

Chapter 40 Torture and Mistreatment

Key points about Torture and Cruel, Inhuman or Degrading Treatment

1. The British Government's policy is clear – we do not participate in, solicit, encourage or condone the use of torture or mistreatment for any purpose. We take all allegations or concerns of torture and mistreatment very seriously and will follow up with action, as appropriate.

You need to take urgent action if you receive an allegation that a British national has been subjected to torture or mistreatment, including dual nationals, or where you suspect that a person has been mistreated. This includes where the individual is not in detention, or has been released from detention. You should report the allegation immediately to Consular Directorate in London.

You should also make every effort to ensure the British national is safe and help them in getting urgent medical care if needed.

REDACTED INFORMATION OUT OF SCOPE OR AVAILABLE IN PUBLIC DOMAIN

Who can commit torture or mistreatment?

REDACTED INFORMATION OUT OF SCOPE OR AVAILABLE IN PUBLIC DOMAIN

6. Acts of torture are most commonly committed by police officers, prison officers, immigration officers and military personnel; however, they can sometimes involve health and legal professionals and other detainees following the instructions of public officials, or with their approval.

Action for Posts

10. How you handle an allegation will depend on your local infrastructure, diplomatic process and cultural attitudes to torture. Some countries will have an established reporting process and independent investigating bodies, others will not.

Before a case

- 📄 Prepare information on how to report an allegation. It would be helpful to have a flowchart or fact sheet which you can give to individuals. An example can be found at Annex 40B.
- 📄 On your list of local lawyers if possible identify those who can offer assistance in cases of torture and mistreatment.
- 📄 Victims of torture or mistreatment may want or need extra support. An individual may want legal advice on redress and reparation, or have longer-term assessment and rehabilitation needs. You should develop a list of relevant NGOs who may be able to offer clinical,

therapeutic or legal services which individuals can be signposted to. All local organisations should be included in the country specific Prisoner Pack.

- ☐ If you are in a country where there is a real risk that any individual who is detained may be tortured or mistreated (e.g. threat of terrorism, political regime, number of allegations of torture), please discuss your concerns as soon as you can with Consular Directorate, HRDD, political colleagues at Post and the relevant Geographical department. You should also identify any appropriate political lobbying opportunities where the issue of torture or individual cases could be raised.
- ☐ Countries are required to inform British Nationals who are arrested or detained in any way of their right to consular access under the Vienna Convention on Consular Relations 1963 (VCCR), and must notify the consulate without delay if the person concerned wants them to do so. The VCCR also entitles consular staff to visit and be *free to communicate* with their nationals. In some countries where torture is widespread we are not notified of an individual's detention and/or are denied timely access.
- ☐ Obtaining early access to our nationals is key. If you are in a country where this is a concern, you should consult London and the political team at Post about what to do. Your post should also develop country specific guidelines on what representations can be made, how to escalate representations if access is not granted, and a timeframe for escalating lobbying.
- ☐ Some countries require visits to prisoners to be approved by the Ministry of Foreign Affairs or equivalent. This can be a lengthy process and prevents timely access to a detainee who has allegedly been mistreated and may be at risk of further torture or mistreatment. If you are posted in a country where this is required you should consider whether there are alternative ways to gain access to an individual quickly, including by establishing good working relationships with individual facilities who may give you informal access.
- ☐ You should be able to meet with an individual in private. Some countries do not allow this. You should discuss potential lobbying on this issue with all relevant departments including political colleagues, particularly where lobbying could result in a complete refusal of visits.
- ☐ You should regularly assess what the potential negative and positive consequences of raising an allegation are in the country you cover. This information should be provided to an individual when they are considering if to make a complaint.

When you get a new case

Immediately

- ☐ If you find out about an allegation through any means other than during a visit, **you should see the individual as soon as possible, preferably within 24 hours** although this may depend on the allegation. You should not wait for a normal scheduled visit if dealing with a detainee.
- ☐ You should do your best to ensure the individual is **safe**. This may be through requesting a

transfer to a different prison, increasing the number of visits, or making regular phone calls.

