

# **Information and questions (detailed version)**

## **Consultation on the forthcoming examination of the United Kingdom by the UN Committee Against Torture**

### **Stage 1: EHRC List of Issues report**

**February 2012**



**Equality and  
Human Rights  
Commission**

## About this consultation

There are two versions of this consultation. This detailed version is primarily targeted at human rights lawyers, human rights NGOs and other experts working in this area. There is a shorter version which is aimed at wider readership. You may choose to respond to either version as you feel appropriate.

Both versions can be downloaded from [here](#).

## Introduction

The UN Committee Against Torture (CAT) is a body of ten independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its state parties.

The treaty requires state parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptions are permitted. It also prohibits states from expelling, returning or extraditing a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture ("non-refoulement"). It requires states to ensure that all acts of torture, and attempts to commit torture, are offences under its criminal law. Each state party is also required to prevent other acts of cruel, inhuman or degrading treatment (CIDT) or punishment which do not amount to torture, when they are committed by or at the instigation of or with the consent or acquiescence of a public official. There are other related rights in the treaty, including the right for victims to obtain redress and compensation.

The full text of the treaty is at:

<http://www2.ohchr.org/english/law/cat.htm>.

All states parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the state party in the form of "concluding observations".

The UK government submitted its Fifth Periodic State Report to the CAT in August 2011. Although the date of the examination by the Committee has not yet been fixed it is anticipated that this will be at the Committee's 50<sup>th</sup> session, due to take place in Geneva in May 2013.

The committee sets a “list of issues” to be the focus of the examination at the session prior to it. The 49<sup>th</sup> session is scheduled for 29 October to 23 November 2012. In order to give the committee sufficient time to consider them, it requests that shadow reports and other communications be submitted at least two months prior to the session at which they will be considered.

Further information about how the committee works can be found at:

<http://www2.ohchr.org/english/bodies/cat/workingmethods.htm>.

## **The Commission’s Report**

The Equality and Human Rights Commission (“the Commission”) is intending to submit a report to the CAT in September 2012. Our objective is to influence the committee’s decisions regarding the matters to be included on the list of issues since these are very likely ultimately to form the basis of many of the committee’s recommendations following the examination. This will probably be followed up by an update shadow report in March 2013 prior to the examination itself.

It is not possible to comment on everything that is covered in the (224 page) state report. Areas will be selected for inclusion in the Commission’s list of issues report because

- They are the most pressing torture / CIDT issues in GB today, and /or
- The committee is likely to be interested in additional information on that topic (previous recommendation / correspondence / or general comment), and/or
- The Commission has already carried out work on the issue which can be described in the report and/or
- The issue is unlikely to be covered in any other shadow report submitted by NGOs, and /or
- The information in the state report is scant or misleading.

Most of the issues covered will be GB wide. All Northern Ireland specific issues will be excluded as they will be covered by the Northern Ireland Human Rights Commission. Scotland specific issues will be dealt with by the Scottish Human Rights Commission.

The purpose of this consultation is to give you an opportunity to tell us what you think are the most important issues for us to include in our report and to provide evidence and case studies to illustrate the extent or seriousness of the issues identified.

Organisations should note that they may also wish to submit a report of their own to the Committee. This need not of course prevent you also responding to this consultation, and we would be pleased to receive a copy of any report you submit to the Committee itself in due course as well.

The questions that appear below are intended as a guide. **You may answer as many or as few as you want according to your particular areas of interest or expertise**; and all responses with or without specific reference to these questions will be welcomed.

**Responses and queries should be sent by email to:**

[catconsultation@equalityhumanrights.com](mailto:catconsultation@equalityhumanrights.com)

**If you would prefer to respond by post please send your response to:**

Legal Enforcement  
Equality and Human Rights Commission  
3 More London Riverside  
Tooley Street  
London  
SE1 2RG

**Please ensure your response reaches us on or before 27 April 2012.**

## **Consultation questions**

The Commission intends to deal with a number of key issues in particular detail, and comment more briefly on a secondary list of issues.

You may respond below or in a separate document.

