

## BRIEFING PAPER: UK LAW AND THE TORTURE BAN

**10 DECEMBER 2024**

Everyone deserves to live in safety, free from torture, and States have an obligation to uphold the absolute ban on torture. However, in recent years the United Kingdom has chipped away at the framework designed to prevent torture, dropping its anti-torture strategy and introducing laws that put survivors of torture at risk or make it harder to hold those responsible for torture to account. This has led to criticism from United Nations bodies that monitor the UK's compliance with international law.<sup>1</sup>

In recent years, several pieces of legislation have been introduced that are detrimental to survivors of torture living in the UK, including those who are asylum seekers. It is estimated that between 27% and 44% of refugees and asylum seekers in high-income countries like the UK will have experienced torture.<sup>2</sup> Legislation such as the Overseas Operations Act, National Security Act, Illegal Migration Act and Safety of Rwanda Act threaten the absolute prohibition of torture, and undermine the international rules-based order and the rule of law.

These laws represent a significant departure from the UK's commitment to upholding human rights and international law. Respect for international law is a critical element of the rule of law, a key commitment of the new government. Without a strong affirmation of the absolute ban on torture, the UK will be vulnerable to accusations of "double standards" when it seeks to promote compliance with human rights and accountability for torture elsewhere in the world but fails to uphold those same rules at home.

In order to rebuild its international rule of law leadership, the UK Government should urgently demonstrate commitment to human dignity and the protection of survivors by taking a firm stance against torture, in two ways:

- Repeal or reform the eight laws that undermine the ban against torture.
- Take torture seriously with a clear plan to implement the government's obligations to prevent and punish torture.

This briefing paper outlines where UK legislation falls short of upholding the torture ban and makes recommendations on eight laws that should be repealed or amended to comply with international law. These recommendations are the result of our three decades of experience pursuing justice and reparation for survivors of torture, and have been developed in collaboration with the Survivor Advisory Group<sup>3</sup> and the UK anti-torture movement.

1 See e.g. Human Rights Committee, Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, [CCPR/C/GBR/CO/8](https://tbinetnet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2FCO%2F8&Lang=en), 3 May 2024, available at: [tbinetnet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2FCO%2F8&Lang=en](https://tbinetnet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2FCO%2F8&Lang=en); Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, CAT/C/GBR/CO/6, 7 June 2019, available at: [tbinetnet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT/C/GBR/6&Lang=en](https://tbinetnet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT/C/GBR/6&Lang=en).

2 Daniel Board, Susan Childs, and Richard Boulton, 'Torture-survivors' experiences of healthcare services for pain: a qualitative study', 2021, 15(3) British Journal of Pain pp. 291-301, available at: <https://journals.sagepub.com/doi/10.1177/2049463720952495#bibr3-2049463720952495>.

3 See REDRESS, Survivor Advisory Group, available at: <https://redress.org/help-for-survivors/survivor-advisory-group/>.

## EIGHT LAWS THAT NEED TO BE CHANGED

There are at least eight laws that need to be amended or repealed to bring the United Kingdom into conformity with the absolute prohibition of torture.

	Legislation	How it breaches the ban on torture
1	Northern Ireland Troubles (Legacy and Reconciliation) Act 2023	Prevents investigations and prosecutions of torture.
2	Overseas Operations (Service Personnel and Veterans) Act 2021	Prevents civil claims for torture.
3	National Security Act 2023	Gives officials immunity for torture and denies redress to survivors.
4	Illegal Migration Act 2023	Allows for the detention of vulnerable survivors and their deportation even when there is a risk of further torture.
5	Safety of Rwanda (Asylum and Immigration) Act 2024	Allows survivors of torture to be sent to Rwanda despite the frequency of torture there.
6	Criminal Justice Act 1988	Allows defences for torture.
7	Justice and Security Act 2013	Limits transparency and accountability in cases where torture is alleged
8	International Criminal Court Act 2001	Restricts prosecutions for international crimes.

### NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) ACT 2023

*Prevents investigations and prosecutions for torture.*

The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 was ostensibly introduced to address the historical injustices associated with the Troubles, a period of violent conflict in Northern Ireland. The Act establishes a framework for dealing with unresolved crimes committed during this period, including the creation of an Independent Commission for Reconciliation and Information Recovery (ICRIR) to review cases, an official historical record of the Troubles, and a controversial “conditional immunity” scheme for individuals accused of crimes who come forward with evidence. Despite its aim of fostering reconciliation, the Act has been widely condemned for its implications for justice and accountability, particularly concerning the prohibition of torture.<sup>4</sup>

The Act undermines the UK’s obligations to prohibit torture in several key ways. Firstly, the conditional immunity scheme allows individuals involved in serious human rights abuses, including torture, to escape prosecution. By offering amnesty to those who cooperate with investigations, the Act circumvents the requirement to investigate and prosecute acts of torture, as mandated by

<sup>4</sup> Rights & Security International, “The Human Right to Effective Investigations and Northern Ireland ‘Legacy’ Cases: A Legal Explainer”, 16 September 2021, available at: [https://www.rightsandsecurity.org/assets/downloads/210916\\_Legacy\\_Legal\\_Brief\\_Final.pdf](https://www.rightsandsecurity.org/assets/downloads/210916_Legacy_Legal_Brief_Final.pdf).

both the European Convention on Human Rights (ECHR) and the UN Convention Against Torture (UNCAT). This failure to hold perpetrators accountable not only denies justice to victims but also sets a dangerous precedent for impunity. Furthermore, the ICIR lacks the robust investigative powers necessary to meet the standards of ECHR Article 3 and fails to provide the independence required under international law, as the Secretary of State retains significant influence over its operations. The ICIR is designed to “review” cases rather than conduct thorough, independent investigations, as required under international law. As a result, many cases, including those involving torture, are likely to remain unresolved or insufficiently scrutinised.

Finally, the Act disregards the rights of victims, many of whom have been denied justice for decades. The immunity scheme creates an almost insurmountable barrier to accountability by setting a low threshold for cooperation and failing to ensure that testimony is truthful or complete. This lack of rigorous oversight is particularly troubling for cases of torture, where survivors and their families have long fought for recognition and justice. In fact, the law has been widely condemned for its lack of meaningful consultation with survivors and victims’ families. Despite their central role in the search for truth and justice, their voices were largely ignored during the legislative process.<sup>5</sup> Many survivors, alongside civil society groups, human rights organisations, all major political parties in Northern Ireland, and international bodies such as the Irish government, the UN High Commissioner for Human Rights,<sup>6</sup> and the Council of Europe,<sup>7</sup> have strongly opposed the Act.

Labour made a commitment in its manifesto to “repeal and replace” the Act with new legislation that better aligns with the UK’s human rights obligations and delivers justice for victims and their families. Since taking power, Labour has reiterated its intention to repeal the Act. The Northern Ireland Court of Appeal (NICA) has declared key provisions of the Act incompatible with the ECHR, adding to existing High Court declarations of incompatibility.<sup>8</sup> On 4 December 2024 a Remedial Order was laid before Parliament under the Human Rights Act 1998 to address these findings, however, the UK Government also previously lodged an application to appeal aspects of the ruling to the UK Supreme Court,<sup>9</sup> and appears to intend to proceed with this appeal (although the grounds have not yet been set out).<sup>10</sup> In addition, the Government has indicated that it will retain the ICIR, the investigative body created by the legislation, with reforms to ensure it operates within a fair and effective framework.

To restore compliance with international human rights standards, we recommend reforming the ICIR through detailed primary legislation. A reformed investigative body should not retain a “national security veto” and must be legally obligated to conduct investigations that fully comply with ECHR Article 3 requirements. We also recommend that the reformed legacy body incorporates outstanding cases identified under the Stormont House Agreement and extends its remit to cover all ECHR Article 3 violations. The investigation process should be fully independent and comprehensive to meet the

5 See e.g. Amnesty International UK, Northern Ireland Troubles Bill, available at: <https://www.amnesty.org.uk/ni-troubles>.

6 Dillon & Ors, Application for Judicial Review [2024] NICA 59 (20 September 2024); UN OHCHR, “UK: Rights of victims and survivors should be at centre of legislative efforts to address legacy of Northern Ireland Troubles – Türk”, 19 January 2023, available at: <https://www.ohchr.org/en/press-releases/2023/01/uk-rights-victims-and-survivors-should-be-centre-legislative-efforts-address>.

7 BBC News, “Troubles Bill: Council of Europe urges UK government to reconsider”, 22 September 2023, available at: [Troubles Bill: Council of Europe urges UK government to reconsider - BBC News](https://www.bbc.com/news/uk-northern-ireland-66889315).

