

**Committee Against Torture’s Draft General Comment No. 1 (2017)
on the Implementation of Article 3 in the Context of Article 22**

**Written observations by the United Kingdom of Great Britain and Northern
Ireland**

1. The United Kingdom appreciates the opportunity to respond to draft General Comment No. 1 regarding the implementation of Article 3 in the context of Article 22 of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (“the CAT”), and thanks the Committee for its work on this draft General Comment.
2. This statement should also be read in conjunction with the Joint Observations of Canada, Denmark, the United Kingdom, and the United States of America of 31 March 2017 in relation to paragraph 19 and 20 of the draft General Comment.

General principles [section II]

3. The UK agrees that the prohibition of torture as set out in article 2(2) of the CAT is an absolute prohibition, and that the principle of “non refoulement” recognized in Article 3(1) of the CAT is also absolute.
4. In relation to paragraph 10, the UK would like to make clear that it does not accept that where military forces operate overseas, they are exercising legal or de facto effective control. The UK armed forces are at all times, and wherever in the world they are serving, subject to the criminal law of England and Wales. The criminal law of England and Wales explicitly forbids torture. Moreover, as a matter of policy, the UK Ministry of Defence strives to maintain the highest standards of treatment reflecting applicable international law including prohibitions on torture and cruel, inhuman and degrading treatment.
5. On paragraph 14 the UK does not believe that the act of cutting financial assistance for asylum seekers is necessarily prohibited. States must be able to make decisions about levels of assistance in light of economic conditions. Civil legal services for asylum applications and appeals are within scope of legal aid subject to an applicant passing a test of means and merits of their case.

Preventative measures to guarantee the principle of “non refoulment” [section III]

6. On paragraph 18 (f) and (g), the UK recognizes the importance of the effective training to respect the provisions of the Convention and Istanbul Protocol, but would recommend that the scope of such training is limited to “all relevant officials”.

Diplomatic assurances [section IV]

7. We reiterate the position on paragraphs 19-20 as set out in the joint observations of Canada, Denmark, the UK and the United States of America of 31 March 2017.
8. The UK has reached agreements with various countries which facilitate deportation from the UK with assurances. Most of these agreements include a provision for monitoring by an independent body. These monitoring provisions do allow for the monitors to accompany the detainee from the UK, and following their return, if they are detained, for frequent and unannounced access. The monitoring terms of reference for these countries also require that visits are conducted in private, with an interpreter if necessary, by experts trained to detect physical and psychological signs of torture and ill-treatment. Monitors can also arrange for medical examinations to take place at any time if they have concerns over a detainee's physical or mental welfare. On a number of occasions, such agreements have been accepted by the UK Courts as being in accordance with Article 3 of the European Convention on Human Rights – for example the UK's monitoring arrangements with Jordan. When identifying a third party to act as a monitoring body the UK will consider a number of factors. These can include our existing relationship and knowledge of the third party organisation, open source reporting, independently commissioned reports to establish independence and capacity to fulfill the role, as well as detailed discussions with the third party themselves. A monitoring body must also be able to report directly, and in confidence, to the UK Government. The effectiveness of a monitoring body or other forms of verification can be challenged by the deportee in the UK courts and before European Court of Human Rights. Ultimately the precise nature of the monitoring arrangements required will depend on the circumstances of the case, including the nature and level of risk.
9. If the Committee wishes to ensure that diplomatic assurances are not used by States as a loophole for compliance with their CAT obligations, we would suggest that the Committee do so, rather than make a blanket statement that all diplomatic assurances are contrary to article 3 of the CAT. Our position is that when used appropriately, diplomatic assurances have served as an effective tool for States Parties to help ensure compliance with Article 3, including as a means of confirming that an individual would not face torture in a receiving State.
10. Since Article 3 itself states that “for the purpose of determining whether there are [substantial] grounds, the competent authorities shall take into account *all relevant considerations*”, we consider that this must include, where relevant, the undertakings given by a receiving State regarding the treatment of the individual or individuals to be transferred.

Redress and compensation [section V]

11. Regarding paragraph 21, the threshold in medical cases is high, as set out in N v Secretary of State for the Home Department [2005] UKHL 31 which was affirmed by the European Court of Human Rights in N v UK (2008) 47 EHRR 39. To meet this high threshold, it is not sufficient itself to show that a person's life expectancy would be significantly reduced if they are removed from the UK. It is only in very rare cases where a person is in the final stages of a terminal illness, without the prospect of medical care or support of family or friends or palliative care on return that would render removal a breach of Article 3 (ECHR).
12. Disparities exist between healthcare systems around the world and it would place an unrealistic burden on the finite resources available in the UK's National Health Service if the UK were expected to provide free and unlimited healthcare to all those without a legal right to stay. Where an individual has been tortured in the past this is taken to be a serious indication that they may be at risk of persecution or serious harm in the future, and as such they may qualify for protection. In cases where there is no risk of persecution or serious harm in the future the person would not qualify for leave on protection grounds but there is provision to grant discretionary leave in exceptional circumstances. They would be unlikely to be granted leave solely on grounds that they need medical treatment given the very high threshold for medical cases, but there may be individuals who have suffered such serious and sustained harm that expecting them to return to the country in which such treatment took place would in itself amount to inhuman and degrading treatment. Each case is carefully considered on its individual merits and leave is granted where appropriate.
13. The UK cannot agree, as suggested in paragraph 22, that the CAT, or indeed any other relevant international law obliges the sending State to go to the receiving State and facilitate the individual's access to judicial remedies in the receiving State. This could be used to encourage an unwarranted interference in the internal affairs of the receiving State.

Article 3 of the Convention and extradition treaties [section VI]

14. No comments.

Article 2 in the context of Article 16(2) of the CAT [section VII]

15. No comments.

Duties of States parties to consider specific human rights situations in which the right of “non-refoulement” applies” [section VIII]

16. The list of possible indicators of a problem comes from ICCPR obligations but the UK is of the view that the breach of one is not necessarily as serious as the breach of another when it comes to assessing risk e.g. para 30(iv) and (v) where the requirement for “independent” medical doctor could be difficult to demonstrate

Non-State actors [section IX]

17. In relation to paragraph 31 and 32, the UK does not accept that non-State actors including international organisations have the same obligations as States in this regard as they are not party to the CAT. Instead, non-state actors will be bound by domestic law, including the criminal law. The UK would therefore recommend the deletion of these paragraphs.

Specific requirements for the submission of individual communications

18. No comments.

Independence of assessment of the Committee [section XI]

19. The UK notes and supports the independence of the role of the Committee. While appreciating that the Committee is not legally bound by decisions of domestic courts of States Parties, the UK recalls that the Committee itself does not have the mandate to issue legally binding conclusions or judgments.

5 April 2017