

Scottish Human Rights Commission submission to the Committee against Torture (CAT)

Periodic Review of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

March 2019

UN Committee against Torture: <https://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

*Contact:* Diego Quiroz, Policy Officer Scottish Human Rights Commission, Bridgeside House, 99 McDonald Road

Edinburgh, EH7 4NS, Scotland

E: diego.quiroz@scottishhumanrights.com

Online: scottishhumanrights.com Twitter.com/ScotHumanRights

**Contents**

Summary of Questions 3

1. Introduction 5

2. UNCAT in Scotland 7

Articles 1 to 5 7

Article 10 12

Article 11 14

Articles 12 and 13 19

Article 16 20

**Summary of Questions**

*The Committee may wish to seek an update from Scotland and the UK on:*

1. The UK's lack of progress on incorporating UNCAT and accepting the right to individual petition, as compared with other European and Commonwealth states.

2. Plans for the repeal or reform of Human Rights Act 1998 and of the United Kingdom’s legal human rights framework after leaving the European Union.

3. Actions being taken to ensure compliance of the UK NPM with OPCAT standards.

4. How all relevant public bodies will be appropriately financed and trained to enforce the Domestic Abuse (Scotland) Act 2018.

5. How raising the age of criminal responsibility to 12 years old, as opposed to 14 years old, is a progressive commitment in Scotland.

6. All measures undertaken to promote positive non-violent forms of discipline in Scotland.

7. Steps taken by the UK and Scottish Governments to ensure that public frontline staff and the private sector are appropriately trained for the identification and care of victims and the prevention of trafficking and exploitation.

8.Actions taken to implement the Children’s Commissioner recommendations on restraint and seclusion in schools.

9. Steps being taken to improve training for police and prisons staff on UNCAT and human rights standards.

10. How the effectiveness of training programmes for police and prison officers is assessed.

11. Measures being taken to provide adequate training for judges, prosecutors and medical personnel steps on UNCAT standards.

12. Plans to reduce the prison population and improve prison conditions and reintegration.

13. Steps taken to improve the delivery of health and social care in prisons.

14. The number of people who died in police custody during 2017/18.

15. The number of people on segregation and rehabilitation units.

16. The cause of the systematic delays in Fatal Accident Inquiries.

17. Arrangements taken to ensure that every death of patients being treated for mental disorder is subject to a proportionate and human rights compliant level of review.

18. The reasons for the continued rise in the use of the law to treat people for mental illness in Scotland.

19. The lack of intensive psychiatric care facilities in Scotland for children and young people.

20. The work of the ISC and on all investigations into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas.

21. Plans to enhance and ensure that private providers of care for older people meet UNCAT and human rights obligations.

**1. Introduction**

1. The Scottish Human Rights Commission (SHRC) is a statutory public body and National Human Rights Institution (NHRI), established in 2006 to promote and protect human rights in Scotland. SHRC is one of the three NHRIs in the UK. SHRC is a member of the UK’s National Preventive Mechanism (NPM) designated in accordance with OPCAT and also a member of the of the UK Independent Mechanism under CRPD. **This submission relates to the protection of human rights in Scotland.**

2. The UK Parliament has devolved various powers to the Scottish Parliament in areas such as education, health, housing, policing and justice. Scotland has a separate legal system to the rest of the UK. The Scotland Act 1998 requires both the Scottish Parliament and Scottish Government to act compatibly with both the European Convention on Human Rights (ECHR) and EU law when exercising relevant functions. This Act also provides that international obligations should be observed and implemented within devolved areas of competency by both the Scottish Government and Parliament. Therefore, responsibility for implementing the UN Convention against Torture (UNCAT) in Scotland lies with the Scottish Government.

3. There have been some positive measures in Scotland to advance human rights in relation to UNCAT since the previous examination (2013), including steps taken to address historical institutional child abuse,[[1]](#footnote-1) legislative proposals to increase the age of criminal responsibility[[2]](#footnote-2) and eliminate corporal punishment of children at home[[3]](#footnote-3) and the adoption of the *Domestic Abuse (Scotland) Act 2018.[[4]](#footnote-4)* The First Minister also established an Advisory Group on Human Rights Leadership[[5]](#footnote-5) (SHRC is a member), tasked “to make recommendations on how Scotland can continue to lead by example in human rights.” The Advisory Group Recommendations provide a real opportunity for Scotland to strengthen human rights protection, including by incorporating the provisions of UNCAT in Scots law.[[6]](#footnote-6) However, taking forward these recommendations will need sustained, collective leadership from inside and outside Scotland.