### **Part A: Primary concerns**

The issues we are intending to focus on primarily are:

- Counter-terrorism measures, including Terrorism Prevention and Investigation Measures (TPIMs)
- Oversight of the security and intelligence services, including the Justice and Security Green paper
- Allegations of complicity in torture in Libya, Guantanamo Bay, Pakistan and elsewhere
- Allegations of ill-treatment by UK forces in Iraq
- Returning individuals to the risk of torture: use of diplomatic assurances, asylum procedures, deportations and extradition.
- Investigations into death by lethal force and the Independent Police Complaints Commission (IPCC)
- Police use of electroshock weapons (Tasers)
- Ill-treatment amounting to cruel, inhuman or degrading treatment in health and social care settings
- The threat of repeal of the Human Rights Act 1998

#### **1. Are these the right areas to focus on? Please give reasons for your answer. If you think other areas should be included instead or as well please explain why you think the issue you propose is one of the key ‘torture’ issues in UK at present.**

In responding to this and the questions that follow, ILPA has had to be selective because of pressure of time. That we have not answered a question should not be taken as indicating that we do not have a view on that question, and that we focus on certain matters in our

answers, and often in short form, should not be taken as indicating that these are our only concerns under that head. The constraints upon us are primarily constraints of time.

There is mention of ill-treatment in immigration detention settings in the body of the consultation paper and we consider that it is appropriate to focus on this. There have been a series of findings of violations of Article 3 of the European Convention on Human Rights in these settings, most recently in the May 2012 judgment in *R(HA (Nigeria)) v SSHD* [2012] EWHC 979 (Admin). See further below. It is important to focus on areas where the UK has been found to have subjected an individual to torture or other cruel, inhuman or degrading treatment and even more important to focus on those cases where, in similar factual circumstances, the UK has repeatedly been found to have done so. Immigration detention of the mentally ill is one such example of this.

We suggest that priority be given to violations of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, rather than focusing on the question of the threat of repeal of the human rights act. The prohibition on torture is a matter of customary international law and torture and acts constituting torture and other cruel inhuman and degrading treatment or punishment are prohibited under other measures of domestic and international law. The case against repeal is far more likely to be made by concentrating on current violations and a focus on these is likely to make for a more searching examination of the Government by the UN Committee Against Torture.

## **2. Please provide us with any information or evidence you have in relation to any these issues.**

The following are not attachments but links to ILPA submissions of relevance and references to reported cases, viz:

- ILPA's response to the consultation on the IPCC oversight of the Border and Immigration Agency, October 2007  
[http://www.ilpa.org.uk/data/resources/13115/07.10.12-BIA-IPCC-oversight-of-  
Incidents-and-Complaints-Consultation.pdf](http://www.ilpa.org.uk/data/resources/13115/07.10.12-BIA-IPCC-oversight-of-Incidents-and-Complaints-Consultation.pdf)
- ILPA Submission to the Joint Committee on Human Rights Inquiry into the Human Rights implications of Extradition policy, January 2011.  
[http://www.ilpa.org.uk/data/resources/14418/11.01.21-ILPA-to-JCHR-re-  
extradition.pdf](http://www.ilpa.org.uk/data/resources/14418/11.01.21-ILPA-to-JCHR-re-extradition.pdf) .

See also the cases cited therein:

- *R (Ignoua et ors) v Judicial Authority of the Courts of Milan ; The Serious and Organised Crime Agency &the Secretary of State for the Home Department.* [2008] EWHC 2619 (Admin)
- *Mohamed Salah Ben Hamadi Khemiri, Habib Ignoua, Ali Ben Zidane Chehidi v. The Court of Milan Italy* [2008] EWHC 1988 (Admin) Judgment 28 July 2008.
- *R(Khemiri) v SSHD* [2010] EWHC 2363 Admin.
- *SSHD v MK* [2011] EWCA Civ 333

- ILPA briefing for House of Lords Committee stage of the Legal Aid, Sentencing and Punishment of Offenders Bill re Immigration Judicial Review 18 December 2011  
<http://www.ilpa.org.uk/data/resources/14010/11.12.18-HL-Comm-Immigration-Judicial-Review-briefnig.pdf>
- ILPA briefing for House of Commons Public Bill Committee stage of the Legal Aid, Sentencing and Punishment of Offenders Bill re Removal and Deportation, 2 September 2011  
<http://www.ilpa.org.uk/data/resources/13695/11.09.02-Briefing-on-Removal-and-Deportation-Amendment.pdf>
- ILPA submission to the Special Rapporteur on the Human Rights of Migrants on immigration detention, 30 January 2012, available at:  
[http://www.ilpa.org.uk/data/resources/14148/12.01.30-ILPA-to-UN-Special\\_Rapporteur\\_Human\\_rights\\_migrants-detention.pdf](http://www.ilpa.org.uk/data/resources/14148/12.01.30-ILPA-to-UN-Special_Rapporteur_Human_rights_migrants-detention.pdf)