- ☑ You should also do your best to help the individual gain access to **medical treatment** if necessary. Further guidance is set out below.
- ☑ You should manage expectations from the beginning – including explaining what we can and cannot do, and what the individual can expect from the authorities.
- ☑ If the allegation is disclosed at a visit or meeting you may need to do a follow-up visit shortly after the first. You should also arrange a follow-up meeting if an individual does **not** raise an allegation but you suspect that they may have been mistreated.
- ☑ **You may need to take action out of office hours if you are notified of an allegation.** You may need to assist an individual if medical treatment is urgently required, or if medical evidence needs to be obtained immediately, particularly in sexual violence cases, or if the individual remains in immediate danger.
- ☑ **You should report all allegations to London within 24 hours using the mistreatment allegation pro-forma (Annex 40C).** This should be sent to the Human Rights Adviser (HRA) in Consular Directorate in London, copying to your CCT mistreatment champion (Annex D), CCT desk officer, Consular Prisoner Team Mailbox, your CROM and your Post's political section if deemed necessary. This includes cases you have learnt about from others, including family members or representatives or reports from other agencies.
- ☑ The pro-forma should be completed with as much relevant information and specific details as possible. The pro forma should also be attached to Compass (as long as all information is unclassified). You should complete a form for every new allegation you receive.
- ☑ Good record keeping is **vital**. All details should be recorded on Compass. You should create a new compass case if there is not one already e.g. where the individual is not in custody. .
- ☑ **You should report an allegation even where the individual has requested that you do NOT share the information with anyone including your colleagues.**
- ☑ If you do not have specific details of the allegation when you first find out about it e.g. where a person writes to you and says that they have mistreated, **you must still report the allegation immediately and send further details after the visit or meeting.**
- ☑ Where the allegation is very serious e.g. systematic torture, or you receive a large number of allegations, you should make your Head of Mission aware of the case(s).
- ☑ If a detainee dies in custody and you suspect that their death may have been as a result of torture/mistreatment or it was a contributing factor, including the refusal of medical attention after such abuse, you must flag it up to key contacts in London. Guidance on deaths in custody provides further advice.
- ☑ If the incident involves military related equipment, for example, batons, special forces wearing body armour, tasers etc, you should also report the case to the Export Licensing

Desk Officer in the Human Rights and Democracy Department (HRDD).

- ☐ In the case of highly classified information, you should ask your Head of Mission how to proceed and who to share the information with.
- ☐ If a British national reports that other nationals are being, or have been, tortured or mistreated, you still have a responsibility to report it. You should refer to the FCO Torture and Mistreatment Reporting Guidance for advice. If a British national alleges that a foreign national was tortured or mistreated for the purpose of intimidating them or another British national, you should follow this guidance.

Do not

Do not judge the individual or their behaviour.

- ☐ Do not push the individual to provide more information than they are willing to give freely. Being asked a lot of questions, and the way it is done, can make the person feel like they are being interrogated.
- ☐ Do not show any doubt about their account. Victims often expect they won't be believed and so they are looking for things that reinforce this. Doing so may cause them more distress and result in them not telling you more.
- ☐ Do not try to persuade the individual to report the allegation if he/she does not want to. But do encourage them to if there is no risk in them making a complaint. You should tell the individual that you must report all allegations to other relevant colleagues.

During a case

Denial of consular access

11. If a visit is denied by the local authorities, you should notify London and discuss ways to push for consular access within 48 hours. There may be a negative reason for the refusal, for example to allow any physical signs of abuse to fade, to stop you finding out about the abuse, or to allow for it to continue. If the local authorities continue to deny access you need to consult London and the political section at post on how you can escalate your request.

Private visits

12. You should request that your visit be in private or at the very least out of earshot of anyone else, to allow for an effective degree of privacy, unless they feel more at ease with someone else present. An individual is less likely to confide in you if there are others present, whether they are a person in authority or a fellow prisoner.

If you are denied a private visit you should notify London and discuss possible options for raising this issue with the authorities within 48 hours. If private access is continuously denied you should consider how our concerns can be escalated.










Who should visit

13. Victims are more likely to disclose an act of abuse when they are able to build an element of trust with the person they are talking to. It is therefore preferable that the same consular official continues to visit the individual, although this may not be possible in some circumstances.

Frequency of visits

14. You may need to visit a victim of torture/mistreatment who is in custody more frequently than the standard visiting policy recommends (they are likely to be particularly vulnerable). Visiting can deter further mistreatment and also allows consular officers to make every effort to ensure that any medical treatment requested is being administered. If you have any questions on whether to visit you should consult the HRA in London. If it is impossible to visit the individual more, consult CCT and the HRA for advice on how to assist the British national.

