



## **UN Committee on Human Rights (CCPR)**

### **Concluding Observations of 140<sup>th</sup> session, examination of the UK**

#### **Briefing for the UK NPM – July 2024**

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In February 2024 the UK NPM submitted evidence to the CCPR's 140<sup>th</sup> session concerning:

- Progress made by the UK on the Committee's list of issues; and The
- UK State report to the Committee.

The NPM submission responded to the UK's State report where it related to the conditions and treatment of people in detention, as well as highlighting significant human rights concerns in UK detention settings that were not covered by the list of issues or the UK's State report. The NPM's submission also included a supplementary section on detention in Northern Ireland, as well as incorporating evidence from Northern Ireland throughout, to address the omission by the Committee and the UK of any evidence on detention in Northern Ireland.

The CCPR examined evidence regarding the UK's progress on upholding its obligations under the ICCPR in its 140<sup>th</sup> session, held in March 2024. The UK NPM gave evidence which helped direct the Committee's questioning of the UK representatives which informed the Concluding Observations of the CCPR 140<sup>th</sup> session. Of note for the NPM are paragraphs 15, 24, 25, 26, 27, 29, 34, 35, 36, 37, 42 and 43 as detailed below.

This brief is intended to outline the impact of the NPM's submission, constructed with evidence from inspection and monitoring visits, and to point to any actions the UK NPM can take in light of the CCPR's recommendations.

#### **Paragraph 15(c) Equality and non-discrimination**

1. The UK NPM's submission highlighted concerns from inspections in Northern Ireland which found instances of discrimination by staff at one prison based on religious belief. In England and Wales, the experience of black prisoners and staff members indicates persistent discrimination based on race, and force is used against black prisoners more frequently than against other groups. As well as discrimination based on protected characteristics, standards of mental health care across the prison estate, and of pre-natal care in the women's estate, demonstrate that prison rules and international standards on access to health services without discrimination on the grounds of prisoners' legal situation are not being fulfilled in the UK.
2. Paragraph 15(c) of the concluding observations outlines general recommendations on duties of non-discrimination which are applicable to sites of detention. The UK should increase its efforts to prevent acts of discrimination, including by ensuring adequate training for civil servants, law enforcement officials and bodies, the judiciary and public prosecutors on racial, ethnic and cultural awareness.
  - a. The NPM is in a position to monitor the content of such training and its impact in the work of those working in detention settings.

### **Paragraphs 24-27: The prohibition of torture and cruel, inhuman or degrading treatment or punishment**

3. The NPM submission noted as an outstanding matter of concern the fact that the Criminal Justice Act 1988 provides a defence for alleged perpetrators of torture where there is “lawful authority, justice or excuse”.
4. Concluding observations paragraphs 24 – 27 reiterated concerns that the definition of torture under the Criminal Justice Act 1988 (Section 134(4) and (5)) maintains a defence for individuals charged with torture if they can demonstrate “lawful authority, justification or excuse”. This can be interpreted as permission, rather than prohibition, of acts of torture. The UK sees the definition as necessary to cover situations where “an official incidentally inflicts severe pain or suffering in the performance of their duties” and does not plan to reform the defence to torture.
  - a. The NPM should be aware of the diverging understanding of an absolute prohibition of torture, maintaining the position that the right not to be subject to inhuman or degrading treatment cannot be limited or restricted in any way or for any reason. This should feature in any meetings with new Ministers.
5. The Committee urged the UK to review this legislation with a view to repeal any possible defence of torture in accordance with Article 7 ICCPR and other international standards.
6. The Committee also recommended that all individuals considered to have “lawful authority” receive proper guidance, training and oversight to ensure torture or other forms of ill-treatment are never used, whether intentionally or incidentally.
  - a. The Office of the United Nations High Commissioner for Human Rights (OHCHR) notes that prevention operates via mitigation (direct prevention) and deterrence (indirect prevention). Mitigation involves reducing the risk factors and eliminating possible causes of torture before it takes place, through training, education and monitoring. The NPM can monitor whether training and education is adequate to prevent any “incidental” acts of torture and noting whether legislation and practice creates an environment where torture is not likely to occur. An effective preventive strategy requires political will, publicly stated and therefore able to be monitored, including through legislative provisions.<sup>1</sup>

### **Paragraphs 26-27: Principles Relating to the Detention and Interviewing of Detainees**

7. The UK NPM report reiterated that there is currently no independent NPM visiting, monitoring or inspection of overseas military detention facilities, meaning the preventive function served within the UK is not extended here.
8. The CCPR recommended the UK should continue efforts to ensure prompt review of the 2020 Principles Relating to the Detention and Interviewing of Detainees, to ensure clear and absolute prohibition of torture, unlawful killing and extraordinary rendition, eliminating issues of subjectivity created by the application of the “presumption not to proceed” principle. It should evaluate diplomatic assurances to ensure renditions do not occur under UK jurisdiction and ensure all investigations and proceedings regarding the involvement of British officials are carried out thoroughly, independently and within a reasonable time period, and that those found responsible are held accountable and that all proceedings are made public.

### **Paragraph 29: Counter-terrorism measures**

9. Under counter-terrorism measures (paragraph 29) the Committee recommends that the UK review its counter-terrorism legislation to ensure compliance with the ICCPR,

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<sup>1</sup> [Torture Prevention Guide.pdf \(ohchr.org\)](#)

and with principles of legality, certainty, predictability and proportionality, particularly regarding the definition of terrorism and maximum period of pre-charge detention in terrorism cases.

