Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: OL GBR 16/2025
(Please use this reference in your reply)

28 October 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 52/7, 53/4, 58/14 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the following five pieces of legislation in the United Kingdom: National Security Act 2023; Overseas Operations (Service Personnel and Veterans) Act 2021; Justice and Security Act 2013; International Criminal Court Act 2001; and the Criminal Justice Act 1988.

We respectfully refer your Excellency's Government to relevant treaty obligations that reinforce the absolute (*jus cogens*) prohibition of torture or other cruel, inhuman or degrading treatment or punishment, namely articles 1, 2, 4, 12, 13, 14 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United Kingdom ratified on 8 December 1988; article 7 of the International Covenant on Civil and Political Rights (ICCPR), which the United Kingdom ratified on 20 May 1976; and article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which the United Kingdom ratified in September 1953 and which forms part of United Kingdom law via inter alia the Human Rights Act of 1998.

We further refer to ICCPR articles 2(3) (right to effective remedy), 6 (right to life) and 9 (liberty and security of person).

In this communication, we do not provide a comprehensive analysis of the different legislation and their compatibility with international human rights standards. Rather we analyse those provisions falling within the scope of the mandates entrusted to us by the Human Rights Council.

1. National Security Act 2023

That National Security Act 2023 (NSA) addresses threats to security. We express concern that this Act could provide immunity for torture and deny redress to survivors which is contrary to the absolute prohibition on torture and contrary to obligations under CAT to investigate, prosecute and provide redress

for torture.

Article 2 of the CAT provides that no exceptional circumstances may be invoked to justify torture. The Committee Against Torture ("Committee") emphasizes that "exceptional circumstances" include circumstances of a state of war or threat thereof, internal political instability, public emergency, any threat of terrorist acts, and violent crime as well as armed conflict, international or non-international.[1] This includes responses to threats of international terrorism adopted by State parties - those responses must conform to the obligations in CAT.[2]

Section 30 – defence

Section 30 of the Act provides a defence to ministers and officials and appears to grant immunity if a person shows their act was "necessary for the proper exercise of a function of an intelligence service" or "necessary for the proper exercise of a function of the armed forces relating to intelligence". We observe that section 30 fails to define "necessary," leaving the scope and limits of this defence vague and open to potentially broad interpretation. We express concern that what constitutes "necessary" may be interpreted to include serious human rights abuses and permit officials to justify their complicity in torture or extrajudicial killings. Section 30 contains no reasonableness or proportionality criterion to limit its scope.

The provision could effectively grant legal immunity for participation by UK officials in serious international crimes, such as extrajudicial killings (for instance, resulting from drone operations or intelligence sharing), torture and cruel, inhuman or degrading treatment or punishment and enforced disappearances stemming from extraordinary renditions. For example, where a UK official transmits information that is subsequently used in an interrogation involving torture – a scenario that may amount to aiding or abetting torture under section 134 of the Criminal Justice Act 1988 – section 30 could be invoked to avoid liability. Such impunity would be inconsistent with the UK's obligations to ensure effective remedies and accountability under international human rights and humanitarian law.

It is of particular concern that section 30 appears primarily tailored to protect individuals operating in the UK (in respect of extraterritorial offences), rather than military or intelligence personnel deployed overseas, who are already subject to a separate legal regime under section 7 of the Intelligence Services Act 1994.[3] So-called "section 7 authorisations" already provide a legal framework for evaluating the lawfulness of national security operations, including those conducted extraterritorially. In addition, the Serious Crime Act 2007 separately provides a defence of "acting reasonably," which allows courts to consider the purpose of the conduct and the authority under which it was carried out. This enables officials to argue that their actions were taken in good

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1 Committee Against Torture, General Comment No. 3 (2012), para. 5.

2 Report of the Committee Against Torture, A/57/44, "Statement of the Committee in connection with the event on 11 September 2011", paras. 17 and 18.

3 https://www.legislation.gov.uk/ukpga/1994/13/section/7.

faith and in accordance with national security functions. The introduction of an additional statutory defence in section 30 of the NSA therefore appears unnecessary, and risks creating overlap and ambiguity while expanding immunity in ways that could weaken accountability for serious violations of international law.