4. The Commission’s report is structured around the Committee’s List of Issues (LoI) and provides suggestions of questions and recommendations for the Committee to consider during its examination of the UK. This report is informed by our operational work, including prison inspections, responses to legislative and policy proposals, the evidence gathered through the implementation of Scotland’s National Action Plan on Human Rights, and the voices of civil society and people who engaged in our training and discussions on UNCAT implementation in Scotland in November 2018.[[7]](#footnote-7) Throughout the report we take a preventive approach in the analysis of the issues as a NPM body and will explore conditions that may amount to a violation of the convention.[[8]](#footnote-8)

5. SHRC looks forward to engaging with the Committee and the Scottish Government and hopes that the concerns and recommendations raised in this submission will be meaningfully addressed by the Scottish and UK governments during their appearance before the Committee.

**2. UNCAT in Scotland**

**Articles 1 to 5**

**Legislative and Policy Measures**

6. Scotland and the UK has yet to incorporate all the provisions of UNCAT into its domestic legal system, as recommended by the Committee in 2013. There is no definition of torture in Scots law that matches Article 1 of UNCAT and Section 134 (4) and (5) of the Criminal Justice Act 1988, which applies in Scotland, provides for the defence of “lawful authority, justification or excuse” to a charge of “official intentional infliction of severe pain or suffering.”[[9]](#footnote-9) Furthermore, in the UK there is no right of individual petition under Article 22 of UNCAT. Individual petition under UNCAT has been accepted by the majority of EU Member States.

**Human Rights Act**

7. SHRC recalls the Committee’s previous concluding observation relating to the Human Rights Act 1998 (HRA). We continue to be concerned by criticism of the Human Rights Act 1998 by UK government public figures.[[10]](#footnote-10) We consider that any public statement or legislative changes, such as the proposed establishment of a Bill of Rights, should not erode the level of constitutional protection afforded to the prohibition of torture, cruel, inhuman or degrading treatment or punishment currently provided by the Human Rights Act.[[11]](#footnote-11) The Scottish Government and Parliament is opposed to the repeal of the HRA.

**National Preventive Mechanism (NPM)**

8. In March 2009, in a written ministerial statement to Parliament, the UK Government designated multiple, existing bodies to form the UK NPM. The UK NPM was not explicitly established through a single piece of legislation, so the corresponding legislative framework and budget allocation in line with OPCAT standards is absent. As the SPT is aware, this has an important impact on the financial and operational function of the UK NPM.[[12]](#footnote-12)

9. It is still common practice to second State officials working in places of deprivation of liberty to NPM bodies. This raises concerns as to the guarantee of full independence of such bodies.

**Suggested questions:**

* Explain the UK's lack of progress on incorporating UNCAT and accepting individual petition, as compared with other European and Commonwealth states.
* Update on any plans for the reform of Human Rights Act 1998 and of the United Kingdom’s membership to the Council of Europe.
* Outline what actions are being taken to ensure compliance of the UK NPM with OPCAT standards.

**Recommendations:**

1. Adopt legislation to incorporate all the provisions of UNCAT into its domestic legal systems, including the right of individual petition.

2. Affirm its commitment to retaining the Human Rights Act following withdrawal from the EU.

3. End the practice of seconding individuals working in places of deprivation of liberty to NPM.

**Violence against Women**

10. The Commission welcomed the introduction of the *Domestic Abuse (Scotland) Act 2018* as a positive step.[[13]](#footnote-13) The last few years have seen signiﬁcant movement on criminal justice and policy responses to tackle violence against women, including the Domestic Abuse Act. However, a comprehensive approach requires the Government to continue improving the legislative framework, (for example by ratifying and implementing the Istanbul Convention) and supporting greater awareness-raising for victims and survivors of domestic abuse, to encourage reporting and ensure that the broader scope of the protections provided by the Act are understood. Adequate funding is also required to ensure that women and children receive support to access the services they require. Training for prosecutors, local authorities and law enforcement is also required to ensure that the law is robustly enforced and accurate statistical records in relation to domestic violence exist.[[14]](#footnote-14)

11. SHRC Commission is concerned about prevalent gaps in Scotland in providing specialist services for black and minority ethnic women experiencing domestic violence (especially asylum-seeking, refugee and trafficked women). Furthermore, local authority sources reveal that the number of families with No Recourse to Public Funds (NRPF) is increasing in Scotland. An Inquiry by the Equalities and Human Rights Committee of the Scottish Parliament (EHRiC) in 2017 on NRPF, highlighted that women and children survivors of domestic abuse who have insecure immigration status and NRPF are at ‘acute’ risk of suffering destitution due to hostile immigration policies.[[15]](#footnote-15)