The following are attached:

- ILPA's letter of 11 October 2010 to Dee Bourke, then UK Border Agency Director of Operations and Performance about the UK Border Agency Enforcement Instructions and Guidance, chapter 55 detention and the implications for the mentally ill.
- ILPA's letter of 13 January 2012 to the European Commission re the asylum screening unit
- ILPA's letter of 2 March 2012 to the Chief Inspector of the UK Border Agency about the Chief Inspector's report on the detained fast track.
- ILPA to Information Management, UK Border Agency of 12 July 2011 re UK Border Agency: Subject Access Requests under the Data Protection Act and the response of the Agency of 1 September 2011.

### **3. Returning individuals to the risk of torture: in order to assess the extent of the problem we are particularly looking for evidence concerning:**

#### **4.**

- examples of the use of extradition with assurances,
- examples of the use of deportation with assurances
- examples of asylum removals to a real risk of torture.

On this topic more generally, we highlight that difficulties in cases of removal and deportation will become all the more acute from April 2013 because from that date legal aid will be removed from immigration cases at first instance and on appeal, and from some immigration judicial review cases. Asylum cases and cases before the Special Immigration Appeals Commission will continue to attract legal aid as will challenges to immigration

detention. See ILPA's briefings to the Legal Aid, Sentencing and Punishment of Offenders Bill, two of the most pertinent of which are listed in response to question 2.

### **Extradition**

Please see the ILPA submission to the Joint Committee on Human Rights Inquiry into the Human Rights Implications of Extradition Policy, to which a link is provided in response to question 2. This is discussed in paragraphs 222 to 224 of the Committee's report.<sup>1</sup> See the judgments cited in ILPA's response, which are listed separately in response to question two above. ILPA's particular concern is at revocation of refugee status, deprivation of indefinite leave to remain or citizenship, while a person who has been extradited is outside the country. This is a concern that underpins concerns about extradition, including extradition with assurances as at it risks leaving an individual stranded outside the UK, at risk with no means of return or of calling on the protection of the UK including in circumstances where the individual faces onward *refoulement* to torture.

These concerns go wider than extradition cases. The practice of revoking indefinite leave to remain while a refugee is outside of the UK, was most recently the subject of consideration by the Court of Appeal in *EI (OS Russia)* [2012] EWCA Civ 357.

### **Deportation with assurances**

The attention of the Committee should be drawn to *W (Algeria) and BB (Algeria) and others v SSHD* [2012] UKSC 8, 7 March 2012. The appellants in those cases were faced with the prospect of being unable to adduce evidence to demonstrate that diplomatic assurances would not protect them. The cases are pending.

The question of diplomatic assurances cannot be considered in isolation from the Special Immigration Appeals Commission procedures, with closed evidence and the use of special advocates in which context they are most often given.

### **Asylum removals to a real risk of torture**

Where there are failings in the system of asylum determination there is a real risk that those determining a claim for asylum will make the wrong decision and identify that there is no risk of persecution, including torture or other cruel, inhuman or degrading treatment, on return. This creates a risk that the person will subsequently be *refouled* and be subjected to such treatment.

In *MSS v Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011 it was held that conditions for MSS in Greece violated Article 3 of the European Convention on Human Rights. See also *NS v UK* (C-411/10). As held by the court in NS, there can be no conclusive presumption of compliance by a country, including a European country, with fundamental rights. Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 purported to contain such conclusive presumptions, and the UK has relied upon these in removing people, creating a risk of torture or other cruel, inhuman or degrading treatment.

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<sup>1</sup> The Human Rights Implications of Extradition Policy, Joint committee on Human Rights 15<sup>th</sup> Report of session 2010-2012, HL Paper 156, HC 767.

Shortcomings in any aspect of the asylum determination procedure can create a risk that a person will be *refouled* to face torture or other cruel, inhuman or degrading treatment. The UK asylum determination procedure has many shortcomings. The way in which applications for asylum are received at the Asylum Screening Unit determines the future treatment of the case, in particular whether it is routed into the detained fast track to be processed within timescales that do not permit full instructions to be given to a legal representative or evidence gathered.