8 BBC, “Government to challenge Legacy Act court ruling”, by Julian O’Neill, 18 October 2024, available at: <https://www.bbc.com/news/uk-northern-ireland-66889315>.

9 UK Northern Ireland Office, “A proposal for a Remedial Order to amend the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023”, 4 December 2024, available at: <https://www.gov.uk/government/publications/a-proposal-for-a-remedial-order-to-amend-the-northern-ireland-troubles-legacy-and-reconciliation-act-2023><https://www.gov.uk/government/publications/a-proposal-for-a-remedial-order-to-amend-the-northern-ireland-troubles-legacy-and-reconciliation-act-2023>.

10 Secretary of State oral statement on Northern Ireland Legacy, 4 December 2024, available at: <https://www.gov.uk/government/speeches/secretary-of-state-oral-statement-on-northern-ireland-legacy>

UK's international obligations under the UNCAT.

Furthermore, the Government should abandon its intention to appeal the Dillon judgment in relation to any elements of ECHR incompatibility, and any provisions related to the Belfast/Good Friday Agreement rights protected under the Windsor Framework.

To ensure public trust, the Government should engage meaningfully with victims and survivors, who were largely ignored during the legislative process. Addressing their concerns is essential for delivering justice, accountability and reconciliation while reaffirming the prohibition of torture as an absolute, non-negotiable right.

## **OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) ACT 2021**

*Prevents civil claims for torture.*

The Overseas Operations (Service Personnel and Veterans) Act 2021 introduces significant barriers to accountability for UK personnel involved in serious human rights abuses during overseas operations. While the Act excludes international crimes, such as torture and genocide, from the provisions limiting prosecutions, it creates significant challenges for victims seeking justice for abuses committed during overseas operations by restricting the ability of survivors of torture and ill-treatment to bring civil claims for damages, severely undermining access to justice for victims.

The Act introduces a six-year "longstop" limitation period on bringing civil claims for personal injury or death related to overseas operations conducted by UK armed forces. This removes the courts' discretion to extend the time limit based on the circumstances, which can include factors such as the victim's trauma or the challenges of gathering evidence in conflict zones. International law, including the UNCAT, recognises the right of torture survivors to seek redress without restrictions based on time (Article 14). UNCAT General Comment No. 3 explicitly states that statutes of limitations are incompatible with the right to redress and that States must ensure victims can access remedies "regardless of when the violation occurred." We know from our work with survivors of torture at REDRESS that justice is integral to survivors' healing process and should not be time-bound. Seeking justice requires physical safety and mental strength. This may take time, especially when survivors must leave the place where the torture happened to find safety. It may be impossible to pursue justice in the jurisdiction where torture occurred. By imposing this limit, the Act denies victims of torture the opportunity to hold the Ministry of Defence (MoD) accountable for human rights violations that may only come to light after several years.

While civilians face a strict six-year deadline, the Act allows members of the armed forces to bring civil claims without time limits. This two-tier discriminatory system is incompatible with international human rights law, including Article 14 of the UNCAT. The Act's provisions could also lead to the UK breaching its obligations under the ECHR, particularly the rights to a fair trial and an effective remedy.

Civil society groups, including REDRESS and other human rights organisations, ran a campaign to amend the original provisions of the Overseas Operations Bill.<sup>11</sup> Whilst this led to crucial amendments in Parliament, including the exclusion of international crimes from the presumption against prosecution, and mitigated some of the Bill's most harmful effects, the concerns related to the limitation on civil claims remain.

The UK government should repeal the Overseas Operations (Service Personnel and Veterans) Act 2021 and thereby preserve pathways to justice for victims of torture and other grave abuses, in line with its obligations under the UNCAT and ECHR.

<sup>11</sup> REDRESS, "Overseas Operations Bill Passes, but with Crucial Amendments Thanks to Concerted Campaign", 29 April 2021, available at: <https://redress.org/news/overseas-operations-bill-passes-but-with-crucial-amendments-thanks-to-concerted-campaign/>.

## **NATIONAL SECURITY ACT 2023**

*Gives Whitehall immunity for torture and denies redress to survivors.*

The National Security Act 2023 introduced provisions that severely undermine the absolute prohibition against torture. The legislation grants unprecedented immunity to ministers or officials who, for example, provide information to foreign partners that leads to someone being tortured or unlawfully killed in a drone strike. By shielding those in power from accountability, the Act not only endangers individuals at home and abroad but also threatens the UK's reputation as a global leader in human rights. There is also concern that the bill restricts victims' ability to seek civil damages in the courts.