**LGBTI Domestic Violence**

12. While there is some research on LGBTI people’s experience of domestic abuse, more is required to fully understand their experiences. Women’s Aid has highlighted that members of the LGBTI community can face additional abuse experiences such as fear of being ‘outed’[[16]](#footnote-16) and research by the ‘Voice Unheard’ project with LGBTI young people, found that 47.1% of young people said that fear of homophobia, biphobia or transphobia would make them less likely to access domestic support services.[[17]](#footnote-17) Research by Scottish Transgender Alliance found high levels of domestic abuse experienced by transgender people (80% of respondents had experienced emotional, sexual or physical abuse from a partner or ex-partner).[[18]](#footnote-18)

**Children**

13. While Scots law protects adults from all forms of physical assault, children do not have the same level of protection. *The Criminal Justice (Scotland) Act 2003* provides a defence of justifiable assault of a child, available where it is claimed that such an act was physical punishment carried out in exercise of a parental right. This defence is contrary to numerous human rights standards and is challenged continuously by the international human rights bodies. In 2018, a Bill for the equal protection of children from assault was introduced, which SHRC welcomes.[[19]](#footnote-19)

14. The *Age of Criminal Responsibility (Scotland) Bill* was introduced in 2018, following consultation and the recommendations of an advisory group established in 2015[[20]](#footnote-20) to examine the implications of raising the minimum age of criminal responsibility from eight to twelve years. The Bill is currently being considered by the Sottish Parliament at Stage 3. SHRC’s view is that Scotland can be more ambitious by raising the age of criminal responsibility to a minimum of 14 years of age, in line with the majority of European nations and the Council of Europe Parliamentary Assembly’s Resolution xlviii.[[21]](#footnote-21)

15. In 2018, the Children and Young People’s Commissioner Scotland (CYPCS) undertook an investigation[[22]](#footnote-22) on the adequacy of local authority policies and procedures on the use of restraint and seclusion in schools. The investigation found a lack of planning and continuous assessment of individual children’s needs and a general failure to consult with children and their families involved. Furthermore, the investigation found a lack of consistency across different schools and local authorities in terms of the type of document, status and context, and where the policies are located within local authority structure. The investigation also found inconsistencies in reporting requirements relating to the use of restraint and seclusion in schools.It is crucial that all children are able to feel that school is a safe place where rights are respected.

**Human Trafficking**

16. The Scottish government introduced the *Human Trafficking and Exploitation (Scotland) Act* in 2015 and published the *Trafficking and Exploitation Strategy* in May 2017. The first Annual progress report of the Human Trafficking and Exploitation Strategy group showed that the National Referral Mechanism (NRM) received 207 total referrals in Scotland in 2017, which was a 38% increase on the previous year.[[23]](#footnote-23) However, the Annual Progress Report also shows that convictions remain low. In 2017, there were two individuals convicted of trafficking offences under the Act.[[24]](#footnote-24) Greater corporate sector engagement is needed as 34% of businesses have not adhered to the UK Modern Slavery Act.[[25]](#footnote-25)

**Suggested questions:**

* Explain how all relevant public bodies will be appropriately financed and trained to enforce the Domestic Abuse (Scotland) Act 2018.
* Describe how raising the age of criminal responsibility to 12 years old, as opposed to 14 years old, is a progressive commitment in Scotland.
* Update on all measures undertaken to promote positive non-violent forms of discipline in Scotland.
* Update on the steps taken by the UK and Scottish Governments to ensure that public frontline staff and the private sector are appropriately trained for the identification and care of victims and the prevention of trafficking and exploitation.
* Explain what steps have been taken to implement the Children’s Commissioner recommendations on restraint and seclusion in schools.

**Recommendations:**

4. Guarantee that all relevant public bodies and organisations are appropriately financed and trained to implement the *Domestic Abuse (Scotland) Act 2018.*

5. Raise the age of criminal responsibility to a minimum of 14 years of age, in line with the majority of European nations.

6. Ensure that public frontline staff and the private sector are appropriately trained for the identification and care of victims and the prevention of trafficking and exploitation.

7. Promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.

8. Ensure that no restraint or seclusion takes place in the absence of clear consistent policies and procedures at all levels in Scotland.

**Article 10**

**Education programmes for prison staff and police**

17. In Scotland, induction training for officers and staff working in custody settings does not explicitly address UNCAT. While it draws on human rights standards, the quality and quantity of training across different establishments is variable. Furthermore, refresher training is not always routinely provided. We have found through our involvement in prison inspection and monitoring that no specific training had been provided to prison staff on human rights for over 8 years after commencing employment.[[26]](#footnote-26) As a consequence the knowledge is occasionally outdated and inconsistent, relying on the individual capacity of staff. We have also found that there is a lack of tools and processes to assess the effectiveness of training and educational programmes in reducing cases of ill-treatment. SHRC welcomes the 2013 police commitment to integrate human rights in the structures and culture of policing, but has yet to see evidence of it being operationalised.