ILPA has had extensive correspondence with UK Border Agency about shortcomings in the Asylum Screening Unit over the past year or so, and has formally complained to the European Commission on Human Rights about the way in which the shortcomings of the Unit breach the UK's obligations under the EU reception<sup>2</sup> and procedures<sup>3</sup> directives. The screening process is flawed and the detained fast track process does not permit of proper examination of an asylum claim. See our letter to the Chief Inspector of the UK Border Agency, listed in response to question 2 and appended. We should be happy to provide further information if this would be helpful.

As to asylum removals, we draw to your attention *R (Medical Justice) v SSHD [2011] EWCA Civ 269*. Until halted by that case, there were categories of person whom the Home Office was removing without notice, giving them no opportunity to advance evidence of a risk on return. Perhaps one of the best known examples of such a case is that of John Bosco Nyombi who was removed to Uganda despite having a pending application in the UK. He was detained in Uganda because of his sexual orientation until the Administrative Court ordered that the Home Secretary should bring him back to the UK. He was subsequently recognised as a refugee in 2009 and was awarded very substantial compensation.

The question of removals to Sri Lanka throws into sharp relief the problems with removals of persons whose applications for asylum have not succeeded. The UN Committee Against Torture has itself produced, and will be aware of, evidence of torture and other cruel, inhuman or degrading treatment or punishment in Sri Lanka.

On 28 September 2011 UK Border Agency returned 50 people, including 42 who had previously made asylum applications, to Sri Lanka. A further charter flight operation took place on 15 December 2011 when 50 Sri Lankans were removed. A failed asylum seeker forcibly removed on 21 February 2012 alleged that he was tortured on arrival at the airport in Sri Lanka. British officials have interviewed him and the British High Commission arranged a medical examination. There has been an alleged breach of confidentiality in connection with this incident. A further charter flight took place on 28 February 2012. In light of the existing information, including from the UN Committee against Torture about torture, inhuman and degrading treatment or punishment, and the report of the British High Commission-appointed doctor in the 21 February 2012 case there is concern that the UK is returning persons to a risk of torture, inhuman or degrading treatment in Sri Lanka.

Returns to Iraq, Afghanistan and Zimbabwe have also given rise to considerable concern. Even where notice of removal is given, the UK Border Agency does not promise more than 72 hours notice. ILPA is supposed to receive the letters that the UK Border Agency sends to the administrative court notifying the court that a charter flight is imminent at the same

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<sup>2</sup> Directive 2003/9/EC

<sup>3</sup> Directive 2005/85/EC

time as these are sent to the court. Instead, the letters are faxed to us (they are emailed to the court) often days after the court has received them, often on a Friday night outside normal working hours although the flight is set for just after midnight on the Monday, as was the case with a recent flight proposed to Afghanistan. Not all letters are sent, in the case of the Afghanistan flight ILPA did not receive notice of its cancellation until we asked for it having heard about it through representatives on the flight. The risks that a person facing *refoulement* to torture is unable within the time constraints to challenge the removal, or do so effectively, are very high.

## **5. UK Borders Agency operation of asylum procedures: in what ways do asylum procedures lead to violations of CAT? Detention of survivors of torture? Detention of some immigration detainees in prisons? Is the decision making process on whether to detain adequate? Are investigations of complaints independent and effective?**

See response to question 3 above. Detention not only in prisons but also in immigration removal centres can violate the prohibition on torture or other cruel inhuman and degrading treatment.

See ILPA's letter of 11 October 2010 to Dee Bourke, then UK Border Agency Director of Operations and Performance about the UK Border Agency Enforcement Instructions and Guidance, chapter 55 detention and the implications for the mentally ill, listed in response to question 2 and appended hereto, for ILPA's protest made to changes to guidance on the detention of the mentally ill.

In *R (S) v SSHD [2011] EWHC 2120 (Admin)*, *R(BA) v SSHD [2011] EWHC 2748 (Admin)* (26 October 2011) and *R(HA (Nigeria)) v SSHD [2012] EWHC 979* the treatment of men with mental health problems was found to breach Article 3 of the European Convention on Human Rights. In BA's case the judge speaks of the 'callous indifference' to his suffering. Rather than one case being a wake-up call and leading to changes in the treatment of mentally ill detainees, these cases form a pattern and are indicative of grave shortcomings in the UK's treatment of immigration detainees.