We are also concerned that section 30 of the NSA risks undermining the ability to establish the criminal responsibility of commanders and superiors for acts of torture, by introducing a defence that may shield those who order, encourage, or facilitate such conduct. Under UK law, such individuals may be held criminally liable either through (a) the offence of conspiracy under sections 1 or 1A of the Criminal Law Act 1997, or (b) aiding and abetting torture under section 134 of the Criminal Justice Act 1988. UK case law affirms that liability may arise where an individual encourages or assists in the commission of torture at the time,[4] or encourages or assists it beforehand.[5] Public officials who issue orders for torture, even without directly participating, may be prosecuted for both torture and conspiracy. In addition, section 65 of the International Criminal Court Act 2001 embeds the principle of superior responsibility into domestic law, allowing for the prosecution of military commanders or superiors for international crimes including genocide, crimes against humanity, and war crimes, when committed by subordinates under their effective control. Section 30 appears to jeopardise these accountability mechanisms by creating the possibility of a statutory defence that could be invoked to avoid liability for grave breaches of international law.

Amnesties provided in domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. We understand that the Chief Prosector of the ICC at the time indicated that a clause that protects ministers from domestic prosecution may mean these cases are admissible before the ICC.[6] This not only heightens legal exposure for UK officials but also risks diminishing the UK's global leadership in accountability and human rights. The Prosecutor suggested that the provision would be "clearer" if it expressly excluded serious human rights abuses.[7]

Sections 85-88 – limits on civil damages

In addition, sections 85-88 of the Act permit the reduction or denial of civil damages payable by the Crown to victims on the basis of allegation of "terrorist wrongdoing", to ensure that compensation is not used to support terrorism.[8] This

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4 *R v. Millar* [1970] 2 QB 54.

5 *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (Amnesty International intervening) (No. 3)* (1999) 2 All ER 97.

6 Reprieve, Annual Report 223, https://reprieve.org/wp-content/uploads/sites/2/2024/05/2024_05_09_PUB-Reprieve-2023-Impact-Report-Compressed-3_compressed.pdf, p. 26; The Times, Ministers could face Hague trials if UK spy law gives them immunity, 23 February 2023, https://www.thetimes.com/uk/politics/article/ministers-could-face-hague-trials-if-uk-spy-law-gives-them-immunity-8sb2g0q6q.

7 https://www.the mes.com/uk/policics/article/ministers-could-face-hague-trials-if-uk-spy-law-gives-them-immunity-8sb2g0q6q.

8 Explanatory Notes, https://www.legislation.gov.uk/ukpga/2023/32/pdfs/ukpgaen_20230032_en.pdf.

may place an undue burden on survivors of torture and undermine survivors' rights without due process. The Committee Against Torture has clearly stated that "under no circumstances may arguments of national security be used to deny redress for victims".[9] Victims of torture and other serious rights violations have an enforceable right to fair and adequate compensation (CAT art. 14 and articles 2(3), 6, 7 and 9 of the ICCPR).

We are concerned that the provisions could allow the UK Government to apply for damages awarded to victims of torture and other serious abuses overseas to be reduced, potentially to zero, even after liability has been established. "Terrorist wrongdoing" is a broad and vaguely defined category that extends beyond the proven commission of terrorist offences to include "other involvement in terrorism-related activity", as defined under the Terrorism Prevention and Investigation Measures Act 2011. We are particularly concerned that this mechanism may apply to survivors who have never been convicted of a terrorism-related offence, or whose alleged conduct occurred in foreign jurisdictions where "terrorism" is used to target dissidents, journalists, and human rights defenders. As a result, survivors of torture may be denied redress on the basis of allegations that have never been tested or upheld in a court.

We are of the view that the Act should be amended to explicitly exclude serious human rights abuses, including torture and ill-treatment, from any statutory defence or immunity. The right of torture survivors to damages should also be amended so that they cannot be reduced or denied on the basis of national security.

