



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
24 June 2013

Original: English

Committee against Torture

Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)

1. The Committee against Torture considered the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/5) at its 1136th and 1139th meetings, held on 7 and 8 May 2013 (CAT/C/SR.1136 and 1139), and adopted at its 1160th and 1161st meeting (CAT/C/SR.1160 and 1161), held on 27 May 2013, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of the United Kingdom, which generally followed the reporting guidelines. The Committee appreciated the State party's detailed written replies to the list of issues (CAT/C/GBR/Q/5/Add.1 and annexes).

3. The Committee appreciates the positive and constructive engagement of the State party's high-level delegation during the dialogue, as well as its efforts to provide comprehensive responses to the issues raised by Committee members.

B. Positive aspects

4. The Committee notes with satisfaction that the State party has ratified the following international human rights instruments:

(a) Convention on the Rights of Persons with Disabilities, in 2009;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2009.

5. The Committee welcomes the judicial developments and the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including:

(a) Amendment of the International Criminal Court Act 2001 by section 70 of the Coroners and Justice Act 2009 which extends the jurisdiction *ratione personae* and *ratione temporis* of United Kingdom courts over genocide, war crimes and crimes against humanity to United Kingdom residents and to acts committed abroad after 1 January 1991;

(b) Adoption of the Protection of Freedoms Act 2012, amending Schedule 8 of the Terrorism Act 2000 and reducing the maximum period of pre-charge detention for terrorist suspects from 28 to 14 days;

(c) House of Lords judgement in the case of *A and Others v. Secretary of State for the Home Department* (No. 2) [2005], which made clear that evidence obtained by torture is inadmissible in legal proceedings;

(d) Criminal Procedure (Legal Advice, Detention and Appeals) (Scotland) Act 2010, which provides for the right to access solicitors for detained persons in Scotland;

(e) Police and Criminal Evidence Act 2006, which enshrines the right to have someone informed when arrested in Bermuda;

(f) Repeal, in 2007, of specific provisions for Northern Ireland contained in Part VII of the Terrorism Act 2000 as part of the normalization programme undertaken in Northern Ireland;

(g) Entry into force, in 2009, of new Constitution Orders enshrining fundamental rights and freedoms in the Virgin Islands, Cayman Islands, Falkland Islands (Malvinas)¹, St. Helena, Ascension and Tristan da Cunha, and, in 2012, in Turks & Caicos;

(h) Entry into force, in 2006, of the Human Rights (Bailiwick of Guernsey) Law 2000, the Human Rights (Jersey) Law 2000 and the Isle of Man Human Rights Act 2001, aimed at incorporating human rights provisions, including the prohibition of torture;

(i) Establishment of a new Police Complaints (Guernsey) Law 2008, and the enactment of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2006, enhancing witness protection.

6. The Committee also welcomes actions taken by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) Establishment of the Commission for Equality and Human Rights, in 2007, and the Scottish Human Rights Commission, in 2008;

(b) Appointment of a Prisoner Ombudsman for Northern Ireland, in 2005;

(c) Adoption of the Foreign & Commonwealth Office Strategy for the Prevention of Torture (2011-2015);

(d) Establishment of the Historical Enquiries Team to re-examine deaths in Northern Ireland attributable to “the Troubles” committed between 1968 and 1998, and holding of a number of public inquiries into conflict-related deaths;

(e) Measures undertaken in England, Scotland and Northern Ireland to reform the criminal justice system and upgrade the prison estate in England and Scotland;

(f) Adoption of strategies to prevent suicide and self-harm in custody, such as the Assessment, Care in Custody and Teamwork, introduced between 2005 and 2007 in England and Wales; the revised suicide risk management strategy ACT2Care, introduced in 2005 in Scotland; as well as the Supporting Prisoners At Risk (SPAR) procedures, introduced in 2009, and the revised Suicide and Self-Harm Prevention Policy and Standard Operating Procedures, issued in 2011 in Northern Ireland;

¹ There is an ongoing dispute between the governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

(g) Changes in the youth justice system in England, Wales and Northern Ireland, aimed at reducing the number of children in detention and the development of community sentences;

(h) Extension of the scope of the United Kingdom's ratification of the Optional Protocol to the Convention against Torture to the Isle of Man.