What to do during a visit or meeting

-  You should first check that the individual feels safe. Be in listening mode and do not judge what they say to you. You should approach the conversation sensitively whilst trying to get as much detail as possible about the allegation(s), including dates, times, places, the details of the torture or mistreatment and the names of any officials involved.
-  The main issues are **Who did what to whom?** and **When, where, why and how?**
-  You should use open questions when speaking with the individual to help get this information. Annex 40H includes some suggested questions you can ask.
-  You should take notes of the allegation including any physical signs of abuse and injuries, whether the person shows or describes them to you, and how the individual states these have been sustained, but do not comment yourself on how they could have been sustained. You should also document them on a body map (Annex 40E).
-  You should also record any signs of psychological distress. This is important as a lack of physical signs of abuse does not mean that a person has not been mistreated.
-  If you are asked to take photographs you should consult Consular Directorate before taking any action.
-  You should ask if they would like us to take the allegations up with the relevant authorities. However, **do not ask for permission** if you are **unsure** if the allegation amounts to mistreatment and/or we are likely to advise the individual to make a complaint to the authorities themselves before we can assist further. You should seek advice from the HRA and your CCT mistreatment champion before offering to raise the allegation in these cases.
-  You should make clear that we are prepared to raise concerns vigorously, but do **not** set false expectations as to what this might achieve. You should ensure that individuals are fully informed about both the potential negative and positive consequences of raising their allegations so they can make an informed decision.
-  **You should only take case-specific action with the authorities with the direct consent of**

the individual . People may choose not to have allegations of torture or mistreatment raised with the authorities, as they may believe that it could exacerbate the situation. Posts should still report these allegations to London.

- ☑ An individual may not feel able to tell you about an allegation and their wishes if you did not have a private visit. If you have suspicions of torture in such cases, you should seek to visit again as soon as possible and press for proper free communication. Always make a note of who was present during a visit, or if the visit was private. The British national may need to be assessed by a doctor, not only for the purposes of treatment, but also to document the allegation (this information could subsequently be used in legal proceedings if a claim is made, as could any consular records). You should encourage the individual to seek medical assistance. If they are in detention you should ask them if they have seen a doctor, and if they have not, ask if they would like to. You can then raise this with the authorities, with their consent.
- ☑ You should provide the individual with a list of relevant local and where relevant UK-based NGOs who may be able to offer clinical, therapeutic or legal services.

Prison transfers or relocation

15. If you have concerns that the individual may continue to be mistreated, or they are worried that this may happen, we can consider supporting an internal prison transfer or transfer to another facility. We can also consider requesting relocation within a facility to another housing unit or wing if this is deemed more suitable. If there is a genuine risk you should consult your CCT mistreatment champion and HRA for advice on whether we can lobby for a transfer. If a transfer is not possible then you should discuss the possibility of making representations on specific conditions and safeguards with London.

If an individual does not want the allegation raised, you may have to consider other reasons to justify our request for a transfer.

What to do if you suspect torture or mistreatment

16. There may be instances where an individual does not disclose that they have been tortured or mistreatment but you are concerned that they have been. This may arise, for example, when you can see that the person has injuries but they say nothing. At the same time it is important to know that a person can have suffered torture without clear physical signs being present. Perpetrators sometimes deliberately use specific ways of torturing which do not leave obvious evidence.

If you are concerned that an individual has been tortured or mistreated but they do not tell you, you should report your suspicions to the HRA in London and try to do a follow up visit as soon as possible. At this visit you should gently encourage the individual to speak. If they still do not want to disclose any information and you remain concerned, you should conduct a follow up visit as soon as possible and continue on any subsequent visits to ask them how they are being treated and if there is anything they want to tell you.

You should note the reasons why you suspect the individual is being or has been mistreated and what follow up actions you took.

Helping a British National to make a complaint

17. You should tell the individual about ways in which they can make a formal complaint themselves. You should ensure that they are given the details at an appropriate time and help them submit the complaint if needed. An individual does not necessarily need to make an allegation themselves for us to raise our concerns with the authorities. Reporting an allegation themselves may put them in further danger, or at least they may believe that it will.

If a person does decide to make a formal complaint they may need some extra help. You should offer to be present when they report the allegation if they want you to be there, for example when they report the allegation to the prison warden or a prosecutor. You should only be there to offer emotional support to the individual at a difficult time; you are not expected to participate.

The individual may need a copy of the complaint they have made. You can ask for a copy to be given to the individual if they are, or their lawyer is, unable to obtain a copy.