The UK already possesses extensive legal powers to prevent the use of damages or other funds to support terrorism, such that the new power is unnecessary. Existing law allows for the freezing of any assets suspected of being used for terrorist purposes, and is a more targeted and appropriate tool to apply to court-awarded damages.

2. Overseas Operations (Service Personnel and Veterans) Act 2021 (OOA)

Under the OOA, civil claims for personal injury or death related to overseas operations conducted by UK armed forces must be brought before the later of either the end of a period of six years beginning with the date on which the act complained of took place or the end of the period of 12 months beginning with the date of knowledge. Under section 7(5)(b) of the Human Rights Act 1998 (HRA), however, the standard limitation period is one year for bringing proceedings against a public authority, which courts can extend if they consider a longer period to be "equitable having regard to all the circumstances".

The OOA, however, stipulates that courts must exercise such discretion under the HRA in accordance with the above statutory limitations in the OOA and additional criteria for determining whether doing so would be "equitable having regard to all the circumstances" as per 7A(2) of the OOA.

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[9] Committee Against Torture, General Comment No. 3 (2012), para. 42.

As such, the OOA makes it more difficult for individuals to bring human rights claims beyond the standard one-year statutory limit in the HRA and within the six-year period by requiring judges to consider additional factors when deciding under section 7(5)(b) of the Human Rights Act 1998 whether it is "equitable having regard to all the circumstances" to extend the standard limitation period of one year normally applied in the HRA. The factors include the likely impact of the operational context on the ability of members of armed forces to remember events fully or accurately; the extent of dependence on the memories of such individuals; and the likely impact of the proceedings on the mental health of a witness who is or was a member of the armed forces.

We are concerned that the additional factors to determine whether claims under the HRA could be brought beyond the standard one-year limitation period could prevent potential victims of serious violations such as torture or other ill-treatment from pursuing a claim against the UK. We are also concerned that the maximum six-year limitation period would also prevent potential victims of serious violations such as torture or other ill-treatment from pursuing a claim against the UK Government after six years. By removing judicial discretion to allow meritorious claims to proceed beyond the limitation period, the OOA appears to undermine the right to an effective remedy as enshrined in article 14 of the CAT and articles 2(3) read in conjunction with articles 6, 7 and 9 of the ICCPR.

The absolute prohibition on torture and the *jus cogens* status of torture does not permit any statutes of limitations.[10] Limitation periods are incompatible with the absolute character of the prohibition on torture and State's obligations to investigate, prosecute and punish torture under articles 12 and 13 of CAT. Limitation periods are also contrary to article 14 of the CAT which obligates States to ensure that the right to redress is effective. States must ensure victims can access their rights to remedy and to obtain redress "regardless of when the violation occurred."[11]

We refer to OL GBR 6/2020 about the proposed Overseas Operations (Service Personnel and Veterans) Bill 117 2019-21 at the time, which contained a concern about the six-year limitation period. We received a reply dated 14 August 2020 which indicated that a six-year limitation was considered to be a reasonable timeframe.[12]

We also refer to the Committee against Torture's 8 June 2022 List of Issues prior to the submission of the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland ("List of Issues") which requested indication on whether the six-year statute of limitations would be removed for civil claims.[13] The UK's 17 July 2023 Response to the List of Issues ("UK's Response") did not contain a specific comment on the limitation period.

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[10] See A/HRC/52/30, "Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture", para. 21.
[11] Committee Against Torture, General Comment No. 3 (2012), paras. 38 and 40.
[12] UK Mission Geneva, Reply to OL GBR/2020, Annex pg. 1.
[13] CAT/C/GBR/QPR/7, para. 18.

We also refer to the Human Rights Committee 3 May 2024 Concluding Observations on the eighth periodic report of the UK ("Concluding Observations") that recommended that legislative and other steps should be taken to ensure that all violations committed by British officials and members of the armed forces, including those committed overseas, are investigated, prosecuted as appropriate, and duly sanctioned without a time limitation, including by repealing or amending the Act.[14]

In addition, the Act does not contain a limitation period for members of the armed forces to bring civil claims which creates a discriminatory system that is incompatible with international law.

