and medical personnel on the Istanbul Protocol.**

## Conditions of immigration detention

25,061 people were placed under immigration detention in the year ending September 2018.<sup>37</sup> The use of immigration detention in the UK has become routine, and decisions to detain are often based on poor decision making.<sup>38</sup> In 2019, the JCHR found serious concerns about the detention decision-making process.<sup>39</sup> In a separate inquiry in 2018 about the Windrush generation, the JCHR examined two cases files and found that “administrative decisions made in these cases were not justified and proportionate and did not protect against unnecessary and unlawful detention”.<sup>40</sup>

In addition, the conditions of detention centres have been found to be extremely poor. A recent investigation using a sample of 188 people held in detention in the UK on 31 August 2018, found that “more than half of the sample were either suicidal, seriously ill or victims of torture”.<sup>41</sup> According to the Equality and Human Rights Commission, the number of self-harm incidents requiring medical treatment in immigration detention settings

almost trebled between 2011 and 2017.<sup>42</sup> Between March 2013 and March 2019 there have been 26 deaths of immigration detainees held in immigration detention, prison, during deportation, or within four days of release.<sup>43</sup>

Since 2011 there have been six High Court rulings where detention and the conditions of detention were found to be so poor as to constitute a breach of Article 3 of the ECHR.<sup>44</sup>

In all six cases, the detainees’ health deteriorated in detention and the deterioration was not identified until they were very unwell. In all but one of the cases the detainee required inpatient hospital treatment. An analysis of the High Court rulings identified four key areas of failure: a systemic problem with insufficient healthcare; a bureaucratic inertia or breakdown in communications between agencies; poor on-going detention review; and poor attitude/cynicism.<sup>44</sup>

### Case study: “Mr L”

Mr L began experiencing problems with an old wound in his leg while in detention, and repeatedly asked for medical assistance over the course of 4 months. Mr L’s concerns were dismissed, with healthcare staff suggesting that if he wanted treatment he should return to his own country. His condition was treated with plasters and paracetamol, and healthcare staff refused at times to examine his worsening injury.

Eventually Mr L’s condition got much more severe and he had to be admitted to hospital for a series of operations. His records were lost when he was transferred from one detention centre to another. A volunteer who visited Mr L throughout this experience reported that his distress, pain and suffering were clearly evident and worsening.

Mr L has now been released from detention. He now has to walk with a stick following his time spent in detention.

There are wider systemic shortcomings of the conditions of immigration detention that have come to light in recent years. Individual detention centres are mostly run by private contractors, and issues can vary across the detention estate.

There continue to be concerns about the quality of healthcare provided in immigration detention centres, including the attitude of staff and inadequate or inappropriate mental health services. There has been a significant increase in deaths, especially self-inflicted deaths, in immigration detention over recent years.<sup>46</sup>

There has been an increase in the use of restraints for healthcare appointments, as reported by the National Audit Office, which identified a link between the increase in fines for absconding and the use of restraints at external appointments, including healthcare.<sup>47</sup> This has led some detainees to refuse to attend such appointments, possibly leading to a decline in their health. The Independent Monitoring Board at Harmondsworth IRC reported that nearly all detainees were taken to external appointments in restraints.<sup>48</sup>

A 2016 report highlighted the misuse of solitary confinement, or segregation, in immigration detention, with particular concerns that they are used punitively rather than in accordance with the Detention Centre Rules.<sup>49</sup>

#### Case study: “Woman Z”

Immigration officers attempted to detain Woman Z but the stress of this led her to have a non-epileptic seizure and she was taken to hospital. After she was removed from hospital she was taken to Yarl’s Wood IRC.

Woman Z stated that she was placed in solitary confinement without explanation and without indication of how long she would remain there. During this time, she had another seizure and came around lying in her own vomit.

Her treatment had traumatising consequences for Woman Z, and she reported that her mental health condition rapidly deteriorated in the detention centre. She now lives in fear of police and the authorities.

In September 2017, the BBC programme Panorama broadcast an undercover investigation into conditions at Brook House IRC which appeared to reveal assaults, abuse

and falsification of records by the G4S staff which ran the Centre.<sup>50</sup> Footage showed one officer appearing to strangle a detainee. The mechanisms for identifying and reviewing these issues within IRCs are wholly inadequate. There have been on-going issues with rape and sexual abuse at Yarl’s Wood IRC, which has led to the dismissal of a number of guards.<sup>51</sup>

The UK Government pledged to end the detention of children for immigration purposes in 2010 in line with a recommendation by the CRC Committee. However, in 2016 the specialist family detention unit built as a result of this pledge, Cedars, was closed and children started being detained in a new family unit at Tinsley House IRC. Despite the HO’s Enforcement Instructions and Guidance listing children as “*unsuitable*” to be placed in immigration detention centres,<sup>52</sup> some minors continue to be detained. Although the number of children entering detention has dropped sharply since 2009, 17 children were detained in the first quarter of 2018, rising to 22 in the second quarter of 2018.<sup>53</sup>

Some children are also being detained within adult detention centres.<sup>54</sup> People claiming, and appearing, to be under 18 continue to be detained on a relatively regular basis.

#### **No time-limit for immigration detention**

The Committee previously recommended that the UK introduce a time limit for immigration and “*take all necessary steps to prevent cases of de facto indefinite detention.*”<sup>55</sup> The JCHR echoed recommendations from civil society that the maximum cumulative period for detention should be 28 days.

However, the UK remains the only country in Europe where there is no time limit on immigration detention. The extensive flexibility provided by the lack of a statutory time limit has led the UK to neglect many procedural safeguards. Currently, a deportee must only be detained for a “reasonable” period of time before removal in order for immigration detention to be lawful.<sup>56</sup>

2-3% of immigration detainees are held for up to six to 12 months, and the additional 1% of detainees are held for more than a year. These detainees have limited recourse to legal action and no clarity over their position under current legislation.<sup>57</sup>

There is a growing body of evidence as to the damage caused by this lack of time limit. Research conducted in 2015 showed that 83% of detainees between 2000 and 2015 reported that they experienced a negative impact on their mental and physical health as a result of their experience within detention.<sup>58</sup>

In January 2018, the HO introduced automatic bail hearings following four months in detention and has stated that it intends to bring this down to two months. However, it is unclear whether this change is actually benefitting those detained. Detainees have reported to CSOs that they have been asked to sign a form on arrival in detention waiving their right to an automatic bail hearing.

In July 2018, the government announced that an 'Alternatives to Detention' scheme will be designed by the HO and the UN Refugee Agency for women currently detained in Yarl's Wood IRC.<sup>59</sup>

**3.5 The UK should ensure that the conditions of immigration detention meet the standards set out in the Nelson Mandela Rules.**

**3.6 The UK should introduce a statutory time limit to immigration detention and ensure that detention is a measure of last resort and is justified as reasonable, necessary and proportionate in the light of the relevant circumstances. The UK should take into account the proposed 28-day limit put forward by the Joint Committee on Human Rights and civil society organisations.**

**3.7 The UK should renew and fulfil its commitment to ending the immigration detention of children.**

## **Poverty in the asylum process and the risk of destitution**

Asylum-seekers in the UK do not have the right to work whilst their claim is being processed and are therefore forced to depend on UK HO support provided under section 95 of the Immigration and Asylum Act 1999. Asylum seekers often wait more than a year for their asylum appeal to be heard meaning that they can be on support for years.

A number of changes in recent years have worsened the situation. Current levels of asylum support mean that a single asylum seeker will be living 74% below the relative poverty line.<sup>60</sup> An asylum-seeking family including a couple and one child under 14 would be living 63% below the relative poverty line.<sup>61</sup>

Asylum seekers who have had their initial application and any subsequent appeal refused are left without any statutory support and are at risk of becoming homeless. The only asylum seekers who continue to be supported after their appeal rights are exhausted are families with children, and those asylum seekers who the HO accepts face a genuine obstacle to return (for example, if they are too sick to travel or are waiting for travel documents to be issued by their own governments).<sup>62</sup>

A 2017 report documented the struggle to survive for this group, most of whom were not receiving any form of support.<sup>63</sup> The report found that living in limbo with no control over their future had a profound impact on the physical and mental health of refused asylum seekers, whose health deteriorated rapidly over time.

Local authorities have a duty to support families with No Recourse to Public Funds under Section 17 of The Children Act 1989 if they are "in need". However, a 2017 survey of 70 families found that those who have tried to access support are often denied it: 71% experienced initial gatekeeping, and 42% were refused a "child in need" assessment. Of families who were offered this support,

26% received very low rates of financial subsistence<sup>64</sup> well below Asylum Support rates.<sup>65</sup> Some No Recourse to Public Funds families are forced to live on less than £2 per person per day.<sup>66</sup> 7% were wrongly told that their children would be placed in foster care if the parents were unable to support them.<sup>67</sup>

Over 50,000 individuals with dependants had the NRPF condition applied to their limited leave to remain over a two-year period, up until 2016. Only a third of applications to remove these conditions are successful, leaving many families without access to the welfare support they need.<sup>68</sup>

**3.8 The UK should provide asylum seekers and refused asylum seekers with the right to work and provide sufficient support to meet basic needs in line with mainstream income support and ensure that no one becomes destitute.**

## Chapter 4: Prisons and other forms of detention



No young offender institutions and secure training centres were found safe enough to hold children in 2017.  
© Morris Carpenter/Panos pictures.

## Chapter 4: Prisons and other forms of detention

### Articles 11 and 16

In its 2016, LoIPR the Committee requested information, *inter alia*, on measures taken in the UK to reduce prison overcrowding, the use of solitary confinement, the frequency of inter-prisoner violence, efforts made to meet the needs of women and children in detention and deaths in custody. This chapter also highlights the needs of older persons in detention as the fastest growing age group in the prison population, and the needs of disabled prisoners.

### Detention conditions and arrangements for custody

#### *Use of solitary confinement*

In 2015, HMIP highlighted that solitary confinement and isolation goes under many alternative names such as: segregation, care and separation, loss of association, basic, time out, therapeutic isolation or temporary confinement. The report identified that there was a risk *“that some of this terminology can obscure the seriousness of the practice and the need for rigorous monitoring and governance”*.<sup>1</sup> The UK’s NPM specifies a limit of 15 days, in line with the Nelson Mandela Rules.

A 2016 study of segregation units and closed supervision centres found that 9% were segregated for longer than 84 days, 20% for between 14 and 42 days and 71% spent fewer than 14 days in segregation.<sup>2</sup> In only a quarter of prisons visited by HMIP in 2017-18 was evidence found of meaningful work to reintegrate segregated prisoners back to normal location.<sup>3</sup>

Over half of the prisoners interviewed for the 2016 study reported three or more mental health problems including anxiety, depression, anger, difficulty in concentration, insomnia, and an increased risk of self-harm. During 2017–18, at least six prisoners took their own lives while in

segregation units.<sup>4</sup> Regimes in most segregation units have been found to be impoverished, comprising little more than a short period of exercise, a shower, a phone call, and meals.<sup>5</sup>

HMIP has raised particular concerns regarding the segregation of vulnerable women. In its 2018 report on HMP Peterborough, it found that the prison *“could not fully support women with very complex and challenging behaviour. Some of these women were managed for long periods in segregation or in the health care department, which could not meet their needs”*.<sup>6</sup> For segregation of children see below.

#### **Prisoner safety and inter prisoner violence**

The number of assaults in prisons are at their highest level in ten years. In the 12 months to June 2018, there were 32,559 assault incidents (up 20% from the previous year) and 3,951 serious assaults (up 7% from the previous year).<sup>7</sup> Of these 23,448 prisoner-on-prisoner assaults (up 19% from the previous year), 13% being serious assaults (up 5% from the previous year).

The number of incidents of self-harm in prisons are also at their highest levels. In the 12 months to June 2018, there were 49,565 incidents, up 20% from the previous year. Incidents requiring hospital attendance increased by 11% to 3,151.<sup>8</sup>

A key factor behind the decline in standards of safety in prisons in England and Wales has been the steep cuts in prison service staffing and resources since 2010. Between 2010–11 and 2014–15, HM Prisons and Probation Service (HMPPS) reduced its budget by nearly a quarter.<sup>9</sup> A prison service *“benchmarking”* efficiency programme contributed to a 25% cut in frontline operational staff between 2010–2017.<sup>10</sup>

The Permanent Secretary at the MOJ told the UK Parliament’s Public Accounts Committee in 2017 that the reduction in staff numbers *“has been detrimental to security, stability and good order in prisons”*.<sup>11</sup> HMIP has reported that there has been a huge increase in violence across the prison estate in the last five years, at a time when large reductions in staff numbers were taking effect.<sup>12</sup>

Since 2016 the MOJ has introduced measures to: increase front-line staff capacity, diagnose violence-promoting characteristics and increase conflict resolution in line with the Nelson Mandela Rules on safety. However, these initiatives have not yet resulted in improved safety.

### **Overcrowding and poor living conditions**

Prisons remain extremely overcrowded. Nearly 21,000 people in England and Wales were held in overcrowded accommodation in 2016–17, almost a quarter of the prison population. This has remained broadly unchanged for 14 years.<sup>13</sup>

There are currently 7,973 men and women held above the UK MOJ’s own definition of safety and decency.<sup>14</sup> Overcrowding is unevenly distributed across the prison estate. For example, HMP Winchester and HMP Wandsworth are operating at 159% and 155% capacity respectively.<sup>15</sup>

There are significant concerns regarding the long-term sustainability and affordability of the UK Government’s prison building programme. While the UK Government has committed to building an additional 10,000 prison places, its original commitment to bring about a “less crowded” prison estate has been dropped.

A 2017 report found that the MOJ’s ambitions for prison building are inadequately funded by approximately £162m in 2018-19, rising to £463m in 2022-23.<sup>16</sup> On current population projections, there is no prospect of any reduction of overcrowding before 2022.

HMIP has highlighted the poor living conditions which many prisoners are enduring. It noted that due to inadequate facilities in some establishments “prisoners often have to eat their meals in their cells, often next to their toilets and, in some cases where there is insufficient furniture, sitting on their beds”.<sup>17</sup>

The CPT has repeatedly raised concerns over the impact of overcrowding. In 2017 it called on the UK to significantly

reduce the current and future prison population as a matter of priority.<sup>18</sup>

### **Imprisonment for Public Protection**

Imprisonment for Public Protection (IPP) sentences were introduced to ensure that dangerous, violent and sexual offenders stayed in custody for as long as they presented a risk in society. Offenders were given a minimum tariff (period) to spend in prison before they can apply to the Parole Board for release.

IPP sentences were abolished in 2012 following a review, but this did not apply to existing prisoners. In June 2018 there were 2,598 people in prison serving an IPP sentence, despite IPP sentences being abolished in 2012.<sup>19</sup> Nearly 9 in 10 (88%) are still in prison despite having passed the minimum period they must spend in custody which is considered necessary to serve as punishment for the offence.<sup>20</sup>

Long periods of incarceration without certainty of release causes mental distress. There were 872 incidents of self-harm per 1,000 IPP prisoners in 2017 – more than double the self-harm rate of determinate sentenced prisoners.<sup>21</sup>

**4.1 The UK should take effective measures to prevent overcrowding and prisoner violence and ensure that solitary confinement is only used in exceptional cases as a last resort.**

**4.2 The UK should place the remaining Imprisonment for Public Protection sentences under review.**

## **Deaths in prison**

Deaths in prison in England and Wales have risen to historically high levels in the past five years.<sup>22</sup> 2016 saw the highest number of deaths ever recorded, and the levels of self-harm in prisons continue to reach record highs.

There were 325 deaths in prison custody in the 12 months to September 2018 (up 8% from the previous year).



Of these, 5 were homicides (up from 3 incidents in the previous year). There were 87 self-inflicted deaths (up from 78 in the previous year).<sup>23</sup>

The most common issue highlighted at recent inquests was failures with the suicide and self-harm monitoring procedures. This was followed by issues with observation and communication (in around 40% of cases).<sup>24</sup> Other common themes were issues with record keeping, medicine prescribing processes, health care (for both physical and mental health), and staff training. There has been a marked increase in the number of incidents when a prisoner's death is classified as *"awaiting further information"*.<sup>25</sup>

The Prisons and Probation Ombudsman (PPO) has concluded that while some prisons *"appear to have learned the lessons from previous self-inflicted deaths, others are still repeating the same failings"*.<sup>26</sup> It warned against complacency as the rate of self-inflicted deaths (suicides) has been rising again in the first six months of the 2018-19 year. The PPO has stated that it frequently investigates deaths where the level of restraint use is inappropriate.

**4.3 The UK should take robust measures to prevent self-inflicted deaths (suicides), including suicides and self-harm in custody. The UK should ensure that cases of suicide and self-harm are independently and thoroughly investigated and that lessons are learned; that staff are adequately trained; and that prisoners receive adequate protection and appropriate mental health and other support services for them.**

## Women in detention

In 2017, 8,474 women were imprisoned in England and Wales either on remand or under sentence,<sup>27</sup> and 87% of the sentenced women had been convicted of a non-violent offence (compared to 69% of men).<sup>28</sup>

There is continuing over-use of short custodial sentences for women. Over three quarters of women sentenced to

### Case study: "Emily"

Emily was 21 years old when she was found dead in HMP New Hall in April 2016. Emily was imprisoned for arson, having set fire to herself, her bed and curtains. She had a history of serious mental ill-health including self-harm, suicide attempts and drug addiction. This was Emily's first time in prison. Her family said *"the one consolation was that we believed she would be kept safe"*.

On 1 February 2018, the inquest investigating Emily's self-inflicted death concluded with deeply critical findings about her care and the failure to transfer her to a therapeutic setting. The same coroner had dealt with a strikingly similar death ten days prior to Emily's inquest.

immediate custody in 2017 were sentenced to less than 12 months<sup>29</sup> (many to less than three months) overwhelmingly for minor offences.<sup>30</sup> There are also concerns that prison is being used by magistrates as a place of safety for women.<sup>31</sup>

The use of community sentences has decreased by 42% from 2010 to 2017.<sup>32</sup> The 12-month Post-Sentence Supervision introduced in 2017 has resulted in a high number of recalls to prison for women,<sup>33</sup> has proven to be inefficient and has been condemned by the UK Parliament's Justice Committee and by CSOs.<sup>34</sup>

The 2018 MOJ Female Offender Strategy marks a serious attempt by the UK Government to take proper account of the vulnerability of many women offenders by endorsing the case for a gender specific approach to women.<sup>35</sup> However, concerns remain over the limited allocated resources and a timetable to drive progress.<sup>36</sup>

The prevalence of past trauma amongst women in prison is high. 53% have experienced emotional, physical or sexual abuse as a child, (compared to 27% of men) and 57% report being victims of domestic violence as adults.<sup>37</sup> There are strong links between women's offending behaviour and their experience of abuse and coercive control.<sup>38</sup> The draft Domestic Abuse Bill is an opportunity for the UK Government to address this by introducing a statutory

defence in relation to offences committed by women subject to coercive relationships.<sup>39</sup>

Women's centres offer a holistic approach to female resettlement and can help and support women who have had contact with the criminal justice system to move away from offending.<sup>40</sup> However, central allocation of resources remains inadequate to support existing services and fill gaps across the country. Women also continue to be held far from home (an average of 66 miles)<sup>41</sup> and adequate support services with rehabilitative elements are not available to all women in prison, especially those on short sentences.

The UN Committee for the Elimination of Discrimination Against Women (CEDAW Committee) has also raised concerns about the levels of incarceration of women in the UK for minor offences and recommended the adoption of *"alternative... custodial strategies, including community interventions and services"* for women accused of minor offences.<sup>42</sup>

The latest statistics show a rate of 2,366 incidents per 1,000 in women's prisons (up 24% from the previous year).<sup>43</sup> In the 12 months to June 2018 inter prisoner assaults in women's prisons increased by 36% from 2017 to 2018, with assaults on staff increasing by 32% in the same period.<sup>44</sup>

Strip-searching remains a concern, and a 2018 inspectorate report has highlighted the over-use of strip-searching in HMP & YOI Peterborough.<sup>45</sup>

There have been 104 deaths in women's prisons since the 2007 review of women in the criminal justice system. In 2016, there were 22 deaths in women's prisons. There have also been seven deaths of transgender women in men's prisons in this period.<sup>46</sup> Recent research identifies serious safety failures inside prisons in relation to self-harm, and suicide management and inadequate healthcare provision.

**4.4 The UK should ensure implementation of the Female Offender Strategy through increased funding for women's centres.**

It also highlights the lack of action on recommendations arising from post-death investigations and inquests.<sup>47</sup>

Levels of self-harm are staggeringly high in women's prisons, with women accounting for around 5% of the prison population but almost 20% of all self-harm incidents. In 2018, self-harm incidents in the women's estate were at their highest levels since 2011.<sup>48</sup>

## **Older persons in detention**

People aged 50 and over are the fastest growing age group in the prison population and yet no national strategy for their care exists. In June 2018 there were 13,616 older people (aged 50 and over) in prison in England and Wales of whom around two thirds (65%) were aged 50-59, one quarter (24%) aged 60-69 and just over one in ten (11%) aged 70 and over.<sup>49</sup> Older prisoners made up 15% of the total prison population of England and Wales.

It has been estimated that dementia affects approximately 5% of prisoners over the age of 55.<sup>50</sup> A 2013 Justice Committee inquiry found that for these prisoners, many were being held in establishments that could not meet their basic needs, were not being provided with essential social care, and were released back into the community without adequate support. It recommended a national strategy for older prisoners, but this has not been adopted.

The HM Prison and Probation Service has now developed instructions on supporting prisoners with care and support needs and on safeguarding, and the Care Act 2014 also clarified that a prison's local authority is responsible for assessment of need and provision of social services for prisoners who meet eligibility criteria. Despite this, the health and social care needs of older prisoners are often unmet, particularly upon entry and discharge.<sup>51</sup>

**4.5 The UK should publish a comprehensive national strategy for the care of older persons in detention.**

## Disabled prisoners

The Prisons and Probation Ombudsman has also identified the failure of prisons to make reasonable adjustments for disabled prisoners as a significant problem.<sup>51</sup> This failure can give rise to inhuman and degrading treatment as noted in *Price v United Kingdom* (2001).<sup>53</sup>

Recent research suggests that life for hard of hearing and deaf prisoners can be particularly difficult given that prison largely revolves around audible signals for actions such as alarms, bells and spoken commands. Deaf prisoners are also often isolated and even where there is more than one deaf prisoner, they are not accommodated together.<sup>54</sup>

**4.6 The UK should ensure that prisons can make reasonable adjustments for disabled prisoners.**

## Children in detention

### *Children in prison*

Children who are criminalised can be detained in the youth custody “secure estate”. The act of detaining children can be highly damaging to their psychological and physical wellbeing, yet far too many children continue to be detained inappropriately. England and Wales have the highest level of child incarceration in Western Europe,<sup>55</sup> despite significant reductions in both the numbers of arrests of children and in the number of children locked up in penal custody. By August 2018, the population of the secure estate for under-18s was 875. Most concerning is that Black, Asian and minority ethnic (BAME) children account for just under half of the child prison population. The Committee on the Rights of the Child (CRC Committee) has urged the UK to “ensure that detention is not used discriminatorily against certain groups of children”.<sup>56</sup>

The reduction in the number of children in custody has not resulted in an increase in the number of places in high quality secure provisions for children. Secure

Children’s Homes, which offer the highest level of care for children, hold the fewest children. In February 2017 HMIP stated that at that time, it could not classify any Young Offender Institution or Secure Training Centre as safe enough to hold children.<sup>57</sup> There are no facilities in Wales for girls who are currently held in institutions in England. Distance from family and friends puts additional pressure on their emotional health and wellbeing.