See also our comments in answer to question four about the Asylum Screening Unit. It is not possible to determine in all cases at the point where a person claims asylum whether that person has been subject to torture or other cruel, inhuman or degrading treatment. Yet it is at that stage that a decision to detain a person is made, rendering guidance that those who have been tortured should not normally be detained, ineffective.

## **6. Use of force in immigration detention / removals: we are looking for case studies. Have there been improvements since the 2010 change of contractor? Are safeguards effective? Is there a need for a routine medical examination by a doctor before all removals (rather than a risk assessment as at present)? What evidence is there of standards of care in Immigration Removal Centres?**

See the House of Commons Home Affairs Committee Eighteenth Report of Session 2010-2012 *Rules governing enforced removals from the UK* (17 January 2012) and House of Commons Home Affairs Committee, The Work of the UK Border Agency, 4th Report of Session 2010-11, 21 December 2010, for evidence of the Independent Police Complaints Committee about Reliance, the company that now holds the contract. Reports of abuses continue. See, for example Amnesty International's 7 July 2011 briefing: *Out of Control: The case for a complete overhaul of enforced removals by private contractors* [http://www.amnesty.org.uk/uploads/documents/doc\\_21634.pdf](http://www.amnesty.org.uk/uploads/documents/doc_21634.pdf) and the article of 13 April 2012 *Deportation contractor Reliance faces litany of abuse claims against staff* The Guardian.

Current safeguards are insufficient. A report under Rule 35 of the Detention Centre Rules SI 2001/238 is supposed to be produced after an injury has been sustained during a failed forced removal attempt – but doctors visiting detainees report that such reports are not normally available. Photographs of injuries are required by a Detention Service Order 14/2008 *Recording of Incidents* (available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/> with all Detention Service orders). Doctors visiting detainees report that the taking of photographs is not consistent. The photographs should be held as a part of the detainee's healthcare notes, but doctors visiting detention centres report that this too is rare. It is reported that CCTV is rarely available and we consider that the Equality and Human Rights Commission should look into the nature and extent of investigations of allegations of harm during removal and how these are documented, so that it can present this information to the Committee. It should also consider whether injured detainees are taken to hospital in a timely manner and/or whether they are handcuffed in hospital. The latter, apart from being undesirable in and of itself, gives rise to a risk that the detainee will not feel free to describe how injuries have been sustained.

ILPA considers that yes, there should be a routine medical examination by a doctor before all removals. This should be carried out by an independent doctor rather than the staff or subcontractors of the private company contracted to run the immigration removal centre and/or escort functions.

As to standards of care in immigration removal centres, in addition to the cases cited in response to question five we refer you to the recent report from Medical Justice, which concerns a different group of detainees, those with HIV: *Detained & Denied: The clinical care of immigration detainees living with HIV*.<sup>4</sup>

## **7. The role of the Home Secretary in extradition cases: what is the role of executive rather than the courts? Are there cases where this has caused a problem?**

See our response to question 4 above. The question is not only of the roles of the Executive and of the Courts, but of the Special Immigration Appeals Commission procedure.

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<sup>4</sup> 22 March 2011. Available at <http://www.medicaljustice.org.uk/mj-reports,-submissions,-etc./reports/1723-qdetained-a-denied-the-clinical-care-of-immigration-detainees-living-with-hivq-220311.html>

**8. Do you know of any good or bad examples of investigations into death by lethal force? Is the Independent Police Complaints Commission (IPCC) system, in theory and in practice, capable of meeting this obligation?**

Mr Jimmy Mubenga died while being forcibly restrained on a flight from Heathrow to Angola in October 2010. Three guards from G4S, the private security company subcontracted to the Home Office, were arrested on suspicion of possible manslaughter. As of March 2012, they had been repeatedly bailed and no decision had been made as to whether they would face charges. Such delays may create problems in the particular case but may also prevent lessons being learned, a matter of considerable concern when reports of abuse continue (see response to question 3).