Making a separate criminal complaint to the police

18. The Convention against Torture requires each state party to ensure that all acts of torture are offences under criminal law. An individual may wish to make a separate criminal allegation to the police, particularly if they are not in detention at that time. You should give them general information on the local police and the legal process so they know what to expect. You should also offer to accompany them to the police station as reporting the allegation can put the individual at risk or lead to further trauma.

Raising allegations on behalf of a British National

19. Our decision on whether to raise an allegation and how to do it will be decided by the individual circumstances of the case.

In some cases we may expect the individual to follow the local procedure for making a complaint before we can offer to raise the allegation. This may be because there is an effective and efficient independent investigative body in place or due to the nature of the allegations. This is country and case specific. Seek advice from the HRA and your mistreatment champion before taking action.

The main action we can take in response to claims of torture or mistreatment is to bring the case urgently to the attention of the relevant authority, with the individual's consent, demanding an end to the torture or mistreatment, and that the incident is investigated and the perpetrators brought to justice. It is not the role of consular officials to investigate allegations. There is a strong presumption by HMG that allegations of torture or mistreatment should be raised vigorously with the appropriate authorities, with the consent of the individual concerned.

Each case should be assigned a case manager at Post . The case manager is responsible for the running of the case and should develop a lobbying strategy with the help of the HRA, the CCT mistreatment champion and, in some cases, political colleagues at post. Multiple allegations from

one individual should be covered by the same case manager. If feasible, the consular official who is first told about the allegation should be the case manager.

20. We do not need a written statement of the allegation to raise our concerns; however, you may request it in cases where:

- ☐ you are having difficulty in establishing details
- ☐ where the process in the country concerned requires one for an allegation to be made
- ☐ when you are concerned that the allegation is false. Merely requesting a statement can prevent false or exaggerated allegations.

How to raise an allegation

21. We can raise allegations with the authorities in a number of ways. Be creative with your strategy; think about the specifics of a case and what steps are most likely to achieve an outcome. But remember it is **vital to raise allegations at the right level. You must ensure you do not raise the allegation directly with the alleged perpetrator and must always consider the risk to the individual involved, and any risk to third parties.** You should also always ensure that the individual is provided with updates on the steps that we have taken and any response received from the state in question.

22. One way to raise an allegation is formally through a Note Verbale. The Note should not imply that we are offering any view as to the substance of the allegations but should express concern at the allegations and request that a prompt, impartial investigation be undertaken. The Note will also request that HMG is informed of the result of any investigation undertaken.

23. If a Note is unlikely to work, you should consider other methods and levels of communication which could prevent further mistreatment and allow for an effective and prompt investigation.

- ☐ You could raise concerns with the government or regional department responsible for the force/individuals involved, such as the Department of Corrections or Headquarters of the police.
- ☐ Another option is to raise concerns with the head of a facility e.g. warden of a prison or chief of a police station.
- ☐ Alternatively you may be able to report allegations directly to an independent national prevention body.

24. All representations must be specific to the case and request the correct things. For example, you can request that the British national is provided medical treatment if needed, or that the investigation must be independent and not carried out by an authority involved in the case in any other way. We can also include non-notification or other VCCR issues if relevant. Please find examples of diplomatic representations at Annex 40F. You should use these examples to draft your note/letter and consult the HRA if you want or need any more advice.

25. You should always follow up the request for an investigation to ascertain the outcome, unless an individual expresses that they do not want you to. You should raise our concerns if it appears that the process was not comprehensive or impartial, or if you receive a reply of a simple denial which does not outline the steps taken to ascertain that outcome. You should ask the HRA for guidance on what further action to take, who will provide advice in consultation with the CCT mistreatment champion and other key contacts.

26. In raising a case we are requesting, and hoping, that the authorities conduct a fair, independent and impartial investigation into the allegation(s). The Istanbul Protocols is a set of international guidelines that provide guidance on how an independent investigation should be conducted. It is an official UN document. The protocol is an important source of help and a good starting point when considering what we should expect from an investigation. We should encourage countries to follow these guidelines. Some of the key guidelines can be found at Annex 40G.

27. Tips on how to approach cases, including a flowchart, can be found at Annex 40H. London can provide best practice examples if requested.

