

Keynote presentation to the
United Kingdom’s National Preventive Mechanism Annual Conference

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*Check against delivery*

 Ladies and gentleman,

Thank you for the warm introduction and the invitation of Wendy Sinclair and Sam Gluckstein to present today. I am delighted to be addressing the Annual Conference of the United Kingdom’s National Preventive Mechanism, here in the city of Belfast.

I want to start my presentation by reflecting on **two anniversaries** that have significance for our collective resolve to prevent and end the use of torture and other cruel, inhuman or degrading treatment or punishment, and their connections. I will then say a few words about the **situation in the United Kingdom**.

Anyone waking up in Belfast this morning, who has spent their professional career striving for all societies to know peace, freedom and justice, cannot be but struck by the history of this city and all that its people have endured. The **Good Friday Agreement**, which brought an end to the Troubles and guided the transition to peace 25 years ago, and which is being recognized over this period, was a triumph of cooperation over control, of democracy over discrimination, and of human rights over divisions.

Regrettably, torture and other cruel, inhuman or degrading treatment or punishment alongside violence, terror, killings and disappearances, were deployed on a massive scale by all sides. Such ill-treatment was used to terrorize, intimidate and instill fear, to control, to punish, as well as in cases to extract information and confessions. There is considerable psychological research to evidence that trauma from torture is long felt and lingering, and can be inter-generational. That’s why rehabilitation and justice are so important to those who have suffered, and why we must identify risks and quickly stamp out malpractice whenever it re-emerges.

The Good Friday Agreement offered – and continues to offer – hope to the people of Northern Ireland. It is also a beacon of hope for many of the world’s protracted crises. That said, I am worried that the world has lost the art of peacemaking and we are potentially in a very dangerous global downward spiral of might over right, and war over law. Internationally, we are in a period of heightened tension in which we must continue to express our absolute condemnation of acts of aggression, including torture or other ill-treatment. There are no excuses for torture, no justifications, no amnesties, no immunities, no exceptions. I see as one of my responsibilities as the UN’s Special Rapporteur on torture to keep the absolute status of torture high on international and national agendas; and welcome the opportunity to speak to you all today.

The Troubles also lead to **significant litigation**. There are a number of iconic torture cases that we all know by rote; among the most well known of these is the European Court of Human Rights’ Grand Chamber judgment in *Ireland* versus *the United Kingdom,* handed down in 1978, and relating to events in 1971. The original judgement – as well as the Court’s subsequent rejection on procedural grounds of an application by Ireland to revisit the judgement in 2018 – are often considered disappointing outcomes, for the reason that the Court did not make a ruling of “torture” and instead classified the five interrogation techniques at issue as “inhuman and degrading treatment”. In my view, and as reflected in later jurisprudence in a wide range of jurisdictions, any of those acts of inhuman or degrading treatment, taken together or separately, depending on their intensity and duration and the pain or suffering of the victim, could shift over the threshold to be recognized as “torture”.

However, the **judgment should not be overlooked** for what it did contribute to our current understanding of prohibited conduct. Let me mention four important principles it espoused:

* First, the judgment recognized that no matter what you call a certain action, if it meets the minimum threshold of pain and intensity, it is unlawful. Each of the so-called five “deep interrogation” techniques used by British troops against IRA suspects – namely prolonged wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink – were ruled then, and continue to be today, unlawful.
* Second, while a single infraction may not reach the threshold of pain or suffering required for torture, individual acts - assessed cumulatively or in combination - can meet the intensity threshold of the prohibition.
* Third, the Court ruled that physical symptoms were not required for a finding under article 3 of the European Convention of Human Rights, and specific to the case at hand, they recognized that the techniques, which were aimed at sensory deprivation and disorientation, had caused or could be predicted to, if it had not been already established, “acute psychiatric symptoms”.
* And fourth, in assessing that threshold, all the circumstances of a case shall be taken into account, including the duration of the treatment, its physical and mental effects, and the sex, age and state of health of the victim.