We are of the view that the six-year limitation period on civilian claims is contrary to the obligation to ensure the right of victims of torture and other serious human rights violations to effective redress and recommend it be repealed.

There are often valid and compelling reasons why a claimant may not be able to bring a case within six years. Delays may result from the nature of the harm itself, such as the late onset or diagnosis of psychological trauma or other medical conditions. In other instances, foreign claimants may face significant logistical barriers, including the difficulty of accessing justice in a foreign legal system or obtaining legal representation. Claims involving secret detentions, extraordinary rendition, or covert operations may also be delayed due to the inaccessibility of relevant evidence, or the secrecy and concealment surrounding the harm suffered. Many potential claimants are not initially aware that their treatment constituted a human rights violation or that they have a right to seek redress.

For victims of sexual torture and other sexualized ill-treatment, there are also widely documented additional challenges for victims and witnesses, for which statutes of limitations present significant obstacles to their right to seek and receive justice (see A/79/181).

Further, the OOA restricts the definition of the "date of knowledge" from which the six-year period begins to run. It only considers awareness of the act itself and of the involvement of the Ministry of Defence or the Secretary of State. It does not include awareness of the resulting injury, the possibility of legal redress, or access to legal assistance. None of these factors are treated as exceptional circumstances sufficient to justify an extension. As a result, the OOA appears to impose a rigid cut-off that could prevent otherwise valid claims from being heard.

UK courts are already empowered to assess delays in accordance with well-established legal principles, applied fairly and contextually. The UK courts can strike out civil claims that disclose "no reasonable grounds" for bringing the

[14] CCPR/C/GBR/CO/8, paras. 12-13. (With respect to the presumption against prosecution in favour of military personnel deployed outside the territory of the State party after five years, but we hold that the principle for removing time limitations is applicable to the six-year limitation period for civilians).

case, including those which are vexatious or "obviously ill-founded".[15] No compelling justification has been provided for removing judicial discretion to extend time limits in cases of serious human rights violations. As such, limiting judicial discretion appears both unnecessary and unjustified, and risks denying access to justice in precisely those cases where judicial oversight is most urgently required.

Further, the additional factors that the courts must apply when considering whether to extend standard limitation periods within the six-year limit are weighted against claimants, discourage the progression of legitimate claims. They appear to arbitrarily interfere in the right to effective remedy and deny the courts the discretion to consider claims individually.

Moreover, we are concerned that the OOA's restrictions risk shielding unlawful policies and individual or systemic abuses from scrutiny when they come to light after the six-year period has expired. This would severely undermine the role of the courts in ensuring institutional accountability, thereby increasing the risk of impunity and the continuation of unlawful practices.

Part 2 of the OOA is predicated on the erroneous assumption, as claimed in the Explanatory Notes, that there has been a surge in vexatious civil claims arising from historic overseas military operations. While numerous claims have been brought, the assertion that they are largely without merit is not supported by evidence.

In one 2017 judgment, a UK court found that four Iraqi claimants had been unlawfully detained and subjected to severe mistreatment by British forces.[16] That case was brought approximately ten years after the claimant's detention, and would not have been possible under an absolute six-year longstop. The judge described the abuse as "sadistic" and contemptuous, underscoring the vital role of the civil courts in uncovering and addressing grave misconduct by the armed forces.[17] We are concerned that the proposed longstop would prevent similar claims from proceeding, denying justice to victims in violation of international law and weakening the accountability of the Ministry of Defence. In this regard we stress that State violations of international law, and impunity for them, are conditions conducive to terrorism under Pillar I of the United Nations Counter-terrorism Strategy, which the United Kingdom joined by consensus in the General Assembly in 2006.

3. Justice and Security Act 2013

The Act enhances national security by establishing the framework for certain civil proceedings and disclosure in court.

We express concern with the Closed Material Procedure (CMP) introduced in this Act which limits transparency and accountability in civil cases where

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15 Civil Procedure Rules, Part 3.4, https://www.justice.gov.uk/courts/procedurerules/civil/rules/part03#3.4, and Practice Direction 3A, https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03/pd_part03a.

16 *Alseran and others v Ministry of Defence* [2017] EWHC 3289 (QB).