### **Paragraphs 34-35: Conditions of detention**

10. The NPM's submission listed findings across the prison estate of overcrowding and overcapacity in prisons, too-little time out of cell, a restricted regime with lack of access to progression activities, all exacerbated by staff shortages (particularly in mental healthcare teams) and lack of sufficient training. These conditions contributed to high levels of drug use, violence, self-harm, and suicide, and the over-use of segregation units for mental health. A number of prisoners in these units in Scotland had experienced conditions amounting to solitary confinement. The result was a prison service struggling to accommodate prisoners safely and decently, with conditions compromising prisoner privacy and dignity.
11. The NPM submission cited a 2023 Thematic Review Of Segregation In Scottish Prisons that found what the NPM considers to be very serious torture and ill-treatment concerns, including and up to direct mistreatment and abuse by prison staff. Mental health decline, lack of meaningful activity and time outside of these cells are just some of the specific issues of concern.
12. The NPM's evidence on material conditions in the UK's immigration estate was broadly positive, but one site raised serious concerns – overcrowding, close contact and sharing of blankets in “squalid conditions” at Manston STHF ran risks of infection, and one detainee had passed away from diphtheria.
13. In police custody, the NPM submission demonstrated consistent issues with the use of anti-rip clothing being used without risk information, often by force, and potentially as a punitive measure showing clear risks to detainee dignity and potential ill-treatment.
14. In its concluding observations the Committee responded to these concerns by highlighting cumulative deleterious effects on prisoners due to chronic overcrowding, poor living conditions and lack of purposeful regimes, of children remaining in cells for 22-23 hours daily, and of segregation, solitary confinement, restraints and strip-searches in YOIs in Scotland. Of particular concerns were the increases in self-inflicted deaths and self-harm despite measures taken. It recommends the UK intensify efforts to ensure conditions comply with the Nelson Mandela Rules, particularly:
  - a. Reducing overcrowding through wider application of non-custodial measures (Tokyo Rules)
  - b. Limiting the use of solitary confinement and administrative or disciplinary segregation as a measure of last resort, for as short a time as possible, ensure use of such measures is subject to judicial review.
  - c. Ensuring body search procedures are strictly supervised, that invasive searches are only used in exceptional cases and in the least intrusive manner possible, with full respect for dignity and gender identity.
  - d. Increasing efforts to prevent self-inflicted deaths and self-harm in custody and ensuring cases are independently and thoroughly investigated.

### **Paragraphs 36-37: The Mental Health Act 1983**

15. The NPM submission and evidence recorded deep concern for mentally unwell prisoners waiting unacceptably long times for transfer to specialist mental health inpatient facilities for treatment under Mental Health Acts. This included women being sent to prison solely on mental health grounds, under remand for “own protection” under the Bail Act 1976, or to prison as a “place of safety” under the Mental Health

Act 1983, which is very concerning. Prisons are not an appropriate or therapeutic environment for people who should be receiving proper medical treatment for mental health.

16. The concluding observations express concern that the Mental Health Act 1983 provides for involuntary, compulsory treatment and detention of people with learning disabilities and/or autism, and that the average length of detention is over 2 years. The Committee recommends repeal of this legislation and associated practices, and intensified efforts to guarantee sufficient community-based mental health services to provide preventive support.
  - a. The NPM notes that the new Government has announced it will introduce legislation to modernise the Mental Health Act. The NPM is in a position to recommend a time limit and monitoring responsibilities for mental health transfers and can also engage with policy makers on the necessary changes to the Act outlined in Paragraphs 15 and 16. Future NPM work can also focus on the experiences of people with learning disabilities or autism in mental health detention or under Deprivation of Liberty Safeguards.

#### **The principle of non-refoulement**

17. The Committee recommends the withdrawal of the Safety of Rwanda (Asylum and Immigration) Bill (now Act) in order to strictly uphold the principle of non-refoulement in law and practice.
  - a. The UK NPM notes that in July 2024, the new Government announced it will not continue the previous Government policy to deport immigrants to Rwanda.

#### **Paragraphs 42-43: Indefinite and extended detention**

18. In immigration detention, the NPM submission showed that detainees are being held for too long, particularly detainees for whom there do not appear to be realistic chances of deportation taking place. Without a definitive time limit for detention, these individuals are in practice held in indefinite detention, which can have profound effects on their wellbeing. In addition to existing findings, the NPM submission noted that the legal framework had changed since the UK Government submitted its report, with legislation now in place to allow for detention without realistic prospects of removal.
19. In prisons, the NPM submission outlined the ongoing harms of indeterminate sentences; due to their lack of release date, IPP prisoners do not enjoy adequate access to rehabilitation, while the “feelings of hopelessness and despair” resulting from a lack of release date contributed to high levels of self-harm and to suicides.
20. The Committee noted the lack of a fixed timeline on the duration of immigration detention and that many people are held for more than 28 days, as well as an increase in cases of unlawful use of immigration detention. The Committee is concerned that the Immigration Act 2023 expands the powers and application of immigration detention to 7-day detention of pregnant women, the detention of children, and automatic detention up to 28 days without access to immigration bail or judicial review. It recommended the establishment of a statutory time limit and that the UK ensure detention is only used as a measure of last resort for as short a time period as possible, and that it increase alternatives to detention (especially for children, pregnant women and families with children) that respect the right to privacy and other human rights.
  - a. Given the July 2024 announcement that the Government will be introducing new legislation on asylum processing, the UK NPM can communicate recommendations on a statutory time limit to policy makers.