A central concern with the Act is Section 30, which provides a statutory defence for ministers and officials involved in serious human rights violations overseas, such as torture or targeted extrajudicial killings. Under this section, individuals could evade prosecution if their actions are deemed "necessary for the proper exercise of a function of an intelligence service" or related to military operations. This vague definition of "necessary" allows for potential abuse, as it fails to exclude serious human rights abuses from its scope. Consequently, officials could justify their complicity in torture or extrajudicial killings, thereby eroding fundamental protections against such abuses.

The Act risks creating gaps in the UK's domestic legal framework that could expose British personnel to prosecution before the International Criminal Court (ICC). The ICC has explicitly warned that the lack of clarity regarding the prohibition of torture in the National Security Act could lead to UK cases being deemed admissible for prosecution, as the legislation fails to provide adequate protections against complicity in human rights violations. This not only threatens the legal safety of UK personnel abroad but also diminishes the UK's credibility as a champion of human rights on the global stage.

Additionally, the Act denies redress to survivors of torture through provisions that permit the Government to reduce or eliminate damages awarded to victims based on allegations of "terrorist wrongdoing." This criterion is not only broad and undefined but also places an undue burden on claimants, allowing the Government to undermine their rights without due process. Such measures contravene international human rights treaties to which the UK is a signatory and hinder the pursuit of justice for those harmed by Government actions.

The UK Government should amend Section 30 of the National Security Act to explicitly exclude serious human rights abuses, including torture and cruel, inhuman or degrading treatment, and sexual offences, from the statutory defence. Furthermore, it should ensure that allegations of "terrorist wrongdoing" are not used as a basis for denying victims their right to seek damages awarded by the courts, and as such sections 85-88 of the National Security Act should be repealed. These changes are essential for restoring the UK's commitment to international law and safeguarding human rights.

## **ILLEGAL MIGRATION ACT 2023**

*Allows for the detention of vulnerable survivors and their deportation even when there is a risk of further torture.*

The Illegal Migration Act 2023 is a controversial piece of legislation aimed at curbing unlawful migration into the UK. It requires the Secretary of State to remove any adults who arrived without legal documentation after 7 March 2023, and it explicitly prevents individuals who did not come directly to the UK, for instance those who passed through a third country, from claiming asylum. This Act has drawn widespread condemnation from civil society organisations and human rights advocates<sup>12</sup>

<sup>12</sup> See "Joint civil society statement on the passage of the Illegal Migration Act", July 2023, available at: <https://redress.org/publication/joint-civil-society-statement-on-the-passage-of-the-illegal-migration-act/>.

for its failure to protect and support survivors of torture and for undermining the UK's international obligations, including those outlined in the ECHR, the UNCAT and the Refugee Convention.<sup>13</sup> The UK Government has acknowledged its inability to certify that the legislation complies with the ECHR.<sup>14</sup>

The Illegal Migration Act 2023 severely undermines the prohibition against torture in multiple ways. First, it violates the principle of non-refoulement, which prohibits the deportation of individuals to countries where there are "substantial grounds for believing that [they] would be in danger of being subjected to torture" (UNCAT, Article 3(1)). The expedited nature of the Act's procedures does not allow sufficient time for survivors of torture to demonstrate their vulnerability or to have their claims adequately assessed. This raises serious concerns about the UK's compliance with international law. The Act poses a grave risk of subjecting vulnerable individuals to torture or inhumane treatment.

Secondly, under its provisions, the Act subjects survivors of torture to detention, which is likely to be prolonged and routine. Detention can lead to the re-traumatisation of survivors, exacerbating mental health issues such as depression, anxiety, and PTSD. The Act lacks necessary safeguards for survivors of torture, neglecting to establish procedures for identifying these individuals prior to detention. Consequently, their rights to redress and rehabilitation are fundamentally undermined, as they are barred from filing protection claims and accessing the support they desperately need.