The Independent Police Complaints Commission does not have jurisdiction in all relevant cases. In *R (Salimi) v (1) SSHD & (2) IPCC* [2012] EWCA Civ 422, the Court of Appeal ruled that the Commission did not have jurisdiction to investigate allegations of mistreatment in the course of an enforced removal to Iraq because the alleged mistreatment took place outside of the UK. In October 2007, in responding to the consultation on extending the jurisdiction of the Commission to investigate what is now the UK Border Agency, we identified several concerns about the limitations of the proposed (and now implemented) jurisdiction – including the question of mistreatment outside the UK, including at juxtaposed controls. ILPA's response to that consultation is available at:

<http://www.ilpa.org.uk/data/resources/13115/07.10.12-BIA-IPCC-oversight-of-Incidents-and-Complaints-Consultation.pdf>

**9. We are looking for examples of good or bad practice on follow-up of recommendations from IPCC investigations**

Not answered.

**10. Should Tasers be completely outlawed? Or can their use be regulated so as to avoid breaches of CAT?**

Not answered.

**11. In relation to torture and CIDT in health and social care, we are interested in people's ability to make complaints, and for examples of the state's failure to prevent abuses by private or third sector organisations.**

Not answered.

## **Part B: Other issues**

In relation to some of the other issues we have some more specific questions that will help us determine the degree of priority we give them in our report.

We have listed each further area below with any specific questions that arise. The overarching questions that arise in relation to each one are:

- Which of these further issues are the most important in your view? Are there any that can be disregarded?
- Please provide us with any information or evidence you have in relation to these issues.

The issues are grouped in three sections:

- Follow of previous CAT committee recommendations
- Legislative change needed to fully incorporate the treaty
- An article by article analysis of other relevant issues

## **Follow up of previous recommendations**

- Compliance with Article 15 (use of evidence obtained under torture in court)
- 12. The Committee has previously expressed concern about the use of evidence obtained by torture, but it is not clear whether this is still an issue after the House of Lords decision in A (no.2)<sup>5</sup>. Do you have a view on that?**

The practice of using secret evidence has spread from hearings before the Special Immigration Appeals Commission. Secret evidence has been used in immigration and deportation hearings, judicial review cases, civil actions and indeed more broadly, including in family and employment proceedings. Where secret evidence is used, the risk that evidence obtained by torture is used increases. See answer to question 4 above.

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<sup>5</sup> A and Others v. Secretary of State for the Home Department (No. 2) [2005] UKHL 71

- Extent of UNCAT jurisdiction
- 13. We are concerned that the government does not consider that it is bound by obligations arising under UN CAT outside the territory of the UK. The Committee's previous concerns about the applicability of the Convention to UK troops in Iraq and Afghanistan has not been acted on. We would like your views on the position when UK troops are acting under the auspices of the UN, and any evidence that CAT standards have not been adhered to in Afghanistan.**

ILPA concurs with the Committee Against Torture that “...the Convention protections extend to all territories under the jurisdiction of a State party ... this principle includes all areas under the *de facto* effective control of the State party’s authorities” (Conclusions and recommendations : United Kingdom of Great Britain and Northern Ireland. 10/12/2004. CAT/C/CR/33/3, paragraph 4)

## **Legislative change needed to fully incorporate CAT**

- s.134 (4) Criminal Justice Act 1988 – ‘lawful authority excuse’

Section 134 reads (in part):

134 Torture.

(1)A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in theUnited Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2)...

(3)It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4)It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

**14. Can you think of any case where such a defence might operate in the UK?**

ILPA concurs with the Committee Against Torture that “...article 2 of the Convention provides that no exceptional circumstances whatsoever may be invoked as a justification for torture” (Conclusions and recommendations: United Kingdom of Great Britain and Northern Ireland. 10/12/2004. CAT/C/CR/33/3, paragraph 4). The so-called ‘defence’ is contrary to

the UK's obligations under the Convention and there is no case in which it could lawfully operate.

- Article 22 CAT – the right of individual petition

**15. The UK has not signed up to that part of the Convention which would give an individual, in certain circumstances, the right to lodge with the Committee against Torture complaints regarding the violation of one or more of the Convention's provisions. What do you think the right to petition CAT would add to the remedies already available under UK law?**

ILPA concurs with the Joint Committee on Human Rights that “the UK's slow progress in accepting individual petition, as compared with other European and Commonwealth states, undermines its credibility in the promotion and protection of human rights internationally. These considerations, in our view, support an early reconsideration of the decision on rights of individual petition, in two years' time. (17<sup>th</sup> Report, session 2004-2005, para 27).