**Electrical discharge weapons**

18. Police Scotland announced in 2018 that they were aiming to train 520 police officers on the use of electrical discharge weapons, with a view to them being deployed in June 2018.[[27]](#footnote-27) The deployment of these trained officers mean that around 2.9% of force establishment will carry a ‘taser’.[[28]](#footnote-28) However, there is a lack of information about whether human rights and UNCAT are integrated into that training.

**Training for judges, prosecutors and medical personnel**

19. The Domestic Abuse (Scotland) Act 2018 provides a number of protective measures for victims. However for these to be effective, adequate training for prosecutors, local authorities and law enforcement agencies is required.

20. While most public authorities have a requirement that staff using physical intervention techniques require some kind of training for designated staff in order for them to use physical intervention techniques, it generally does not explicitly address UNCAT standards.

**Suggested questions:**

* Explain what steps are being taken to improve training for police and prisons staff on UNCAT and human rights standards.
* Clarify how the effectiveness of training programmes for police and prison officers is assessed.
* Outline what steps are being taken to provide adequate training for judges, prosecutors and medical personnel steps on UNCAT standards.

**Recommendations:**

9. Ensure that initial and refresher training programmes are consistently delivered which support those working in prison and police custody.

10. Monitor the performance of police and prison staff in compliance with HRA.

11. Assess the effectiveness of training programs for police and prison officers.

12. Ensure training for judges, prosecutors and medical personnel dealing with detained persons on UNCAT standards.

**Article 11**

**Imprisonment**

21. In 2013, the Committee highlighted concerns regarding the ‘problem of overcrowding, and its impact on prisoner violence and access to recreational activities.’ Scotland has a large prison population (7.804), with a relatively large number of people on remand (1.296).[[29]](#footnote-29) While there has been an improvement in conditions of detention since the last report (2013) and the Prison Inspectorate (HMIPS) has adopted an explicit human rights based approach to prison inspection and monitoring in Scotland,[[30]](#footnote-30) a number of key areas still require further improvement.

22. Two thirds of female admissions to Scottish prisons are for remand, 70% of which do not go on to receive a custodial sentence.[[31]](#footnote-31) Several prisons are understaffed, which has an impact on the delivery of services and safety of both prisoners and staff.[[32]](#footnote-32) While the general treatment of women in prison has improved in the last 4 years, questions remain in relation to specific issues, including mental health services, rehabilitation programmes and reintegration into the community. Women in prison are more likely to be involved in self-harm than men. In 2016/17 women accounted for 26% of self-harm incidents in prison.[[33]](#footnote-33) Figures obtained by Scottish Liberal Democrats (via a Freedom of Information request) show that there were 762 incidents of self-harm in 2018, compared to 532 in 2017 – an increase of 43 %. A total of 517 incidents were for cuts; 72 incidents were categorised under “swallows item”; 41 for “overdose” and 31 as “attempted suicide”.[[34]](#footnote-34)

23. There are significant limitations to providing adequate material conditions of detention for older prisoners and those with physical disabilities.[[35]](#footnote-35) Over one quarter of prisoners over the age of 60 are serving sentences of 5 years or more which leads to increasing number of prisoners in their 70s and 80s.[[36]](#footnote-36) As a consequence, there is an increasing need for social care for prisoners, as well as medical care. The Scottish prison estate is not equipped to care appropriately for older prisoners, with many experiencing poor treatment in terms of isolation and inadequate healthcare.[[37]](#footnote-37)

24. The report of the 2017 Scottish Parliament Inquiry on Health Care in Prison found that a change in the body responsible for delivering health services in Scottish prisons had ‘not materialised’ in a better service, and the Committee was ‘disappointed to discover the unique opportunity to address health inequalities within the prison environment is not being taken’.[[38]](#footnote-38) SHRC and HMIPS inspections support these findings.[[39]](#footnote-39) There are also significant challenges to accessing benefits and housing for people leaving prison. Five groups of prison leavers face particular barriers: remand prisoners, those on short sentences; women; young people; and those who were homeless on entering prison.[[40]](#footnote-40)

25. Some prisoners, in particular young men and those on remand, are locked up for long periods (as much as 20-22 hours a day), with limited access to purposeful activity.[[41]](#footnote-41) Segregation regimes are overused and the data available on solitary confinement (segregation and rehabilitation units) is incomprehensive as it is not aggregated or comparable.