17 Ibid, para. 953.

torture is alleged. The CMP enables information sensitive to national security to be disclosed in legal proceedings. This sensitive material is disclosed to the court and the Special Advocate but not to the other party or their representative or the public.[18]

We refer to the 2022 Independent report on the operation of closed material procedure under the Justice and Security Act 2013[19] which contained a list of CMP cases, some of which included allegations of torture.[20] These torture cases involved allegations of UK involvement in rendition and torture abroad.

The CAT requires State parties to ensure that allegations of torture are examined promptly and impartially by competent authorities (art. 13). A closed process undermines impartiality in cases of allegations of complicity and torture by UK entities because the claimant would be excluded from the proceedings and would not be able to see or challenge the evidence or defences put forward by the government.[21] The lack of transparency in CMP cases where the outcome favours the government would create a sense of impunity. The CMP process is also contrary to the State's obligation to ensure victims' rights to redress and fair and adequate compensation (art. 14, CAT).

We reiterate that any responses to threats of terrorism must conform to the obligations of the CAT[22] and other international standards.

In the List of Issues, the Committee against Torture requested information on measures taken to respond to threats of terrorism and how those measures were compatible with obligations under international law including the CAT.[23]

The UK's Response indicated that courts are able to fully review and scrutinize the decisions of the government including considering in "closed material procedure" sensitive intelligence material which is not in the public interest to disclose publicly but without which the court could not fairly consider such cases.

The Human Rights Committee in its Concluding Observations expressed similar concern for the increased use of closed material proceedings for legal cases involving "the Troubles".[24]

We are of the view that the CMP process impacts the fairness of proceedings as parties are denied access to crucial information about their case and can lead to impunity and a denial of redress for torture and other violations. We recommend that the CMP process be used sparingly, conform to international human rights

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18 UK Ministry of Justice, Policy paper Closed material procedure: government response, 29 May 2024.

19 Sir Duncan Ousely, Independent report on the operation of closed material procedure under the Justice and Security Act 2013, November 2022.

20 Cases such as *CF and Mohammed Ahmed Mohamed v. The Security Service & Ors* [2013] EWHC 3402 (QB); *Kamoka & Ors v. The Security Service & Ors* [2015] EWHC 60 (QB); *Belhaj & Anor v. Straw & Ors* [2017] EWHC 1861; *Abdule & Ors v. The Foreign and Commonwealth Office & Ors* [2018] EWHC 3594 (QB).

21 *Al-Rawi v The Security Service*, [2011] UKSC 34, para. 83.

22 Report of the Committee Against Torture, A/57/44, "Statement of the Committee in connection with the event on 11 September 2011", paras. 17 and 18.

23 CAT/C/GBR/QPR/7, para. 29.

24 CCPR/C/GBR/CO/8, para. 10.

standards, and be subject to strict oversight and scrutiny.

4. International Criminal Court Act 2001

This Act permits UK courts to try war crimes, crimes against humanity and genocide.

We note that the Act does not contain a complete form of universal jurisdiction in that the Act only permits the prosecution of UK nationals, resident or otherwise subject to the UK's service jurisdiction which restricts its ability to prosecute perpetrators who are merely present in the UK.[25]

Under the CAT, States are to establish jurisdiction over all acts of torture on territoriality, flag State active nationality, passive nationality and universal jurisdiction principles (art. 5). States have a duty to extradite alleged offenders when they are not prosecuted (arts. 5(2) and 7(1)).

The restriction in the Act may operate as a safe haven loophole for certain perpetrators. It also stands in contrast to section 134 of the Criminal Justice Act (1988) which allows for prosecution of torture if the perpetrator is merely present in the United Kingdom. Torture is often an act committed as war crimes, crimes against humanity and genocide and there should be consistency in the legislation on prosecuting all perpetrators.

The Act also contains different temporal jurisdictions for genocide (on or after 1 January 1991) and crimes against humanity and war crimes (on or after 1 September 2001) unless at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law.[26]

We recommend the Act be amended to include persons merely present in the territory of the United Kingdom to be prosecuted. This would assist in closing loopholes for perpetrators to escape prosecution and signal a stronger commitment in the fight against impunity.