C. Principal subjects of concern and recommendations

Incorporation of the Convention in the domestic legal order

7. The Committee notes the State party's position that the Human Rights Act incorporates the European Convention of Human Rights, including the prohibition of torture contained therein, in its legislation. However, the Committee is of the view that incorporation of the Convention against Torture into the State party's legislation and adoption of a definition of torture in full conformity with article 1 of the Convention would strengthen the protection framework and allow individuals to invoke the provisions of the Convention directly before the courts (art. 2).

The Committee recommends that the State party incorporate all the provisions of the Convention against Torture in its legislation, and raise awareness of its provisions among members of the judiciary and the public at large.

The Human Rights Act 1998

8. The Committee welcomes the assurance given by the State party's delegation that the European Convention on Human Rights will remain incorporated in its legislation, regardless of any decision on a Bill of Rights. It is concerned, however, that the Human Rights Act 1998 is the subject of negative criticisms by public figures (art.2).

The State party should ensure that public statements or legislative changes, such as the establishment of a Bill of Rights, do not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.

Extraterritoriality

9. The Committee is concerned by the State party's position on the extraterritorial application of the Convention, in particular that although its armed forces are required to comply with the absolute prohibition against torture as set out in the Convention, it considers that the scope of each article of the Convention "must be considered on its terms" (CAT/C/GBR/Q/5/Add.1, para. 4.5) (art. 2).

The Committee calls on the State party to publicly acknowledge that the Convention applies to all individuals who are subject to the State party's jurisdiction or control, including to its armed forces, military advisers and other public servants deployed on operations abroad. Recalling its general comment No. 2 (2008) on the implementation of article 2 by States parties, the Committee reminds the State party of its obligations to take effective measures to prevent acts of torture not only in its sovereign territory but also "in any territory under its jurisdiction", including all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law (para. 16).

Ambiguities in the legislation

10. The Committee is concerned by remaining ambiguities in the State party's legislation, which appear to provide an "escape clause" to the absolute prohibition of torture. It notes in particular that, despite its previous concluding observations (CAT/C/CR/33/3, para. 4(a)(ii)), the State party has not yet repealed Section 134 (4) and (5) of the Criminal Justice Act 1988 which provides for the defence of "lawful authority, justification or excuse" to a charge of official intentional infliction of severe pain or suffering and the defence of conduct that is permitted under foreign law, even if unlawful under the State party's law (art. 2).

The State party should repeal Section 134 (4) and (5) of the Criminal Justice Act 1988 and ensure that its legislation reflects the absolute prohibition of torture, in accordance with article 2, paragraph 2, of the Convention, which states that no exceptional circumstances whatsoever may be invoked as a justification of torture.

Consolidated guidance to intelligence officers and service personnel

11. The Committee welcomes the publication in 2010 of the Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees (Consolidated Guidance) as an important step toward ensuring transparency and accountability in relation to the actions of its personnel operating overseas and their relationships with foreign intelligence services. The Committee further welcomes the delegation's assurance that this framework is "absolutely not intended as allowing torture to proceed" but rather to "prevent it". It remains concerned, however, that ambiguities in the Consolidated Guidance remain, noting in particular the possibility of seeking assurances in situations where actions of foreign security and intelligence services pose a serious risk of torture or other ill-treatment to "effectively mitigate that risk to below the threshold of a serious risk" (Consolidated Guidance, paras. 17-21) (arts. 2 and 3).

The Committee urges the State party to reword the Consolidated Guidance in order to avoid any ambiguity or potential misinterpretation. The State party should in particular eliminate the possibility of having recourse to assurances when there is a serious risk of torture or ill-treatment, and require that intelligence agencies and armed forces cease interviewing or seeking intelligence from detainees in the custody of foreign intelligence services in all cases where there is a risk of torture or ill-treatment. The State party should also ensure that military personnel and intelligence services are trained with regard to the absolute prohibition of torture and ill-treatment.