26. Through its involvement with prison inspections, SHRC has found a lack of confidence in the complaints process amongst prisoners.[[42]](#footnote-42) Our inspection reports revealed that information regarding complaints processes was not consistently provided to prisoners and was not available in alternative formats. Foreign nationals also experience heightened levels of isolation due to limited access to appropriate educational and recreational activities, as well as the lack of translated and culturally appropriate materials.[[43]](#footnote-43)

**Deaths in Prison and Police Custody**

27. All deaths in prison and police custody are subject to a Fatal Accident Inquiry (FAI). A freedom of information request submitted to the Crown Office and Procurator Fiscal Service (COPFS) in January 2019 revealed there are 127 outstanding FAIs.[[44]](#footnote-44) Currently, the longest waiting times for an inquiry to be completed relate to two deaths eight years ago, and one FAI, completed in 2014/15, occurred 10 years after the death.[[45]](#footnote-45) A significant number of deaths in prison are still ‘awaiting determination’ as to the cause of death.[[46]](#footnote-46) Statistics for deaths in police custody are difficult to find and only appear to be available up to 2014/15. A report by the Home Office in 2017 showed that Scotland figures were comparable with England, but marginally higher during 2013/14 and 2014/15.[[47]](#footnote-47) The FAI review process is lengthy and lacks a sufficient element of public scrutiny.

**Mental Health Settings**

28. There is no mandatory investigation of deaths in mental health settings. A number of agencies can be involved in investigating the deaths of people being treated for mental disorder. However, the most common way these deaths are investigated is by means of NHS boards’ Significant Adverse Event Review processes. The current arrangements do not comply with the requirements set out in Article 2 of the ECHR (e.g. that investigations should be independent of those implicated in the death).  A Ministerial review of the arrangements concluded that the Mental Welfare Commission for Scotland should develop a system for investigating all deaths of patients who, at the time of death, were subject to mental health detention.

**Suggested questions:**

• Update on plans to reduce the prison population and improve prison conditions and reintegration.

* Explain steps taken to improve the delivery of health and social care in prisons.
* Supply information on the number of people who died in police custody during 2017/18.
* Provide data on the number of people on segregation and rehabilitation units.
* Explain the cause of the systematic delays on FAI.
* Supply information about the steps taken to ensure that every death of patients being treated for mental disorder is subject to a proportionate and human rights compliant level of review.

**Recommendations:**

13. Strengthen the current efforts to reduce the high level of imprisonment, in particular through the use of non-custodial measures as an alternative to imprisonment.

14. Reduce the number of hours prisoners are locked in their cells.

15. Ensure that an adequate standard of health and social care is delivered in prisons.

16. Improve the data available on people on segregation and rehabilitation units.

17. Improve the investigation of deaths in line with the principle of effective investigation (Article 2 of the ECHR).

**Mental Health Detention**

29. In 2017/18 the Mental Welfare Commission (MWC) reported 5,647 new episodes of compulsory treatment for mental health in Scotland - a 4.1% increase on the previous year.[[48]](#footnote-48) This is the highest number since the 2003 Mental Health Act was implemented, and follows an upward trend since 2009/10. The MWC has expressed concern about the continued rise in the use of the law to treat people for mental illness, particularly the use of emergency detention.

30. There is a lack of provision for high secure mental health provision in Scotland for women designated as requiring such. The only high secure mental health facility in Scotland is the State Hospital at Carstairs. In low security, all Intensive Psychiatric Care Units (IPCU) there are fewer hospital options for women, who often have to travel outside of their home Health Board area for treatment. IPCUs in hospital wards are mixed sex in Scotland.

**Young People in** **Intensive Psychiatric Care**

31. The number of children and young people treated for mental illness in non-specialist wards in Scotland also rose in 2017-18.[[49]](#footnote-49) 103 admissions were recorded nationally, involving 90 young people under the age of 18.[[50]](#footnote-50) There was a reported lack of service provision for young people requiring IPCU, with some young people having to be admitted to adult IPCUs.[[51]](#footnote-51) Adult intensive care psychiatric units can often be unsuitable environments for adolescents. Fourteen of the children and young people admitted to non-specialist wards were treated in an adult IPCU, including five who were under the age of 16.[[52]](#footnote-52)

**Suggested questions:**

* Explain the reasons for the continued rise in the use of the law to treat people for mental illness in Scotland.
* Describe what the Scottish Government is doing to address the lack of intensive psychiatric care facilities in Scotland for children and young people.

**Recommendations:**

18.Examine the persistent rise in the use of the law to treat people for mental illness in Scotland.