Raising allegations when a detainee has been released from custody

28. We can make representations after an individual has been released from custody and/or returned to the UK, with their consent, if they are unwilling for concerns to be raised at the time. If you are asked to raise concerns you should seek advice from the HRA. There is no prescribed time limit for making an allegation although some countries may have local laws which require reporting within a time frame. You should find out whether there is a deadline in your country. Making an allegation early can help towards an effective investigation.

When they don't want an allegation to be raised

29. If the individual does not want us to raise the allegation of torture or mistreatment with the authorities you should still record the allegation in as much detail as possible, as set out above, and advise the individual that we can take the allegations up in the future with the authorities concerned. You should continue to ask them on subsequent visits whether they wish us to raise any concerns. You should report the allegation to key contacts in London.

30. Where an individual does not want allegations of torture or mistreatment raised with the country concerned, but there are general concerns about torture in that country, or you are aware of similar complaints e.g. from EU partners, you should seek the HRA's advice on whether it would be appropriate (and safe for the British national concerned) for us to make general representations, either alone, or via others such as the EU Presidency. The individual should be asked whether they agree to such action before any lobbying is undertaken. These representations may in some cases form part of the wider political dialogue with your host Government.

31. The FCO may decide to make case-specific representations without express consent where there are exceptional circumstances that justify doing so. An example of this may be where the individual is mentally incapable of giving informed consent. Such cases should be determined on a case by case basis, taking the best interests of the individual into account. Again, the HRA should be consulted in all cases.

Medical assessments and treatment

32. If an individual asks you, or you feel it would be beneficial, to attend a medical assessment you should consult the HRA/CCT as it may be appropriate in some circumstances. We are not medically trained and cannot advise if an assessment is thorough and accurate, but attendance may ensure an assessment is completed, encourage the medical practitioner to follow procedure more closely or could help you understand why the individual believes they need further medical attention.

You do not need to take detailed notes however you should note any serious concerns you have about the process of the assessment if you are in the room e.g. the short length of the examination.

REDACTED INFORMATION OUT OF SCOPE

34. You may need to request urgent medical assistance without the individual's consent if you are concerned the injury may be fatal. Cases involving allegations of sexual violence may require specialist medical assistance. You should refer to Consular Guidance Chapter 7 Rape and other forms of sexual assault for further advice.

Access to lawyers

35. The individual may not realise the legal implications of their treatment, either on their ongoing case, or any claim they may wish to bring against the authorities. You should encourage them to raise the allegation with their lawyer, or provide them with the list of local lawyers again if they have not instructed a lawyer or wish to change. It is crucial that they have early access to legal advice, but remember we cannot provide legal advice ourselves or pay for a lawyer.

36. Having a lawyer, or a list of lawyers, is worthless if the individual is unable to contact their lawyer. If an individual raises concerns about not being able to access his/a lawyer, you should ask whether they would like you to raise the issue with the facility. If access is continuously denied you should discuss how we can raise this at a higher level with the HRA.

37. Acts of torture or mistreatment may impact on an individual's right to a fair trial. Consult the HRA in London if you have any concerns of this nature, particularly if you suspect that an individual was tortured to obtain a confession to use in criminal proceedings against them.

REDACTED INFORMATION OUT OF SCOPE

When the incident occurred outside of formal detention

39. You should arrange to see the individual as soon as possible, preferably within 24 hours, in a safe place. You should ask them where they would feel comfortable meeting, and invite them to the embassy or consulate if they would like to meet there. You should make sure that they do not need urgent medical assistance.

Remember that the individual may need extra support to do things like arrange a medical examination, report the allegation or engage a lawyer.

Action for Consular Directorate

40. If you hear first about an allegation from somebody else, e.g. a family member, and the individual is still in another country, you must notify post immediately so they can act on the allegation. If the individual has returned to the UK, you should contact them directly to discuss the allegation.

If Post instructs you, pass details on to next of kin/ named person *if* the victim asks you to and for non competent children and young people (See Chapter 3, Children and Young People – Mental Capacity and Competence).

You should ensure that the individual is provided with updates on the steps that we have taken and any response received from the state in question when they are back in the UK.

When you have contact with a victim

41. Please remember the key points above on how to approach a person who alleges torture or mistreatment, as well as the guidance for Posts. This is especially important if an individual tells you about a new allegation.

Support agencies

42. Upon return to the UK, ask the individual if they would like contact details for support organisations, some of which are listed at the end of the Chapter. If the individual is the victim of rape or other form of sexual assault, please also consult

Where to go for more guidance Chapter 7 Rape and other forms of sexual assault for specialist support agencies.

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