The Illegal Migration Act 2023 therefore attacks the very foundation of human rights by stripping away the rights of those seeking safety in the UK, implying that these rights are conditional rather than universal. This not only impacts those directly affected but threatens the human rights framework for everyone within the UK. As a coalition of 290 organisations, including REDRESS, has expressed, through this legislation the UK turns its back on its moral and legal obligations, and its passage risks breaching multiple international human rights treaties while shielding the Government from accountability.<sup>15</sup>

The UK Government should re-legitimise asylum procedures and uphold its commitments to international human rights standards by repealing the Illegal Migration Act 2023. This is necessary to prevent violations of the prohibition against torture and to ensure that all individuals, especially survivors of torture, are afforded the protection and support they require when they seek safety. It is essential that the Government reinforces its dedication to the international rules-based order by creating a fair and compassionate asylum and immigration system that respects the dignity and rights of all individuals.

## **SAFETY OF RWANDA (ASYLUM AND IMMIGRATION) ACT 2024**

*Sending survivors to Rwanda despite the frequency of torture there.*

The Safety of Rwanda (Asylum and Immigration) Act 2024 poses significant risks to vulnerable individuals seeking asylum in the UK by allowing for the relocation of some asylum seekers to Rwanda for the processing of their claims. This controversial legislation, which was previously ruled unlawful by the Supreme Court,<sup>16</sup> prevents legal challenges against the Government, including those relating to the risk of torture in the host country.

The Act undermines the absolute prohibition against torture by disregarding credible evidence of

13 Convention relating to the Status of Refugees 1951, available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/3b66c2aa10.pdf>.

14 Gower, M., McKinney, C. J., Dawson, J., and Foster, D., Illegal Migration Bill 2022-23, 10 March 2023, House of Commons Library, available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9747/CBP-9747.pdf>.

15 See "Joint civil society statement on the passage of the Illegal Migration Act", July 2023, available at: <https://redress.org/publication/joint-civil-society-statement-on-the-passage-of-the-illegal-migration-act/>.

16 Supreme Court, R (AAA & others) v Secretary of State for the Home Department, 2023, UKSC 42.



human rights violations in Rwanda, including documented cases of torture and ill-treatment.<sup>17</sup> The assumption that Rwanda is a “safe” country for the relocation of asylum seekers not only contravenes the principle of non-refoulement but also poses an imminent threat to individuals who may be sent there. By failing to acknowledge the real dangers that asylum seekers could face upon arrival in Rwanda, the Act effectively puts the UK Government in violation of international obligations, including the UNCAT and the Refugee Convention.

Research by the NGO Medical Justice analysed the casefiles of 30 clients who were taken into detention between 29 April and 24 May 2024 for forced removal to Rwanda, before the scheme was abandoned. Their findings shows that none had criminal convictions and all were seeking asylum. A large majority had histories of trauma and/or mental health conditions, which made them particularly susceptible to suffering harm. 80% of the cohort had histories of torture and/or serious ill-treatment and/or trafficking. 10 did not have any legal representation at the time of their detention and receiving their Notice of Intent for removal to Rwanda. None of the 30 people had a Rule 35 (1) or (2) safeguarding report completed as should have happened, including those who were suicidal. People were held in detention for up to 50 days, despite evidence of their vulnerabilities and continued detention posing a risk of further harm.<sup>18</sup>

The UK Government has announced that it will not implement the Rwanda policy but has stopped short of repealing the law.<sup>19</sup> By leaving the law on the books, the Government sends a troubling message that it condones the circumvention of international legal standards. The existence of this legislation could embolden future administrations to pursue similar harmful policies, potentially exacerbating the plight of asylum seekers and undermining the UK’s longstanding reputation as a champion of human rights. Even if the current Government commits to not enforcing the Act, its mere presence in the legislative framework creates a climate of uncertainty for those seeking refuge in the UK, as they may continue to fear deportation to a country where they face the risk of torture.

No advocate for the international rule of law should maintain such an Act on its statute books. To reaffirm the UK’s commitment to human rights and its obligations under international law, the Government should repeal the Safety of Rwanda (Asylum and Immigration) Act 2024. This repeal is vital not only to prevent potential violations of the prohibition against torture but also to restore the UK’s global standing as a leader in human rights protection.