19. Increase IPCU facilities for children and young people in Scotland.

**Articles 12 and 13**

**Inquiries into allegations of torture overseas**

32. SHRC recalls the Committee’s concluding observations relating to inquiries into allegations of torture overseas and refers the Committee to follow up information provided by the three UK NHRIs in relation to this matter.[[53]](#footnote-53) An interim report ofSir Peter Gibson's Inquiry into the Involvement of State security and intelligence agencies into allegations of torture overseas was published in December 2013.[[54]](#footnote-54) The UK Government subsequently referred the matter to the Intelligence and Security Committee of UK Parliament (ISC) for resolution.[[55]](#footnote-55) In June 2015, the UK NHRIs addressed the UN Human Rights Council highlighting the delay and reinforcing the need for a full, independent, judge-led inquiry which complies with the investigative obligation under international human rights law.[[56]](#footnote-56) However, 4 years later no such Inquiry has been initiated.

**Suggested questions:**

* Inform the Committee on the work of the ISC and on all investigations into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas.

**Recommendations:**

20. The UK should consider establishing more robust accountability measures to ensure prompt, independent, impartial and effective investigations into allegations of ill-treatment of detainees overseas by British military personnel, security and secret intelligence services.

**Article 16**

**Older People**

33. In July 2018, the Care Inspectorate (CI) in Scotland identified a number of serious concerns during their inspection to Muirhead Care Home, which service 31 older people. The CI found the care and support; quality of environment; quality of staffing, management and leadership unsatisfactory.[[57]](#footnote-57) Subsequently, the CI made an application to the sheriff at Aberdeen Sheriff Court seeking cancellation of the care service's registration (under Section 65 of the Public Services Reform (Scotland) Act 2010). The application is based on the Care Inspectorate's belief that in the absence of an order there will be serious risk to the life, health or wellbeing of persons cared for by the service.

**Suggested question**:

* Inform on any plans to enhance and ensure that private providers of care for older people meet UNCAT and human rights obligations.

**Recommendations:**

21. Guarantee that the treatment of older people in care homes is compatible with UNCAT standards, including by providing effective guidance to business on how to respect human rights throughout their operations.

End.

1. E.g. the introduction of an Apology Law, a Financial Redress Scheme and the Removal of Time Bar. See: <http://www.scottishhumanrights.com/justice/historic-child-abuse/#historic-child-abuse-3858> for further information. [↑](#footnote-ref-1)
2. See: *The Age of Criminal Responsibility (Scotland) Bill* at: <https://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx> [↑](#footnote-ref-2)
3. See: The *Children (Equal Protection from Assault) (Scotland) Bill* at: <https://www.parliament.scot/parliamentarybusiness/Bills/109156.aspx> [↑](#footnote-ref-3)
4. The *Domestics Abuse (Scotland) Act* *2018* can be viewed at: <http://www.legislation.gov.uk/asp/2018/5/contents/enacted> [↑](#footnote-ref-4)
5. For more information see: <http://humanrightsleadership.scot/> [↑](#footnote-ref-5)
6. See: *Recommendations for a new human rights framework to improve people’s lives: Report to the First Minister* (Dec 2018) at: <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf> [↑](#footnote-ref-6)