All those principles remain important for understanding torture and other forms of ill-treatment as prohibited conduct under international and national law. The “cumulative” test, for example, has been very helpful in condemning deleterious conditions in prisons as prohibited conduct, and not simply substandard care. Giving consideration to all the factors in a case, including the impact of any treatment or punishment on the victim, for example, has been followed in other ground-breaking judgments such as *Aydin* v *Turkey*, from 1997, which recognized for the first time that rape is a form of torture when the Turkish security forces blindfolded, beat and raped a 17-year-old girl.

My first report to the UN Human Rights Council ([A/HRC/52/30](https://www.ohchr.org/en/documents/thematic-reports/ahrc5230-good-practices-national-criminalization-investigation)) which I presented last month focused on a **State’s duty to investigate torture**, which is a foundational obligation that does not have an end date and is not affected by difficult security or other challenges. The UK Supreme Court’s decision[[1]](#footnote-1) in 2021, that the termination of investigations into criminal liability in respect of the ‘hooded men’ case was an unlawful termination, is, in my opinion, the right one. There is no statute of limitations on torture allegations. There can be no peace without justice.

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Turning now to the second anniversary I wanted to mention. In December 2022, we celebrated the **20th anniversary of the adoption of the Optional Protocol to the Convention against Torture**. It is worth taking a moment at a conference such as this, to reflect on the history of this innovative international treaty and your roles as part of the UK’s National Preventive Mechanism.

 The OPCAT is based on **one simple idea**: that when you open up places where persons are deprived of their liberty to public scrutiny, incidents of torture and other ill-treatment or punishment diminish, and improvements in the treatment and conditions of detention can be identified. Torture is a crime of international proportions, which regularly takes place behind closed doors and in secret. When we puncture the cover of darkness by shining a light in and on these hidden places - through **your presence, observations and recording what you see** - the risks and threats of torture are prevented and reduced.

 OPCAT obligations are not new ones. The ‘prevention’ obligation is a core one in article 2 of the Convention against Torture. But what the OPCAT has added is to **institutionalize the role of public scrutiny and monitoring**, and **normalize visits** by external bodies to all places where persons are deprived of their liberty.

There are presently 173 States parties to the Convention against Torture; only 22 States worldwide are left to join before the 40th anniversary which is to be commemorated next year. Meanwhile there are 92 States parties to OPCAT, of which about seventy-eight per cent (78%) have designated or newly established NPMs that regularly visit places of detention in those countries. Fourteen States are on the SPT’s so-called ‘non-compliant list’ consisting of those who are three or more years overdue with their obligation relating to establishment in Article 17.

Sixty-five per cent (65%) of visit reports conducted by the SPT have been made public, which is very positive as States parties are under no obligation to release them. While the rationale that **confidentially of reports** builds confidence with the visited Government and that they would be more willing to cooperate with the SPT, and I think there is merit in that underlying rationale, the SPT’s reports are only useful if they are known and distributed, and can be acted upon by Governments such as by incorporating recommendations into national action plans and other reforms. I am pleased to see that the British Government has a practice of making public the SPT’s visit reports.

The good thing is that the OPCAT expected the reports of the NPMs to be public.

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Detention monitoring is one of the most important shields we have against the abhorrent practice of torture and other ill-treatment. The very fact of an entity possessing the authority to make unannounced visits by qualified, capable and independent observers has brought enormous benefits to many prison systems around the world.

The question that arises from the coincidence of these two anniversaries I’ve mentioned with the timing of your Annual Conference in Belfast for me is whether, **had the NPM existed at the time of the Troubles, would it have made a difference?** Had there been a visiting body, independent of Government, with powers of unfettered access to any place where persons were deprived of their liberty, at that time, would the cases of torture and inhuman treatment have been exposed much earlier? The Troubles are very real reminder of why checks on power are so vital.