Closed material procedures

12. Notwithstanding the State party's position that the Justice and Security Act 2013 will strengthen the oversight and scrutiny of the security and intelligence agencies, it is concerned that it also extends the use of closed material procedures in civil proceedings where national security is at risk. The Committee notes that the decision was made despite the European Court of Human Rights ruling in *A and Others. v. United Kingdom* (Application no. 3455/05)² that the Special Advocate System used in closed material procedures was insufficient to safeguard detainees' rights, as well as other severe criticisms, including from the Special Rapporteur on torture and other cruel, inhuman or

² See <http://www.refworld.org/docid/499d4a1b2.html>

degrading treatment or punishment³ and the majority of special advocates (memorandums to the Joint Committee on Human Rights on the Justice and Security Bill, June 2012 and February 2013). The Committee notes in particular that (arts. 2, 15 and 16):

(a) Special advocates have very limited ability to conduct cross-examination and cannot discuss the full content of confidential material with their client, thus undermining the right to a fair trial;

(b) A good amount of closed evidence is heavily reliant on information from secret intelligence sources and may contain second- or third-hand hearsay or other material and statements that may have been obtained by torture, which would not be admissible in ordinary criminal or civil proceedings, except against a person accused of torture as evidence that the statement was made;

(c) Closed material procedures may adversely impact on the possibility of establishing State responsibility and accountability.

The Committee recommends that all measures used to restrict or limit fair trial guarantees based on national security grounds be fully compliant with the Convention. The State party should in particular:

(a) **Address the concerns raised with regard to the Justice and Security Act 2013 by the Joint Committee on Human Rights and the special advocates;**

(b) **Ensure that intelligence and other sensitive material be subject to possible disclosure if a court determines that it contains evidence of human rights violations such as torture or cruel, inhuman or degrading treatment;**

(c) **Ensure that the Justice and Security Act 2013 will not become an obstacle to accountability for State involvement or complicity in torture, cruel inhuman or degrading treatment, nor will it adversely impact on the right of victims to obtain redress, remedy and fair and adequate compensation.**

Non-jury trials in Northern Ireland

13. The Committee notes with appreciation the measures taken in Northern Ireland in the context of the security normalization programme but regrets that the Justice and Security (Northern Ireland) Act 2007 retains the possibility of the conduct of non-jury trials, despite the apparent consensus among a broad range of actors that the problem of juror intimidation in Northern Ireland still needs to be demonstrated (art. 2).

The Committee recommends that the State party take due consideration of the principles of necessity and proportionality when deciding the renewal of emergency powers in Northern Ireland, and particularly non-jury trial provisions. It encourages the State party to continue moving towards security normalization in Northern Ireland and to envisage alternative juror protection measures.

National preventive mechanism

14. The Committee, fully cognizant of the State party's willingness to promote experience sharing, notes that the practice of seconding State officials working in places of deprivation of liberty to National Preventive Mechanism bodies raises concerns as to the guarantee of full independence to be expected from such bodies (art. 2).

³ <http://www.internationalalllawbureau.com/index.php/un-special-rapporteur-on-torture-criticises-uk-secret-courts-plan/>.

The Committee recommends that the State party end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism bodies. It recommends that the State party continue to provide the bodies constituting the National Preventive Mechanism with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.

Inquiries into allegations of torture overseas

15. The Committee is deeply concerned at the growing number of serious allegations of torture and ill-treatment, including by means of complicity, as a result of the State party's military interventions in Iraq and Afghanistan. It welcomes the State party's assurances that it intends to "hold an independent, judge-led inquiry" and to publish as much as possible of the interim report of the Detainee Inquiry conducted by Sir Peter Gibson to examine the involvement of State security and intelligence agencies in "improper treatment of detainees held by other countries in counter-terrorism operations overseas". The Committee is concerned that the State party has not yet set a clear timeline for the establishment of the new inquiry which may result in the amendment of Section 134 (4) and (5) of the Criminal Act 1988, nor for the publication of the interim report of the Detainee Inquiry (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party establish without further delay an inquiry on alleged acts of torture and other ill-treatment of detainees held overseas committed by, at the instigation of or with the consent or acquiescence of British officials. The State party should ensure that the new inquiry is designed to satisfactorily address the shortcomings of the Detainee Inquiry, identified by a broad range of actors. In this regard, the Committee encourages the State party to give due consideration to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61). The State party should ensure that all perpetrators of torture and ill-treatment identified in the context of the inquiry are duly prosecuted and punished appropriately, and that effective reparation, including adequate compensation, is granted to every victim. Furthermore, the Committee urges the State party to speedily publish the content of the interim report of the Detainee Inquiry to the fullest extent possible.