## **CRIMINAL JUSTICE ACT 1988**

*Allows for defences for torture.*

The Criminal Justice Act 1988 introduced provisions aimed at improving the efficiency of the criminal justice system but has been criticised for weakening safeguards against torture and ill-treatment. Notably, sections 134(4) and (5) of the Act allow those accused of torture a defence of “lawful authority, justification or excuse,” which is inconsistent with the absolute prohibition of torture. Despite repeated concerns raised by the Committee against Torture,<sup>20</sup> these provisions have not been repealed. While torture is unequivocally prohibited in the UK, the application of this defence is ambiguous, particularly when perpetrators act under the authority of foreign law. This creates a potential loophole, where domestic law in other States could justify torture, undermining the UK’s

17 REDRESS, “Torture in Rwanda: Briefing on the Safety of Rwanda (Asylum and Immigration) Bill”, December 2023, available at: <https://redress.org/wp-content/uploads/2023/12/2023-12-12-Rwanda-Bill-REDRESS-briefing.pdf>.

18 Medical Justice, “You’ll see the outside when you’re in Rwanda”: Mistreatment in UK detention and mass round ups for forced removals, September 2024, available at: [2024-YoullSeeTheOutsideWhenYoureInRwanda.pdf \(medicaljustice.org.uk\)](https://www.medicaljustice.org.uk/2024-YoullSeeTheOutsideWhenYoureInRwanda.pdf)

19 Evening Standard, “Keir Starmer says Labour ‘not keeping’ Rwanda policy but won’t commit to scrapping it on day one”, 1 May 2024, available at: <https://www.standard.co.uk/news/politics/rwanda-policy-government-migrants-asylum-seekers-labour-keir-starmer-b1155107.html>.

20 See CAT/C/GBR/CO/6, para. 12-13; CAT/C/GBR/CO/5, para. 10; CAT/C/CR/33/3, para. 4 (a) (ii); and CCPR/C/GBR/CO/7, para. 18.

universal jurisdiction over such crimes and breaching its obligations under Articles 2(2) and 2(3) of the UNCAT.

To uphold the UK's obligations under the UNCAT and the ECHR, it is crucial to ensure that any detention powers are subject to strict oversight and that all individuals are protected from inhumane or degrading treatment. The Government should repeal sections 134(4) and (5) of the Criminal Justice Act 1988 to ensure that all individuals are protected from inhumane or degrading treatment, both domestically and abroad.

## **JUSTICE AND SECURITY ACT 2013**

*Limits transparency and accountability in cases where torture is alleged.*

The Justice and Security Act 2013 introduced closed material procedures (CMP) in civil proceedings relating to national security, limiting transparency and accountability. Under CMP, applicants are prevented from seeing evidence presented in closed hearings and must rely on a special advocate to represent their interests. However, the special advocate is prohibited from communicating with the applicant once they have been exposed to closed material. This lack of communication undermines the fairness of the proceedings, as applicants are denied access to crucial information that may affect their case.

The use of CMPs has raised significant concerns due to their increasing application in a broader range of proceedings. Initially limited to specialist tribunals, such as the Special Immigration Appeals Tribunal, CMPs are now being applied in areas such as employment tribunals, financial proceedings, and even family law cases. This expansion reduces the public's ability to understand and scrutinise the use of CMPs. A 2014 report found that annual reporting requirements on CMP use are insufficient to inform the public adequately about the frequency and justifications for their use.<sup>21</sup>

The potential for CMPs to be misused in more contexts, without sufficient oversight or public accountability, poses a significant risk to the UK's commitment to human rights, including compliance with the UNCAT. To ensure the UK upholds its obligations under UNCAT, it is crucial that CMPs are used sparingly and that their application (and the scope of their application) is fully transparent and compliant with international human rights standards. The Government must take steps to limit the use of CMPs to the national security context and ensure that their use is subject to strict oversight and public scrutiny.

## **INTERNATIONAL CRIMINAL COURT ACT 2001**

*Restricts prosecutions for international crimes.*

The International Criminal Court Act 2001 (ICCA) represented a commitment by the UK to prosecute international crimes such as genocide, crimes against humanity, and war crimes. However, significant gaps in the Act undermine the UK's ability to hold perpetrators accountable, leaving the legal framework ill-equipped to combat impunity for the most egregious violations of international law.

A critical shortcoming of the ICCA is its restriction of prosecutions for genocide, crimes against humanity and war crimes to individuals who are UK nationals, residents, or otherwise subject to the UK's service jurisdiction.<sup>22</sup> This is in stark contrast to the broader jurisdiction provided under the Criminal Justice Act 1988, which allows for prosecutions of torture if the perpetrator is merely

<sup>21</sup> Bingham Centre for the Rule of Law, Closed Material Procedures under the Justice and Security Act 2013: A review of the First Report by the Secretary of State, August 2014, p. 7, available at: <https://binghamcentre.biicl.org/projects/closed-material-procedures-under-the-justice-and-security-act-2013>.