### *Solitary confinement and isolation*

The rate of single separation in Secure Children’s Homes and Secure Training Centres has seen a large increase in 2018, from 52.3 to 93.9 per 100 children or young people.<sup>57</sup> The Children’s Commissioner for England found that one in three detained children will experience isolation at some point; disabled children are two thirds more likely to experience isolation and BAME children are subject to isolation at three times the rate of their white peers.<sup>59</sup>

The Children’s Commissioner for England has also reported “intolerable conditions” regarding children kept in confinement in prisons including hard beds, open toilets and either too-cold or stifling hot conditions.<sup>59</sup> Up to date figures on the use of isolation, disaggregated by protected characteristics, are not publicly available, raising questions around oversight and accountability.

The CRC Committee has recommended the UK “prohibit the use of solitary confinement in all circumstances” for children and the CPT has been extremely critical of children being on a “separation list” where they are locked up alone in their cells for 23.5 hours a day.<sup>61</sup> It concluded: “holding juvenile inmates in such conditions amounts to inhuman and degrading treatment.”<sup>62</sup> Concerns have also been raised by the British Medical Association, the JCHR, the Children’s Commissioner for England and HMIP.<sup>63</sup> Despite overwhelming evidence to the contrary, the UK Government does not accept that children are being held in conditions amounting to solitary confinement.

### ***Mental health, self-harm and deaths in custody***

A 2012 report highlights that 31 children aged 14 to 17 (all boys) have died in prison from 1990 to 2011, 29 of which were self-inflicted deaths.<sup>64</sup> A further three have died since then.<sup>65</sup> The report observes that children in prison are among the most disadvantaged in society, many having complex support needs, such as mental health, a learning disability or speech, language and communication difficulties,<sup>66</sup> which is reflected in the backgrounds of the children who have died.

The high prevalence of emotional and mental health problems among children in prison is a particular concern, and self-harm is common. In the last year incidents of self-harm increased by 40% to nearly 1,800 incidents.<sup>67</sup>

### ***Restraint of children in Young Offenders Institutions and Secure Training Centres***

The circumstances in which it is lawful to restrain children in custody are too widespread, indicating that it is used otherwise than as a last resort. Statistics show that the use of restraint has risen in the last five years, with monthly physical restraints of 32.1 per 100 children or young people in custody in the last year (just over 4,500 incidents),<sup>68</sup> compared with 20.5 per 100 children in 2010-11.<sup>69</sup> In 2017 a legal challenge ended the routine use of adult restraint techniques on children at Feltham prison.<sup>70</sup>

An HMIP survey found that more than a half of children (55%) in Secure Training Centres reported being restrained. More than two-fifths (44%) of boys reported being restrained while in YOIs.<sup>71</sup> BAME children or young people were significantly more likely to be restrained than White children at 51.9 per 100 children compared to 36.6 per 100 children.<sup>72</sup> In 2016, the CRC Committee raised concern about the “increased use of restraint and other restrictive interventions against children in custodial settings in England and Wales”.<sup>73</sup> There were 70 occasions in which children required medical treatment for an injury following a use of force on them (2% of all incidents). Of these, 66 injuries were minor requiring medical treatment on site and four incidents required hospital treatment.<sup>74</sup>

Following the deaths of two children in custody after the use of restraint, a new system called Minimising and Managing Physical Restraint was introduced. However, the new system still includes techniques which involve the deliberate infliction of pain on children.

A serious case review into abuse of children by staff at Medway Secure Training Centre found there to be a lack of escalation and effective monitoring of the safety of children. The review criticised the contract between the Youth Justice Board and Barnardos, as independent advocates for children, which acted as a barrier to independent scrutiny. The review criticised the use of pain-inducing restraint techniques with the majority of children having experienced restraints. It highlighted how HMIP have, more than once, made recommendations to the UK Government that the use of pain inflicting techniques on children in Secure Training Centres and Young Offender Institutions should be stopped.

Positively, the MOJ has announced a review of the use of pain-inducing restraint across all child prisons and escorting procedures which is due to report in summer 2019.<sup>75</sup> Children's rights charity Article 39 also lodged a judicial review with the High Court against the UK Government's decision to allow the use of pain-inducing restraint by prison escort workers from a private contractor.<sup>76</sup>

**4.7 The UK should embed in law that children will only be deprived of their liberty as a last resort, for the shortest possible time, and only when it is in the best interest of the child. All children in custody should have a statutory right to full independent advocacy.**

**4.8 The UK should ensure that restraint against children is only used as a last resort in cases of absolute necessity. It should not be permitted as a form of discipline but exclusively where there is a need to protect the child or others from serious harm. The use of any physical restraint techniques which aim to inflict deliberate pain on children should be banned. Any conditions that amount to solitary confinement of children should be abolished.**

**Chapter 5: Policing, the use of equipment and the criminal justice system**



The use of tasers has increased, even though they can cause extreme pain, serious injury and even death.  
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## Chapter 5: Policing, the use of equipment and the criminal justice system

Articles 11, 14, 16

The 2016 LoIPR requested information on any instances of the alleged excessive use of force that have occurred as a result of using electrical discharge weapons or any other less-than-lethal device. This chapter outlines the introduction of pepper incapacitant sprays onto the adult male prison estate, the use of electrical discharge weapons on adults and children, as well as the use of other devices and techniques on children by the police and local authorities in England and Wales. This chapter also highlights the lack of support provided to exonerates and the resultant difficulties faced upon rehabilitation into society.

### Use of equipment by police and in prisons

#### ***PAVA Incapacitant Sprays***

In October 2018 the UK Government announced that prison officers in the adult male estate in the UK will be equipped with PAVA (pepper) incapacitant sprays.<sup>1</sup>

PAVA interacts with sensory nerve receptors to produce discomfort, itching burning and pain principally in the eyes, respiratory tract and/or skin.<sup>2</sup> The European Court of Human Rights (ECtHR) has stated that strong doses “may cause necrosis of tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging.”<sup>3</sup> One study of PAVA and CS (tear gas) incapacitant sprays in the UK found that effects “last longer than generally believed.”<sup>4</sup>

The CPT has stated “PAVA spray should not form part of the standard equipment of custodial staff and, given the potentially dangerous effects of this substance; it should not be used in confined spaces.”<sup>5</sup>

The decision to roll out PAVA spray was based on pilot studies in four prisons. However, the HMPPS evaluation report found

that the pilot “was unable to conclusively demonstrate that PAVA had any direct impact on levels of prison violence. Overall violence continued to rise... continuing previous trends”.<sup>6</sup> The report also found that among the 50 incidents where it appeared that PAVA was drawn and/or used, there were examples that it was done so outside of the operational policy and expectations of professional conduct, and that “staff used PAVA to enforce rules and gain compliance when it was not clearly the last resort or when more time could have been spent talking”.<sup>7</sup>

#### ***Use of electrical discharge weapons (Tasers)<sup>8</sup>***

In 2016, there were 11,294 uses of Tasers (electronic discharge weapons) by police; representing a 9% increase on the previous year.<sup>9</sup> This works out at an average of 30 Taser deployments per day. Between 2011 and 2016, there was a 43% increase in Taser deployments.<sup>10</sup> Tasers are three times more likely to be used against black men and women.<sup>11</sup>

Tasers can cause extreme pain, serious injury and even death. In the period 2003 to 2016, there were at least 17 Taser-related deaths in the UK.<sup>12</sup> In 2017, a man died after being shot with a Taser.<sup>13</sup> In late 2016, an ex-soldier said to be experiencing mental health difficulties died after being shot with an electronic discharge weapon.

The Independent Office for Police Conduct has also said it has “major concerns about the use of Tasers in ‘drive stun mode’ which is purely a means of pain compliance”.<sup>14</sup>

The HMPPS Business Plan 2018-2019 includes the commitment to “develop operational guidance to support the tactical use of TASER and drones during incidents” for Operational Response and Resilience Unit staff. However, it has yet to be decided whether Tasers will be introduced into the prison estate.<sup>15</sup>

#### ***Use of spit hoods***

Spit hoods are translucent sacks of netting or meshed material placed over a person’s head, the fabric of which

partially or entirely blocks spit, vomit, blood, or other substances.<sup>16</sup> Serious concerns have been raised on the potential for their use in inhuman and degrading treatment. This potential has been compounded as they have been adopted on an ad hoc basis as a matter of individual police force policy.

In 2016, the British Transport Police used a spit hood against a young black man during an argument between him and his partner at a London train station. Footage of the incident showing the man in extreme distress resulted in a complaint being lodged with the Independent Police Complaints Commission (now Independent Office of Police Conduct).<sup>17</sup>

There have also been a number of examples of deaths in police custody following the use of spit hoods – including improvised spit hoods.<sup>18</sup>

An increasing number of police forces have said that they want to be equipped with spit hoods in both frontline duty and in custody and the Home Secretary has backed calls for them to be rolled out across police forces in England and Wales.<sup>19</sup> In February 2019, the London Metropolitan Police (MPS) reneged on an earlier commitment by announcing that front-line MPS officers will be given spit guards as part of their equipment.<sup>20</sup>

The degrading, humiliating and dangerous character of spit hoods is self-evident. Over-policed groups, including young black men, and those with particular vulnerabilities such as individuals with mental illnesses, disabilities, and those addicted to substances, are likely to be disproportionately impacted.

**5.1 The UK should not equip custodial staff with incapacitant sprays on a routine basis. Sprays should be stored in a secure and controlled environment and deployed only in exceptional circumstances.**

**5.2 The UK should ensure that electrical discharge weapons, such as Taser, should only be used in**

**extreme and limited situations as a substitute for lethal weapons, subject to the principles of necessity and proportionality. If the UK does authorise the use of Taser in the prison estate, it should only provide permission to use Taser to a limited number of rigorously trained members of the special emergency taskforce stationed outside of places of detention.**

**5.3 The UK should ensure that police forces should end the use of spit hoods in both custodial and extra custodial sentences.**

## Policing and children

### *Age of criminal responsibility*

The CRC Committee makes it clear that children in conflict with the law should be treated differently from adults because they “*differ from adults in their physical and psychological development, and their emotional and educational needs*”.<sup>21</sup> Yet the age of criminal responsibility in England and Wales remains at just 10 years despite numerous recommendations by the CRC Committee to increase it.<sup>22</sup> The age of criminal responsibility is a reserved (non-devolved) matter and the UK Government has consistently resisted calls to raise it.

### *Overnight detention in police custody*

Police custody is not an appropriate place for children to be detained and is a matter reserved to the UK Parliament. Responses to FOIA requests from 33 forces revealed that in 2016 at least 22,408 children were detained overnight in England including 42 children aged 10-11 years old. One child was detained for nearly 5 days. In England, more than a third (36%) of children detained overnight in police cells were from BAME backgrounds.<sup>23</sup>

Contributing to these high numbers is detaining children pre-charge prior to questioning and the failure to transfer children from police custody to local authority accommodation for children that have been refused bail.

#### **Case study: Gwent Police<sup>24</sup>**

A 2017 inspectorate report found that although there was a robust monitoring process and a recognition among custody sergeants of the importance of minimising detention times for children and avoiding their overnight detention, a custody record analysis and case audits showed that a significant proportion of children detained remained in custody overnight.

Data showed that of the 43 children charged and refused bail in the year to 30 June 2017, 30 requests for accommodation were made, but only five were moved to alternative non-secure accommodation and none to secure accommodation.<sup>25</sup> In most cases they were detained overnight due to a lack of alternative accommodation.

#### **Strip searching**

In 2015 the HM Inspectorate of Constabulary and Fire & Rescue Services reported that no official records were kept of how many children undergo more intrusive searches (including strip searches). FOIA requests to police forces in England for data on the use of these searches revealed that in 2017 1,056 children were strip searched. Of these cases 801 involved more than outer clothing being removed. In 113 of these cases intimate body parts were exposed *without* an appropriate adult present. BAME children accounted for 66% of children strip searched.<sup>26</sup>

#### **Use of spit hoods on children**

Children have described how traumatic and distressing it is to be hooded.<sup>29</sup> Yet FOIA requests to police forces in England revealed that 21 of the 28 forces that responded use spit-hoods. There were at least 47 uses on children in 2017 and 114 incidents in the first nine months of 2018 although the true figure is likely to be much higher. Across the whole period requested for 2017 and 2018, BAME children accounted for 38% of all spit-hood use but rises to 72% for the metropolitan police service.<sup>30</sup> In 2016, several police officers were found by

the then Independent Police Complaints Commission (now Independent Office of Police Conduct) to have committed misconduct in detaining an 11-year-old child with a severe developmental disorder for more than 60 hours and, among other things, using a spit hood against her.<sup>31</sup>

#### **Use of electronic discharge weapons on children (Tasers)**

Firearms officers are also permitted to use Tasers on children. The use of these weapons on children is particularly harmful, owing to their particular vulnerabilities. In May 2007, the Defence Scientific Advisory Council's Sub-Committee on the Medical Implications of Less Lethal Weapons concluded that children are "*at potentially greater risk from the cardiac effects of Taser currents than normal adults*".<sup>32</sup> This is reflected in the recommendation by the Police Scientific Development Branch, following their evaluation of Tasers, that they should not be fired on small children.<sup>33</sup>

Even when Tasers are not actually fired, or used in "*drive stun mode*", the threat of a police officer drawing a weapon is likely to be extremely distressing for a child or young person.<sup>34</sup> The CRC Committee has recommended that their use on children should be banned<sup>35</sup> yet in the year ending 31 March 2018 HO figures reveal that Tasers were used on children in England and Wales 972 times including 16 times on children perceived to be aged under 11 years.<sup>36</sup> In a five year period, more than 2000 children in England and Wales under the age of 18 were targeted with Tasers, including almost 70 children under the age of 14.<sup>37</sup> In England in 2017, Tasers were used on children 871 times including being fired

#### **Case study: PD<sup>27</sup>**

A 14-year-old girl was strip-searched, ostensibly for her own protection, in a police station without an appropriate adult present in Merseyside, North West England. During the court challenge the court was very concerned and questioned how "*it should have been thought appropriate immediately to remove the clothes of a distressed and vulnerable 14-year-old girl without thought for alternative and less invasive measures to protect her from herself*".<sup>28</sup>



50 times and used in drive stun mode 12 times.<sup>38</sup> In Wales in 2016, Tasers were used 30 times on children, some as young as 12 years old, which is an increase of 30% in a year, up from 23 times in 2015 and from 19 times in 2014.<sup>39</sup> Included in these figures are incidents where South Wales Police fired Tasers, which involved 15-year-old boys, and in which a 12 year-old was “red dotted”.<sup>40</sup> In a recent review by one Welsh police force, the use of spit hoods and Tasers on young people could not be ruled out.<sup>41</sup>

### **Use of mosquito devices**

The Mosquito device is an electronic device used to deter young people by emitting a high frequency sound. In 2010, an investigation by the Council of Europe found that the device was “degrading and discriminatory” to children and should be banned because it “violates legislation prohibiting torture”.<sup>42</sup> The UN Committee on the Rights of the Child has also recommended it should be prohibited in public spaces.<sup>43</sup>

**5.4 The UK should significantly raise the age of criminal responsibility in England and Wales to ensure the full implementation of juvenile justice standards. The UK should ensure that children in conflict with the law are dealt with under a completely separate and distinct system to adults.**

**5.5 The UK should ensure that overnight police detention is only used as a last resort; and there should be sufficient local authority accommodation to ensure that no child spends the night in police cells.**

**5.6 The UK should ensure that strip-searching of children must only be used as a last resort and when used, must have appropriate safeguarding procedures in place.**

**5.7 The UK should ensure that the use of all harmful devices on children by police or local authorities, including spit hoods and Tasers, Taser, and mosquito devices, is prohibited.**

### **Case study: Andrew**

Andrew was exonerated after spending 25 years in prison when it was discovered that he suffered from a condition that made him susceptible to accusation made against him, which led to him giving a false confession.

Such was the impact on his mental health that when he was released psychiatric and social work experts were unanimous in agreeing that he was in need of the equivalent of a hostage retrieval programme to manage his transition to freedom.

## **Ill-treatment in the criminal justice system**

There are concerns that the lack of support available to exonerees on their release from prison amounts to inhuman and degrading treatment. On release from prison, exonerees are offered no explanation as to what happened to them, nor an apology or proper compensation.<sup>44</sup> Moreover, the state leaves them alone to deal with the severe trauma they have suffered through being wrongfully imprisoned.<sup>45</sup>

Those who have their conviction quashed are released without any state-given support, other than £46 and a travel voucher. There is no automatic right to compensation and no automatic assistance in finding accommodation or work. This is in stark contrast to the support that is offered to prisoners who are released having served their sentence.<sup>46</sup>

The trauma of being wrongly incarcerated means that exonerees suffer from unique issues when they are released. These might include not understanding how the modern world works, finding accommodation, work and benefits, coping with readjustment and finding relationships difficult to maintain. These are not easily resolved, and the consequence of trauma may last for many years.

**5.8 The UK should ensure that exonerees are given sufficient support following their release.**

## Chapter 6: Other forms of deprivations of liberty and ill-treatment in health care settings



Anti-psychotic drugs and other medicines have been routinely over-prescribed to people with learning disabilities and other patients. © Abbie Trayler-Smith/Panos Pictures.

## Chapter 6: Other forms of deprivations of liberty and ill-treatment in health care settings

### Articles 11 and 16

In its 2016 LoIPR, the Committee requested information on persons deprived of their liberty in health care settings and the use of restraint affecting individuals deprived of their liberty in health-care settings. This chapter also highlights the use of seclusion, the inappropriate use of anti-psychotic drugs and other medication, as well as the safeguarding procedures in place for individuals in care settings.

### Persons deprived of their liberty in health care settings

There are two legal frameworks in place to treat someone without their consent and to deprive them of their liberty by detaining them in hospital. The Mental Health Act 1983 (MHA) provides the legislation by which people diagnosed with a 'mental disorder' can be detained in hospital or

#### Case study: Lorraine<sup>1</sup>

Lorraine was detained under the Mental Health Act in hospital. She was admitted into an unfinished bedroom, with no curtain on the door window and no bathroom. Lorraine had continence problems which meant she needed to use the toilet often, but the communal toilet was locked overnight. As a result, staff gave Lorraine a bucket to use as a toilet.

Lorraine was very embarrassed and distressed. With her mental health advocate, Lorraine challenged the lack of proper bathroom facilities as a risk to her right to be free from inhuman and degrading treatment.

The staff had not realised this was a human rights issue until Lorraine raised it. The staff then moved Lorraine to a different room, where she had access to a toilet.

police custody and have their disorder assessed or treated against their wishes. Section 4 of the Mental Capacity Act 2005 (MCA) sets out the circumstances in which a person who lacks capacity can lawfully be deprived of their liberty (the Deprivation of Liberty Safeguards or 'DoLS').<sup>2</sup>

### *Detention of people under the Mental Health Act 1983*

In 2017-18 in England and Wales, the number of detentions recorded under the MHA was over 49,551, although the overall national totals will be higher as not all providers submitted data.<sup>3</sup> A January 2018 Care Quality Commission report shows that there has been a 36% rise in the number of detentions under the MHA since 2010.<sup>4</sup>

In addition, there were 5,175 people reported to be on a Community Treatment Order at the year-end in 2017-18.<sup>5</sup> While not designed to be a deprivation of liberty, the conditions imposed under a Community Treatment Order may be very restrictive, often more so than while in hospital. In December 2018 the Supreme Court ruled that an individual placed on a Community Treatment Order after coming out of hospital cannot be deprived of their liberty.<sup>6</sup>

The legal test for appropriate treatment under the MHA is very broad and does not include the need to follow current good practice around learning disability.

The use of the MHA disproportionately affects ethnic minority groups. For example, the rates of detention for Black and Black British group are over four times that for the White group. The use of community treatment orders are over eight times that for the White group.<sup>7</sup>

Despite the UK Government's Transforming Care Programme, which was introduced to reduce the number of autistic and learning disabled people in long-stay hospitals following the scandal at Winterbourne View (a private hospital where a television documentary revealed a pattern of serious abuse in 2011),<sup>8</sup> the number of detained learning disabled people has barely moved, with the latest figure being 2,315.<sup>9</sup>

Under section 136 of the MHA, a police officer has the power to remove a person to, or keep them in, a place of safety in order to be assessed.<sup>10</sup> Between April 2017 and March 2018, there were 29,662 detentions using this power which represents an increase of 5%.<sup>11</sup> A police vehicle was used to take the person to a place of safety in half of all cases, rather than an ambulance.<sup>12</sup>

In 2017 the MHA was amended so as to ban the use of police cells as places of safety for under 18s and restrict their use for adults. In recent years the use of police cells has decreased significantly as a result of the Crisis Care Concord, an agreement between key national bodies in 2014 which was rolled out across England. A similar agreement was made in Wales in 2015.

Police officers will often be first responders to emergencies, but it is very concerning that they play such a large part in the mental health crisis response. In a recent report the HAC stated, *“in too many areas, the police are the only emergency service for those in crisis, and they are being used as a gateway to healthcare for those in desperate need of help”*.<sup>13</sup>

An independent review of the MHA conducted by relevant professionals and users of mental health services, their families and carers, was published in December 2018. The review emphasises the need to rebalance the law to ensure patients are supported to make choices for themselves. The review also acknowledges the recognition that not only have

#### Case study: MS<sup>14</sup>

When MS was arrested and detained by the police under the Mental Health Act, he was held in a police cell longer than the maximum time allowed under the law. During this time, he repeatedly banged his head on the wall, drank from the toilet and smeared himself with faeces. He took a human rights case to court challenging the conditions and time in police detention. The court took into account the impact the detention conditions had on MS, including the fact that he was in real need of appropriate mental health care and treatment. The court decided this breached MS's right to be free from inhuman and degrading treatment.

too many people been deprived of their liberty but when they have, they have been further deprived by having their wishes and preferences ignored. The review points out that compliance with the Convention on the Rights of People with Disabilities has been rejected by the UK in respect of ending all forms of substituted decision making.

#### **Detention of people under the Mental Capacity Act 2005**

The Deprivation of Liberty Safeguards (DoLS) under the MCA aim to ensure that people are only deprived of their liberty when it is in their best interests and there is no other less restrictive way to provide necessary care and treatment.

However, there has been a higher number of applications under DoLS over the last three years in England. In 2017-18 there were 227,400 DoLS applications in England.<sup>15</sup> The 2014 Cheshire West case,<sup>16</sup> a Supreme Court ruling which had the effect of lowering the threshold for what constituted *“deprivation of liberty”*, has been a contributing factor to the higher number of applications.<sup>17</sup>

The DoLS are used most often to protect older people.<sup>18</sup> However, despite the legislation, underfunded councils are not properly resourced to undertake the assessments of deprivation of liberty as required under the MCA, as well as reviewing cases in the necessary timescales. As a result, there are many people whose deprivation does not have suitable conditions placed on it or should not be occurring at all.<sup>19</sup>

New analysis suggests for the third year in a row, more DoLS applications were received than completed. The number of applications not completed at the end of the reporting period increased by 7% on 2015-16, from 101,740 to 108,545.<sup>20</sup> Therefore, over 108,000 vulnerable adults may be being illegally denied liberty or the right to associate freely with their own families at present.