We also recommend that the Act be amended so that courts have jurisdiction over the full spectrum of crimes covered by the Rome Statute from at least 1998 and to indicate which crimes could be prosecuted prior to this date under customary international law.

5. Criminal Justice Act 1988

We express concern that sections 134(4) and (5) of the Act allows a defence of "lawful authority, justification or excuse" for torture which is inconsistent with the absolute prohibition on torture and expressly recognised in article 2(3) of the CAT, which provides that there shall be no defence of superior orders or a public authority as justification for torture.

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[25] International Criminal Court Act 2001, Schedule 8, s. 51, 52, 54, 58, 59 and 61.
[26] Section 65A.

The Human Rights Committee has consistently raised concern with sections 34(4) and (5) since the third periodic review. In the List of Issues, the Committee again requested information on measures taken to repeal sections 134(4) and (5).[27]

The UK's Response indicated that there were no plans to repeal sections 34(4) and (5) and continued to rely on its position in its 27 May 2004 report.[28] In that fourth periodic report, the position stated was[29]:

> "The Criminal Justice Act 1988 has a broader definition of torture than the Convention - it includes all severe pain or suffering inflicted in the performance of duties. Without any defence, this law could criminalize:
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> Mental anguish caused by imprisonment;
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> Any serious injury inflicted by a police officer in the prevention of a crime, even when the offender was injuring another person or attacking the police officer;
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> The arrest of a suspect; and so on.
>
> Lawful sanction. There is some overlap between the defence of lawful authority, justification or excuse in the 1988 Act and the exception in article 1 of the Convention, which concerns lawful sanction. Although the defence in the 1988 Act goes wider than the exception in article 1, this is because of the broader definition of torture in the 1988 Act (as explained above). Furthermore, the 1988 Act defence only applies where the public official etc., is acting lawfully. There is nothing in the current case law which authorizes, far less requires, the use of this defence in circumstances that would amount to torture within the terms of the Convention.
>
> Human Rights Act. In any event, in the light of the Human Rights Act 1998, the courts are required to interpret the defence so far as possible in a way that is compatible with article 3 of the ECHR (prohibition on torture). There are no foreseeable circumstances in which a defence under the 1988 Act could be available inconsistently with the Convention."

We also refer to the HRC's Concluding Observations which expressed concern that sections 134(4) and (5) could lead to the Act being interpreted as permitting torture, rather than prohibiting it and regrets that the State party continues to see the definition as fit for purpose and necessary to cover the situation in which an official incidentally inflicts severe pain or suffering in the performance of their duties and that there were no plans to reform the defence for torture under the

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[27] CAT/C/GBR/QPR/7, para. 2.
[28] UK response to UN Committee Against Torture's list of issues, 17 July 2023, para. 6.; referring to CAT/C/67/Add.2.
[29] CAT/C/67/Add.2.

Act.[30]

The definition of torture in section 134(1) in the Act provides:

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

The position in the fourth periodic report appears to be premised on incidental harms or negligent conduct caused while performing duties, which would not amount to torture under section 134(1) or under article 1 of the CAT. We reiterate that the absolute prohibition on torture precludes any "lawful authority, justification or excuse for" torture. Simply put, no individual in performing their duties, can ever be lawfully authorized to or justified or excused in committing torture under international law.

If the purpose of sections 134(4) and (5) is to distinguish the unintentional infliction of severe pain and suffering caused by law enforcement in the performance of their duties from the crime of torture, it should be stated clearly so that it does not appear to provide a defence to torture.

The definition of torture in article 1 of the CAT provides that "[i]t does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." In order for sanctions to be lawful they must be "widely accepted as legitimate by the international community"[31] and be compatible with standards of international law. Treatment or punishment which are by their nature cruel, inhuman, or degrading are prohibited under international law and cannot be regarded as lawful sanctions.