<sup>22</sup> International Criminal Court Act 2001, Schedule 8, s. 51, 52, 54, 58, 59 and 61.



present in the UK.<sup>23</sup> There is no principled reason that UK courts should be able to prosecute non-citizens and non-residents for torture but not crimes against humanity, or war crimes and genocide, particularly given that torture can amount to these wider violations when the relevant elements are present.

The ICCA is also inconsistent about how far back prosecutions can go, leaving gaps that make it difficult to prosecute certain crimes. While the ICCA allows for the prosecution of genocide committed on or after 1 January 1991,<sup>24</sup> crimes against humanity and war crimes can only be prosecuted if committed 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”.<sup>25</sup> The question of which crimes have been codified in customary law, and when, has not been clarified by Parliament and the courts have not resolved the issue, and are not likely to do so soon.<sup>26</sup>

The Government should amend the ICCA to include “a person present in the territory of the United Kingdom” in the relevant provisions, aligning the ICCA with international standards and ensuring perpetrators cannot evade justice by exploiting existing loopholes. Additionally, extending the temporal jurisdiction for crimes against humanity and war crimes under the ICCA to 1991 would reflect the established recognition of these crimes under international law. This can be achieved by removing subsections 65A(2) and 65A(6) of the ICCA, creating a consistent framework for the retrospective application of the law. These changes would significantly strengthen the UK’s ability to investigate and prosecute international crimes, close loopholes that allow perpetrators to seek refuge in the UK, and signal the UK’s firm commitment to combating impunity and upholding its obligations under international law.

## TORTURE-FREE TRADE

### *Law reforms to prevent the sale of prohibited equipment*

While acts of torture and other ill-treatment can be committed using any number of items, it is often the case that State officials use specialist equipment. Specialised law enforcement equipment is often used to inflict torture and ill-treatment.<sup>27</sup> Some of this equipment, such as spiked batons and electric shock shields, is inherently abusive and has no place in lawful policing. Other items, such as handheld pepper spray or standard handcuffs, may have legitimate uses but are frequently misused in ways that violate human rights. This duality underscores the urgent need for robust national, regional, and international controls on the trade in such equipment.<sup>28</sup>

The UK has national regulations governing the trade in some of this law enforcement equipment.<sup>29</sup> Nonetheless, the range of equipment covered by these regulations needs to be updated and expanded

23 Criminal Justice Act 1988, s. 134.

24 The ICCA came into force on 1 September 2001, criminalising acts of genocide, crimes against humanity, and war crimes committed after that date (see International Criminal Court Act 2001 (Commencement) Order 2001), but given that it repealed the Genocide Act 1991, the ICCA was later amended to retrospectively extend jurisdiction to acts of genocide occurring on or after 1 January 1991. See ICCA, s 65, inserted by the Coroners and Justice Act 2009. This ensured that genocidal conduct during the conflicts in the former Yugoslavia and Rwanda in the early 1990s could be criminalised in domestic law.

25 ICCA, s. 65A.

26 Kate Grady, “International Crimes in the Courts of England and Wales”, 2014, 10 Criminal Law Review, pp. 693-722, available at: <https://eprints.soas.ac.uk/18841/1/grady-international-crimes-in-the-courts-of-england-and-wales-criminal-law-review.pdf>.

27 See e.g. Omega Research Foundation, Torture-Free Trade, available at: <https://omegaresearchfoundation.org/what-we-do/trade/>.

28 Amnesty International, Essential elements of the Torture-Free Trade Treaty, 23 September 2022, available at: <https://www.amnesty.org/en/documents/ior40/5977/2022/en/>.