Accountability for abuses in Iraq

16. The Committee notes the establishment of some inquiries into allegations involving the State party's army in Iraq, such as the Baha Mousa Public Inquiry and the ongoing Al-Sweady Public Inquiry. It notes the establishment of the Iraq Historic Allegations Team set up to investigate allegations of abuse of Iraqi citizens by British service personnel, but remains concerned that its composition and structural independence is further challenged, as close institutional links with the Ministry of Defence remain. In view of the number and persistence of legal claims submitted by Iraqis who allege that they were subject to abuse by British officers in Iraq between 2003 and 2009, the Committee regrets that the State party continues to resist a full public inquiry that would assess the extent of torture and ill-treatment and establish possible command responsibility for senior political and military figures. Furthermore, it is deeply concerned that, to date, there have been no criminal prosecutions for torture or complicity in torture involving State's officials, members of the security services or military personnel, although there have been a number of court martials of soldiers for abuses committed against civilians in Iraq (arts. 2, 13, 14 and 16).

The Committee urges the State party to take all necessary measures to establish responsibilities and ensure accountability, including setting up a single, independent public inquiry to investigate allegations of torture and cruel, inhuman or degrading

treatment or punishment in Iraq from 2003 to 2009. In accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, the State party should also ensure that all victims of torture, cruel, inhuman or degrading treatment obtain redress and are provided with effective remedy and reparation, including restitution, fair and adequate financial compensation, satisfaction and appropriate medical care and rehabilitation.

Appropriate penalties for torture

17. The Committee is deeply concerned that despite the gravity of the injuries inflicted by British soldiers on Baha Mousa, the investigation of and prosecution for his death has led to the acquittal or clearance of charges for six of the accused officers, and only one year imprisonment for the corporal who pleaded guilty to inhumane treatment (arts. 4, 13 and 14).

Recalling that penalties commensurate with the gravity of the crime of torture are indispensable in order to have a successful deterrent effect, the Committee urges the State party to ensure that torture or complicity in torture committed by State party's officials, members of the security services or military personnel abroad are subjected to appropriate penalties commensurate with the seriousness of the crime, in line with article 4 of the Convention.

Reliance on diplomatic assurances

18. The Committee notes with concern the State party's reliance on diplomatic assurances to justify the deportation of foreign nationals suspected of terrorism-related offences to countries in which the widespread practice of torture is alleged (arts. 3 and 13).

The Committee calls on the State party to ensure that no individual – including persons suspected of terrorism, who are expelled, returned, extradited or deported – is exposed to the danger of torture or other cruel, inhuman or degrading treatment or punishment. It urges the State party to refrain from seeking and relying on diplomatic assurances “where there are substantial grounds for believing that [the person] would be in danger of being subjected to torture” (art. 3). The more widespread the practice of torture or other cruel, inhuman or degrading treatment, the less likely the possibility of the real risk of such treatment being avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. Therefore, the Committee considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention.

Transfer of detainees to Afghanistan

19. The Committee takes note of the decision of the Secretary of State for Defense to maintain the moratorium on the transfer of detainees to Afghan authorities due to the risk of torture and ill-treatment, and welcomes the assurance provided by the State party that it will not transfer detainees to countries where it deems that there is a real risk of serious mistreatment or torture (art. 3).

The Committee recommends that the State party adopt a clear policy and ensure in practice that the transfer of detainees to another country is clearly prohibited when there are substantial grounds for believing that he or she would be in danger of being subjected to torture. It further recommends that the State party recognize that diplomatic assurances and monitoring arrangements cannot be relied upon to justify transfers when such substantial risk of torture exists.

Deportations to Sri Lanka

20. The Committee notes that on 28 February 2013 the High Court ordered a suspension of the return of Tamils – whose asylum applications were not successful – to Sri Lanka, given the allegations and evidence that some Sri Lankan Tamils have been victims of torture and ill-treatment following their forced or voluntary removal from the State party. The Committee is nevertheless concerned that the State party has not yet reflected such evidence in its asylum policy (art. 3).

The Committee recommends that the State party observe the safeguards to ensure respect for the principle of non-refoulement, including consideration of whether there are substantial grounds to indicate that an asylum seeker might be in danger of torture or ill-treatment upon deportation to his or her country of origin. The Committee calls on the State party to conduct a thorough risk assessment of situations covered by article 3 of the Convention, notably by taking into consideration evidence from Sri Lankans whose post-removal torture claims were found credible, and revise its country guidance accordingly.