7. See: <http://www.scottishhumanrights.com/news/un-specialist-visits-scotland-to-share-expertise-on-preventing-torture/> [↑](#footnote-ref-7)
8. Article 16 of CAT cuts across the majority of the provisions and issues discussed. [↑](#footnote-ref-8)
9. See *Criminal Justice Act 1988* at: <https://www.legislation.gov.uk/ukpga/1988/33/contents> [↑](#footnote-ref-9)
10. The 2017 Conservative manifesto states that the party will consider our human rights legal framework when the process of leaving the EU concludes. In October 2014 the Conservative Party issued proposals for the reform of human rights protections in the UK, including the repeal of the HRA 1998 and its replacement with a “British Bill of Rights and Responsibilities”. These proposals were refined in the Conservative party manifesto and in the Queen’s Speech of May 2015 (see: <http://www,gov.uk/government/speeches/queens-speech-2015>) [↑](#footnote-ref-10)
11. See letter of the Minister of Justice in relation to this issue at: <https://www.parliament.uk/documents/lords-committees/eu-justice-subcommittee/CWM/EAtoLB-PolDeclationReferencetoECHR040119.pdf> [↑](#footnote-ref-11)
12. For further detail on this see UK NPM report to UNCAT available at <https://www.nationalpreventivemechanism.org.uk/> [↑](#footnote-ref-12)
13. The *Domestics Abuse (Scotland) Act* *2018* can be viewed at: <http://www.legislation.gov.uk/asp/2018/5/contents/enacted> [↑](#footnote-ref-13)
14. The government announced £165,000 of dedicated training funding for Scottish Women’s Aid and also additional funding to train police officers on the new Act. See: <https://www.theguardian.com/society/2018/feb/01/scotland-set-to-pass-gold-standard-domestic-abuse-law> [↑](#footnote-ref-14)
15. The Destitute Domestic Violence Concession, which allows people on a UK partner visa to claim certain welfare benefits in cases of domestic violence, does not apply to women with no recourse to public funds. See: *Hidden Lives- New Beginnings: Destitution, Asylum and Insecure Immigration status in Scotland* (22 May 2017) Equalities and Human Rights Committee, SP Paper 46, 3rd Report (session 5): <http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiC_3rd_Report_2017.pdf> [↑](#footnote-ref-15)
16. See: *Speaking Out: Recalling Women’s Aid in Scotland: 40 Year of Women’s Aid in Scotland* (2017) Women’s Aid: <https://womenslibrary.org.uk/gwl_wp/wp-content/uploads/2017/12/Speaking-Out-40-years-of-Womens-Aid-1.pdf> [↑](#footnote-ref-16)
17. See: ‘Safe Lives’ blog on LGBT young people’s experience of domestic abuse (Feb 2017): <http://safelives.org.uk/practice_blog/lgbt-young-peoples-experiences-domestic-abuse> [↑](#footnote-ref-17)
18. See: *Out of Sight, Out of Mind? Transgender People’s Experience of Domestic Abuse* (2013), Scottish Transgender Alliance: <https://www.scottishtrans.org/wp-content/uploads/2013/03/trans_domestic_abuse.pdf> [↑](#footnote-ref-18)
19. The *Children (Equal Protection from Assault) (Scotland) Bill* has been welcomed by the SHRC and Scotland’s Commissioner for Children and Young People. The Bill is currently at Stage 1. [↑](#footnote-ref-19)
20. The Advisory Group was comprised of representatives from a range of bodies, including the Crown Office Procurator Fiscal Service, youth justice bodies, victims’ organisations, children’s organisations and children’s rights bodies. [↑](#footnote-ref-20)
21. Parliamentary Assembly Resolution 2010 (2014) Final version. Child-friendly juvenile justice: from rhetoric to reality. [↑](#footnote-ref-21)
22. See *No Safe Place: restraint and Seclusion in Scotland’s Schools* (Dec 2018) CYPCS at: <https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf> [↑](#footnote-ref-22)
23. *Human Trafficking and Exploitation Strategy: First Annual Report* (14th June 2018),