In response to the growing number of DoLS applications and concerns that DoLS are not *“fit for purpose,”* the Law Commission made recommendations for change, including the Liberty Protection Safeguards.<sup>21</sup> Some of these

recommendations have been incorporated in the Mental Capacity Amendment Bill currently going through Parliament but crucially, the recognition by the Law Commission that a reliance on the “best interests” of the individual often results in their wishes and feelings being ignored, and the need to bring legislation more into line with supported decision making, has been rejected.<sup>22</sup> The JCHR has also expressed its concerns that the proposed legislation does not conform to international human rights standards.<sup>23</sup>

**6.1 The UK should ensure that people in mental health crisis are assessed and treated in health care settings and that police cells should not be used as places of safety in any case.**

**6.2 The Committee should monitor the Mental Capacity (Amendment) Bill to ensure that it protects the rights of disabled people.**

**6.3 The UK should ultimately create law that is compliant with the Convention on the Rights of Persons with Disabilities. In the shorter term, the UK should: (i) invest in alternatives to detention and coercion, share learning and scale up successful approaches; (ii) increase autonomy, including through advance choice statements and expanded advocacy (in line with the recent Mental Health Act Review in England and Wales); (iii) require providers of mental health services to achieve a year on year decrease in the use of compulsory detention and compulsory treatment, with accountability via inspection and reporting and; (iv) create a roadmap to services free of restraint and seclusion, as in the USA, with each incident viewed as a clinical failure, with a debrief afterwards with all involved.**

## **Use of restraint and seclusion against people in health care settings**

Between 2016-17 there were 80,387 uses of restraint in mental health, learning disability and autism wards in England. 10,071 of these instances were prone restraint, involving 2,996 patients.<sup>24</sup> This is despite UK Government

guidance which states that “*There must be no planned or intentional restraint of a person in a prone/face down position on any surface, not just the floor*”.<sup>25</sup> Girls and young women were the most likely to be restrained.<sup>26</sup> The rate of use of restraint on Black or Black British people was three times that of its use on White people in 2016-17.<sup>27</sup>

Between 2016-17 there were 7,720 uses of seclusion and 747 uses of segregation (long-term seclusion).<sup>28</sup> There were 8,639 uses of chemical restraint and 1,202 uses of mechanical restraint.<sup>29</sup>

The 2015 Learning Disability Census in England found that 26% of patients experienced at least one adverse experience, such as accidents, physical assault and self-harm, as well as at least one restrictive measure such as restraint or seclusion (solitary confinement).<sup>30</sup> 22% of all men included (485 out of 2,255) had at least one adverse experience and at least one restrictive measure compared to 39 per cent of women (290 out of 740).<sup>31</sup> 13% were subject to seclusion, an increase from 11% in 2013-14.

The Census also stated that 56% of people with a learning disability in inpatient units had experienced self-harm, an accident, physical assault, hands-on restraint or been kept in seclusion. It also stated that 72% of people in inpatient units had received antipsychotic medication but only 29% were recorded as having a psychotic disorder.<sup>32</sup>

On 1 November 2018, the Mental Health Units (Use of Force) Act was passed into law, which will require mental health

### **Case study: “Bethany”<sup>33</sup>**

In October 2018, BBC Radio 4 highlighted the experience of a 17-year-old autistic girl called “Bethany” who had been in seclusion (solitary confinement) for almost 21 months. Bethany was held in a room with a bed and a chair and fed through a small hatch in the door. While in the seclusion cell Bethany resorted to self-harm. At one point Bethany had the insides of a biro pen in her arm for four weeks as staff decided it would be too dangerous to enter the room to remove it.

units to take steps to reduce the use of force against patients, including by providing better training on managing difficult situations. It will require them to provide patients with information about their rights and to collect better data and will also require police to wear body cameras when called to mental health settings.

### ***Inappropriate use of anti-psychotic drugs and other medication***

A 2015 study found that in England on any given day 17% of persons with learning disabilities were routinely being prescribed anti-psychotic drugs (despite only 4% exhibiting psychosis). 17% were being prescribed anti-depressants (while only 7% have depression) and 16% were prescribed one or other drug (while having neither psychosis or depression). 72 per cent of inpatients with a learning disability (2,155) received antipsychotic medication either regularly or 'as and when needed' in the 28 days prior to the learning disability census collection in 2015, compared to 73% (2,345) in 2014.<sup>34</sup>

In 2016 the UK Government, NHS England, several professional bodies and the Challenging Behaviour Foundation published a shared pledge to tackle the over-prescribing of anti-psychotic drugs to people with learning disabilities and/or autism: STOMP (stopping the overmedication of people with a learning disability, autism or both with psychotropic medicines).<sup>35</sup>

There is also growing concern about the inappropriate use of antipsychotic drugs for dementia patients living in residential or nursing care homes.<sup>36</sup>

### ***Children in mental health institutions and residential special schools***

There is no restrictive practice guidance in relation to children. A draft was consulted on in 2018 but the final guidance has not been published.<sup>37</sup>

A recent survey has revealed that physical restraint and isolation of disabled children is wide-spread.<sup>38</sup> 88% of the 204 respondents said their disabled child has experienced

physical restraint, with 35% reporting that it happened regularly. 71% of families said their child had experienced seclusion or isolation with 21% reporting that this happened daily. Most of the physical interventions took place in schools (68%). Over half of the cases of physical intervention or seclusion reported involved children between the ages of five and ten. 20% of respondents also reported the use of mechanical restraints, (for example, arm splints or being strapped to a chair). Of these, 35% reported that mechanical restraint was taking place daily. 58% of the families whose child had experienced restraint said it led to injury and 91% reported an emotional impact on their child. The reported incidents occurred across different settings, including in mental health institutions, residential schools, respite care, as well as in mainstream and special schools.

61% of respondents agreed that the leaders of the setting where the restrictive intervention took place were using it as their main method to address challenging behaviours. Extremely concerning is that 42% believed that restrictive interventions were being used with the aim of punishing their child.

The use of Tasers in mental health settings is now being recorded, revealing that between April and September 2017, Tasers were used 3 times on children, including being fired on a 15-year-old girl.<sup>39</sup>

In June 2016, the CRC Committee expressed concern at the use of restraint and seclusion on children with psychosocial disabilities including autism in schools.<sup>40</sup>

**6.4 The Committee should monitor the Mental Health Units (Use of Force) Act 2018 to ensure that it leads to a fall in the use of restraint.**

**6.5 The UK should abolish all methods of restraint against children for disciplinary purposes in all institutional settings, including "special" schools, and ensure it is used against children exclusively to prevent harm to the child or others and only as a last resort. Tasers should be prohibited from being used on children in mental health settings.**

## Ill-treatment of patients receiving health care services

Section 1 of the Care Act 2014 requires a local authority in England to promote individual wellbeing in all it does including “protection from abuse and neglect.”<sup>41</sup> The Act holds that local authorities are the lead safeguarding agencies and are generally the first point of contact for raising concerns.

Local authorities in England must ensure that enquiries that they undertake are robust and satisfactorily resolve the situation. Each local authority must also establish a Safeguarding Adults Board for its area, which also includes NHS and the police. The Safeguarding Adults Board can request relevant information and expect compliance with that request in most cases.

However, because of the nature of the problem, and the demographic of people affected, the abuse in health care and care home settings often goes undetected and as such, abuse remains a largely hidden problem.

A 2018 survey of 1544 staff across 92 English care home units found significant evidence of abusive and neglectful behaviours which included making a resident wait for care, avoiding a resident with challenging behaviour, giving residents insufficient time to eat, and taking insufficient care when moving residents. 1.1% of staff reported physical and 5% verbal abuse against residents. More staff reported abusive/neglectful behaviour in homes with higher staff burnout-depersonalisation scores.<sup>42</sup>

Key findings from the Safeguarding Adults Collection for the period 1 April 2017 to 31 March 2018 found that 394,655 concerns of abuse were raised in England during 2017-18, an increase of 8.2% on the previous year. Older people are much more likely to be the subject of a Section 42<sup>43</sup> safeguarding enquiry; one in every 43 adults aged 85 and above, compared to one in every 862 adults aged 18-64.<sup>44</sup>

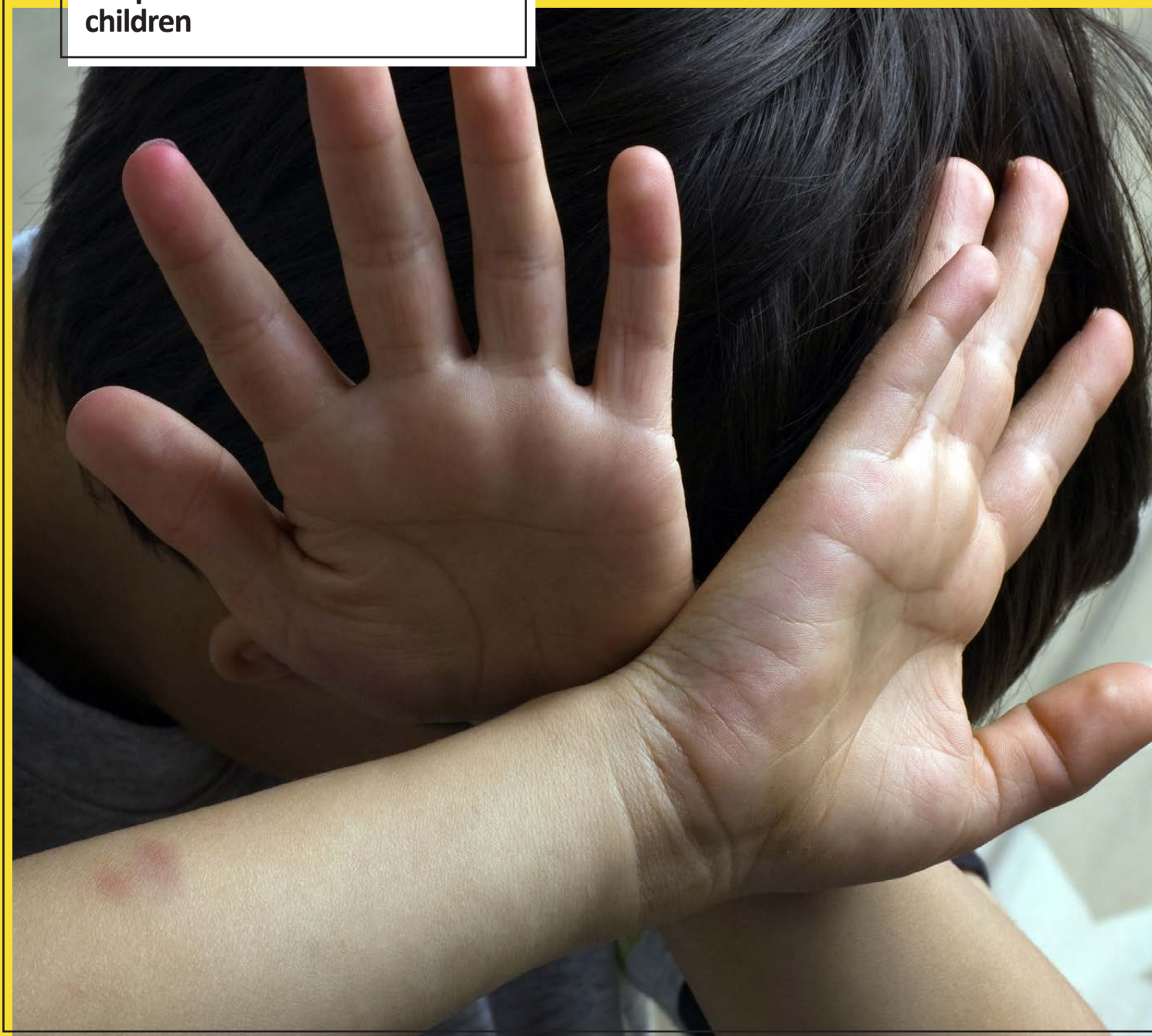
The Prisons and Probations Ombudsman has consistently raised concerns about the use of restraints on older, infirm

or terminally ill prisoners.<sup>45</sup> *The High Court judgment in R (Graham) v. Secretary of State for Justice* criticised routine restraint of prisoners on hospital visits without any prior risk assessment.<sup>46</sup> The Ombudsman’s fatal incident investigations have also raised concerns about the treatment of dying prisoners with very old, frail and/or very unwell prisoners routinely escorted to hospital in handcuffs and some restrained until shortly before they died.<sup>47</sup>

It continues to be a matter of serious concern that not all older people who receive regulated care services have their human rights protected by the HRA. Section 73 of the Care Act 2014 extended the HRA to explicitly cover all those receiving care funded or arranged by the local authority. However while welcome, this was only a partial closure of the protection gap that continues to leave those whose care is funded by another public body, such as the NHS or who are paying and arranging for their own care, outside the scope of the HRA.

**6.6 The UK should ensure that local authorities have enough resources to sufficiently investigate and address allegations of abuse. The UK should ensure that restraints are not used on older, infirm, or terminally ill prisoners. The UK should ensure that all older people who receive regulated care services have their human rights protected under the Human Rights Act 1998.**

## Chapter 7: Ill-treatment of children



Corporal punishment of children in the home is still lawful in England and Wales.  
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## Chapter 7: Ill-treatment of children

### Article 16

In its 2016 LoIPR the Committee requested information about any measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the family, schools and alternative care settings. The Committee also requested information on child sexual exploitation and abuse. This chapter additionally highlights concerns about the UK's ongoing recruitment of children into the British Army.

### Corporal punishment

Corporal punishment of children in the home is still lawful in the UK. In England and Wales, legal defences for the use of corporal punishment are in section 58 of the Children Act 2004.<sup>1</sup> Corporal punishment is partially prohibited in alternative care settings. It is unlawful in residential care institutions and in foster care arranged by local authorities or CSOs but lawful in private foster care. Children are protected from corporal punishment in most schools, including private schools, but this does not extend to “unregistered independent settings providing part-time education”.<sup>2</sup> It has been reported that, some academy trusts in England have been using “isolation booths”.<sup>3</sup> There, students are made to sit still, alone and in silence for up to several hours a day as punishment for even minor disciplinary offences. This is clearly unlawful as “forcing children to stay in uncomfortable positions” is a form of corporal punishment.<sup>4</sup>

The UK Government has consistently defended the notion of “reasonable chastisement”, rejecting seven UPR recommendations to prohibit corporal punishment: “Parents should not be criminalised for giving a child a mild smack in order to control their behaviour.”<sup>5</sup> Several UN treaty bodies have made recommendations to the UK to prohibit corporal punishment of children throughout the state party. Since the last examination by the UNCAT Committee,

recommendations have been made by the CRC Committee,<sup>6</sup> the HR Committee,<sup>7</sup> and the CEDAW Committee.<sup>8</sup>

Legislative proposals to repeal the legal defence and prohibit all corporal punishment are currently being considered in Wales and Scotland. This followed a sustained and lengthy period of campaigning by CSOs<sup>9</sup> to ensure that children have equal protection from harm. In July 2018 the Welsh Government reaffirmed its commitment to enacting full prohibition of corporal punishment and declared that a Bill would be introduced before July 2019.<sup>10</sup> The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill will be laid in March 2019.

**7.1 The UK should urgently bring forward legislation to prohibit all forms of corporal punishment of children, and repeal all legal defences in all settings as a matter of priority, and abolish the use of isolation rooms or booths.**

### Child sexual abuse and exploitation

While a Joint Targeted Inspection report in 2018 found evidence of improvement in the multi-agency response to tackling child sexual exploitation, local and national agencies do not yet fully understand the scale or level of risk to children and existing services are not always appropriate for dealing with the exploitation of children outside a family setting.<sup>11</sup>

There is a significant omission in the legal framework protecting young people from abuse because not all adults who have power and influence over children (including sports coaches, youth leaders and faith leaders) are banned from sexual activity with the 16 and 17-year-olds in their care. The UK Government has failed to act on their earlier commitments to close this loophole in the law.

In 2019, research evaluating UK Government policy and practice on young witnesses (including victims of child sexual abuse) found they were being let down by the criminal justice system.<sup>12</sup> Previous policy commitments on young witnesses had not been fulfilled, there was no

overarching approach to safeguarding children in the system, support for young witnesses was inadequate and there were long delays in court processes with the average time from charge to completion in child sexual abuse cases involving contact increasing from 255 days in 2011 to 286 days in the first quarter of 2018. The report also flagged a concerning increase in police forces moving away from tackling child sexual abuse through specialist child protection units and instead investigations being handled by teams dealing with public protection more broadly or operating under an ‘omni competent’ model of policing.”

**7.2 The UK should ensure that all allegations of child sexual abuse and exploitation are investigated and prosecuted without delay.**

## Recruitment of children in the British Army

The UK’s implementation of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) was criticised by the CRC Committee during its review of the UK’s periodic reports in 2002, 2008 and 2016, primarily because the UK still enlists children into the armed forces.

OPAC retains a loophole allowing for the military enlistment of children aged 16-17 as long as states maintain safeguards to ensure that recruitment is “*genuinely voluntary*” and recruits are “*fully informed of the duties involved*.”<sup>13</sup> However, in 2016 the CRC Committee expressed serious concerns: that the UK’s safeguards are “*insufficient*”; the UK’s declaration to OPAC “*may permit the deployment of children...under certain circumstances*”; and that the Army actively recruits children from vulnerable groups disproportionately represented. The CRC Committee called on the UK to “*consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18*”.<sup>14</sup> The UK is one of fewer than 20 states still enlisting 16-year-olds into its armed forces and the only European state still to do so.<sup>15</sup> The UK has taken no action to implement any of the Committee’s recommendations concerning OPAC.

In May 2018, a report presented a rights-based analysis of child enlistment by state armed forces.<sup>16</sup> It argued that military enlistment and training of minors is fundamentally incompatible with states’ obligations under the CRC on numerous grounds. On enlistment, recruits sign away many rights, including rights to union representation, free speech, and trial in a juvenile system. The military environment involves many risks to mental and physical health – such as injury, alcohol misuse, exposure to bullying or abuse, and PTSD – which child recruits are more vulnerable to than adults.<sup>17</sup>

1,690 minors enlisted for the Army in 2017-18; comprising 26% of the total annual Army intake (excluding officers).<sup>18</sup> This is in a pattern of decline; 1,800 children enlisted in 2016-17, comprising 24% of the intake that year.<sup>19</sup>

**7.3 The UK should remove its declaration to OPAC and raise the minimum recruitment age for the armed forces to 18.**

## Chapter 8: Sexual and gender based violence



Police recorded nearly 600,000 domestic abuse related crimes in the year to 2018.  
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## Chapter 8: Sexual and gender based violence

### Articles 2 and 16

In its 2016 LoIPR the Committee requested information on measures taken to eliminate all forms of violence against women, including domestic violence, sexual harassment and Female Genital Mutilation (FGM), as well as information on the the protection and support services available to survivors of gender-based violence in the UK. This chapter also highlights instances of forced marriage in the UK and of UK nationals overseas, including the forced marriage of children under 16.

### Domestic abuse and sexual violence

In 2014, a review of all 43 police forces in England and Wales found that there were serious deficiencies in police operations concerning domestic abuse, including “*alarming and unacceptable*” weaknesses in some core policing activity.<sup>1</sup> The HAC found that despite some improvement, “*there [remain] instances where victims’ claims of abuse are not taken seriously, where they do not receive an appropriate police response and where police forces do not follow national guidance on recording or responding to reports of domestic abuse incidents*”.<sup>2</sup>

These failures are amplified when it comes to helping migrant and BAME victims of domestic and sexual violence.<sup>3</sup> A lack of understanding of culturally specific forms of abuse and harmful practices has meant that police are often not equipped to assist women from these communities who are trapped in these circumstances.<sup>4</sup>

Official figures show police recorded 599,549 domestic abuse related crimes in the year to March 2018 (an increase of 23% from the previous year).<sup>5</sup> However, an estimated two million individuals (16+) experienced domestic violence in the last year.<sup>6</sup> Women are much more likely than men to be the victims of high risk or severe domestic abuse,

with disabled people more than twice as likely to suffer some form of domestic abuse compared to the general population.<sup>7</sup> On average two women are killed by their partner or ex-partner every week in England and Wales.<sup>8</sup> The HO has estimated that the social and economic cost of domestic abuse per year is £66 billion, of which £47 billion is the physical and emotional harm suffered by the victims.<sup>9</sup>

The impact of domestic violence on children can be devastating and last into adulthood and have serious implications.<sup>10</sup> At least 130,000 children live in a household considered to be at high risk of domestic abuse.<sup>11</sup> 14.2% of children will have experienced domestic violence at some point during their childhood.<sup>12</sup>

A 2018 Supreme Court judgment found systemic failings on the part of the police to carry out effective investigations into allegations of sexual offences committed against women, in breach of Article 3 ECHR.<sup>13</sup> The judgment sets a strong precedent that “the state is obliged under Article 3 to conduct an effective investigation into crimes which involve serious violence to persons, whether they have been carried out by state agents or individual criminals”.

A particular concern exists for migrant women with insecure status who fear immigration enforcement should they report sexual violence to the police. Another product of the hostile environment policy is that police forces across the country have referred victims of crime to the HO for immigration enforcement purposes. An FOIA request revealed that out of 45 UK police forces, 27 said they had handed over information about victims of crime to the HO.<sup>14</sup> This has included victims of gender-based violence, some of whom have been arrested and subjected to removal proceedings.<sup>15</sup>

The UK Government has published a draft Domestic Abuse Bill 2019 following the commitment to ratify the Council of Europe Convention on Combating Violence against Women and Domestic Violence (Istanbul Convention). The Bill introduces a statutory definition of domestic abuse to specifically include economic abuse and controlling and manipulative non-physical abuse, establishing a unified

policy and legal framework. However, the draft Domestic Abuse Bill continues to fail migrant women, as it excludes immigration and welfare issues on the face of this proposed legislation. As a result, thousands of migrant survivors of abuse will continue to be barred from accessing basic services and support. Although many groups are seeking to widen the scope of the Bill to ensure equal protections for migrant women, it is unlikely this will come to fruition before the publication of this report, if at all.<sup>16</sup>

In Wales, the Welsh Government introduced legislation through the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015<sup>17</sup> with a view to protecting and supporting victims of such violence and all kinds of physical, sexual and emotional abuse.<sup>18</sup> A national strategy<sup>19</sup> has been published to promote consistency and best practice in the way in which these issues are tackled across Wales.

However, despite these legislative developments, frontline services have seen significant cuts since 2008, and without proper funding and adequate resources many of the ambitions of the bill will be severely tested.<sup>20</sup> Cuts in police resources have also hampered domestic abuse cases reaching the courts.<sup>21</sup>

#### Case study: “L”<sup>22</sup>

L is a woman who survived family-based non-State torture in the UK from infancy into early adulthood. She was repeatedly beaten, raped, drugged, deprived of food, threatened to be killed, and confined to an enclosed space, among other horrific acts.

She has stated: *“[n]aming non-State torture is vital because I felt in an ongoing life-threatening environment my whole childhood. When the torture ordeals happened I dissociated to survive and I felt in shattered bits...like no one or nothing. This had a profound effect on my childhood and my adult life. The result of the torture was that I didn’t know I was a person with human rights. I was not able to work as I was struggling with dissociation and post-traumatic stress responses”.*

**8.1 The UK should ensure that the scope of the Domestic Abuse Bill 2019 is widened to protect all women and that any legislative reform is resourced effectively.**

**8.2 The Committee should monitor the progress of the Domestic Abuse Bill 2019.**

**8.3 The UK should ensure that children who experience domestic abuse in the home are provided with dedicated and specialist support.**

## Female genital mutilation

The enactment of the Serious Crime Act (2015) in England and Wales enabled the courts to issue protection orders to protect potential or actual child victims of FGM. However, concerns remain over the significant number of children who are affected by harmful practices, including FGM.