Shaker Aamer

21. The Committee notes with great concern the case of Shaker Aamer, the last British resident held in Guantanamo Bay, who has been detained without charges for over 11 years and whose condition is rapidly deteriorating, particularly in the context of the current hunger strike. The Committee regrets that despite the State party's "best endeavours" to secure his release, there are no encouraging signs of this happening soon (arts. 2 and 16).

The Committee urges the State party to consider all possible measures to ensure the prompt release and return to the United Kingdom of Shaker Aamer, who has been detained without charges for over 11 years. In this context, the State party should follow up on its June 2012 and May 2013 requests to the Secretary of Defence of the United States of America to exercise a "waiver", as contained within the National Defence Authorisation Act 2012, to enable the release of Shaker Aamer.

Universal jurisdiction

22. The Committee notes with satisfaction the reference made in the State party's strategy for the Prevention of Torture (2011-2015) to the obligations under the Convention to ensure that there are no "safe havens" for individuals accused of torture, and welcomes legislative changes which widen the competence of United Kingdom courts to prosecute international crimes. The Committee is however concerned that, in parallel, legislation has been passed (Police and Social Responsibility Act, 2011), making it more difficult for private arrest warrants to be issued where a suspect is present in the State party's territory (art. 5).

The Committee recommends that the State party take all necessary steps to effectively exercise universal jurisdiction over persons allegedly responsible for acts of torture, including foreign perpetrators who are temporarily present in the United Kingdom. In addition, the Committee recommends that the State party fill the "impunity" gap, identified by the Human Rights Joint Committee in 2009⁴, by adopting the Torture (Damages) Bill that would provide universal civil jurisdiction over some civil claims.

⁴ United Kingdom, Parliament, 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), available at: <http://www.refworld.org/docid/4a81460c2.html>.

Transitional justice in Northern Ireland

23. The Committee welcomes the development by the Northern Ireland Office and Northern Ireland Department of Justice of a “package of measures” to deal with the past in Northern Ireland, including the establishment of mechanisms to carry out historical investigations into deaths related to the conflict, including of victims of torture and ill-treatment. However, it notes reports of apparent inconsistencies in investigation processes in which military officials are involved which delay or suspend investigations, thus curtailing the ability of competent bodies to provide prompt and impartial investigations of human rights violations and to conduct a thorough examination of the systemic nature or patterns of the violations and abuses that occurred in order to secure accountability and provide effective remedy. In addition, the Committee is concerned about the State party’s decision not to hold a public inquiry into the death of Patrick Finucane (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.

Historical Institutional Abuse Inquiry

24. While welcoming the establishment in May 2012 of the Historical Institutional Abuse Inquiry, which will investigate the experiences of abuse of children in residential institutions in Northern Ireland between 1922 and 1995, the Committee regrets that some victims, such as women over 18 who were confined in Magdalene Laundries and equivalent institutions, as well as clerical abuse survivors, will fall outside the remit of the inquiry (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party conduct prompt, independent and thorough investigations into all cases of institutional abuse that took place in Northern Ireland between 1922 and 1995, including of women over 18 who were detained in Magdalene Laundries and equivalent institutions in Northern Ireland, and ensure that, where possible and appropriate, perpetrators are prosecuted and punished, and that all victims of abuse obtain redress and compensation, including the means for as full as possible rehabilitation, in accordance with the Committee’s general comment No. 3 on the implementation of article 14 by States parties.

Use of evidence obtained by torture

25. The Committee notes the House of Lords’ judgment in the case of *A and others v. Secretary of State for the Home Department* (No. 2) [2005] (UKHL71) (CAT/C/GBR/5, para. 27) not to allow evidence obtained by torture to be admissible in legal proceedings. It is concerned, however, that the burden of proof on the admissibility of torture material continues to lie with the defendant/applicant (art. 15).

The Committee calls on the State party to ensure that where there is allegation that a statement was made under torture, the burden of proof is on the State. In addition, the State party should never rely on intelligence material obtained from third countries through the use of torture or other cruel, inhuman or degrading treatment.