## **Other issues in relation to each Article of the Convention**

### **Article 2 – effective measures to prevent torture and complicity**

- 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

**16. There have been two legal challenges to this guidance.<sup>6</sup> Are there other problems or issues in relation to that guidance that have not been dealt with in those cases?**

Not answered.

- Torture equipment

**17. Are there any torture equipment issues in the UK other than the export of sodium thiopenthal?**

Not answered.

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<sup>6</sup> EHRC v the Prime Minister and others; Al-Bazzouni v the Prime Minister and others [2011] EWHC 401 (Admin).

### **Article 3 – non-refoulement**

To be dealt with as a priority issue (above).

### **Article 4 - Criminalisation of torture**

- Police misconduct

### **18. Do you have any views on the new police Standards of Professional Behaviour?**

Not answered.

### **Article 10 – Education and training of police, military, doctors etc.**

- Violence against women and girls as torture in particular rape, domestic violence, trafficking and FGM (e.g. failure to prosecute, failure to protect).

### **19. Is the education and training of police officers adequate in this regard? In what ways could protections by the state be enhanced?**

The question asks about a very wide range of crimes. ILPA has particular expertise where the victims of crime are persons under immigration control. We draw attention to Immigration Officers having powers of arrest, search and detention that are comparable to those of police officers without having the training that is given to police officers.

- Police
- Prisons
- Immigration
- Military
- Consular officials
- Intelligence officers and service personnel

### **20. In relation to each of these we are interested in hearing about the adequacy of training and guidance and how these translate to standards in practice.**

Not answered.

## **Article 11 – review of preventative measures**

- Deaths in custody

**21. Is the Ministerial Council on Deaths in Custody is effective? Is enough being done to reduce rates? How effective are IPCC investigations in driving improvements?**

Not answered.

- OPCAT National Preventative Mechanism

**22. Are deprivations of liberty in private care homes adequately covered as well as psychiatric hospitals?**

Not answered.

**23. Is the prisons inspection regime adequate?**

Not answered.

- “Attenuating Energy Projectile” impact rounds (rubber or plastic bullets)

**24. Do you know of any evidence of the use of impact rounds in the UK outside Northern Ireland? Is their use acceptable?**

No we do not know of any such evidence.

## **Articles 12 and 13 – Investigations and complaints procedures**

- Deaths in prisons
- Deaths in immigration detention
- Military

**25. Are there any problems with independence in the investigation of complaints in the prisons, immigration detention or military context?**

Yes, in the case of immigration detention there is the problem of the division of responsibility between the UK Border Agency and its contractors and also the problem of the obligations upon the contractors running the centres. This begins with the keeping of records and the adequacy or otherwise of these and runs through disclosure of these records. Please see ILPA's letter to the UK Border Agency ILPA to Information Management, UK Border Agency of 12 July 2011 re UK Border Agency: Subject Access Requests under the Data Protection Act and the Agency's response of 1 September 2011, listed in response to question 2. Any investigation is hampered if adequate records are not kept.

## **Article 14 – compensation and rehabilitation**

- Criminal Injuries Compensation Scheme, Victim Support, Victim Support Plus

### **26. Are these arrangements adequate?**

The withdrawal of legal aid from persons appearing before the Criminal Injuries Compensation Authority intended from April 2013 under the provisions of the Legal Aid, Sentencing and Punishment of Offenders Bill will make it very difficult for people to bring cases.

## **Article 16 – Prevention of cruel, inhuman or degrading treatment or punishment (CIDT)**

- Prison conditions (particularly with regard to transgender or transsexual and disabled prisoners; slopping out; use of bodybelts; overcrowding; concerns about health care especially mental health service provision).

### **27. Please provide us with any evidence of inadequate prison conditions. Are there particular problems with private prisons and escorts? What evidence is there of people being held in prison who should be in hospital?**

See our responses to questions 5 and 25.

- Deaths and violence in prison

### **28. We are seeking views on the government's Suicide Prevention strategy (Assessment, Care in Custody and Teamwork (ACCT)). Are cell sharing risk assessment and violence reduction strategies working?**

Not answered.

- Youth justice

**29. Should the age of criminal responsibility (10) be increased?**

Yes.

**30. We are looking for examples which demonstrate the adequacy or otherwise of Children's Act welfare provision in Young Offenders Institutions.**

Not answered.

- Police custody
- Immigration detention

**31. Is self-audit of compliance with operating standards sufficient? Is oversight by Independent Monitoring Boards and HM Chief Inspector of Prisons sufficient and effective in practice?**

No, self-audit is not adequate.