FGM has been illegal in the UK since 2003. Figures for England and Wales from 2015 estimate that up to 137,000 women and girls are affected by FGM.<sup>23</sup> 60,000 girls aged 0-14 were born to mothers who had undergone FGM and approximately 10,000 girls under 15 who have come from abroad are likely to have undergone FGM<sup>24</sup>. It is estimated that as many as 144,000 girls under 18 are at risk of FGM in the UK, with the majority of cases thought to take place before a child is eight years old.<sup>25</sup> Since 2015, 205 FGM Protection Orders have been made yet up until now, there has been only one successful prosecution.<sup>26</sup> Latest data from the Crown Prosecution Service shows that it has received just 36 referrals of alleged FGM since 2010.<sup>27</sup>

**8.4 The UK should ensure that preventative and protection measures are strengthened to address all harmful practices against children, including FGM, including improved data collection, public awareness and professional training, and prosecution of perpetrators of crimes.**

## Forced marriage

Forced marriage is a criminal offence that carries a maximum sentence of seven years. It is largely a hidden crime and is thought to be significantly under-reported. Despite this, statistics show that 1,196 cases of forced marriage were identified in 2017, with 30% of victims being children of which 16% were under 16.<sup>28</sup> Victims may suffer abuse, sexual violence, domestic slavery and isolation, with children suddenly being withdrawn from school or disappearing. The UK Government have issued statutory guidance for different agencies on how to report and on handling cases, and the Forced Marriage Unit operates in the UK and overseas.<sup>29</sup>

**8.5 The UK should ensure that marriage of 16-17 year olds takes place only in exceptional circumstances and is based on full, free and informed consent.**

## Chapter 9: Human trafficking and modern slavery



19-year-old Jiera from Lithuania was trafficked into prostitution in the UK when she was 17.  
© Karen Robinson/Panos Pictures.

## Chapter 9: Human trafficking and modern slavery

### Articles 2, 14, 16

In its 2016 LoIPR the Committee requested information about cases of human trafficking, including information on new legislation such as the Modern Slavery Act 2015 (MSA) and the availability of effective remedies and reparation.

There are an estimated 136,000 people in slavery within the UK, ten times the UK Government's top estimate.<sup>1</sup> The National Crime Agency uses several broad categories of exploitation linked to modern slavery, including: forced labour; sexual exploitation; domestic servitude; organ harvesting; and child exploitation.<sup>2</sup>

### Legislative or other preventive measures

The MSA was enacted in 2015 in England and Wales.<sup>3</sup> While some CSOs recognise that the MSA is a great first step, criticisms remain about the lack of victim support, gaps in legislation, tensions with immigration and drugs legislation which mean many survivors remain criminalised, and poor corporate accountability regarding transparency in supply chains.

The Independent Anti-Slavery Commissioner (IASC) is an independent monitoring body that reports to the HO (rather than Parliament, as had been intended by the Palermo Protocol).<sup>4</sup> The first IASC resigned in May 2018, citing government interference.<sup>5</sup> On 22 February 2019 the HO announced that Sara Thornton will take on the role in May 2019.<sup>6</sup>

#### *Corporate responsibility under the MSA*

The monitoring and enforcement provisions for organisations with an annual global turnover of £36 million or more under section 54 of the MSA are very weak leading to low levels of compliance and poor reporting standards. There are no

financial consequences for non-compliance and companies are not required to undertake due diligence.

Research indicates that British companies are indirectly engendering poor working conditions for debt-bonded workers through their supply chains, through unsafe waste management of garment off-cuts.<sup>7</sup> Modern slavery, including debt-bonded labour, is located in construction supply chains which include investments from British firms. However, many of the companies involved are compliant with the MSA, as they are not actually required to carry out due diligence.

There is no central Government-run registry to publish statements. The Business & Human Rights Resource Centre's Modern Slavery Registry monitors compliance with the MSA reporting requirements. They have found that just 19% of statements comply with the minimum legal requirements (for example, being signed by a director or equivalent), less than half of the estimated 12-18,000 companies required to report have submitted statements, and a lack of yearly reporting or new information provided. The Business & Human Rights Resource Centre's annual FTSE 100 analysis indicates that the MSA is not leading to anticipated transformational change in corporate behaviour.

**9.1 The UK should publish a list of companies required to report under the Modern Slavery Act 2015, establish a government-run central registry of reports, require companies to carry out effective human rights due diligence and establish financial penalties for non-compliance.**

### Effective remedies and reparations

The National Referral Mechanism (NRM) is a framework to identify and support the rights of adult victims of trafficking and modern slavery in the UK. Its remit was extended to all victims of modern slavery in England and Wales following the MSA.<sup>8</sup>

In 2018, the NRM received 7,000 referrals.<sup>9</sup> Most victims identified were forced into labour or criminal exploitation



from over 116 different countries. Just over 18% of victims were trafficked into sexual exploitation.<sup>10</sup> There was 36% increase in referrals from 2016.<sup>11</sup>

Referrals are made by designated “first responders,” including the police, local authorities and some CSOs. There is no statutory first responder training for local authorities and many in the police and local authorities are unaware they have this role. As a result, the role of first responders has been found to be inconsistent, which has resulted in victims not being identified or provided with appropriate safeguards and protection. In 2017 the police inspectorate found that non-specialist officers and staff displayed a limited understanding of the new powers under the MSA and there were substantial problems with the way investigations were handled.<sup>12</sup> A consultation with 26 service users found that 18 of them had already been in contact with at least one professional who had not identified them as a victim of trafficking before being referred to the NRM.<sup>13</sup>

### Support under the NRM

There is a two-stage process to determining victim status. Following a referral by a designated “first responder”,<sup>14</sup> a case is managed by one of the “competent authorities”<sup>15</sup> who will first decide within 5 days if there are “reasonable grounds” (RG) to believe that the person is a victim. Following a positive RG decision, the case is investigated and a “conclusive grounds” (CG) decision is made whether, on a balance of probabilities, the person is a victim.

Following a positive RG decision, the potential victim is entitled to support until a CG decision is made, for a minimum of 45 days. A positive CG decision entitles the victim to a further 14 days of support.<sup>16</sup> During this time they should have access to one-to-one support from a keyworker. CSOs have found that for many victims, their keyworker is the only person they trust to speak to about their trauma.<sup>17</sup> In the period following an NRM referral and prior to an RG decision the first responder, whether in the police, a local authority or NGO must try to identify alternative emergency support and/or accommodation. In some cases, the NRM support

### Case studies: survivors who have exited NRM support

Black Country Women’s Aid (BCWA) is a provider of refuge and outreach support to survivors of modern slavery referred by the NRM. After exiting NRM support, survivors have told them:

*“I have been left with no money for 4 weeks; I have nothing to eat, how do I survive?”*

*“I am homeless and have no access to any money, I was better off with the traffickers”*

*“They have moved me to another area, I feel so isolated, I have no one to help me”*

*“I have been in hospital for 2 weeks, no one is telling me anything; I am so scared because I can’t speak the language”*

*“I have been unwell for weeks, but have nobody to help me talk to the doctors and go with me”*

*“I have to go to court, can you please help me because I am scared, I can’t go alone”*

*“I feel so down, I need someone to talk to; I am left with my own thoughts of what happened to me. At least when I was in your service, I had the support but now have been left with nothing”.*

providers will agree to take on the client. A 2018 National Audit Office Report found that 79% of clients received only outreach support.<sup>18</sup>

There is no formal challenge available to a CG decision.<sup>18</sup> The allocated caseworker can make an informal reconsideration request, or the decision can be judicially reviewed if there is access to legal support.

CSOs have criticised the lack of support when exiting the NRM. While there is some exit support sub-contracted to CSOs, this is limited to a small case load and such services are not available across the UK meaning the majority of victims

experience a cut off in support.<sup>20</sup> Move on times increased at the start of February 2019 from 14 to 45 days for people with a positive CG decision and from 2 to 9 days for those with a negative decision which is a significant improvement but still is not long enough for the majority of survivors of slavery to be ready to cope independently without specialised support. There is a presumption that local authorities will provide housing/support prior to and following the NRM, however there has been no additional funding provided to councils (outside of new HO pilots) which has meant that most local authorities' teams simply refuse to support victims.<sup>21</sup> Even in the new pilots, local authorities will only provide support for those victims who have Leave to Remain in the UK.

The UK Parliament Work and Pensions Committee has strongly challenged the current arrangements for victim support, adding their voice to civil society demands for an extended period of support beyond the 45-day identification period currently on offer, which was shown to be completely inadequate.<sup>22</sup> As above there has been a small success in the increase in move on times but the sector believe this does not go far enough. The IASC in his 2017 Annual Report,<sup>23</sup> not only described the NRM as “*not fit for purpose*” but was highly critical of other aspects of the systematic response to modern slavery; and the National Audit Office, the official auditor for government policy, also scathingly described the government’s modern slavery strategy as “*inadequate*”, weak, poorly-informed and “*inconsistent*”.<sup>24</sup>

CSOs have found that potential victims have declined a referral to the NRM for fear of homelessness or deportation at the end of the identification process, as well as being left with no long-term financial support outside the NRM. CSOs have been told by police that they have re-referred individuals into the NRM multiple times, as each time they left the NRM they became destitute and fell into exploitation again. Many EEA nationals who have been trafficked are not considered eligible for public funds due to their inability to prove that they have been working in the UK.<sup>25</sup> This has resulted in cases such as *Galdikas* and *Subatkis*<sup>26</sup> where individuals found to have been trafficked and who were cooperating with the police were still left destitute. In some

cases victims have returned to situations of exploitation for the purpose of paying for their daily needs.

### ***Proposed NRM reforms***

The UK Government has yet to publish statutory guidance for victim care under the MSA. In October 2017 the UK Government announced a series of reforms to the NRM, including:

- Increasing exit support from 14 days to 45 days;
- Creating Government-funded ‘places of safety’ so that adult victims leaving situations of exploitation can be given assistance and advice for up to three days before entering the NRM;
- Drop-in services for confirmed victims and working with local authorities to create best practice for transition into a new community;
- The creation of a ‘single, expert unit’ in the HO to handle all referrals separate from the immigration system; and
- The introduction of an independent panel of experts to review all negative decisions.

However, these reforms have not yet been implemented and pilot projects have been criticised by CSOs. In addition, the UK Government is also planning to align subsistence rates provided to victims of modern slavery with those received by asylum seekers. However, this represents a cut of subsistence rates down to £37.75 per week, which has been highlighted by CSOs as rates which can lead to destitution. In 2018 initial cuts were found by the High Court to be unlawful.<sup>27</sup> Following this judgment, which criticised the lack of statutory guidance, the HO quickly released draft interim guidance. This was criticised by many CSOs that rushed guidance without consulting with experts risked creating safeguarding risks.<sup>28</sup> The HO is considering these risks and has not yet published the interim guidance. Nor has it committed to a time plan and consultation for the development of the full statutory guidance.

The Modern Slavery (Victim Support) Bill, currently waiting for second reading in the House of Commons, would bring in further improvements to adult victim support, such as

the provision of a year-long residence permit with case work support to those receiving a positive CG decision.

### **Compensation**

Between 2014 and 2017 a total of 124 victims accessed compensation or non-asylum immigration legal advice, an average of just 41 per year.<sup>29</sup> These numbers suggest that less than 1% of those referred into the NRM are currently able to access legal aid in respect of a potential compensation claim against their trafficker.<sup>30</sup>

The Modern Slavery Act introduced a new Reparation Order to enable the courts to ensure that more money from those convicted of slavery and/or exploitation offences goes directly to their victims.<sup>31</sup> However, it appears no reparation orders have yet been made under the MSA.

Reparation orders require the conviction of the defendant, which remain low. Between 2004 and 2014, 211 persons were found guilty of crimes of human trafficking, slavery, servitude and forced labour. However, only 8 compensation orders were made with regard to those crimes during the same 11-year period amounting to a total of just over £70,000.<sup>32</sup>

CSOs have found that barriers to compensation persist. For example, an application to Criminal Injuries Compensation Authority (CICA) must be made within two years of the criminal injury suffered.<sup>33</sup> Many victims do not act within this time limit due to trauma, lack of assistance or a lack of awareness that this is an additional requirement on top of the NRM.<sup>34</sup> There is no legal aid available for a CICA application other than if exceptional funding is secured. The scheme also requires a victim to have suffered a “*crime of violence*”. Trafficking or modern slavery is not of itself considered a crime of violence. CICA is able to refuse, withhold or reduce awards of compensation where an applicant has “*failed to cooperate*” or has a criminal conviction, without consideration for the applicant’s circumstances.

Victims are entitled to legal aid to bring claims against their traffickers in the High Court, County Court or Employment

Tribunal. However, in practice this is undermined by difficulties in obtaining legal aid. Many victims experience delays of up to several years which negatively impacts their underlying legal case. Where victims do recover compensation, the Government recovers the cost of running their case on legal aid from the total award which can see their compensation extinguished. In 2015 the court awarded a victim of domestic servitude £266,536 but she was unable to claim it as it was used to pay off her legal aid fees. The claimant had initially been refused legal aid for 17 months on the grounds that her case was not of “*sufficient importance or seriousness*”.

### **Criminalisation of trafficking victims and other barriers to rehabilitation**

Existing immigration and drug legislation means that many victims of trafficking are still criminalised.<sup>35</sup> Section 45 MSA, intended to provide a statutory defence for victims compelled to commit crimes as part of their exploitation, for example Vietnamese young people forced into cannabis farming, British children exploited in drug lines, and non-British survivors who have irregular status, has been shown to be completely ineffective in preventing victims from being convicted and imprisoned.<sup>36</sup>

Many survivors of trafficking have difficulties formalising their immigration status. In 2015 just 12% of confirmed victims were granted a residence permit.<sup>37</sup> The Immigration Acts of 2014 and 2016 have further heightened migrants’ vulnerabilities to labour exploitation, restricting access to housing, health, banking and legal representation, and increased penalties for unauthorised working for irregular migrants. In addition, CSOs have noted that the links to immigration powers have caused potential victims to refuse to enter the NRM.

In addition, the NHS Overseas Visitors Charging policy, low rates of asylum support and the absence of a right to work during an asylum claim are barriers to rehabilitation. Survivors of torture and some asylum seekers have multiple and complex health needs. These can be compounded by

the asylum system itself and their experiences seeking safety in the UK (see Chapter 3 Asylum and Immigration).

**9.2 The UK should implement all promised reforms to the National Referral Mechanism and should ensure that civil society are effectively consulted regarding further reforms. First responders should receive statutory training into the identification of potential victims of human trafficking and modern slavery.**

**9.3 The UK should ensure that all victims of human trafficking and modern slavery have access to compensation, reparation and rehabilitation.**

## Migrant domestic workers

The introduction of the "tied" visa in April 2012 prohibited workers from being able to change employer and renew their 6-month visa, leaving them unable to escape abusive employment. If they escape they face becoming undocumented, unable to seek redress and driven underground at risk of further exploitation.

In the two years following the introduction of the tied visa Kalayaan<sup>38</sup> found that: 16% of workers registering with them suffered physical abuse (compared with 8% on the original visa); 71% reported never being allowed outside of the house where they lived and worked unsupervised (compared with 43% on the original visa); 65% did not have their own room (compared with 34% on the original visa); and 53% worked more than 16 hours a day (compared with 32% on the original visa). Kalayaan internally assessed 69% of tied workers as being suspected victims of human trafficking in comparison with 26% of those not tied to their employer.<sup>39</sup>

The MSA left the tied visa regime intact and only gave limited protection to migrant domestic workers identified as a victim of trafficking through the provision of six months leave to remain. This meant workers had to take the risk of leaving without knowing whether or not they would be

identified as trafficked and were not able to work whilst their case was being considered under the NRM.

In April 2016 changes were made to the terms of the tied visa, after a government commissioned independent review found "the existence of the visa tie to a specific employer and the absence of a universal right to change employer and apply for extensions of the visa are incompatible with the reasonable protection of overseas domestic workers while in the UK."<sup>40</sup> However, these changes were limited, for example, permitting domestic workers to change employer during their first 6-month visa. Whilst appearing to remove the tie, this has not reinstated meaningful protections for workers who have experienced abuse in the UK. Their options to find another employer remain incredibly limited as they have only months or weeks remaining on their visa and are doing so without references. In addition, 83% of workers did not have possession of their passport when they registered at Kalayaan and so are unable to demonstrate that they have valid permission to work in the UK.<sup>41</sup> During this time there is no recourse to public funds.

The UK Government also amended the Immigration Rules to increase the length of a visa granted to a recognised victim of trafficking from six months to two years. However, concerns remain that workers are pressured in to accepting exploitative work and living arrangements in order to meet the requirements to apply and avoid destitution once they no longer have support under the NRM.<sup>42</sup>

**9.4 The UK should fully implement all the recommendations of the independent review of the tied visa, including by granting migrant domestic workers the unconditional right to change employer and renew their visa for at least two and a half years, and ensuring that all migrant domestic workers can attend an information session on the visa.**

**9.5 The Committee should monitor the passage of the Modern Slavery (Victim Support) Bill. The Bill currently provides guaranteed support to all recognised victims of trafficking for a minimum of 12 months.**

## Child victims of trafficking and slavery

In 2018 there were 3,071 potential child trafficking victims identified in the UK, comprising 44% of the total number of trafficking victims and reflecting a 45% increase compared to the previous year.<sup>43</sup>

CSOs have demonstrated that a significant percentage of trafficked children go missing after being identified.<sup>44</sup> More than a quarter of all trafficked children and over 500 unaccompanied asylum-seeking children went missing at least once in the year to September 2015, with 207 remaining unfound. It was reported that 150 Vietnamese minors disappeared from care and foster homes between 2015 and October 2017.<sup>45</sup> At least 104 children went missing between August 2016 and July 2017 in the UK after being transferred from Calais.<sup>46</sup>

### Support measures for child victims of trafficking

Although the MSA provides for the introduction of specialist independent advocates for trafficked children these have yet to be fully rolled out.

Unlike for adults, in England and Wales the local authority child protection services are responsible for safeguarding and supporting child trafficking victims under Section 20 of the Children Act 1989. Once children are identified as trafficked through the NRM, there is no follow-up provision and no specific funding provided to children's services to offer additional or specialist support. A 2017 report commissioned by the HO and Department for Education found that there was limited availability of specialist provision by local authorities for migrant children identified as potential victims of modern slavery.<sup>47</sup> A 2017 report by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings found that local authority approaches to providing this support to child victims of trafficking in the UK were "inconsistent" and "patchy."<sup>48</sup> Support has also been hampered by reductions of funding to children's services. With reduced funding, core functions become prioritised, meaning that specialist training or early intervention services for children are being reduced.

### Criminalisation of child trafficking victims

Child trafficking victims continue to be arrested or prosecuted for crimes they have been forced to commit whilst being exploited. Between 2012 and 2017, more than 1,333 Vietnamese children were arrested, rather than being seen as potential trafficking victims.<sup>49</sup> The reasons for arrest included drug offences, despite the known links with exploitation for cannabis cultivation. This is despite the CPS guidance stating that "*[i]f the defendant is a child victim of trafficking/slavery, the extent to which the crime alleged against the child was consequent on and integral to his/her being a victim of trafficking/slavery must be considered. In some cases the criminal offence is a manifestation of the exploitation.*"<sup>50</sup>

An inspection of policing responses to modern slavery and human trafficking highlighted that inconsistent and ineffective identification of victims is causing failures to prevent victims of trafficking from being criminalised.<sup>51</sup>

#### Case study: 'Stephen'<sup>52</sup>

'Stephen' was identified as a former child victim of trafficking but faced the threat of removal to Vietnam. An orphan aged just 10 years old, Stephen was trafficked out of Vietnam to the UK. He was locked away in houses converted into cannabis farms and forced to work as a gardener producing the drug for sale in the UK. He worked long hours for no pay and in extremely dangerous conditions, mixing chemicals that made him ill, getting burnt by hot lamps used to grow the plants and receiving electric shocks from wires. He was kept alone most of the time, completely hidden from the public and received beatings from his traffickers. "I was like an animal, kept in a box", he told The Guardian.

At the age of 16, he was found by police and placed in foster care in the North East of England. On turning 17 and a half he lost his automatic right to remain and applied for asylum. However, his application was refused, meaning he faced removal to Vietnam, despite having no family or support network there, and despite the known risk of re-trafficking.

These problems are exacerbated by a situation in which there are few solicitors, barristers and legal projects that specialise in the representation of children who may have been trafficked, and they are not distributed uniformly across the UK.<sup>53</sup>

Section 45 of the MSA also introduces a defence for victims who are compelled to commit criminal offences. However, UNICEF found there are “*serious shortcomings in the implementation of the non-punishment principle in the UK.*”<sup>54</sup> CSOs believe that the ‘reasonable person’ test contained within the defence is not appropriate or fair in children’s cases.

A further concern of child criminal exploitation lies in the so-called country line drug networks, where children in the UK who have been groomed by criminals to transport drugs, often witnessing or directly experiencing significant physical or sexual abuse, are often not protected by the legislation and risk being criminalised.<sup>55</sup>

### ***Effective remedies and reparation***

The UK is obligated under the EU Directive Against Trafficking in Human Beings to provide a “*durable solution*” or long-term sustainable arrangement for all separated children, including those who have been trafficked.<sup>56</sup> This seeks to ensure stability and security for each child to recover and rebuild their lives based on an individual assessment of the child.<sup>57</sup> There is no such arrangement in place in the UK, which means that victims of trafficking are often placed at risk of further harm.

Many child victims of trafficking face significant challenges in the asylum system<sup>58</sup> and asylum refusal rates for these children have increased.<sup>59</sup> If they have not been granted refugee status, these children are granted limited leave to remain in the UK (Unaccompanied Asylum Seeking Child or UASC leave), which lasts until they are 17 ½. There is a lack of services and support provision for young people at this transition age (18-21), which is compounded when there is uncertainty as to whether a child will be able to remain in the UK or not.<sup>60</sup>

The uncertainty of their immigration status and lack of a stable long-term solution leads to further vulnerability. Some young people are forced into destitution after being discharged from services.<sup>61</sup> Some intentionally choose to disengage from statutory services at 18 because of fear of detention and forced removal, making them more likely to end up working in exploitative conditions. Some even reach out to underground networks as a result.<sup>62</sup>

There is a distinct lack of scrutiny and human rights-based risk assessment for child trafficking victims who are returned to their country of origin as young adults. There are no monitoring procedures in place, meaning that there is no visibility as to whether further exploitation or re-trafficking has occurred. For EEA national children, there is less clarity on a child’s rights and legal status with regard to the returns procedure. Research has shown that decisions on returns are often made on an ad hoc basis, with the potential for mistakes to be made.<sup>63</sup>

**9.6 The UK should reform the National Referral Mechanism for children and ensure that decisions on whether a child has been trafficked are made by trained multi-agency child protection services and ensure rights-based training for all frontline professionals. Specialist care and support should be provided, including accommodation and access to mental health support. There should be a system to improve data collection and monitor the outcomes of children referred to the National Referral Mechanism and increased efforts to avoid criminalisation of children.**

**Chapter 10:  
Hate crimes**



The number of recorded hate crimes has more than double in the past five years in England and Wales.  
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## Chapter 10: Hate crimes

### Article 16

In its 2016 LoIPR the Committee requested information on measures taken to combat hate crimes, including crimes committed on the basis of race, nationality and religion.<sup>1</sup> The Committee also requested information on reports of a rise in Islamophobia and anti-Semitic hate crimes and specific measures taken to address underreporting of disability and transgender-motivated hate crimes.<sup>2</sup>

Recent figures for England and Wales show that the number of recorded hate crimes has more than doubled in the past five years.<sup>3</sup> Hate crime offences recorded by the police rose by 17% to 94,098 in 2017-18.<sup>4</sup> This represents an increase of 123% since 2012-13, when 42,255 hate crimes were recorded. This includes a rise in hate crimes linked to race, sexual orientation, religion, disability and transgender identity.<sup>5</sup> This rise has been attributed in part to the EU referendum and terrorist attacks in 2017.<sup>6</sup> The ERD Committee has raised deep concerns that the EU referendum campaign was marked by *“divisive, anti-immigrant and xenophobic rhetoric”*.<sup>7</sup> The UN Special Rapporteur drew attention to the impact of Brexit on racial inequality in the UK and the growth of explicit racial, ethnic and religious intolerance in 2018.<sup>8</sup>

In 2016 the HO launched a Hate Crime Action Plan (HCAP)<sup>9</sup> which set out a four-year programme covering five themes: Preventing hate crime by challenging beliefs and attitudes; Responding to hate crime within our communities; Increasing the reporting of hate crime; Improving support for victims of hate crimes; Building understanding of hate crime.