With respect to the UK's Response which relies on the position that the defence is required to exclude "mental anguish caused by imprisonment", we remind that all States are expected to adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Depriving someone of the liberty is a form of suffering, however when it comports with international standards such as the Nelson Mandela Rules, it qualifies pain or suffering inherent in a lawful sanction and would not constitute torture.[32]

Likewise, force used by police in the ordinary exercise of their functions – in exercising an arrest or in crowd control operations – would not constitute a form of torture or other ill-treatment, as long as it complies with rules relating to the conduct of law enforcement authorities.[33]

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30 CCPR/C/GBR/CO/8, paras. 24-25

31 Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment, 10 January 21997, E/CN.4/1997/7, para. 8.

32 Ibid.

33 See UN Guidance on Use of Less Lethal Weapons, 2020; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990.

It is our position that if the purpose of sections 134(4) and (5) is to exclude mental anguish or suffering that is incidental to imprisonment conditions and/or treatment that adheres to international standards from the definition of torture, it is unnecessary and unconfusing to state it as a defence.

It is also unclear how and if sections 134(4) and (5) apply to perpetrators operating under foreign authority and the implications that it may have over such crimes.

We strongly recommend that sections 134(4) and (5) be repealed.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the information presented in this letter.

2. Please explain how the provisions in the various laws set out above are in accordance with the United Kingdom's obligations under international law, particularly with regard to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to life, the right to liberty and security of person, and the right of victims and their families to redress, and the duty to investigate and prosecute these violations.

Please provide specific responses on the following questions:

a. **National Security Act 2023**

i. Does the Government intend to repeal section 30 of the Act which permits a defence for serious human rights violations overseas? Please explain what constitutes necessity in the defence for intelligence services and armed forces. Please explain how section 30 adheres to the absolute prohibition on torture, and especially article 2(3).

ii. Does the Government intend to repeal sections 85-88 of the Act which permit reduction and/or denial of damages based on terrorist wrongdoing? What safeguards are in place to ensure victims of torture and other serious violations of international human rights law and international humanitarian law are not denied redress and compensation? Please explain how sections 85-88 are compatible with article 14 of the CAT and articles 2(3), 6, 7 and 9 of the ICCPR.

iii. Please clarify what measures are in place to ensure that allegations of "terrorist wrongdoing" under sections 84–87 of the National Security Act 2023 are subject to fair and independent judicial scrutiny, particularly where such allegations originate from

jurisdictions with documented patterns of using terrorism charges to suppress dissent.

b. **Overseas Operations (Service Personnel and Veterans) Act 2021**

i. Does the Government intend to repeal the six-year limitation period for civilians to bring civil claims for personal injury or death related to overseas conduct by UK armed forces? Please explain how this limitation period is compatible with article 14 of the CAT and articles 2(3), 6, 7 and 9 of the ICCPR. Please explain why this limitation period applies to civilians and not members of the armed forces.

ii. Please provide information on how your Excellency's Government ensures that the restrictions introduced by the National Security Act and the Overseas Operations Act do not impede the ability of UK courts to scrutinise and remedy unlawful State practices, including those of a systemic or policy-driven nature.

c. **Justice and Security Act 2013**

i. Please explain what safeguards in the CMP process are in place to protect claimants who have alleged torture by the government and ensure they are entitled to their rights to redress, rehabilitation, and compensation under article 14 of CAT.

d. **International Criminal Court Act 2001**

i. Does the Government intend to amend the Act to include persons merely present in the territory of the United Kingdom to be prosecuted? Please explain the reasons for the restriction on the status of the perpetrator in this Act. Please explain the difference between this Act and the Criminal Justice Act 1988 which permits the prosecution of perpetrators or torture who are merely present in the UK. Please take into account jurisdictional obligations for offences of torture under article 4 of CAT.

ii. Please explain if there have been any steps taken to clarify when crimes amounted to criminal offences under customary international law.

e. **Criminal Justice Act 1988**

i. Does the Government intend to repeal sections 134(4) and (5) of the Act? Please explain how the defence available under these sections adheres to the absolute prohibition on torture, and in particular article 2(3) of CAT.

3. Please explain whether any analysis and/or consultation have been undertaken with victims and their families to assess the impact of such

legislation. We would welcome any document presenting the outcome of such analyses or consultations.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Bernard Duhaime
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