Electrical discharge weapons (Taser)

26. While taking note of the guidance for England and Wales, which seeks to limit the use of electrical discharge weapons to situations where there is a serious threat of violence, the Committee expresses concern that the use of electrical discharge weapons almost doubled in 2011 and that the State party intends to further extend their use in the Metropolitan Police area. In addition, it is deeply concerned at instances where electrical discharge weapons have been used on children, persons with disabilities and in recent policing operations where the serious threat of violence was questioned (arts. 2 and 16).

The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons, and to strictly monitor and supervise their use.

Age of criminal responsibility

27. The Committee welcomes the enactment of the Criminal Justice and Licensing (Scotland) Act 2010, which raises the age of criminal prosecution from 8 to 12 years in Scotland. The Committee remains concerned, however, that criminal responsibility starts at the age of 8 in Scotland and at 10 in England, Wales and Northern Ireland and regrets the State party's reluctance to raise the age despite calls to do so from more than 50 organizations, charities and experts in December 2012 and the repeated recommendations made by the Committee on the Rights of the Child⁵ (arts. 2 and 16).

The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in general comment No. 10 (2007) on children's rights in juvenile justice of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (General Assembly resolution 40/33, annex) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (General Assembly resolution 45/112, annex).

Restraint of children

28. The Committee is concerned that the State party is still using techniques of restraint that aim to inflict deliberate pain on children in young offender institutions, including to maintain good order and discipline (arts. 2 and 16).

The Committee reiterates the recommendation of the Committee on the Rights of the Child to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished (CRC/C/GBR/CO/4). The Committee

⁵ See CRC/C/15/Add.135; CRC/C/15/Add.188; CRC/C/GBR/CO/4.

also recommends that the State party ban the use of any technique designed to inflict pain on children.

Corporal punishment

29. The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in *loco parentis*. In addition, it is concerned that some forms of corporal punishment are lawful in the home, schools and alternative care settings in almost all overseas territories and Crown dependencies.

The Committee recommends that the State party prohibits corporal punishment of children in all settings in the Metropolitan territory, Crown dependencies and overseas territories, repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

Immigration detention

30. The Committee notes that the expansion of immigration detention has prompted some reforms including the adoption of the Borders, Citizenship and Immigration Act (2009), aimed at streamlining immigration processes; the official disavowal of child detention and revised processes for dealing with Rule 35 of the Detention Centre Rules. The Committee remains concerned at:

(a) Instances where children, torture survivors, victims of trafficking and persons with serious mental disability were detained while their asylum cases were being decided;

(b) Cases of torture survivors and people with mental health conditions entering the Detained Fast Track (DFT) system due to a lack of clear guidance and inadequate screening processes, and the fact that torture survivors need to produce “independent evidence of torture” at the screening interview to be recognized as unsuitable for the DFT system;

(c) The absence of a limit on the duration of detention in Immigration Removal Centres (arts. 2, 3, 11 and 16).

The Committee urges the State party to:

(a) **Ensure that detention is used only as a last resort, in accordance with the requirements of international law, and not for administrative convenience;**

(b) **Take necessary measures to ensure that vulnerable people and torture survivors are not routed into the Detained Fast Track System, including by: (i) reviewing the screening process for administrative detention of asylum seekers upon entry; (ii) lowering the evidential threshold for torture survivors; (iii) conducting an immediate independent review of the application of Rule 35 of the Detention Centre Rules in immigration detention, in line with the Home Affairs Committee’s recommendation and ensure that similar rules apply to short-term holding facilities and (iv) amending the 2010 United Kingdom Border Agency, *Enforcement Instructions and Guidance*, which allows for the detention of people with mental illness unless their mental illness is so serious that it cannot be managed in detention;**

(c) **Introduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention.**

Detention conditions

31. The Committee is concerned about the steady increase in the prison population throughout the past decade and the problem of overcrowding and its impact on the suicide rate, cases of self-injury, prisoner violence and access to recreational activities. The Committee echoes the concerns raised by the National Preventive Mechanism in 2010 concerning deficiencies in access to appropriate mental health care and treatment and inappropriate placement of children. It is deeply concerned that children with mental disabilities can sometimes be placed in police custody in England for his or her “own interest or for the protection of others” (arts. 11 and 16).