Independent Monitoring Boards and HM Chief Inspectorate of Prisons have done important work in immigration detention as has the Chief Inspector of the UK Border Agency.

- Corporal punishment (schools)

**32. We are looking for examples of physical punishment, for instance in religious supplementary schools, by sports coaches, or other private tutors?**

Not answered.

**33. Are there any matters which we include above on which you think comment is unnecessary?**

Not answered.

## **Areas provisionally to be excluded from the Commission's report**

<b>Area</b>	<b>Reason for exclusion</b>
<b><i>Previous recommendations</i></b>	
Bullying /self-harm / suicide in the armed forces.	Events that were subject of Deepcut review are too long ago. No point in continuing to pursue public inquiry now.
CAT recommendation to group statute and common law provisions on torture together and publish.	Not necessary
<b><i>Other issues covered in state report</i></b>	
Military regulations / service custody	No important issues
Prosecution of Faryadi Zardad for crimes committed in Afghanistan	No comment needed.
Arts 8 and 9 – extradition of torture suspects and mutual legal assistance	No request from other countries received. No comment needed.
Art. 10 – education and training re. CPS	No comment needed.
Art. 11 - Introduction of corporate manslaughter offence – to include custodial facilities	No comment needed.
Art. 11 – review of preventative mechanisms – CPS, Coroners, Private security industry (door staff etc)	No comments needed.

**34. Are there any reasons why these matters should not be excluded from our report?**

Not answered.

**35. Are there any other matters you wish to bring to our attention?**

It has long been recognised that destitution may give rise to torture or other cruel, inhuman or degrading treatment or punishment, see *R(Limbuela) v SSHD* [2005] UKHL 66. In *Limbuela* the House of Lords identified that in the cases of Limbuela and others “.. there was an imminent prospect that the way they were being treated by the Secretary of State, in the context of the entire regime to which they were being subjected by the state, would lead to a condition that was inhuman or degrading.” See also *D v UK* [1997] 24 EHRR 423.

Persons refused asylum who cannot be returned through no fault of their own continue to be at risk of inhuman and degrading treatment. ILPA is a member of the Still Human Still Here coalition which works to end enforced destitution.

We are very grateful for your responses to this consultation. Any queries about it, or about our report to CAT, should be sent to [catconsultation@equalityhumanrights.com](mailto:catconsultation@equalityhumanrights.com).

## **Confidentiality**

In line with the Commission's policy of openness, at the end of the consultation period, copies of the responses we receive may be made publicly available through our website and offices at:

3	More	London Street
Tooley London SE1 2RG.		

If you do not want your response or your name to be made publicly available, you must clearly request that your response and or name be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.

In addition, all information provided in responses may be disclosed to:

- (i) to Commission staff, agents and contractors it has engaged in the consultation and/or drafting process, or who need to know the information for any other purposes related to carrying out the business of the EHRC;
- (ii) our sponsor body and any other government department who need to know the information.

## **Freedom of Information**

The Commission cannot guarantee the confidentiality of your response as there might be circumstances in which the Commission will be required to communicate information to third parties on request in order to comply with its obligations under the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations (EIR) 2004. Any queries about FOI or EIR should be directed to: [foi@equalityhumanrights.com](mailto:foi@equalityhumanrights.com)

Comments or complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) should be addressed to [complaints@equalityhumanrights.com](mailto:complaints@equalityhumanrights.com)

# **Contacts**

## **England**

Equality and FREEPOST	Human House,	Rights	Commission Arndale	Helpline RRLL-GHUX-CTRX Centre,
Arndale Manchester M4 3AQ				
Main number: Textphone: Fax: 0845 604 6630		0845 0845	604 604	6610 6620

## **Scotland**

Equality and FREEPOST	Human Optima Robertson	Rights	Commission	Helpline RSAB-YJEJ-EXUJ
The 58 Glasgow G2 8DU				Building, Street,
Main number: Textphone: Fax: 0845 604 5530		0845 0845	604 604	5510 5520

## **Wales**

Equality and FREEPOST	Human Floor,	Rights 3	Commission Callaghan	Helpline RRLR-UEYB-UYZL Square,
3rd Cardiff CF10 5BT				
Main number: Textphone: Fax: 0845 604 8830		0845 0845	604 604	8810 8820

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