

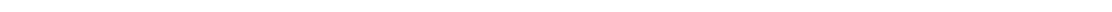
ACAT UK

**Contribution to the Third Review of the
United Kingdom**

Human Rights Council

Third cycle of the Universal Periodic review

27th session, April – May 2017



Authors of the report

ACAT-UK

ACAT UK was formed in 1984 by the then British Council of Churches, with the active support of Amnesty International and Society of Friends. ACAT UK is affiliated to the International Federation of Action by Christians for the Abolition of Torture (FIACAT) in Paris, and is a Body in Association with Churches Together in Britain and Ireland (CTBI). ACAT UK's aim is to work, as Christians, for the abolition of torture worldwide. It seeks to increase awareness in the Churches and among Christians of the widespread and evil use of torture and the need, for reasons of Christian faith, to campaign for its abolition. Its main activities are a mailshot every two to three months on cases of victims of torture or people sentenced to death and a Christmas and Easter letter campaign during which Christmas and Easter cards are sent by ACAT members to prisoners.

With regard to the previous recommendations accepted by the United Kingdom at the time of its latest review during the 13th session of the Universal periodic review in May 2012 ACAT UK wishes to bring to the Council's attention a number of concerns regarding the criminalization of torture, the use of torture by UK forces abroad and the deportation of individuals to countries where they may face a risk of torture and other ill-treatment.

I. Criminalization of torture

The prohibition of torture is contained in article 3 of the Human Rights Act 1998 which states: "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*". Article 134 of the UK Criminal Justice Act 1988 criminalize torture as the following:

"134 Torture.

(1) 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.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

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

The definition also contains a defence for its use:

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

The article goes on to provide what is meant by lawful authority, justification or excuse:

“(5) For the purposes of this section “lawful authority, justification or excuse” means—

(a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;

(b) in relation to pain or suffering inflicted outside the United Kingdom—

(i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and

(iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.”

The Human Rights Committee in its Concluding Observations of 2015 urged the UK government to review this section.¹ According to the UK government this issue had been addressed by the Human Rights Act 1998 and the defence was required to cover the situation where severe pain is caused incidentally (i.e. not intentionally), for instance as a result of a lawful arrest or imprisonment. Also, as it was previously stated by the Law Society, the legislation leaves open an exception to the crime of torture where it is committed in a foreign state, whose law does not criminalise or provide a defence for torture. However, article 2 paragraphs 2 and 3 of the Convention against torture states the absolute prohibition of torture, explaining that:

“2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”

ACAT-UK notes that by section 134 CJA, the UK government seeks to meet the obligation to uphold the prohibition on torture by criminalizing it (in accordance with Article 4 of the UN Convention Against Torture (‘CAT’)). Article 7 of CAT stipulates that State Parties should deal with offences of torture as they would any other serious criminal offences. Necessarily this must include the availability of appropriate defences. However, we fail to see the requirement for a defence described in terms of ‘lawful authority’ (per section 134(4)). Indeed, we regard a defence described in such terms as not only unnecessary but inappropriate.

By definition, criminal defences are defences either of justification or excuse. Therefore, the words ‘justification or excuse’ in section 134(4) cover all legitimate defences. However, the inclusion of the words ‘lawful authority’ creates space for state actions that are wholly

¹ Human Rights Committee, *Concluding Observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7, August 2015, para 18.

contrary to the universal prohibition on torture. State authorization of torture, or torture inflicted in consequence of superior orders cannot constitute defences to the crime of torture and should not be seen to do so. Given that all proper defences are covered by the words 'justification or excuse', there is no requirement for a specific defence of lawful authority and the inclusion of such a defence is liable to create misunderstanding, if not actually appear to create space for the abuse of state power in the commission of the crime of torture.

ACAT-UK urges the government to remove the words 'lawful authority' from the current legislation, and thereby assist in implementing the absolute prohibition of torture, wherever it takes place.

II. The use of torture by UK forces abroad.

During the last Universal Periodic Review of the UK Switzerland and Belarus showed concerns regarding allegations of torture by British armed forces during their service abroad and recommended to the State to carry out investigations on these allegations.² This issue was also raised by the Human Rights Committee and the Committee against Torture.³ In its 2012 response to the HRC review the UK government pledged to ensure that allegations of torture by British armed forces (especially when serving abroad) would be investigated promptly, independently and transparently (Reply of the SP to the report, 110.67/86). Since the HRC returns to these issues in 2015 and expresses concern about the slow progress and adequacy of these investigations, ACAT-UK would welcome more positive action by the UK government.

ACAT UK recommends to the UK to carry out independent investigation into allegations of torture and cruel, inhuman or degrading treatment or punishment by British soldiers abroad and prosecute and condemn the authors of such acts appropriately.

III. Reliance on diplomatic assurances for the deportation of individuals to countries where they may face a risk of torture and other ill-treatment

During the 2nd Universal Periodic Review of the UK, Nicaragua expressed its concerns regarding the practice of the UK to use diplomatic assurances to avoid exposing a person to the risk of torture and other ill-treatment during a transfer to the territory or custody of another State.⁴ Similarly the Human Rights Committee was concerned "*that the State party*

² Human Rights Council, Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland, A/HRC/21/9, July 2012 paras 110.67 and 110.68:

" 110.67. Ensure that inquiries are carried out immediately, independently, and transparently in cases where members of the armed forces are suspected of having committed acts of torture, particularly in the context of their service abroad (Switzerland);

110.68. Along with the Special Procedures, investigate allegations of the systematic use of torture by British soldiers vis-à-vis detainees outside the country, and inform the results of these investigations to the UN human rights mechanisms, including the Human Rights Committee, Human Rights Council and its mechanisms (Belarus)."

³ Human Rights Committee, *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/7, August 2015, para 9 and Committee against Torture, *List of Issues prior to submission of the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CAT/C/GBR/QPR/6, June 2016 paras 33 and 34.

⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review, United Kingdom of Great Britain and Northern Ireland, A/HRC/21/9, July 2012 para 110.122.

continues to rely on its “deportation with assurances” policy to justify the deportation of foreign nationals suspected of terrorism-related offenses to countries where it is reported that they may face a real risk of torture or other forms of ill-treatment”⁵

ACAT-UK calls the UK government to ensure not only that such assurances are in place, but that it can effectively monitor their validity and take remedial action where they are not fulfilled.

⁵ Human Rights Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/7, August 2015, para 19