However, the responsibility is placed on individual local authorities, police forces, and other statutory bodies to fulfil broad national recommendations. This has resulted in unclear lines of accountability and a lack of overall strategic leadership.

### **Anti-Semitism**

In 2017 the Community Security Trust recorded 1,382 anti-Semitic incidents.<sup>10</sup> This was the highest annual total recorded and a 3% increase from 2016, which had itself seen a record annual total of anti-Semitic incidents.<sup>11</sup> In 2017, 356 individuals in public, 283 visibly Jewish individuals, 141 Jewish community organisations, communal events or commercial premises, 89 homes and 76 synagogues were targeted.

In 2017, the most common form of anti-Semitic hate crime was abusive behaviour, with 1,038 incidents reported. 145 anti-Semitic assaults were reported in 2017, which is an increase of 34% from 2016 and the highest number ever recorded in the category of assault.<sup>12</sup> A large proportion of anti-Semitic hate speech is via social media, recording 247 anti-Semitic incidents from social media in 2017; this represents 18% of their overall annual total of recorded anti-Semitic incidents.<sup>13</sup>

### **Hate crime against Gypsy, Roma and Travellers (GRT)**

A 2016 survey found that 98% of Gypsy, Roma and Travellers (GRT) had experienced discrimination.<sup>14</sup> 77% of respondents reported that they had experienced hate crime *“sometimes”* or *“often”*.<sup>15</sup> The hate incident reporting website Report Racism GRT has received over 622 reports since July 2016, with *“online hate”* accounting for 47% of reports. Just 54 out of these 622 incidents were reported to the police. 33% stated that this was because *“it was too common occurrence to report”* and 23% because they *“did not think the police would do anything to help”*.<sup>16</sup>

Although the HCAP indicates that GRT are a group at risk of hate incidents, the 2017-18 HO statistical bulletin for Hate Crime in England and Wales provides data for five ethnic categories which do not include GRT communities. This limits capacity to build understanding on hate crime towards GRT communities and to respond to hate crime as outlined in the HCAP.



### **Islamophobia**

Between January to June 2018, the organisation Tell MAMA recorded a total of 685 reports of hate crime incidents, of which 608 were verified as having been anti-Muslim or Islamophobic.<sup>17</sup> In 2017 1,380 incidents were recorded, of which 1,201 were verified.<sup>18</sup> The report also showed that two thirds of verified incidents occurred “offline”, or at street level, which marks a 30% increase in offline reports compared to the previous reporting period.<sup>19</sup> Between 2015 and 2016 a 46.9% increase in offline incidents was recorded.<sup>20</sup> Notably, most victims were female (57.5%) and most perpetrators were male (64.6%) and a clear majority (72%) of perpetrators were white men.<sup>21</sup>

Statistics also showed a 475% increase in offline anti-Muslim incidents reported in the week following the 2016 EU referendum in the UK and a 700% increase recorded in the week following the Manchester Arena attack on 22 May 2017.<sup>22</sup>

### **Sexual orientation and transgender motivated hate crimes**

In 2017-18, the police recorded 11,638 sexual orientation hate crimes (27% increase from the previous year) and 1,651 recorded transgender hate crimes (32% increase from the previous year).<sup>23</sup> A 2017-18 HO Hate Crime report states that “These large percentage increases across all three strands may suggest that increases are due to the improvements made by the police into their identification and recording of hate crime offences and more people coming forward to report these crimes rather than a genuine increase”.<sup>24</sup>

Statistics published by Stonewall in January 2018 found that 41% of trans people and 31% of non-binary people have experienced a hate crime or incident in the preceding 12 months.

### **Disability hate crimes**

In 2017-18 there were 7,226 incidents that were classified as disability hate crimes.<sup>25</sup> However, the number of disability

hate crime incidents recorded by the Crime Survey for England and Wales over the period 2016-17 – 2017-18 was 52,000<sup>26</sup> meaning many incidents are going unreported. Victimisation, fear of reprisal and lack of police support and the increased likelihood that the perpetrator of a hate crime is known by the disabled person are reasons cited why disability hate crime is under reported.<sup>27</sup>

Whilst levels of reporting and recording of disability hate crimes by police has increased the number of successful prosecutions has decreased from 79.3% in 2016-17 to 75% in 2017-18. In addition, the volume of prosecutions completed decreased by 25.5% over the same period.<sup>28</sup> The Crown Prosecution Service put this down to the difficulty of determining when a disability hate crime has been committed as a crime motivated by a disabled person being seen as “vulnerable” or an easy target currently does not count as a hate crime.<sup>29</sup> Occasionally extreme cases of hatred and violence towards disabled people come to light. For example, in August 2017 a family were convicted of enslaving and perpetrating violence for 26 years against 18 people including people with learning disabilities.<sup>30</sup>

**10.1 The UK should adopt concrete measures, in consultation with groups affected, to: (i) increase the reporting of racist hate crimes, by ensuring that the reporting mechanism is transparent and accessible and that victims have trust in the police and the justice system; (ii) ensure that it investigates all reported racist hate crimes, prosecute the perpetrators and punish them with sanctions commensurate with the gravity of the offence; (iii) systematically collect disaggregated data on hate crimes; and (iv) review and adopt comprehensive measures to combat racist hate speech and xenophobic political discourse, including on the Internet, particularly with regard to the application of appropriate sanctions, and ensure that public officials not only refrain from such speech but also formally reject hate speech and condemn the hateful ideas expressed, so as to promote a culture of tolerance and respect.**

## Chapter 11: Redress



Nazanin Zaghari-Ratcliffe was granted diplomatic protection by the UK on 7 March 2019.  
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## Chapter 11: Redress

### Article 14

In its 2016 LoIPR the Committee requested information on redress and compensation measures available to victims of torture or their families. This chapter explores existing mechanisms and identifies changes that could be made in the UK to help victims of torture obtain justice and reparation. This includes the provision of universal civil jurisdiction, sanctions and asset recovery regimes, and the provision of diplomatic protection.

### Civil damages claims

As the law presently stands, torture survivors in the UK cannot sue a foreign state in UK courts for redress for the damage done to them, on the basis that the other state and its officials have immunity from suit.<sup>1</sup> This leaves an “impunity gap”, as identified by the JCHR in 2009.<sup>2</sup>

In the Committee’s concluding observations of the fifth periodic report of the UK adopted in 2013, it recommended that the UK provide for universal civil jurisdiction over some civil claims by adopting the Torture (Damages) Bill. However, this Bill was never adopted after it was dropped following its first reading before Parliament in 2009. Accordingly, there is no specific legislative basis in the UK upon which an individual can bring an extraterritorial civil claim for universal jurisdiction crimes. Consequently, civil claims can only be brought on the basis of common law tort actions, which are restricted by limitation periods, service rules, the principle of *forum non conveniens* and immunities. In addition, victims of torture committed overseas cannot apply for an award for compensation under the Criminal Injuries Compensation Scheme.

**11.1 The UK should close the “impunity gap” by providing for universal civil jurisdiction over civil claims for damages as a result of torture or ill-treatment.**

### Magnitsky sanctions and asset recovery

Under Part 5 of the Proceeds of Crime Act 2002 (POCA), modified by the Criminal Finances Act 2017 which came into force in January 2018, property obtained through “unlawful conduct” can be recovered through civil proceedings before the High Court. Under Section 240 “*gross human rights violations*” (which includes torture and ill-treatment, including where this has been committed overseas) can constitute unlawful conduct.<sup>3</sup> However, the mechanism requires evidence of a link between the perpetrator’s “*unlawful conduct*” and the property seized, which may be difficult to obtain.

Further, there are no opportunities for third parties, including civil society organisations, to start (or request) proceedings for asset recovery, or for victim involvement in the process. Assets seized under POCA are used for supporting further asset recovery work, crime reduction and community projects.<sup>4</sup> There is no mechanism under Part 5 of POCA for funds to go directly to victims.

The UK’s sanctions regime is currently being reviewed as part of its preparations to leave the EU. The Sanctions and Anti-Money Laundering Act 2018 (SAML) provides Ministers with broad powers to introduce autonomous sanctions against individuals and entities for permitted purposes which includes “*to provide accountability for or to be a deterrent to gross violations of human rights law or respect for human rights*”.<sup>5</sup> However, these powers are not expected to come into force until the UK has left the EU.

**11.2 The UK should provide a mechanism under Part 5 of the Proceeds of Crime Act 2002 by which victims of the unlawful conduct complained of can benefit directly from the funds recovered in the civil proceedings, and to provide for victim involvement in such proceedings.**

**11.3 The UK should review the Proceeds of Crime Act 2002 requirement that there is a direct link between the unlawful conduct and the property seized.**

**114 The UK should ensure that the Sanctions and Anti-Money Laundering Act 2018 is brought into force as soon as possible.**

## Diplomatic protection for survivors of torture

Diplomatic protection is a formal state-to-state process employed by the state when a national of that State suffers injury as a result of an internationally wrongful act committed, either directly or indirectly, by another state.<sup>6</sup> It is a procedure intended to secure protection of the national, and to obtain reparation for the wrongful act committed.<sup>7</sup> As recognised by the International Court of Justice, diplomatic protection may be achieved by way of either “*diplomatic action*” or “*international judicial proceedings*.”<sup>8</sup>

### Case study: Nazanin Zaghari-Ratcliffe

Nazanin Zaghari-Ratcliffe is a British-Iranian charity worker who is currently serving a five-year prison sentence on unspecified charges relating to national security in Evin Prison, Tehran.

In total, Nazanin has spent over eight months in solitary confinement including being held in tiny cells without windows, natural air or light. Her treatment has had an extremely severe impact on her mental and physical health, which has caused at times, among other things, her inability to walk and use her arms and hands, severe weight and hair loss, blackouts, panic attacks, post-traumatic stress disorder, advanced depression and suicidal tendencies. She has also been denied access to necessary medical treatment. REDRESS has argued that the exceptionally harsh treatment inflicted upon her throughout her detention and resulting harm may amount to torture.

In March 2019, the UK Government confirmed that it would grant diplomatic protection to Nazanin, formally recognising that her treatment has failed to meet the relevant standards under international law.

Under international law, a state traditionally has had the right to exercise diplomatic protection on behalf of a national although it has been under no obligation to do so. Consequently, the decision to exercise diplomatic protection is political and discretionary. However, recent jurisprudence has suggested that, the more egregious the mistreatment or injustice alleged on the part of the affected individual (for example if the violation is of a *jus cogens* norm such as torture), the more the balance will be tipped in favour of the recognition of an obligatory element in the protection offered.

In the UK, diplomatic protection is a matter of published policy rather than the basis of a legal right to such protection. The policy is found in the “*Rules applying to international claims*” (updated May 2014) and FCO internal guidelines.<sup>9</sup> Ministers are consulted when a request for diplomatic protection is being considered.

Currently, UK nationals cannot sue a foreign state in UK courts for redress for the damage done to them (such as torture), and the only way in which the UK can implement its Article 14 commitments under UNCAT is if it takes up the case, or ‘espouses’ it, against the State which has been responsible for the torture or other ill-treatment. It is understood that the UK Government has never espoused such a case. Survivors of torture in the UK should be entitled to a legal right to such a remedy, which should consist in the UK offering them diplomatic protection, by way of legal steps (if necessary) up to and including international judicial proceedings.

The UK Government did recently grant diplomatic protection to *Nazanin Zaghari-Ratcliffe* (see case study). It is understood that this is the first time it has been granted to an individual in living memory.

**115 The UK should ensure that survivors of torture who are UK nationals are entitled to a legal right to diplomatic protection. This protection should include the UK taking legal steps (if necessary) up to and including international judicial proceedings.**

**Chapter 12:  
Use of torture evidence**



A recent Court of Appeal judgment has worrying implications regarding the admissibility of evidence obtained through torture. © Abbie Trayler-Smith/Panos Pictures.

## Chapter 12: Use of torture evidence

### Article 15

In its LoIPR the Committee requested information on measures taken to ensure respect in law and practice for the principle of inadmissibility of evidence obtained through torture.

During the reporting period, the Court of Appeal (England & Wales) gave judgment in *Shagang v HNA* – a commercial dispute between two Chinese corporations.<sup>1</sup> The judgment has worrying implications regarding the admissibility of evidence obtained through torture. This related to the admissibility of various admissions by Shagang which HNA contended had been obtained by torture. The Court of Appeal found that where a claim is based entirely on hearsay evidence obtained from third parties, who confessed to bribery when in police custody in China without access to lawyers, and who subsequently retracted their confessions on the basis that they had been tortured, a judge is bound to weigh that hearsay on the basis that there was no torture unless torture can be proved on the balance of probabilities. If torture was not proved to have occurred, she should proceed on the basis that it did not happen.

This judgment has worrying implications given: (1) the difficulty in proving torture; and (2) the fact the decision runs contrary to the judgment in *A (No 2)*.<sup>2</sup> In *A (No 2)* the House of Lords held that evidence is inadmissible if proved to have been extracted under torture and that if torture cannot be proved, but the court has a doubt as to whether there was torture, this is relevant to the weight to be given to the evidence. The Court of Appeal in this case held that *A (No 2)* is not of general application but applies only to the Special Immigration Appeals Commission. At the time of writing it is understood that permission has been granted for the case to be appealed to the Supreme Court.

The use of torture evidence in intelligence sharing is addressed in Chapters 13 and 14.

**12.1 The Committee should monitor the case of *Shagang Shipping Company Ltd v HNA Group Company Ltd* [2018] EWCA Civ 173.**

## Chapter 13: Accountability for torture overseas



In 2014 UK agencies shared intelligence with the CIA on Abdulhakim Belhaj and his wife Fatima Boudchar which led to their kidnapping and rendition to Libya. © Reprivee.

## Chapter 13: Accountability for torture overseas

### Articles 12, 13, 14, 15 and 16

In its 2016 LoIPR the Committee requested information on steps taken by the UK to establish an independent judge-led inquiry into allegations of torture and ill-treatment of detainees, including by means of complicity, held in other countries in counter-terror operations. The Committee further requested information on investigations into and accountability for abuses in Iraq between 2003 and 2009. This chapter further outlines concerns about the UK's responsibility to ensure accountability for gross human rights violations allegedly committed by foreign subsidiaries of UK parent companies.

### Inquiries into allegations of torture overseas

The UK Government has failed to establish an independent judge-led inquiry into allegations of torture overseas, despite strong and credible evidence of UK involvement in the torture and ill-treatment of detainees held by other states in counter-terrorism operations overseas since 2001.

In June 2018, the Intelligence and Security Committee of Parliament (ISC) published a report concerned with UK involvement in detainee mistreatment and rendition relating to 2001-2010.<sup>1</sup> The findings included:

- 19 allegations that UK personnel themselves committed acts of torture.<sup>2</sup>
- Evidence that UK personnel made threats to detainees that, in view of the conditions under which they were detained, may also constitute torture or other ill-treatment.<sup>3</sup> Some of these allegations were made in official complaints to police, yet none of them resulted in criminal prosecution or a successful civil case.<sup>4</sup>
- At least 2 instances where UK personnel “directly engaged in the mistreatment of a detainee by others”<sup>5</sup>

- At least 13 UK officials witnessed detainee mistreatment first hand, with 25 more told of mistreatment.<sup>6</sup>
- At least 232 cases where UK personnel “continued to supply questions or intelligence to liaison services after they knew or suspected (or, in [the ISC’s] view, should have suspected) that a detainee had been or was being mistreated”<sup>7</sup>
- 198 occasions where UK officers received intelligence from prisoners they knew were being mistreated, and in 128 cases they did so after being told of mistreatment by foreign partners.<sup>8</sup>
- Extensive efforts by UK intelligence agencies to block reporting of incidents of mistreatment, including attempts to keep evidence from reaching the ISC during its previous investigations.<sup>9</sup>
- Evidence that suggests Government officials in one case successfully blocked criminal investigation of breaches of the Geneva Conventions.<sup>10</sup>

The ISC noted that the evidence showed in some areas a “corporate policy of facilitating the rendition of those captured”, amounting to “simple outsourcing of action which [UK officials] knew they were not allowed to undertake themselves.”<sup>11</sup>

The findings of the ISC are only provisional. The report itself warns that it “is not, and must not be taken to be, a comprehensive account”, as the restrictions in place meant that it was unable to produce a “credible” report.<sup>12</sup> The ISC was unable to access key evidence as the UK Government refused to provide access to witnesses from UK intelligence agencies who observed what went on or allow ISC members to interview any of the personnel involved in making the relevant decisions at the time.<sup>13</sup> Just 4 witnesses were made accessible to the ISC by the agencies, but the ISC could not ask them about the specifics of the operations in which they were involved in, or quote them in the final report.<sup>14</sup>

In addition, there have been longstanding concerns around the institutional independence of the ISC, with the Prime Minister still holding a veto over the process



of nominating ISC members, along with a further veto over what the ISC can publish.<sup>15</sup>

In 2004 UK agencies shared intelligence with the CIA on Abdulhakim Belhaj and his wife Fatima Boudchar which led to their kidnapping and rendition to Gaddafi's Libya.<sup>16</sup> UK agencies went on to receive further intelligence obtained from the couple while they suffered appalling mistreatment in detention.<sup>17</sup> The UK Government has recently issued an unprecedented apology.<sup>18</sup> However, neither the ISC nor any other public body has yet completed an independent investigation of that or other cases.

**13.1 The UK should establish a full, independent and judge-led inquiry into UK involvement in torture and ill-treatment since 2001. Such an inquiry should meet the following minimum standards:**

- It should be established under the Inquiries Act 2005 and headed by a judge;
- It should have an independent, judicial mechanism for open proceedings and publication of materials;
- It should have adequate legal powers to hold a full and effective investigation;
- It should be empowered to examine all relevant evidence and cases, including those which have yet to be properly examined, such as Abdulhakim Belhaj and Fatima Boudchar; and
- It should ensure the meaningful involvement of survivors of torture

## Accountability for abuses in Iraq

There have been a number of legal processes established to address alleged abuse committed in Iraq, including criminal investigations, military investigations, civil suits, public inquiries (including the Baha Mousa Public Inquiry) and judicial reviews.<sup>19</sup> However, these processes have been met with criticism from civil society for a number of reasons including

being inadequate, marked by interference and a systemic lack of transparency. There have been no criminal prosecutions of UK Armed Forces personnel for the crime of torture.

The Iraq Historic Allegations Team (IHAT) was terminated in 2017, leaving the newly formed Service Police Legacy Investigations (SPLI) to complete the investigation of over 1200 cases. Between July 2017 and September 2018, the UK's SPLI closed, or was in the process of closing 1122 of the investigations into alleged ill-treatment without a full investigation, 88% of the overall caseload.<sup>20</sup> The MOD's Systemic Issues Working Group found in August 2018 that some of these decisions to close were based on the SPLI's own definitions of "minor" and "medium" ill-treatment:

*"Some were discontinued because of a lack of evidence (including, in some cases, a failure by complainants or witnesses to provide statements). Others were discontinued because the Service Police assessed them in terms of severity as falling at the lower end (ranging from very minor ill-treatment to assaults occasioning actual bodily harm) or middle (ill-treatment of medium severity and/or assault not reaching the threshold of grievous bodily harm) of the spectrum, and determined that a full investigation would be disproportionate".<sup>21</sup>*

However, the Working Group was not able to review the evidential basis used by the SPLI as the cases had been discontinued.<sup>22</sup> Recent research has raised the concern that cases might have been closed "based on an arbitrary and conceptually underinclusive ranking of their severity" and that these narrow definitions of 'lower-' and 'medium-level' 'ill-treatment' are inconsistent with the ECtHR's jurisprudence on the lower threshold of inhuman or degrading treatment.<sup>23</sup> The research also found that publicly available documents do not suggest that the MOD considered the duties under UNCAT, or the different threshold of severity between torture and ill-treatment in UNCAT, or if there was evidence of the intentional infliction of severe physical or mental pain and suffering or of the prohibited purposes under article 1 UNCAT, and there are no references to section 134 of the Criminal Justice Act which criminalises torture.<sup>24</sup>

The *Alseran* judgment (see case study), in which the Claimants were all found to have suffered inhuman and degrading treatment, noted that 331 similar cases had been settled by the MOD (with four discontinued or struck out) and there were 632 unresolved cases. As the facts of the cases subjected to settlement have not been made public, it is not possible to know if these cases have been closed by IHAT, SPLI or by the MOD. However, the settlement of such a large number of cases suggests “a pattern of conduct in relation to ill-treatment that would justify careful investigation of remaining cases” rather than their closure.<sup>25</sup>

**Case study: *Alseran, Al-Waheed and Others v Ministry of Defence*<sup>26</sup>**

In 2017, the High Court found that Mr Alseran was a victim of inhuman and degrading treatment when several British soldiers made him, and other prisoners, lie face down on the ground and then ran over their backs with heavy military boots a number of times “for what appears to have been the sadistic amusement of the assailants and onlookers” in 2003.<sup>27</sup>

The Court also found that in 2003 British soldiers had hooded another claimant, MRE, who sustained an eye injury as a result of a sharp object in the sack, and had struck him on the head. The Claimant has since suffered from migraine headaches, migraine-related balance disorder, visual vertigo and a central auditory processing disorder. A further claimant, KSU, was found to have been hooded.<sup>28</sup>

The final test Claimant in the case, Mr Al-Waheed, was found to have been subjected to practices in 2007 which “were routinely used at the relevant time in handling prisoners, but which amounted to inhuman and degrading treatment”, including “harsh” interrogation, sleep deprivation, and sight and hearing deprivation.<sup>29</sup>

The total damages awarded to the claimants under the Human Rights Act was over £70,000. The MOD has not appealed the judgment.