The Committee urges the State party to strengthen its efforts and set concrete targets to reduce the high level of imprisonment and overcrowding in places of detention, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (General Assembly resolution 45/110, annex). It further recommends that the State party speedily implement the reforms undertaken with a view to reducing the reoffending rate. The State party should ensure that children with mental disabilities shall not, under any circumstances, be detained in police custody, but directed to appropriate health institutions. Detainees who require psychiatric supervision and treatment should be provided with adequate accommodation and psychosocial support care. The Committee also recommends that the State party step up efforts to prevent violence and self-harm in places of detention.

Women offenders

32. The Committee welcomes the adoption of new strategies for female offenders in England, Wales and Northern Ireland, aimed at reducing the number of women in custody and increasing the use of community sentences in combination with support and rehabilitation services. It further welcomes the Northern Ireland Minister of Justice’s plan to construct a separate custodial facility for women prisoners in Northern Ireland, and the steps taken by the Scottish government to implement the recommendations made by the Commission on Women Offenders. The Committee is nevertheless concerned at the unprecedented increase of women in prison over the last 15 years, at information that about half of them have severe and enduring mental illness, and at the disproportionate rate of self-harm amongst women prisoners (arts. 11 and 16).

The Committee recommends that the State party commence without further delay the construction of the new custodial facility for women prisoners in Northern Ireland and urgently implement its new strategy for female offenders, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Economic and Social Council resolution 2010/16, annex). The Committee recommends that the State party pay due attention to the recommendations of the Commission on Women Offenders (Scotland) and those contained in the Corston Report (England and Wales) and, in particular, ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.

Mid Staffordshire NHS Foundation Trust Public Inquiry

33. The Committee notes with interest the reports, published in 2010 and 2013, of the public inquiry, chaired by Robert Francis QC, into the , which highlight the failure of the National Health System’s managers and regulators to identify and act upon the problems at Mid Staffordshire Foundation Trust that led to some 400 to 1,200 deaths between 2005 and 2009. The Committee notes with particular concern the finding that the “system [...]

ignored the warning signs of poor care and put corporate self interest and cost control ahead of patients and their safety” (Press release, 6 February 2013) (arts. 11 and 16).

The Committee calls on the State party to act on its commitment to implement the recommendations contained in the Mid Staffordshire NHS Foundation Trust Public Inquiry reports, and particularly to establish a structure of fundamental standards and measures of compliance in order to prevent ill-treatment of patients receiving health-care services.

Declaration under article 22

34. The Committee regrets that the State party is “not yet convinced of the practical value of individual petition” and notes the concern of the House of Lords/House of Commons Joint Committee on Human Rights that the United Kingdom’s “slow progress in accepting individual petition [...] undermines its credibility in the promotion and protection of human rights internationally” (17th report, session 2004-2005, HL 99/HC 264) (art. 22).

The Committee recommends that the State party reconsider its position and make the declarations envisaged under article 22 of the Convention, in order to recognize the competence of the Committee to receive and consider individual communications.

Data collection

35. The Committee appreciates the State party’s efforts to provide it with detailed information, data and statistics, but regrets that it did not provide comprehensive and disaggregated data on investigations into allegations of torture and ill-treatment by law enforcement, security, military and prison personnel, nor on prosecutions as a result of operations conducted by law enforcement and prison personnel overseas. It also regrets that the delegation did not provide details on settlement or compensation received by victims of torture or ill-treatment, nor information about interrogation techniques and training.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, as well as on means of redress, including compensation and rehabilitation, provided to the victims. It should also provide information on educational training and programmes, including interrogation techniques, provided to all officials, including law enforcement, security and prison personnel.

Other issues

36. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

37. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

38. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee’s recommendations relating to (a) inquiries into allegations of torture overseas; (b) observance of safeguards ensuring respect for the principle of non-refoulement; (c) ensuring the prompt release and return to the United Kingdom of Shaker Aamer; (d) adopting comprehensive measures of transitional justice in Northern Ireland and (e) conducting prompt, thorough and independent investigations, as contained in paragraphs 15, 19, 20, 21, and 23 above.;

39. The State party is invited to submit its next report, which will be the sixth periodic report, by 31 May 2017. The Committee invites the State party to agree, by 31 May 2014, to follow the optional reporting procedure in preparing its report. Under this procedure, the Committee would send the State party a list of issues prior to submission of the periodic report and the State party's replies to the list of issues would constitute, under article 19 of the Convention, its next periodic report.