The Good Friday anniversary also highlights why the mandate of the UK’s NPM needs an independent statutory basis and should also be extended to cover military detention by way of an independent statutory basis and not merely by request, and also to extend the mandate to cover the UK’s extraterritorial actions. I am aware that the Sub-Committee on the Prevention of Torture made similar recommendations when it visited in 2019, and I would encourage the Government to implement them.

Ladies and gentlemen,

Keeping apprised of the state of prisons and the treatment of prisoners in all corners of the globe is a particular purpose of my mandate as Special Rapporteur. Trends in a number of countries include rising rates of incarceration and the most usual corollary of that, deteriorating conditions and increasing risks of violence. Sometimes rates of incarceration are growing, even as crime rates are decreasing. Privatization without adequate oversight, inadequate allocation of resources, and staff shortages are among the many concerns. There are also many worrying situations in the immigration context, in our treatment of the elderly as well as persons with mental illness.

Torture is not of course only perpetrated in places where persons are held against their will. We are also increasingly seeing torture and other inhuman or degrading treatment being perpetrated by public officials in many non-custodial settings. Brazen acts of ill-treatment are being committed on streets, in cities and in neighborhoods, every week, and quite often captured on CCTV, body-worn or vehicle cameras, or by passersby.

The **UK is not exempt from this picture, so let me highlight a few areas where I think improvements need to be made – and which have been highlighted also by your own reports**.

I am disturbed by the allegations of ill-treatment by staff against **asylum-seekers** at Brooke Home and inhuman conditions at Manston short-term holding centre. The reports of missing and it seems from latest reports **abducted children** from immigration hotels, and the very real prospects that some children may have ended up being trafficked into gangs, is utter negligence. The latest **Illegal Migration Bill** is deeply flawed, contains many dubious provisions in particular I do not consider that it has adequately safeguarded the absolute prohibition against *refoulement* to torture or persecution, and ultimately, I believe it will be so difficult to implement that it will become unimplementable.

I have long advocated for a **maximum period of detention** in the UK to be imposed, as the UK remains one of very few industrialized countries that allows asylum-seekers and other migrants to be held without a statutory limit. The impact of not knowing when one will be released, or to be able to plan for one’s future, can cause anxiety, depression and increasing desperation. A [study](https://www.europarl.europa.eu/document/activities/cont/201110/20111014ATT29338/20111014ATT29338EN.pdf) some years back by the Jesuit Refugee Service looking at immigration detention across the European Union found that everyone becomes vulnerable in detention at around three months, showing signs of psychological trauma, even if they presented with no signs of vulnerability upon entry. There appear to be no good reasons why the UK cannot implement a statutory maximum, as most other European and industrialized countries manage to do.

I have also been struck by the reports of the **experience of girls** within the UK’s juvenile justice system,[[2]](#footnote-2) such that they are considered to have the highest needs yet are placed in establishments with the least resources. Although the number of girls in custody is small, they present with multiple and complex needs upon entry, reported as past trauma, substance abuse and neurodiversity. Your reports also indicate a higher likelihood of self-harm, by 12 times that of boys, and higher levels of violence than boys, with eighty-three per cent (83%) more likely to use violence than boys, most usually directed against prison staff. What is going wrong? These indicators are entirely at odds with what we know about boys and girls outside of detention.

The **IPP (Imprisonment for Public Protection) prisoner status** was abolished in 2012, yet, I am informed that 1,437 people remain in prison serving these indeterminate sentences. 16% of those prisoners have served the minimum tariff of less than two years, and greater than two in five or 42% have a tariff of between 2-4 years; some people are still imprisoned a decade beyond the tariff of their original sentence. The psychological toll of such sentences has resulted in higher-than-normal rates of suicide and self-harm. The Justice Select Committee tasked with advising on what to do next, described the programme as causing “acute harm”. A swift recalibration of original sentences appears a way forward. That does not mean that all such prisoners should or would be released; however, what it should result in is a clearer indication of the end date of their tariff and in so knowing this, resources can be appropriately allocated to assist them with that transition back into society. Individually assessed, it is foreseeable that some of these indeterminate sentences have caused psychological torture or another form of inhuman or degrading punishment. The judicial overreach in applying the sentence so frequently and beyond the expected use of the policy, and the large number of crimes to which the sentence was applied (153 specified offences), question the overall compatibility of the IPP regime with international standards. While I cannot prejudge an overall assessment here, nor individual cases, I will be giving further considerations to these sentences in the coming weeks.