In 2014 the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) confirmed the opening of a preliminary examination of the UK on the basis that many hundreds of alleged cases of ill-treatment in Iraq were widespread and systematic and constituted war crimes. In November 2015 the OTP stated that the total allegations of ill-treatment now stand at 1268, including over 200 alleged cases of unlawful killing in custody and situations outside of custody.<sup>30</sup> The OTP’s 2018 report on preliminary examination activities stated that the OTP had documented at least 7 seven deaths as a result of abuse in custody and 24 instances of mistreatment involving a total of 54 individuals. The OTP stated that “At this stage, these incidents should not be considered as either complete or exhaustive, but rather illustrative of the alleged criminal conduct”.<sup>32</sup>

**13.2 The UK should undertake a full investigation into the high-levels of closures by the Service Police Legacy Investigations and should take all necessary measures to establish responsibilities and ensure accountability, including by setting up a full, independent and judge-led inquiry into UK involvement in torture and ill-treatment since 2001 which includes allegations of torture and ill-treatment in Iraq between 2003-2009, including the consideration of command responsibility, and which considers the duties under UNCAT.**

**13.3 The Committee should follow the ongoing preliminary examination of the UK by the Office of the Prosecutor at the International Criminal Court and should monitor the measures taken by the UK to ensure accountability for human rights violations committed by the UK in Iraq.**

## Responsibility for UK parent companies

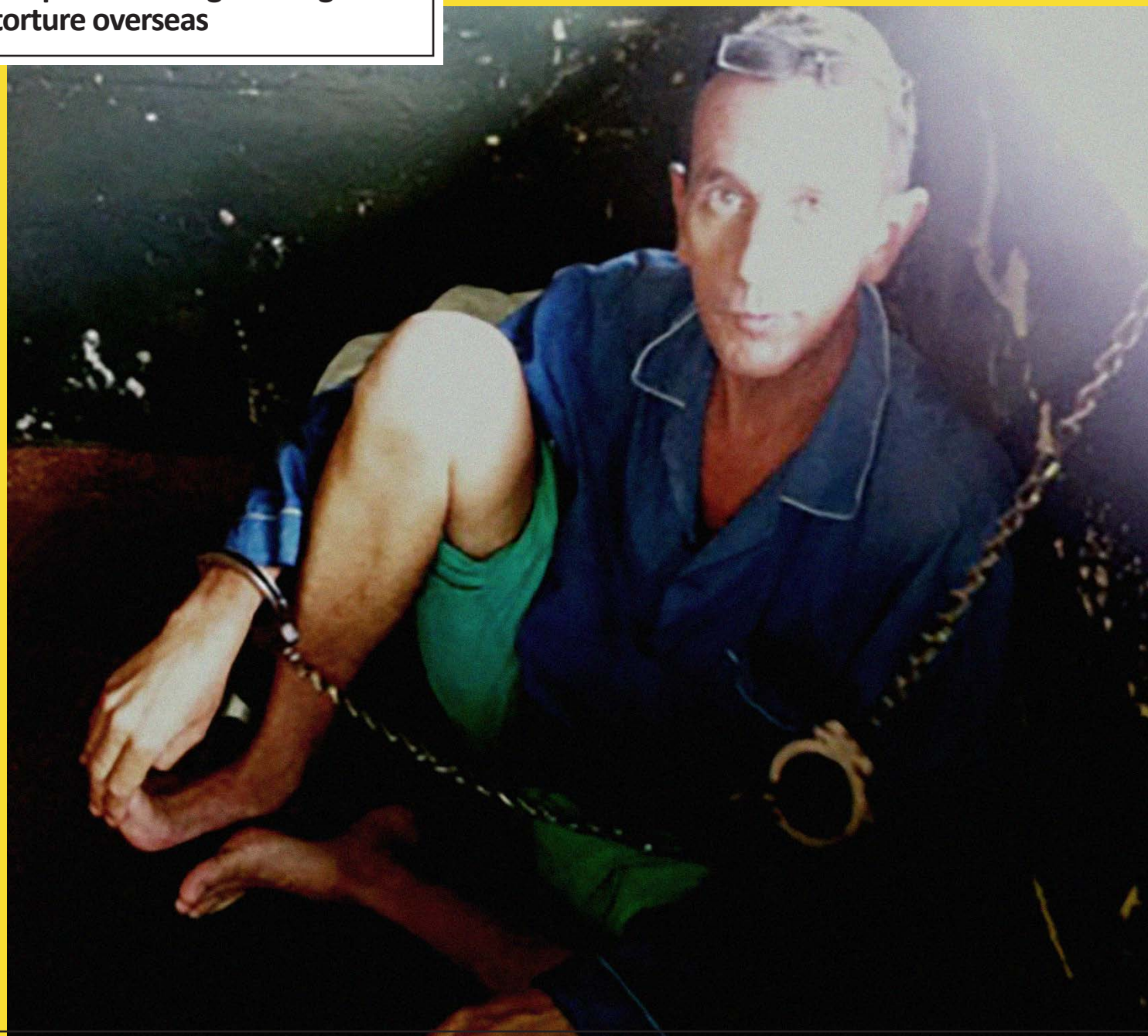
The case of *AAA & Others v Unilever Plc and Unilever Tea Kenya Limited* (application for appeal pending before the UK Supreme Court) was brought by tea workers seeking redress for gross human rights violations (including murders, rapes, torture and violent assaults) which they suffered in Kenya whilst they were employees of Unilever

Tea Kenya Limited, as a result of violence against them following the 2007 elections.<sup>33</sup> The Appellants' claim was dismissed before the filing of a defence, without cross-examination of witnesses, and without the completion of a process of disclosure. In the circumstances, therefore, the full evidential picture could not have been available to either the High Court or the Court of Appeal.

When considering the question of whether this case should have been dismissed at an interlocutory stage, the Supreme Court should be cognisant of the international law right to a remedy and right to reparation. The Court should, so far as it is free to do so, interpret domestic law (including that allowing a dismissal of the case at an interlocutory stage) in a way which does not place the UK in breach of its obligation to respect these rights under international law. The premature dismissal of the case may unwittingly serve to reinforce the general climate of impunity that has prevailed in Kenya for the crimes arising from the post-election violence. This case offers an important opportunity for UK courts to engage on the issue of parent company liability for acts and omissions of their foreign subsidiaries, and the ability of victims to obtain redress for human rights violations suffered as a result.

**134 The Committee should monitor the case of *AAA & Others v Unilever Plc and Unilever Tea Kenya Limited A2/2017/0721*.**

## Chapter 14: Safeguards against torture overseas



Nick Tuffney in a Panamanian prison in 2013. Around 100 UK nationals abroad are tortured or ill-treated each year.  
© Nick Tuffney.

## Chapter 14: Safeguards against torture overseas

### Article 2, 3, 10 and 15

In its 2016 LoIPR, the Committee requested information on any measures taken to reword the UK Government's 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 (the Consolidated Guidance). The Committee additionally requested information on the use of diplomatic assurances. This chapter further outlines information and concerns of other procedures, mechanisms and agreements to safeguard against the use of torture or ill-treatment in other countries. This includes consular protection, the trade of equipment used for torture and the provision of technical assistance to other countries. There is additional information on the use of interrogation techniques by UK armed forces and the training of armed forces in international law.

### Consolidated Guidance to Intelligence Officers

In June 2018 the UK Parliament's Intelligence and Security Committee (ISC) published a report on "*Current Issues*", which focussed on the UK Government's Consolidated Guidance.<sup>1</sup> The report concluded that a full review of the policy is "overdue", and pointed to a significant number of fundamental flaws with the guidance and its application by the Security and Intelligence Agencies.<sup>2</sup>

The Prime Minister subsequently invited the Investigatory Powers Commissioner<sup>3</sup> to make proposals to the UK Government to improve the Consolidated Guidance.<sup>4</sup> The Commissioner's Office subsequently announced a public consultation, seeking submissions on, *inter alia*, the consistency of the Consolidated Guidance with applicable domestic and international legal principles; whether the appropriate balance is struck as to when a decision to proceed may be

made in circumstances where a serious risk of torture or ill-treatment is identified; definitions and distinctions between torture, ill-treatment, and standards of arrest, detention and treatment; and the scope of the guidance and whether it ought to expressly apply to rendition. The Investigatory Powers Commissioners' findings are due to be published in Spring 2019. However, the Prime Minister is not obliged to accept the recommendations of the Commissioner.

There was considerable consensus amongst the CSOs who submitted information to the consultation on the Consolidated Guidance around the following key issues:

- The standard of "*serious risk*" of torture by a third party in the Consolidated Guidance, in which the "*presumption*" is that the UK Government would not proceed with an operation, is vague and ambiguous. Guidance on how the standard should be applied by the Agencies is wholly lacking, risking inconsistent and incorrect application;
- The preferable standard to be applied throughout the guidance is a "*real risk*" as it best reflects the approaches taken to assessing risk of torture or ill-treatment under UNCAT and the ECHR;
- The Consolidated Guidance places too much emphasis on a distinction between torture and ill-treatment when assessing whether or not to proceed with an operation, a distinction which has no place under UNCAT or Article 3 ECHR;
- The UK should acknowledge, clearly and unambiguously, that there is an absolute prohibition on UK action where there is a "*serious*" (or real) risk it may lead to torture or ill-treatment, and the guidance should reflect this. The guidance should make it completely clear and unambiguous that the absolute nature of the prohibition of both torture and ill-treatment means that any balancing exercise between risk and the national security interest in proceeding with an operation is completely inappropriate and likely in violation of the UK's international legal obligations;
- Diplomatic assurances can never effectively mitigate against the risk of torture or ill-treatment. Even if

they could, the process of seeking and monitoring assurances under the guidance is inappropriate;

- There needs to be far greater transparency around the decision-making process at both a ministerial level and at an operational level by the UK Intelligence Agencies;
- The introduction of a process for seeking redress and accountability for misapplications of the Consolidated Guidance or a failure to apply the Guidance; and
- Robust and effective oversight of the Consolidated Guidance is essential.

Concerns remain that the UK has not recognised the fundamental flaws identified within the Consolidated Guidance by the ISC and by civil society.<sup>5</sup> Instead of engaging with the legitimate concerns of the ISC, on many points, the UK has simply pointed to the existence of the ongoing review of the Guidance, without properly engaging with the concerns about the substance of the Guidance itself.

**14.1 The UK should engage meaningfully with the ongoing review of the Investigatory Powers Commissioner and the recommendations put forward by the Intelligence and Security Committee of UK Parliament and by civil society organisations to reform the Consolidated Guidance.**

## Interrogation techniques by armed forces

The Baha Mousa Public Inquiry into the death of an Iraqi hotel receptionist stated that the “harsh” approach, which was used in interrogation (carried out by specialist troops in facilities authorised for interrogation) and tactical questioning (more routine questioning at the point of capture), “should no longer have a place in tactical questioning” and specified the high legal risk of the technique and the need for very clear guidance and specific ministerial approval before use in interrogation.<sup>6</sup> In *Alseran* the harshing technique was found to be inhuman and degrading treatment in the case of Mr Al-Waheed (see Chapter 13).

In May 2012, the harsh approach during interrogation was replaced by the “Challenge Direct” approach. The Challenge

Direct approach forms part of the overall “Challenging” approach alongside “Challenge Indirect”. Both are summarised as: “The Challenge Direct is a series of statements delivered as a verbal “short sharp shock” during the course of questioning to encourage a CPERS [captured personnel] to engage with a questioner. The Challenge Indirect is an approach designed to refocus an arrogant CPERS onto the futility of not talking, undermine their belief in their organisation and stimulate them to challenge their own actions.” The policy goes on to state that the Challenging approach will not be used against prisoners of war or other captured persons who are assessed to be “vulnerable”.

In 2014, in a facial challenge the Court of Appeal found that the Challenge Direct policy had adequate safeguards to be lawful under Article 3 ECHR. However, as part of the judgment the Court viewed 13 (of 17 uses of the policy at that time) video recordings in which Challenge Direct was employed in Afghanistan. The Court noted that, although Challenge Direct was of a limited duration during the interrogations (with one notable exception) there were 8 individual occasions which the Court considered to be a breach of the policy.

Aside from the information contained in the above judgment, the MOD’s policies on tactical question and interrogation have not been published publicly. The Challenging approach is not explicitly mentioned in the publicly available Joint Doctrine Publication on Captured Persons.<sup>8</sup> Similarly, no information has been made available about further breaches of the Challenge Direct policy.

**14.2 The UK should ensure its interrogation techniques are in compliance with the UNCAT and that it publishes on an annual basis the number of times Challenge Direct has been used.**

## Training of armed forces

The British Army did not fully implement reforms to its international law training until 2015 and 2016, despite multiple assurances made by the UK Government following investigations into allegations of torture and ill-treatment

in Iraq.<sup>9</sup> However, research has found the 2014 Operational Law Training Directive and the 2015 Military Annual Training Tests to be genuinely comprehensive.<sup>10</sup>

In 2013, the British Army introduced a multimedia presentation which significantly improved the detail in what soldiers must learn to prevent physical ill-treatment of captured persons. A practical component was introduced to this training in 2016.<sup>11</sup>

However, despite these improvements, the training materials do not contain information on the prohibition on the infliction of severe mental pain and suffering and sexual abuse. In addition, although training appears to be comprehensively disseminated, soldiers' attendance at both training and testing is only recorded in a personnel file, and there is no publicly available data to track how the training has changed soldiers' attitudes.

**14.3 The UK should ensure that training materials are as comprehensive as possible, that they reflect the most protective standards and that the UK develops measures to assess the real impact of training.**

## The use of diplomatic assurances

In 2018, the UK Government dispensed with its normal practice of seeking assurances over the use of the death penalty by the US against two former British citizens and alleged members of the Islamic State known as the ISIS "Beatles".<sup>12</sup> The UK's longstanding policy – in support of its universal opposition to the death penalty – has been to seek comprehensive death penalty assurances from requesting states. This decision has been widely criticised by CSOs due to concerns the Government is loosening its stance on the abolition of the death penalty.<sup>13</sup>

The Government successfully defended a challenge to its decision in the courts.<sup>14</sup> However, at the time of writing it is expected that the decision will be appealed. Moreover, material disclosed as part of the case revealed that the

Government went against the unambiguous advice of the FCO in reaching the decision not to seek assurances. The advice made clear that: "*Were we not to apply this practice to this case, it could undermine all future efforts to secure effective written death penalty assurances from the US authorities for future UK security and justice assistance ... [and] could also undermine future attempts to secure similar assurances from other countries with which we have a security relationship*".<sup>15</sup>

The degree of exceptionalism exercised in this case risks undermining the UK's global standing in complete opposition to the death penalty and sets a dangerous precedent. This decision must also be seen in the broader context of the UK's response to British nationals who have travelled to Iraq and Syria and are accused of joining the Islamic State. It is notable that the two individuals in this case had earlier been deprived of their British citizenship.

**14.4 The UK should uphold its complete opposition to the death penalty, irrespective of the individual circumstances of a case.**

## Statelessness and Temporary Exclusion Orders

Citizenship stripping can be understood as an attempt by the UK Government to withdraw responsibility for an individual which can expose the individual to a real risk of torture and ill-treatment in another country.

By section 40(2) of the British Nationality Act 1981 the Secretary of State can deprive dual nationals of their British citizenship (however acquired), if satisfied that it is "*conducive to the public good*".<sup>16</sup> By section 66 Immigration Act 2014,<sup>17</sup> Parliament conferred on the Secretary of State the power to deprive a person of British citizenship resulting from naturalisation, in circumstances where the consequence of that order is to render a person stateless subject to limited conditions.<sup>18</sup> Executive discretion under the power is broad and there is no requirement for judicial authorisation of a decision to deprive a person of British citizenship.

Incremental changes to the law made by various governments since 2002 have made it much easier for the Secretary of State to use this power. Indeed, revocations of citizenship have skyrocketed in recent years. There has also been a shift away from the exclusive use of the power in the context of national security cases, with examples of the power being applied following convictions for serious crime.<sup>19</sup> The use of the power saw its first significant increase in 2013, with fewer than 30 instances per year up to 2016.<sup>20</sup> The most recent statistics are from 2017 which saw a marked spike in the use of the power, with 104 citizens deprived of their British nationality.<sup>21</sup>

In 2018, the Home Secretary proposed to extend the power to strip dual nationals of their citizenship.<sup>22</sup> In early 2019, the case of Shamima Begum gained considerable media and political attention.<sup>23</sup> Begum was 15 when she left the UK to travel to join the Islamic State in Syria. She was discovered in Al-Hawl refugee camp in northern Syria by a British journalist, having escaped Islamic State held territory. Following widespread media attention, the Home Secretary wrote to Begum's family informing them that her British citizenship was being revoked.<sup>24</sup> The UK does not appear to have considered whether Begum was the victim of trafficking, exploitation or torture or other ill-treatment. A range of concerns have been raised with respect to the case, from the lawfulness of the decision to questions around the racialised and discriminatory nature of British citizenships laws.<sup>25</sup> The welfare and best interests of her new-born son, who the Home Secretary has conceded possesses British citizenship, is of further concern.<sup>26</sup> In early March 2019 it was reported that her new-born son had died.

This case has shone a light on the dangerous pattern of extra-judicial citizenship deprivation being followed by the UK. It is the Government's position that the ECHR does not apply once an individual has lost their citizenship.<sup>27</sup> This raises considerable concerns with respect to UNCAT and likelihood that the UK is exposing individuals to a real risk of torture or ill-treatment in another country, abdicating any responsibility under international law for their protection.<sup>28</sup>

In addition to citizenship stripping, the Counter Terrorism and Security Act 2015 introduced Temporary Exclusion Orders (TEOs). This power allows the Secretary of State to disrupt and control the return to the UK of a British citizen who is suspected of involvement in terrorism-related activity outside the UK.<sup>29</sup>

There were no TEOs in 2015 or 2016. In 2017, 9 TEOs were served.<sup>30</sup> There is no official data on the number of TEOs imposed in 2018. However, the most recent report of the Independent Reviewer of Terrorism Legislation noted that the "use of executive powers is on the rise", including the imposition of TEOs.<sup>31</sup>

The statutory regime is silent on the fate of individuals in the period between the imposition of a TEO and the return of a TEO subject at a time of the Secretary of State's choosing. The Government expressly uses the power against individuals located in jurisdictions widely known to practise torture and other forms of inhuman or degrading treatment. The executive invalidation of a passport can prevent British citizens from departing from a foreign country where they may face a real risk of torture or ill-treatment, which effectively breaches Article 3 UNCAT.<sup>32</sup> Further, the TEO policy risks abrogating the UK's legal obligations by making British citizens *de facto* stateless.

**14.5 The UK should refrain from exercising its powers to deprive British nationals of their citizenship in all circumstances and should not resort to depriving a person of their citizenship or imposing a Temporary Exclusion Order where a more proportionate response is available.**

**14.6 The UK should take into account factors such as whether an individual has been subjected to torture or other ill-treatment in another country; whether they are at a real risk of being subjected to such treatment; and whether they have been or are at risk of being the victim of trafficking and/ or exploitation when making decisions under these powers.**



**Case Study: Jagtar Singh Johal**

In November 2017, police in Punjab, India arrested and detained British national Jagtar Singh Johal. He alleges that immediately following his arrest he was subjected to torture for a number of days, stating “*The torture took place intermittently, numerous times each day. Electric shocks were administered by placing the crocodile clips on my ear lobes, nipples and private parts*”. He states that “*At one point, petrol was bought into the room and I was threatened with being burnt.*”<sup>35</sup>

Despite repeated requests, British consular officers were not granted consular access to Jagtar until two weeks after his arrest. They were not able to visit him in private.

**Consular protection**

The UK Government’s own figures show that around 100 UK nationals abroad are tortured or ill-treated each year.<sup>33</sup> The UN Working Group on Arbitrary Detention (UNWGAD) has recently stated that consular protection rights are “*an important safeguard for individuals who are arrested and detained in a foreign State to ensure that international standards are being complied with*” and would reduce the risk of torture.<sup>34</sup>

Article 5 of the Vienna Convention on Consular Relations (VCCR) provides the basis under international law for “*protecting*” the interests of a state and its nationals as well for a state to help and assist its nationals abroad. Both states and individuals are afforded “*rights*” under Article 36 of VCCR. This includes, *inter alia*, the right of the sending state to be notified of a national’s arrest or detention “*without delay*”, and to communicate and visit their nationals in detention (subject to the individual’s consent). Individuals have the right to, *inter alia*, communicate with and have access to consular officers.

The UK has ratified the VCCR, but it did not incorporate Article 36 into domestic UK law as part of the Consular Relations Act 1968 which it used to introduce some other VCCR provisions. As a result, the UK provides consular protection as a matter

of government policy, based on a policy of discretion, rather than as a matter of law.

**14.7 The UK should recognise that consular protection is an important safeguard against the torture or ill-treatment of British nationals abroad and should incorporate all relevant provisions of the Vienna Convention on Consular Relations into UK law to provide such protection as a matter of law.**

**Trade of equipment used for torture**

CSOs have found that companies marketing weapons and equipment for police use that have no purpose other than to inflict severe pain (e.g. batons with metal spikes, weighted leg restraints) or enforcement equipment that is frequently abused for the purpose of torture or other ill-treatment (e.g. tear gas, projectile electric shock weapons) at arms and security fairs held all over the world.<sup>36</sup>

UK company Clarion Events Ltd. organises arms and security fairs around the world, including the Defence and Security Equipment International exhibition in London every two years. These arms fairs are expanding. Clarion Events organised the inaugural Bahrain International Defence Exhibition & Conference in October 2017. The fair was marketed as an opportunity to engage with senior military and industry leaders from the MENA region due to its “*close proximity to Saudi Arabia*”.<sup>37</sup> In December 2018, Clarion Events held the inaugural Egypt Defence Expo (EDEX), Egypt’s first ever international defence exhibition. The exhibition will include a “*Security & Counter-Terrorism Zone*”, with the fair website stating that “*the Egyptian Government are looking to equip their forces with the right tools and training in order to secure the population and control the borders*”.<sup>38</sup>

Both Bahrain and Egypt have a well-documented recent history of human rights abuses against their populations. Clarion Events claims to “*support[sic] the application and enforcement of both UK and other relevant international arms control and arms export legislation wherever we operate*” and requires of exhibitors at its events that “*all*

equipment, services, documentation and all other forms of visual promotion and display, exhibited or proposed, must comply with UK law and UK international undertakings, EU/UN Law and EU/UN international undertakings".<sup>39</sup>

**14.8 The UK should ensure that UK companies do not facilitate the trade in equipment sold for law enforcement use where there are reasonable grounds to believe that it might be used to commit or facilitate torture or other ill-treatment**

## Provision of technical assistance and training to alleged torturers overseas

The UK Government provides technical assistance and training to foreign governmental institutions, including police forces, to countries where there are serious human rights concerns. For example, the UK Government has trained institutions in Bahrain for the purposes of "strengthening the rule of law" and "justice reform" since 2012,<sup>40</sup> and the Sri Lankan Terrorism Investigation Division (TID) police since 2011.

Projects in Bahrain funded by the UK include training oversight bodies responsible for investigating allegations of torture and investigating prisons<sup>41</sup> and criminal investigations of alleged police abuse (the Bahrain Special Investigations Unit). These bodies have been described by the UNCAT as "not effective" and "not independent".<sup>42</sup> A recent report found that from 2011 to 2016 the Special Investigations Unit failed to refer over 150 cases of alleged torture or other ill-treatment, deaths in custody and unlawful killings.<sup>43</sup> From 2013 to 2017, they failed in 138 further cases that had been highlighted by the Ombudsman.<sup>44</sup> The FCO relies on "categorical assurances" by Bahrain rather than supporting independent investigations into cases of human rights abuses.<sup>45</sup>

Allegations of torture by the Sri Lankan TID police have been documented in numerous reports by human rights organisations and at the UN. Many Sri Lankan Tamils who have successfully claimed asylum in the UK are victims

of the TID. The UK is reported to have previously trained at least three Sri Lankan police officials whose units are alleged to be responsible for the use of torture.

The Overseas Security and Justice Assistance (OSJA) guidance, last updated in 2017, provides guidance and a checklist on how such overseas security and justice assistance work meets the UK's human rights obligations and when such work might need senior ministerial approval.<sup>46</sup> However, concerns have been raised over the lack of transparency in applying this guidance. For example, the UK Government has not provided access to OSJA assessments in response to a series of FOIA requests on the above projects.

There are concerns regarding the transparency of such overseas projects and training. The UK Government has not provided access to OSJA assessments in response to a series of FOIA requests regarding both Sri Lanka and Bahrain. The FCO has refused to disclose information on funds for projects in Bahrain on the basis of national security and other exemptions relating to the involvement of the intelligence services.<sup>47</sup> In September 2018 the UK Parliament's Foreign Affairs Committee published a report criticising the FCO's lack of transparency regarding human rights work in Bahrain.<sup>48</sup>

**14.9 The UK should ensure that technical assistance and training provided to overseas governments and institutions comply with its international human rights obligations. Such human rights assessments should be made public and there should be robust vetting procedures in place to prevent training of alleged torturers. There should be an independent audit of the impact of such assistance and training and reports of allegations of torture.**

**Chapter 15:  
Universal jurisdiction**



The special mission immunity for General Mahmoud Hegazy, allegedly responsible for torture in Egypt, was challenged before the Court of Appeal. © U.S. Army Photos by Spc. Brandon Dyer.