    <https://www.gov.scot/publications/human-trafficking-exploitation-strategy-first-annual-progress-report/> [↑](#footnote-ref-23)
24. See: *Modern Slavery in Scotland: A view from Unseen’s Modern Slavery Helpline* (June 2018) <https://www.modernslaveryhelpline.org/uploads/20180613230226659.pdf> [↑](#footnote-ref-24)
25. See: *Options for Multi-Sectional Engagement on Human Trafficking and Modern Slavery in Scotland: Summary of Proceedings* from See Me, Free Me Conference on Human Trafficking and Modern Slavery in Scotland (March 2018): <https://docs.wixstatic.com/ugd/918b38_cea8894ba6bc41689177538f0a99cbed.pdf> [↑](#footnote-ref-25)
26. HMP *& YOI* Polmont Full Inspection October 2018. Available at http://www.scottishhumanrights.com/justice/prisons-and-detention [↑](#footnote-ref-26)
27. See: <https://www.heraldscotland.com/news/16240360.more-than-500-taser-cops-to-walk-scottish-beats-starting-in-june/> [↑](#footnote-ref-27)
28. *Specially Trained Officers (STOs): Guidance questions and answers for C3 Service Advisors*. Police Scotland. <https://www.pnld.co.uk/media/56554/police-scotland-paper-on-tasers.pdf> [↑](#footnote-ref-28)
29. As of 1 February 2019. See: <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx> [↑](#footnote-ref-29)
30. See: <http://www.scottishhumanrights.com/news/commission-welcomes-rights-based-approach-to-prison-inspections/> [↑](#footnote-ref-30)
31. See: *Law Society of Scotland Submission to the Justice Committee* (25th January 2018): <http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-LSS.pdf> [↑](#footnote-ref-31)
32. See for example, inspection reports of HMP Grampian (2019) and HMP Addiewell (2018) at <http://www.prisoninspectoratescotland.gov.uk/publications> [↑](#footnote-ref-32)
33. *Is Scotland Fairer?:* *The State of Equality and Human Rights in 2018* (2018) Equality and Human Rights Commission. <https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2018> [↑](#footnote-ref-33)
34. Read more at: https://www.scotsman.com/news/politics/self-harm-incidents-skyrocketing-in-scots-prisons-1-4890855 [↑](#footnote-ref-34)
35. See for example, inspection reports of HMP Perth (2018), HMP Greenock (2018), HMP Shotts (2017) at <http://www.prisoninspectoratescotland.gov.uk/publications>. [↑](#footnote-ref-35)
36. *Who Cares? The Lived Experience of Older Prisoners in Scotland’s Prisons: A thematic study carried out by HMIP for Scotland* (July 2017): <https://www.prisonsinspectoratescotland.gov.uk/sites/default/files/publication_files/SCT03172875161.pdf> [↑](#footnote-ref-36)
37. *Who Cares? The Lived Experience of Older Prisoners in Scotland’s Prisons: A thematic study carried out by HMIP for Scotland* (July 2017): <https://www.prisonsinspectoratescotland.gov.uk/sites/default/files/publication_files/SCT03172875161.pdf> [↑](#footnote-ref-37)
38. Read the *Report into Healthcare in Prisons* (2017) Health and Sport Committee, Scottish Parliament, at: https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103318.aspx [↑](#footnote-ref-38)
39. SHRC is a UK NPM member and inspects prison in Scotland, jointly with HMIPS since 2015. The reports are available at <http://www.scottishhumanrights.com/justice/prisons-and-detention/> [↑](#footnote-ref-39)
40. *Prison leavers and homelessness* (2015), E. Dore, Iriss, available at <https://www.iriss.org.uk/resources/insights/prison-leavers-and-homelessness> [↑](#footnote-ref-40)
41. See for example inspection reports for HMP Addiewell (2018 and 2015) at <http://www.prisoninspectoratescotland.gov.uk/publications>. See also BBC report at https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-46878807 [↑](#footnote-ref-41)
42. See for example inspection reports for HMP Open Estate (Castle Huntly)(2016); HMP Addiewell (2018). HMP Perth (2018) ) at <http://www.prisoninspectoratescotland.gov.uk/publications> [↑](#footnote-ref-42)
43. *Report On HMP & YOI Cornton Vale Full Inspection* 28 September - 7 October 2015. [↑](#footnote-ref-43)
44. The figures were obtained by the Scottish Liberal Democrats in January 2019. See: <http://www.scotlibdems.org.uk/lib_dems_uncover_staggering_8_year_waits_for_families_for_fatal_accident_inquiries> [↑](#footnote-ref-44)
45. For further information see: <https://www.scottishlegal.com/article/staggering-fatal-accident-inquiry-delays-of-up-to-eight-years-revealed> [↑](#footnote-ref-45)
46. See: *The Scottish Prison Service publish statistics on prisoner deaths in Scotland*. Available at <http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx> [↑](#footnote-ref-46)
47. *Deaths in Police Custody: A Review of the International Evidence*. Research Report 95 (October 2017). Home Office:<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655710/Deaths_in_police_custody_A_review_of_the_international_evidence.pdf> [↑](#footnote-ref-47)
48. See *Statistical Monitoring: Mental Health Act Monitoring Data 2017/18* (Dec 2018), Mental Welfare Commission: <https://www.mwcscot.org.uk/media/437904/final_for_print_mha_monitoring_data_2017-18.pdf> [↑](#footnote-ref-48)
49. *Statistical Monitoring: Young Person Monitoring Report 2017-18* (December 2018) Mental Welfare Commission: <https://www.mwcscot.org.uk/media/437572/young_person_monitoring_report_2017-18.pdf> [↑](#footnote-ref-49)
50. This compares with 71 admissions involving 66 young people in the previous year. [↑](#footnote-ref-50)
51. Op cit. 46 [↑](#footnote-ref-51)
52. Ibid. [↑](#footnote-ref-52)
53. NIHRC, EHRC and SHRC ‘*Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK’* September 2014 p.3 [↑](#footnote-ref-53)
54. *Report of the Detainee Inquiry* (19 December 2013), available at: <http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf> [↑](#footnote-ref-54)
55. Statement to the House of Commons by the Minister without Portfolio, 13 December 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm> [↑](#footnote-ref-55)
56. UN Human Rights Council Twenty Ninth Session, Agenda Item 3, Joint Oral Statement submitted by the Northern Ireland Human Rights Commission, Equality and Human Rights Commission, and the Scottish Human Rights Commission (A Status NHRIs of the United Kingdom of Great Britain and Northern Ireland).

    Title: *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* (June 2015). [↑](#footnote-ref-56)
57. Inspection rep ort available at: <http://www.careinspectorate.com/index.php/>. See also: <https://stv.tv/news/north/1426779-unacceptable-care-home-to-be-closed-pending-hearing/> [↑](#footnote-ref-57)