Finally, **staff shortages across the prison sector** and challenges of recruitment have been highlighted again and again, with the consequence that too many prisoners are reported to be spending 23 hours per day in their cells. The [Nelson Mandela Rules](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F70%2F175&Language=E&DeviceType=Desktop&LangRequested=False) have as their maximum period 22 hours per day (Rule 44). That is not a standard to be aspired to, but it is the very lowest standard that is permitted, and it should be justified. It is not to be considered the norm. Solitary confinement of more than 15 days is considered torture. What I would like to see, and what is a humane and dignified way to treat prisoners, is that prisoners spend almost all day out of their cells, engaging in meaningful activities and exercise, and only go to their cells for sleeping and down time. I’m afraid this well-meaning standard has caused a descent to the bottom.

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Like yourselves, I have visited many prisons and places of immigration or security detention, and in a range of different countries, and spoken to dozens of prison officials and prisoners. Let me share with you some of my guiding principles from all those visits, that might be informative to keep in mind today:

* Everyone should feel safe and be treated with dignity. The deprivation of liberty or removal from society *is* the punishment. There is no additional penalty to be applied.
* Prisons are both places where people are deprived of their liberty, and they are also places of employment: improving conditions and reducing violence is good both for prisoners and prison staff. Dehumanizing the prison experience also dehumanizes prison staff. Dehumanization creates conditions for violence.
* No one likes to see other’s suffer (except the very perverted or burnt-out prison officials who needs to be identified and moved out of the system). Recruitment and promotions policies involving equality and representation in those processes is key.
* The normalization of small infractions can lead to institutionalized behaviours. Disciplinary as well as investigations with criminal sanctions must be carried out rigorously.
* While prisoners are kept apart from society because of the crime they have committed, for most of them they will at some point be returned to our communities and they must be prepared for that eventuality. Rehabilitation and purposeful daily activities are lifesavers and are not optional.
* There are many people who are detained or who are ordered to reside where they are not free to leave, such as asylum seekers, persons on remand, as well as people residing in psychiatric institutions and elderly care homes. Such places should be run as close as possible to ordinary social (and non-prison) conditions. An entirely different mindset is required.
* And finally, even in the most well-functioning institutions, there are risks, pitfalls, and room for improvements.

The work you perform as part of the NPM is an incredibly important one. Without periodic new sets of eyes, both prisoners and prison staff alike can accept an unacceptable situation, as normal. With a prison population of nearly 90,000 in the United Kingdom, as well as around 21,000 persons entering immigration forms of detention (as of September 2021), and many other persons in places covered by the NPM’s scope, your monitoring visits and your expertise, subject specialization and geographic reach that you all contribute, brings relief and improvements for everyone. It is not easy work, nor particularly desirable. Like me, perhaps many of you might occasionally wonder how you ended up working for so many years or decades on questions of detention, torture and inhuman treatment. There must be lighter roles!

Your role and those of the teams you manage carry important responsibilities and at times, heavy burdens. This annual conference is an excellent opportunity to be able to discuss some of the major challenges, and how to influence further improvements. I am honoured to be spending this day with you all, and I look forward to listening to your experiences, your ideas and your insights; and to be sharing my own in return.

And finally, when you reach your levels of heading institutions, I imagine you are rarely thanked. So let me do that now. I thank you for your service.

Thank you.

1. *In the matter of an application by Francis McGuigan for Judicial Review (Northern Ireland)* [2021] UKSC 55 [↑](#footnote-ref-1)
2. ‘A Thematic Review of Outcomes for Girls in Custody’, 21 September 2021. [↑](#footnote-ref-2)