## Chapter 15: Universal jurisdiction

### Article 5, 6, 7

In its LoIPR, the Committee requested information on measures that have been adopted to implement universal jurisdiction over torture. Concerns remain over the lack of resources provided to police forces to investigate war crimes, and difficulties in issuing private arrest warrants and the UK's practice of granting special mission immunity.

The UK's legislation asserts universal jurisdiction over torture, such that any perpetrator can be prosecuted in the UK even if the torture occurred outside the UK.<sup>1</sup>

It is estimated that since 2010 the UK Home Office has issued adverse recommendations against around 1000 individuals suspected of involvement in or association with torture, war crimes, crimes against humanity and genocide.<sup>2</sup> However, only two individuals have ever been successfully prosecuted on the basis of universal jurisdiction in the UK: Faryadi Zardad and Anthony (Andrzej) Sawoniuk.<sup>3</sup> In the last ten years only two people have faced trial in the UK for universal jurisdiction crimes: Agnes Reeves Taylor and Colonel Kumar Lama. The UK should be commended for these prosecutions, which involved many years' work by the UK prosecuting authorities. However, the UK still falls behind many European countries in the number of universal jurisdiction crimes it has tried. Between 2008 and 2017, the number of universal jurisdiction trials that took place in the following European countries were as follows – Sweden: eight; Germany and Finland: five; France: four; Austria, Norway and Netherlands: two; UK and Belgium: one.<sup>4</sup> Ten European countries have now taken legal action on international crimes committed in Syria.<sup>5</sup> The UK is not one of them.

One barrier to investigating and prosecuting torture and other universal jurisdiction crimes in the UK appears to be a lack of resources. Unlike many other European countries,

the UK does not have a specialised, independent war crimes unit. Instead, it has around ten to fifteen police officers within the Metropolitan Police Counter Terrorism Command that spend a proportion, not all, of their time on the investigation of universal jurisdiction crimes.<sup>6</sup> Similarly, it is the Counter Terrorism Unit of the Crown Prosecution Service that has the mandate to prosecute universal jurisdiction crimes. According to the Crown Prosecution Service: “the majority of the team's work involves prosecuting terrorism cases, which have rapidly increased in number and complexity in recent years.”<sup>7</sup>

In 2017, the Metropolitan Police declined to investigate a suspected torturer in the UK because it had “*temporarily suspended all war crimes investigations*” following recent terror attacks in the UK.<sup>8</sup> This was a breach of the UK's duty under Articles 6(1) and 6(2) of the Convention Against Torture. REDRESS suggested in response that this may be a matter for review by the UK courts. The Metropolitan Police subsequently reversed its policy, and confirmed that it would restart investigations.

It is recognised that the UK legal system presents some particular challenges for universal jurisdiction prosecutions. However, the common experience among the NGOs that work on these cases in the UK has been that universal jurisdiction investigations by the UK authorities are often delayed unjustifiably. In recent cases the preliminary scoping exercises – the stage before a formal investigation is commenced – have often alone taken years. Full investigations are likely to take further years.

The Committee has previously expressed concern about Article 153 of the Police and Social Responsibility Act 2011, which requires the consent of the Director of Public Prosecutions to issue private arrest warrants against anyone suspected of a universal jurisdiction offence. This introduces an additional delay to what is an inherently urgent process and political intervention into what should be an independent judicial decision. Despite the Committee's concerns, there has been no change to this legislation.<sup>9</sup>

The UK continues to grant special mission immunity in accordance with a pilot scheme introduced in 2013.<sup>10</sup> The application of special mission immunity for the alleged torturer, Egyptian General Mahmoud Hegazy, in 2015 was challenged before the Court of Appeal. The Court found on 19 July 2018 that customary international law required the UK to secure, for the duration of the visit, personal inviolability and immunity from criminal proceedings for members of special missions accepted as such by the government, and that this customary international law could be given effect by domestic common law. The Court also held that special mission immunity applies to *jus cogens* crimes such as torture.<sup>11</sup> This presents a significant hurdle to the prosecution of alleged torturers under universal jurisdiction. Further, the UK does not provide information about the individuals or States to whom special mission immunity has been granted.<sup>12</sup> No information is publicly available either about the basis on which the UK determines whether to grant special mission immunity, and whether it takes into account evidence that the individual may have committed torture or other international crimes.

**15.1 The UK Government should create specialised, independent war crimes units within the Metropolitan Police and Crown Prosecution Service to investigate and prosecute universal jurisdiction crimes including torture.**

**15.2 The UK Government should devote sufficient resources to ensure that universal jurisdiction investigations and prosecutions are carried out swiftly, and that delays are prevented.**

**15.3 The UK Government should remove the requirement for consent of the Director of Public Prosecutions to private arrest warrants.**

**15.4 The UK Foreign & Commonwealth Office should publish its policy on granting special mission immunity and should ensure that special mission immunity is not granted to individuals where there is credible evidence that they have committed torture or other international crimes.**

## Endnotes

### About this report

<sup>1</sup> UN Committee against Torture, *List of issues prior to submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, 7 June 2016, CAT/C/GBR/QPR/6.

<sup>2</sup> See Common Core document, paras 12–22.

<sup>3</sup> Amended by the Wales Act 2017.

<sup>4</sup> For a full list see: <http://www.assembly.wales/en/bus-home/bus-legislation/bus-legislation-guidance/Pages/schedule7.aspx>

<sup>5</sup> Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn, Henderson, Ducie and Oeno; St Helena, Ascension, and Tristan da Cunha; South Georgia and South Sandwich Islands; Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus; Turks and Caicos Islands; Virgin Islands.

<sup>6</sup> Bailiwick of Guernsey; Bailiwick of Jersey; Isle of Man.

<sup>7</sup> See UK Government guidelines on extension of treaties to overseas territories, <https://www.gov.uk/government/publications/guidelines-on-extension-of-treaties-to-overseas-territories>

### Chapter 1: Context

<sup>1</sup> These challenges were summarised by Professor Nils Melzer, the UN Special Rapporteur on Torture (UN SRT), in 2018, commenting in the wake of the 70th anniversary of the Universal Declaration of Human Rights (UDHR), A/73/207.

<sup>2</sup> UN Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, para 18.

<sup>3</sup> FCO Strategy for the Prevention of Torture 2011–2015, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35449/fcostrategy-tortureprevention.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/35449/fcostrategy-tortureprevention.pdf).

<sup>4</sup> European Union (Withdrawal) Act 2018 Explanatory Notes, para 46, available at: [http://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpgaen\\_20180016\\_en.pdf](http://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpgaen_20180016_en.pdf).

<sup>5</sup> R Partington, 'Post-Brexit trade partners ask UK to lower human rights standards', *The Guardian* (13 Feb 2019) <https://www.theguardian.com/politics/2019/feb/13/post-brexit-trade-partners-ask-uk-to-lower-human-rights-standards>.

<sup>6</sup> Joint Committee on Human Rights, *Human Rights Protections in International Agreements inquiry launched*, 13 December 2018, available at: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2017/human-rights-post-brexit-inquiry-launch-17-19/>.

<sup>7</sup> Joint Committee on Human Rights, Twenty-First Report, Legislative Scrutiny: Welfare Reform Bill, 6 December 2011, at para 1.45,

available at: [www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf](http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf); Analysis on the impact of austerity and the prohibition against torture and ill-treatment has been undertaken by Lutz Oette, *Austerity and the Limits of Policy-Induced Suffering: What Role for the Prohibition of Torture and Other Ill-Treatment?*, *Human Rights Law Review* (2015) 15(4): 669–694 (1 December 2015).

<sup>8</sup> Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, (London 16 November 2018) [https://www.ohchr.org/Documents/Issues/Poverty/EOM\\_GB\\_16Nov2018.pdf](https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf).

<sup>9</sup> *Ibid.*

<sup>10</sup> Since the start of UK austerity measures, the overall Welsh budget is 5% lower in real terms since 2010–11

<sup>11</sup> National Audit Office, *Financial sustainability of local authorities 2018* (2018) <https://www.nao.org.uk/wp-content/uploads/2018/03/Financial-sustainability-of-local-authorities-2018.pdf>.

<sup>12</sup> Welsh Local Government Association, *Financial 'winter is coming' according to council budget survey* (27 September 2018) available at: <http://www.wlga.wales/financial-winter-is-coming-according-to-council-budget-survey>.

<sup>13</sup> Welsh Government, *Poverty Statistics*, available at: <https://gov.wales/statistics-and-research/households-below-average-income/?lang=en>.

<sup>14</sup> For an overview of the hostile environment policy's impact, see: *A Guide to the Hostile Environment: The border controls dividing our communities – and how we can bring them down*, edited by Liberty (April 2018) available at: <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>.

<sup>15</sup> G Bradley, 'Our proud tradition of resistance will bring down the hostile environment', (*Liberty*, 17 July 2018) <https://www.libertyhumanrights.org.uk/news/blog/our-proud-tradition-resistance-will-bring-down-hostile-environment>; House of Commons Home Affairs Committee, *The Windrush generation: Sixth report of session 2017–2019* (27 June 2018) <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/990.pdf>.

<sup>16</sup> See, D Gayle, 'Pupil data shared with Home Office to create 'hostile environment' for illegal migrants', *The Guardian* (15 December 2016) <https://www.theguardian.com/uk-news/2016/dec/15/pupil-data-shared-with-home-office-to-identify-illegal-migrants>; L Donnelly, 'Stop sharing NHS data with Home Office, officials told', *The Telegraph* (15 April 2018) <https://www.telegraph.co.uk/news/2018/04/15/stop-sharing-nhs-data-home-office-officials-told/>; and BBC's Victoria Derbyshire programme, 'Victims of serious crime face arrest over immigration status' (14 May 2018) <https://www.bbc.co.uk/news/uk-44074572> accessed 8 November 2018.

<sup>17</sup> G Bradley, 'The Windrush Scandal shows why the 'Hostile Environment' for migrants must end', *VICE* (19 April 2018) [https://www.vice.com/en\\_uk/article/43b8ag/the-windrush-scandal-shows-why-the-hostile-environment-for-migrants-must-end](https://www.vice.com/en_uk/article/43b8ag/the-windrush-scandal-shows-why-the-hostile-environment-for-migrants-must-end); and JCWI 'Dossier of Failure – Windrush and the Hostile Environment' (press release) <https://www.jcwi.org.uk/news-and-policy/dossier-of-failure-windrush-and-hostile-environment>.

<sup>18</sup> See, Government guidance, *Penalties for Illegal Renting*, <https://www.gov.uk/penalties-illegal-renting>.

<sup>19</sup> Immigration Enforcement, *Guidance on Immigration status and current accounts*, <https://www.gov.uk/government/publications/current-account-closed-or-refused-based-on-immigration-status/immigration-status-and-current-accounts>.

<sup>20</sup> *Statement on Visit to the United Kingdom by Professor Philip Alston*,

UN Special Rapporteur on Extreme Poverty and Human Rights, (London, 16 November 2018) available at: [https://www.ohchr.org/Documents/Issues/Poverty/EOM\\_GB\\_16Nov2018.pdf](https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf).

<sup>21</sup> N Bloomer, 'Woman reports rape to police – and is arrested on immigration charges', *Politics.co.uk* (28 November 2017) <http://www.politics.co.uk/news/2017/11/28/woman-reports-rape-to-police-and-is-arrested-on-immigration>.

<sup>22</sup> See the Department of Health and Social Care, *Upfront charging operational framework to support identification and charging of overseas visitors*, available at: <https://www.gov.uk/government/publications/overseas-nhs-visitors-framework-to-support-identification-and-upfront-charging/upfront-charging-operational-framework-to-support-identification-and-charging-of-overseas-visitors>.

<sup>23</sup> A Gentleman, 'Theresa May refuses to intervene over man's £54,000 NHS Cancer bill', *The Guardian* (22 March 2018) <https://www.theguardian.com/uk-news/2018/mar/22/theresa-may-refuses-to-intervene-over-mans-54000-nhs-cancer-bill-albert-thompson>.

<sup>24</sup> NHS, *Improving Systems for Cost Recovery for Overseas Visitors, January 2018*, available at: <https://www.england.nhs.uk/wp-content/uploads/2018/02/improving-systems-guidance-chargeable-overseas-visitor.pdf>; UK Department for Health, *Overseas chargeable patients, NHS debt and immigration rules Guidance on administration and data sharing*, para 14, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730171/Overseas\\_chargeable\\_patients\\_NHS\\_debt\\_and\\_immigration\\_rules.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730171/Overseas_chargeable_patients_NHS_debt_and_immigration_rules.pdf).

<sup>25</sup> See Public Health Wales, *Refugees and Asylum Seekers*, available at: <http://www.wales.nhs.uk/sitesplus/888/news/40204>.

## Chapter 2: Legislative, administrative, judicial or other measures to prevent torture or ill-treatment

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<sup>2</sup> House of Lords European Union Committee, *The UK, the EU and a British Bill of Rights, 12th Report of Session 2015-16, 9 May 2016*, available at: <https://publications.parliament.uk/pa/ld201516/ldselect/lducom/139/139.pdf>.

<sup>3</sup> See CAT/C/GBR/CO/5, para. 10. See also CAT/C/CR/33/3, para. 4 (a) (ii), and CCPR/C/GBR/CO/7, para. 18.

<sup>4</sup> Ministry of Justice, *Post-Implementation Review of Part 1 of LASPO*, 7 February 2019, <https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>, para 165.

<sup>5</sup> Refugee Action, *Tipping the Scales: Access to Justice in the Asylum System* (2018) available at: <https://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/>.

<sup>6</sup> Coram Children's Legal Centre, *Rights without remedies: Legal aid and access to justice for children* (2018).

<sup>7</sup> Ministry of Justice, *Lord Chancellor's Exceptional Funding Guidance (Inquests)* (2012), available at: [www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance](http://www.gov.uk/government/publications/legal-aid-exceptional-case-funding-form-and-guidance).

<sup>8</sup> For more information see: INQUEST, *Now or never! Legal Aid for Inquests briefing* (February 2012), available at: [www.inquest.org.uk/legal-aid-for-inquests](http://www.inquest.org.uk/legal-aid-for-inquests).

<sup>9</sup> Ministry of Justice, *Final report: Review of legal aid for inquests* (2019), available at: <https://www.gov.uk/government/publications/review-of-inquests>.

<sup>10</sup> See *Submissions to the UN Human Rights Committee list of Issues for the UK: Jul 2014*, available at: <https://www.rwuk.org/advocacy/submissions-to-the-committee-of-ministers-on-mcCaughey-and-hemsworthjun-2014-2/>.

<sup>11</sup> Bingham Centre for the Rule of Law, *Closed Material Procedures under the Justice and Security Act 2013: A review of the First Report by the Secretary of State*, August 2014, p. 7, available at: [http://www.biicl.org/documents/284\\_cmps\\_the\\_first\\_year\\_-\\_bingham\\_centre\\_paper\\_2014-03.pdf](http://www.biicl.org/documents/284_cmps_the_first_year_-_bingham_centre_paper_2014-03.pdf).

<sup>12</sup> See Ministry of Justice, *Use of Closed Material Procedure Reports*, available at: <https://www.gov.uk/government/collections/use-of-closed-material-procedure-reports>.

<sup>13</sup> *Belhaj and another v Director of Public Prosecutions and another* [2018] UKSC 33 (4 July 2018), para 15.

<sup>14</sup> NPM, *Monitory places of detention, Ninth Annual Report of the United Kingdom's National Preventive Mechanism 1 April 2017 – 31 March 2018*, available at: [https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163\\_NPM\\_AR\\_2017-18\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163_NPM_AR_2017-18_WEB.pdf).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 38.

<sup>17</sup> Baha Mousa Public Inquiry Report, Recommendation 44, (8 September 2011).

## Chapter 3: Asylum and immigration

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<sup>4</sup> K Lyons, 'Revealed: asylum seekers' 20-year wait for Home Office ruling', *The Guardian* (17 August 2018) <https://www.theguardian.com/uk-news/2018/aug/17/revealed-asylum-seekers-20-year-wait-for-home-office-ruling>.

<sup>5</sup> Concluding observations on the fifth periodic report of the United

Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) para. 30.

<sup>6</sup> *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689 (Admin).

<sup>7</sup> Home Office, *Asylum Policy Instruction: assessing credibility and refugee status* (6 January 2015) section 5.2.

<sup>8</sup> Freedom from Torture, *Proving Torture* (November 2016) available at: [https://www.freedomfromtorture.org/sites/default/files/documents/proving\\_torture\\_a4\\_final.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/proving_torture_a4_final.pdf).

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<sup>14</sup> Elder Rahimi Solicitors, *Systemic Delays in the Processing of the Claims for asylum made in the UK by Unaccompanied Asylum Seeking Children* (UASC) (2018).

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#### Chapter 4: Prisons and other forms of detention

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## Chapter 5: Policing, the use of equipment and the criminal justice system

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## Chapter 6: Other forms of deprivation of liberty and ill-treatment in health care settings

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## Chapter 7: Ill-treatment of children

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<sup>15</sup> *Ibid.* and *R (MD) v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf).

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## Chapter 9: Human trafficking and modern slavery

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<sup>7</sup> Research from the project, *Blood Bricks: Examining the Modern Slavery-Climate Change Nexus in the Cambodian Construction Industry* (2017-2019), available at: <https://www.projectbloodbricks.org/project>.

<sup>8</sup> The NRM was first introduced in 2009 as part of the UK's obligation under the Council of Europe Convention on Action against Trafficking in Human Beings. In Scotland and Northern Ireland NRM support is currently only available to victims of human trafficking.

<sup>9</sup> Between 2014-2017 there were 9,404 victims referred to the NRM. In 2017 52% of referrals were men.

<sup>10</sup> Further information can be found in the submission from Equality Now, UK Feminista and Women at the Well to the UK Torture Review.

<sup>11</sup> National Crime Agency, *2018 National Referral Mechanism Statistics*, available at: <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2018-nrm-statistics>.

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<sup>13</sup> Human Trafficking Foundation (HTF), *Long-Term Support Recommendations* (March 2017) available at: <https://www.humantrafficking-foundation.org/policy>.

<sup>14</sup> This includes the police, local authorities and certain non-governmental organisations.

<sup>15</sup> National Crime Agency or the Home Office.

<sup>16</sup> Soon to be extended to 45 days. If a person is not recognised as trafficked they have 48 hours to leave, which is soon to be extended to 9 days. The UK government describes the support as including 'accommodation and subsistence, specialist support including counselling, access to physical and mental health care, and signposting to services including legal aid.'

<sup>17</sup> ("*Pregnancy and Modern Slavery*" and "*Male Victims of Modern Slavery*"). In "*Male Victims of Modern Slavery*"; a psychotherapy expert from the Helen Bamber Foundation told us that the relationship between a victim of modern slavery and their keyworker is so important for their recovery that, she often hoped that they could stay in the NRM longer so they could benefit from that support.

<sup>18</sup> National Audit Office, *Reducing modern slavery* (2017) available at: <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>.

<sup>19</sup> The NRM decision on whether an individual is trafficked or not.

<sup>20</sup> Hestia is the largest sub-contractor for the Victim Care Contract providing support for adult victims of modern slavery. Since 2011, they have supported over 2,000 adults and 700 dependents through safe houses and outreach services.

<sup>21</sup> *In R (AK) v Bristol City Council* (CO/1574/2015), it was accepted by the local authority in a consent judgment that they were not prevented from providing assistance to victims of Modern Slavery under the Localism Act. These principles are also reflected in a contested case of *R (GS) v Camden* [2016] EWHC 1762

<sup>22</sup> Work and Pensions Committee, 12th report, 2016-2017, *Victims of Modern Slavery*, HC803, (London: The Stationery Office)

<sup>23</sup> Independent Anti-Slavery Commissioner, *Annual Report 2016-2017* (October 2017) available at: [http://www.antislaverycommissioner.co.uk/media/1164/iasc\\_annual-report-16-17-web.pdf](http://www.antislaverycommissioner.co.uk/media/1164/iasc_annual-report-16-17-web.pdf)

<sup>24</sup> National Audit Office, *Reducing Modern Slavery* (2017) available at: <https://www.nao.org.uk/wp-content/uploads/2017/12/Reducing-Modern-Slavery.pdf>

<sup>25</sup> See the Aire Society's submission regarding concerns relating to EU survivors.

<sup>26</sup> F Lawrence, "'We are hopeful now": brothers freed from slavery seek British policy change' *The Guardian* (30 March 2016) available at: <https://www.theguardian.com/global-development/2016/mar/30/we-are-hopeful-now-brothers-freed-from-slavery-seek-british-policy-change>

<sup>27</sup> *K & Anor, R (on the application of) v Secretary of State for the Home Department* [2018] EWHC 2951 (Admin), [2018] WLR(D) 692 available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2018/2951.html>

<sup>28</sup> *Written Evidence submitted by the Human Trafficking Foundation et al (MSA0134)* available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/modern-slavery/written/95055.pdf>

<sup>29</sup> Parliament, *Legal Aid Scheme: Written question* (1 December 2017) available at: <https://www.parliament.uk/business/publications/>



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<sup>30</sup> Hestia identify barriers to accessing compensation in their last report: Hestia, *Underground Lives: Male Victims of Modern Slavery* (October 2018) available at: <https://www.antislaverycommissioner.co.uk/media/1247/male-victims-of-modern-slavery.pdf>

<sup>31</sup> Modern Slavery Act 2015, para 51

<sup>32</sup> FLEX, *Access to Compensation for Victims of Human Trafficking* (July 2016) available at: <http://www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf>

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<sup>34</sup> Hestia, *Underground Lives: Male Victims of Modern Slavery* (October 2018) available at: <https://www.antislaverycommissioner.co.uk/media/1247/male-victims-of-modern-slavery.pdf>

<sup>35</sup> G Swerling 'Police treat trafficked children like criminals', *The Times* (19 March 2018) <https://www.thetimes.co.uk/article/police-treat-trafficked-children-like-criminals-hkczd9sgz>; K Guilbert, 'Female trafficking victims wrongly jailed due to UK government "failings"', *Reuters* (17 September 2018) <https://www.reuters.com/article/us-britain-slavery-women-prison/female-trafficking-victims-wrongly-jailed-due-to-uk-government-failings-idUSKCN1LX23Z>

<sup>36</sup> See the research Briefing by Patrick Burland published by MSRC at [Modern-slavery-research@googlegroups.com](mailto:Modern-slavery-research@googlegroups.com)

<sup>37</sup> Letter from Sarah Newton to Work & Pensions Select Committee April 2017 available at: <https://www.parliament.uk/documents/commons-committees/work-and-pensions/Letter-from-Sarah-Newton-MP-to-Chair-re-modern-slavery-session-17-2-2017.pdf>

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<sup>39</sup> Kalayaan, *Producing Slaves: The tied Overseas Domestic Worker visa* (4 July 2014) available at: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-2nd-Reading-Modern-Slavery-Bill.pdf>

<sup>40</sup> James Ewins, *Independent Review of the Overseas Domestic Workers Visa* (16 December 2015) available at: <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

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<sup>42</sup> Workers applying for further leave must demonstrate they will be self-sufficient and not reliant on public funds which will be difficult to evidence if they have been denied permission to work in the NRM and have their entitlement to support end 45 days after being recognised as a victim of trafficking. See Kalayaan briefing available at: <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-Peers-briefing-Modern-Slavery-Victim-Support-Bill.pdf>

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## Chapter 10: Hate crimes

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## Chapter 11: Redress

<sup>1</sup> See *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia)*, 14 June 2006, [2006] UKHL 26, available at: <http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones-1.htm>, a decision found by the European Court of Human Rights not to be "manifestly erroneous" in *Case of Jones and others v UK* (Applications nos. 34356/06 and 40528/06), 14 January 2014, at para. 214).