29 See e.g. Department for International Trade, “Notice to Importers 2938 issued on 31 December 2020 by Import Controls policy and licencing team”, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945737/Notice\\_to\\_importers\\_2938\\_-\\_torture\\_equipment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945737/Notice_to_importers_2938_-_torture_equipment.pdf); Export Control Joint Unit, Department for International Trade and Department for Business and Trade, “Export controls: torture and capital punishment goods”, 15 August 2012, available at: <https://www.gov.uk/guidance/controls-on-torture-goods>.

to ensure that inherently abusive equipment is not traded and used and that the export of standard policing equipment can be halted if there is evidence of misuse. For example, despite evidence from around the world that law enforcement officers misuse standard batons,<sup>30</sup> the UK does not require companies to obtain licences to export this equipment, and therefore has no mechanism to restrict their export. We encourage the UK Government to review the recent UN Special Rapporteur on Torture thematic study on the global trade on law enforcement equipment and ensure the UK's approach aligns with Annexes I and II of the study.<sup>31</sup>

The United Against Torture Consortium (UATC),<sup>32</sup> comprising six leading anti-torture organisations including REDRESS and the Omega Research Foundation, advocates for a comprehensive international framework to prohibit the trade in inherently abusive equipment and tightly regulate the trade in other law enforcement tools. These efforts aim to ensure that such equipment is not used to commit acts of torture or ill-treatment, aligning with existing international torture prevention obligations under human rights law.

Global action is essential to address the widespread and transnational nature of the torture trade. In light of the UK's leadership in human rights and commitments to torture-free trade, the Government should champion the establishment of an international legally binding treaty on torture-free trade, and ensure its national laws align with international best practices. This would send a powerful message that the UK stands firmly against the tools and practices that enable torture and ill-treatment worldwide.

## CONCLUSION: TAKING TORTURE SERIOUSLY

*The need to put in place an anti-torture implementation plan.*

International law imposes a clear obligation on States not only to prohibit torture but also to implement frameworks that actively prevent its occurrence. The prohibition of torture is enshrined as a jus cogens norm, meaning it is universally recognised and binding on all States, regardless of domestic law. Under the UNCAT, States are required not only to punish acts of torture but also to take effective measures to prevent it, as outlined in Article 2, which obligates States to ensure that torture is prevented through both legislative measures and practical safeguards.

The European Court of Human Rights has reinforced this preventative obligation under Article 3 of the ECHR through its jurisprudence, ruling that States must have in place laws and procedures that ensure individuals are not subjected to torture or inhuman or degrading treatment.<sup>33</sup> The Court has emphasised that the prohibition of torture requires a positive duty to prevent such violations, which includes both protecting individuals from harm and ensuring the State has effective measures in place to investigate and prevent torture.<sup>34</sup>

Further, international law requires States to report on their anti-torture efforts and submit themselves to independent monitoring. With the UK scheduled for review by the UN Committee against Torture in late 2025 or 2026, there is an urgent need for the Government to take meaningful steps to demonstrate its commitment to preventing torture, fulfilling its international obligations,

30 Amnesty International, *Blunt Force: Investigating the misuse of police batons and related equipment*, 9 September 2021, available at: <https://www.amnesty.org/en/latest/research/2021/09/blunt-force/>.

31 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, "Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment", A/78/324, 24 August 2023, available at: <https://www.ohchr.org/en/documents/thematic-reports/a78324-thematic-study-global-trade-weapons-equipment-and-devices-used>.

32 See REDRESS, United Against Torture Consortium, available at: <https://redress.org/uk/united-against-torture-consortium/>.

33 See e.g. *Selmouni v. France* (1999) or *Ireland v. United Kingdom* (1978).

34 See e.g. *X and Others v. Bulgaria*, ECtHR, 2021, para. 178; ECtHR, Guide to Article 3 of the European Convention on Human Rights, paras. 109-111.

and combatting impunity for serious international crimes. The UNCAT review mandates States to report periodically on the implementation of the Convention's provisions and to allow for monitoring by the UN Committee against Torture. This review process is designed to assess State compliance with the Convention, including by examining whether their anti-torture framework includes effective legal and administrative measures to prevent torture. Given the lack of a free-standing anti-torture law in the UK, this would be best implemented through the introduction of a comprehensive anti-torture strategy.

Such a strategy should be developed in consultation with survivors of torture, whose experiences can provide critical insight into the adequacy of existing safeguards and measures, as well as with civil society. The Government could use its advisory committees, such as a human rights advisory group or rule of law task force, to conduct this consultation.

By prioritising prevention, accountability, and redress, the UK would not only reinforce its commitment to the rule of law but also preserve its leadership and credibility in promoting human rights on the global stage. As the UK prepares for its upcoming review by the UN Committee against Torture, the adoption of an anti-torture strategy would demonstrate a proactive approach to fulfilling its obligations under the UNCAT and maintaining its standing as a global advocate for the prevention of atrocities.