<sup>2</sup> Joint Committee on Human Rights, *Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims*, 11 August 2009 (HL 153/HC 553) <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/153/15302.htm>.

<sup>3</sup> Proceeds of Crime Act 2002, available at: <https://www.legislation.gov.uk/ukpga/2002/29/part/5/chapter/1>.

<sup>4</sup> Home Office, *Asset Recovery Statistical Bulletin 2011/12-2016/17* (September 2017) available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/)

<file/658375/asset-recovery-financial-years-2012-to-2017-hosb1517.pdf>.

<sup>5</sup> Sanctions and Anti-Money Laundering Act 2018 (SAMLA). Section 1(2)(f).

<sup>6</sup> International Law Commission (ILC), *Draft Articles on Diplomatic Protection* (ADP)(2006), text adopted by the International Law Commission at its fifty-eighth session and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/61/10), version with commentaries available at <http://www.refworld.org/pdfid/525e7929d.pdf>. Art. 1 ADP states that "diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility."

<sup>7</sup> John Dugard, *Diplomatic Protection*, in Max Planck Encyclopaedia of Public International Law, (May 2009) (Dugard, Diplomatic Protection in MPEPIL), para. 1.

<sup>8</sup> ILC, ADP, Commentary to Article 1, para. 8. Subject to the concerned State's consent, claims for diplomatic protection may be adjudicated by the ICJ, arbitration tribunals or mixed claims commissions. Diplomatic action can include negotiation, protest, mediation, request for an inquiry, retorsion, severance of diplomatic relations, countermeasures, and economic pressure. Importantly, diplomatic action does not include *demarches* or any other diplomatic action that does not involve the invocation of the legal responsibility of another State.

<sup>9</sup> *Written evidence from Ross Allen, Head of Consular Assistance Department, Foreign and Commonwealth Office* (CON0033) (May 2014) available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/fco-consular-services/written/15301.pdf>.

## Chapter 12: Use of torture evidence

<sup>1</sup> *Shagang Shipping Company Ltd v HNA Group Company Ltd* [2018] EWCA Civ 1732.

<sup>2</sup> *A v Secretary of State for the Home Department (No 2)* [2005] UKHL 71.

## Chapter 13: Accountability for torture overseas

<sup>1</sup> Intelligence and Security Committee of Parliament, *Detainee Mis-treatment and Rendition: 2001–2010* (June 2018) available at: <https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&sr-cid=aW5kZXBlbnRlbnQuZ292LnVrfGlzY3xneDo0YT11Yj11Nzk3Y2NlZ-Dhi>

<sup>2</sup> *Ibid.*, p. 22.

<sup>3</sup> *Ibid.* p. 23.

<sup>4</sup> *Ibid.* p. 22.

<sup>5</sup> *Ibid.* p. 25.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, p.38.

<sup>8</sup> *Ibid.*, pp.55 and 39.

<sup>9</sup> As the ISC reported from the testimony it saw, abuse was deemed to

be 'not for the write-up', with 'quite an emphasis then on not putting things in writing ... because presumably they didn't want the ISC to read the documents later.' They saw evidence that MI6 officers would 'always write 'no' against the list of potential mistreatment concerns at the end of the reports' and were dissuaded from describing as torture the mistreatment they witnessed.

<sup>10</sup> Intelligence and Security Committee of Parliament, *Detainee Mis-treatment and Rendition: 2001–2010* (June 2018) pp. 26 and 28.

<sup>11</sup> *Ibid.*, pp. 88 and 119.

<sup>12</sup> *Ibid.*, p. 11.

<sup>13</sup> *Ibid.*, p. 1.

<sup>14</sup> *Ibid.*, p. 10.

<sup>15</sup> Justice and Security Act 2013, sections 1(4) and 3(4).

<sup>16</sup> T Sculthorpe and K Ferguson, 'Revealed: Blair government's 'inexcusable' payments to other nations to carry out illegal rendition flights during the US war on terror', *Daily Mail* (28 June 2018) available at: <https://www.dailymail.co.uk/news/article-5895539/Britain-tolerated-extraordinary-rendition-torture-war-terror-report-finds.html>.

<sup>17</sup> Further information about the case can be found at Reprieve, *Abdul-Hakim Belhaj and Fatima Boudchar*, available at: <https://reprieve.org.uk/case-study/abdul-hakim-belhaj>.

<sup>18</sup> I Cobain, O Bowcott, PCrerar & K Shaheen, 'Britain apologises for 'appalling treatment' of Abdel Hakim Bellhaj', *The Guardian* (10 May 2018) <https://www.theguardian.com/world/2018/may/10/britain-apologises-for-appalling-treatment-of-abdel-hakim-belhaj>

<sup>19</sup> For a summary see Dr Carla Ferstman, Dr Thomas Obel Hansen and Dr Noora Arajärvi, *The UK Military in Iraq: Efforts and Prospect for Accountability for International Crimes Allegations? A Discussion Paper*, 1 October 2018, available at: [https://pure.ulster.ac.uk/ws/portalfiles/portal/12694027/THE\\_UK\\_MILITARY\\_IN\\_IRAQ\\_1Oct2018.pdf](https://pure.ulster.ac.uk/ws/portalfiles/portal/12694027/THE_UK_MILITARY_IN_IRAQ_1Oct2018.pdf).

<sup>20</sup> Service Police Legacy Investigation, Quarterly Update – 1 Jul to 30 Sep 18, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/758500/20181120-SPLI\\_FINAL\\_QTR\\_REPORT\\_Jul-Sep18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758500/20181120-SPLI_FINAL_QTR_REPORT_Jul-Sep18.pdf)

<sup>21</sup> Ministry of Defence, *Systemic Issues Identified from Service Police and Other Investigations into Military Operations Overseas: August 2018*, n3, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/737152/20180830-Review\\_of\\_systemic\\_issues\\_arising\\_from\\_military\\_operations\\_overseas\\_Fourth\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737152/20180830-Review_of_systemic_issues_arising_from_military_operations_overseas_Fourth_Report.pdf). The Working Group also found that many cases were discontinued following the Solicitors Disciplinary Tribunal judgment against Phil Shiner, who represented many Iraq claimants.

<sup>22</sup> *Ibid.*, para 3.4, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/737152/20180830-Review\\_of\\_systemic\\_issues\\_arising\\_from\\_military\\_operations\\_overseas\\_Fourth\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737152/20180830-Review_of_systemic_issues_arising_from_military_operations_overseas_Fourth_Report.pdf)

<sup>23</sup> Elizabeth Stubbins Bates, 'Lower-level... ill-treatment' and the UK's *Investigations into alleged violations of international law in Iraq* (under review at the International and Comparative Law Quarterly, Feb 2019, manuscript on file with Redress), p.7, 10.

<sup>24</sup> *Ibid.*, p. 11.

<sup>25</sup> *Ibid.*, p.7.

<sup>26</sup> [2017] EWHC 3289.

<sup>27</sup> *Ibid.*, para 953.

<sup>28</sup> Ibid, para 13

<sup>29</sup> Ibid, para 17.

<sup>30</sup> OTP, *Report on Preliminary Examination Activities 2015*, pp. 7-10, available at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>. The Report also indicated that crimes allegedly occurred in military detention facilities and other locations under the control of UK services personnel in southern Iraq, including in temporary detention/processing facilities and in longer-term detention and internment facilities. The allegations include cases of torture and male on male rape and other allegations of sexual violence. The OTP is currently engaged in processing and analysing the vast amount of material provided by the communication senders while conducting a thorough evaluation of the reliability of the sources and the credibility of the information received.

<sup>31</sup> ICC, Office of the Prosecutor, *Report on Preliminary Examination Activities 2018*, (5 December 2018), para 196. <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>

<sup>32</sup> Ibid.

<sup>33</sup> A2/2017/0721.

#### Chapter 14: Safeguards against torture overseas

<sup>1</sup> Intelligence and Security Committee of Parliament, *‘Detainee Mis-treatment and Rendition: Current Issues’* (2018) available at: <https://bit.ly/2HsE7bj> and press release available here <https://bit.ly/2UcKZvq>.

<sup>2</sup> Summary of the ISC’s findings and recommendations is available at pp. 2-4 of the ‘Current Issues’ report available here: <https://bit.ly/2HsE7bj>

<sup>3</sup> The Investigatory Powers Commissioner (IPC) has responsibility for reviewing the use of investigatory powers by public authorities, such as intelligence and law enforcement agencies. Formal oversight responsibility for the Consolidated Guidance rests with the IPC, following a Prime Ministerial direction to him under s. 230 of the Investigatory Powers Act 2016.

<sup>4</sup> *PM Written Statement: ISC Detainee Reports* (28 June 2018) available at: <https://www.gov.uk/government/speeches/pm-written-statement-isc-detainee-reports>

<sup>5</sup> Cabinet Office, *Government response to the Intelligence and Security Committee of Parliament Reports into Detainee Mistreatment and Rendition* (November 2018)

<sup>6</sup> Recommendation 23 and 24, *The Baha Mousa Public Inquiry report*, 8 September 2011.

<sup>7</sup> *Hussein v Secretary of State for Defence* [2013] EWHC 95 para 13.

<sup>8</sup> Ministry of Defence, *Joint Doctrine Publication 1-10, Captured Persons (CPERS), Third Edition* (2015), available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/455589/20150820-JDP\\_1\\_10\\_Ed\\_3\\_Ch\\_1\\_Secured.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/455589/20150820-JDP_1_10_Ed_3_Ch_1_Secured.pdf)

<sup>9</sup> Elizabeth Stubbins Bates to the Quaker Concern for the Abolition of Torture, 3 November 2018. The talk was based on prior research in Elizabeth Stubbins Bates, ‘Solving the Conundrum between Military Training, Prevention and Compliance in International Humanitarian Law’ (PhD Thesis, SOAS, University of London, 2017).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> B Riley-Smith, ‘Sajid Javid tells US: We won’t block death penalty for Isis ‘Beatles’ *The Telegraph* (23 July 2018) <https://www.telegraph.co.uk/news/2018/07/22/uk-drops-death-penalty-guantanamo-oppo-sition-opens-door-execution/>.

<sup>13</sup> M Spurrier, ‘No Sajid Javid, you don’t get to make us all complicit in the state-sponsored murder of ISIS fighters’ *The Independent* (23 July 2018) <https://www.independent.co.uk/voices/death-penalty-sajid-javid-home-secretary-uk-human-rights-diane-foley-a8460391.html>.

<sup>14</sup> *El Gizouli v Secretary of State for the Home Department* [2019] EWHC 60 (Admin).

<sup>15</sup> Ibid, [19].

<sup>16</sup> By s. 40(3) British Nationality Act 1981, single or dual nationals may be deprived of their citizenship resulting from registration or naturalisation when the Secretary of State is satisfied that it was obtained by means of *fraud, false representation or concealment of a material fact*.

<sup>17</sup> Inserting a new section. 40(4A) into the British Nationality Act 1981.

<sup>18</sup> For an overview of the power see, D Anderson QC, ‘First Report of the Independent Reviewer on the Operation of the Power to Remove Citizenship Obtained by Naturalisation from Persons Who Have No Other Citizenship’ (2016) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/518120/David\\_Anderson\\_QC\\_-\\_CITIZENSHIP\\_REMOVAL\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL_web_.pdf).

<sup>19</sup> *Aziz & Ors v Secretary of State for the Home Department* [2018] EWCA Civ 1884 and for discussion see: C Yeo, ‘How is the government using its increased powers to strip British people of their citizenship?’, *Free Movement* (9 August 2018) <https://www.freemovement.org.uk/british-nationals-citizenship-deprivation/>.

<sup>20</sup> C Yeo, ‘The rise of modern banishment: deprivation and nullification of British citizenship’ *Free Movement* (24 November 2017) <https://www.freemovement.org.uk/rise-modern-banishment-deprivation-nullification-british-citizenship/>

<sup>21</sup> HM Government, *HM Government Transparency Report 2018: disruptive and investigatory powers* (23 July 2018), p. 27 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727961/CCS207\\_CCS0418538240-1\\_Transparency\\_Report\\_2018\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727961/CCS207_CCS0418538240-1_Transparency_Report_2018_Web_Accessible.pdf)

<sup>22</sup> Sajid Javid’s speech to the Conservative Party Conference 2018, available at: <http://press.conservatives.com/post/178663685490/sajid-javid-speech-to-conservative-party>.

<sup>23</sup> A Lloyd, ‘Shamima Begum: Bring me home, says Bethnal Green girl who left to join Isis’ (13 February 2019) *The Times* <https://www.thetimes.co.uk/article/shamima-begum-bring-me-home-says-bethnal-green-girl-who-fled-to-join-isis-hgqvq765d>.

<sup>24</sup> ITV, ‘IS schoolgirl Shamima Begum stripped of UK citizenship’ (19 February 2019) *ITV News* <https://www.itv.com/news/2019-02-19/shamima-begum-has-uk-citizenship-revoked-by-british-government-itv-news-learns/>.

<sup>25</sup> N Kapoor, ‘Citizenship deprivation at the nexus of race, gender and geopolitics’ (22 February 2019) *Verso Books* <https://www.versobooks.com/blogs/4250-citizenship-deprivation-at-the-nexus-of-race-gender-and-geopolitics>.

<sup>26</sup> L Deardon, ‘Shamima Begum: Isis bride’s newborn son will retain British citizenship, Sajid Javid suggests’ *The Independent* <https://www.independent.co.uk/news/uk/home-news/shamima-begum-isis-bride-baby-british-citizen-uk-sajid-javid-home-office-dutch-netherlands-a8788851.html>.

<sup>27</sup> D Anderson, *Citizen Removal Resulting in Statelessness* (April 2016)

p. 16 [3.19], available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/518120/David\\_Anderson\\_QC\\_-\\_CITIZENSHIP\\_REMOVAL\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518120/David_Anderson_QC_-_CITIZENSHIP_REMOVAL_web_.pdf)

<sup>28</sup> The case of Mahdi Hashi highlights the risks this practice can expose people to. For discussion of the case see, K Shamsie, 'Exiled: the disturbing story of a citizen made unBritish' (17 November 2018) *The Guardian* <https://www.theguardian.com/books/2018/nov/17/unbecoming-british-kamila-shamsie-citizens-exile>.

<sup>29</sup> See Counter-Terrorism and Security Act 2015, sections 2-4, available at: <https://www.legislation.gov.uk/ukpga/2015/6/part/1/chapter/2/crossheading/imposition-of-temporary-exclusion-orders>

<sup>30</sup> HM Government, *Transparency Report 2018: Disruptive and Investigatory Powers* (July 2018) p. 26 <https://www.gov.uk/government/publications/disruptive-and-investigatory-powers-transparency-report-2018>

<sup>31</sup> Independent Reviewer of Terrorism Legislation, *The Terrorism Acts in 2017*, (October 2018) available at: <https://terrorismlegislationreviewer.independent.gov.uk/category/reports/>.

<sup>32</sup> Liberty, *Liberty's Second Reading briefing on the Counter-Terrorism and Security Bill in the House of Lords* (January 2015) available at: <https://www.liberty-human-rights.org.uk/sites/default/files/Liberty%27s%20Briefing%20on%20the%20Counter-Terrorism%20%20Security%20Bill%20%28Second%20reading%20HOL%29%20%28Jan%202015%29.pdf>.

<sup>33</sup> In 2012, 142 British nationals alleged that they were tortured or ill-treated abroad. In 2013 there were 95 allegations and there were 118 allegations 2016. There was no data recorded for 2014 or 2015.

<sup>34</sup> Report of the Working Group on Arbitrary Detention, A/HRC/39/45 (2 July 2018).

<sup>35</sup> REDRESS, Jagtar Singh Johal: One year on India still failing to respond to torture allegations, available at: <https://redress.org/news/jagtar-singh-johal-one-year-on-india-still-failing-to-respond-to-torture-allegations/>

<sup>36</sup> Omega Research Foundation, *Trade in the "Tools of Torture"*, available at: <https://omegaresearchfoundation.org/our-work/trade-tools-torture>

<sup>37</sup> Bahrain International Defence Exhibition and Convention Centre, *About BIDEDEC*, available at: <https://www.bahraindefence.com/about-BIDEDEC>

<sup>38</sup> Egypt Defence Expo, *Security and counter-terrorism zone launched at EDEX* (24 September 2018) available at: [www.egyptdefenceexpo.com/news/security-counter-terrorism-zone-launched-at-edex](http://www.egyptdefenceexpo.com/news/security-counter-terrorism-zone-launched-at-edex) (accessed 2 November 2018).

<sup>39</sup> Egypt Defence Expo, *Compliance*, available at: <https://www.egyptdefenceexpo.com/compliance> (accessed 2 November 2018).

<sup>40</sup> See Reprieve, *Training Torturers: The UK's Role in Bahrain's Brutal Crackdown on Dissent*, available at: <https://reprieve.org.uk/wp-content/uploads/2018/05/TRAINING-TORTURERS-THE-UK%E2%80%99S-ROLE-IN-BAHRAIN%E2%80%99S-BRUTAL-CRACKDOWN-ON-DISSENT.pdf> and *Bahrain: Technical Assistance: Written question – HL7913* (6 June 2018) available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-05-15/HL7913>

<sup>41</sup> These bodies include the Bahrain Ministry of Interior Ombudsman and the Bahrain Prisoners' and Detainees' Rights Commission. For more information see Reprieve and the Bahrain Institute for Rights and Democracy, *Training Torturers: The UK's role in Bahrain's brutal crackdown on dissent* (2018), available at: <https://reprieve.org.uk/wp-content/uploads/2018/05/TRAINING-TORTURERS-THE-UK%E2%80%99S-ROLE-IN-BAHRAIN%E2%80%99S-BRUTAL-CRACKDOWN-ON-DISSENT.pdf>

*org.uk/wp-content/uploads/2018/05/TRAINING-TORTURERS-THE-UK%E2%80%99S-ROLE-IN-BAHRAIN%E2%80%99S-BRUTAL-CRACKDOWN-ON-DISSENT.pdf*

<sup>42</sup> UNCAT Committee, *Concluding observations on the second and third periodic reports of Bahrain*, CAT/C/BHR/CO/2-3.

<sup>43</sup> Amnesty International. *Window-dressing or pioneers of change? An assessment of Bahrain's human rights oversight bodies* (2016) available at: <https://www.amnesty.org/download/Documents/MDE1150802016ENGLISH.PDF>

<sup>44</sup> Human Rights Watch, *Bahrain: 2 Face Execution Despite Torture Allegations* (January 2017) available at: <https://www.hrw.org/news/2017/01/23/bahrain-2-face-execution-despite-torture-allegations>

<sup>45</sup> HC Vol 646, Col 249WH (11 September 2018).

<sup>46</sup> HM Government, *Overseas Security and Justice Assistance (OSJA): Human Rights Guidance*, available at: <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>

<sup>47</sup> See C Philip, 'Britain invokes spy clause to cover up payments to Bahrain', *The Times* (22 September 2018) <https://www.thetimes.co.uk/article/britain-invokes-spy-clause-to-cover-up-payments-to-bahrain-dlv00c66f> and 'Dire Straits: Britain should be open about how it supports Bahrain' *The Times* (22 September 2018) <https://www.thetimes.co.uk/article/dire-straits-qtzl28jd6>

<sup>48</sup> See House of Commons and Foreign Affairs Committee, *Global Britain: Human rights and the rule of law* (September 2018) available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/874/874.pdf> and Bahrain Institute for Rights and Democracy (BIRDBH), *Foreign Affairs Committee Report: FCO Should Reconsider Situation in Bahrain and Stop Shielding Saudi Arabia and Bahrain from UN criticism* (14 September 2018) available at: <http://birdbh.org/2018/09/birds-evidence-used-in-report-by-foreign-affairs-committee-assessing-fcos-human-rights-work-in-bahrain/>

## Chapter 15: Universal jurisdiction

<sup>1</sup> Criminal Justice Act 1988, Section 134(1) and Geneva Conventions Act 1957, Section 1(1).

<sup>2</sup> Between 2010 and 2016 inclusive the UK Home Office issued adverse recommendations against 817 individuals on suspicion that they were involved in or associated with war crimes, crimes against humanity or genocide (Home Office response to a Freedom of Information Act request by Dr Andrew Wallis, 22 May 2018). The Home Office did not provide a response to a recent request for updated figures within the statute-mandated 20 working day time limit.

<sup>3</sup> Afghan Faryadi Zardad was convicted of torture and hostage taking in 2005 and sentenced to 20 years imprisonment. There is an unreported High Court judgment of 19 July 2005 in *R v. Zardad* which relates to certain legal aspects of the case. An appeal was denied 17 February 2007. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians. The Court of Appeal upheld his conviction on 10 February 2000 – *R. v. Sawoniuk*, Court of Appeal (Criminal Division), [2000] Crim. L. R. 506. The House of Lords denied leave to appeal on 20 June 2000 – 'War Criminal Refused New Hearing', *Financial Times* (20 June 2000).

<sup>4</sup> Between 2008 and 2017, the following numbers of universal jurisdiction trials took place in the following European countries: Sweden: eight; Germany and Finland: five; France: four; Austria, Norway and

The Netherlands: two; UK and Belgium: one. (Langer and Mackenzie, *The Quiet Expansion of Universal Jurisdiction*, forthcoming European Journal of International Law (2019).

<sup>5</sup> JusticeInfo.net, *European Justice Strikes on Crimes in Syria*, (21 February 2019) available at: [https://www.justiceinfo.net/en/tribunals/national-tribunals/40383-european-justice-strikes-on-crimes-in-syria.html?mc\\_cid=b3f1f97989&mc\\_eid=b845d5240d](https://www.justiceinfo.net/en/tribunals/national-tribunals/40383-european-justice-strikes-on-crimes-in-syria.html?mc_cid=b3f1f97989&mc_eid=b845d5240d).

<sup>6</sup> CPS, *War Crimes/Crimes Against Humanity: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with section 1(4A) of the Magistrates' Courts Act 1980* (updated April 2016) available at: <https://www.cps.gov.uk/publication/war-crimescrimes-against-humanity-guidance-making-application-dpp-consent-application>.

<sup>7</sup> CPS, *Special Crime and Counter Terrorism (SCCTD)* available at : <https://www.cps.gov.uk/special-crime-and-counter-terrorism-division-scctd>.

<sup>8</sup> Letter from Metropolitan Police to REDRESS, 18 August 2017.

<sup>9</sup> CPS, *War Crimes/Crimes Against Humanity: Guidance for making an application for DPP consent for an application for a private arrest warrant in accordance with section 1(4A) of the Magistrates' Courts Act 1980* (updated April 2016) available at: <https://www.cps.gov.uk/publication/war-crimescrimes-against-humanity-guidance-making-application-dpp-consent-application>.

<sup>10</sup> Foreign and Commonwealth Office, *Written Ministerial Statement : Special Mission Immunity*, (4 March 2013) available at : <https://www.parliament.uk/documents/commons-vote-office/March-2013/4-3-13/6.FCO-Special-Mission-Immunity.pdf>.

<sup>11</sup> *The Queen on the application of Freedom of Justice Party and Others v Secretary of State for FCO and others* [2018] EWCA Civ 1719.

<sup>12</sup> Foreign & Commonwealth Office, *Response to Freedom of Information Act 2000 Request Ref: 0926-16*, (25 October 2016).



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