

Is Britain's commitment to the prohibition and prevention of torture safe post-Brexit?

The legal framework for withdrawal from the European Union

By invoking Article 50, Britain has begun the process of leaving the European Union (EU). It will be the first sovereign nation to do so (although, some years ago, Greenland left, despite Denmark, of which it was legally part, remaining.)

The UK government's draft Repeal Bill, formally known as the **European Union (Withdrawal) Bill**¹, was published on 13 July.

The bill specifically rules out incorporation of the EU's **Charter of Fundamental Human Rights (CFR)**² into UK law post-Brexit. Amongst other things, CFR specifically prohibits torture.

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The European Union should not be confused with the older and larger Council of Europe, of which Britain is also, and will remain, a member. The difference between the EU and the Council of Europe is explained below, with special reference to the prohibition of torture.

The European Union and the prohibition of torture

The European Union (EU) is primarily a trade and monetary body, with 28 members (27 after the UK leaves), all of whom are also members of the Council of Europe. The EU was established by the Treaty of Maastricht in 1993, though its antecedents go back to the 1950s. The EU is relevant to human rights issues, including the prohibition of torture, because of its **Charter of Fundamental Human Rights (CFR)**, mentioned above. The CFR is divided into seven 'titles', of which title 1, Dignity, guarantees the right to life, and prohibits torture, slavery and the death penalty.

The **European Court of Justice (ECJ)** rules on the CFR and other aspects of EU law. Case law from the ECJ will be retained in British law post-Brexit, but the UK Supreme Court and the Scottish High Court of Judiciary will be allowed to depart from it.

The Council of Europe and the prohibition of torture

The Council of Europe was founded in 1949, and has 47 member states – every country in Europe apart from Belarus, Kazakhstan, the Vatican City and a few territories with limited recognition, such as northern Cyprus. It is an international organisation whose stated aim is to uphold human rights, democracy and the rule of law in Europe.

Perhaps its greatest achievement is the establishment of the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)** (see below).

The Council of Europe created the **European Convention on Human Rights (ECHR)**, based in Strasbourg, in 1950. Article 3 of the ECHR prohibits torture and inhuman or degrading treatment or punishment. There are no exceptions to this right. The Council of Europe's **European Court of Human Rights (EctHR)** rules on matters to do with ECHR.

It is encouraging to note that the EctHR has ruled that the convention is a living instrument; which, over time, has come to be interpreted more liberally. The court has also ruled that states cannot deport individuals who might be subject to torture, inhuman or degrading treatment or punishment in the recipient state.

Unlike the EU, the Council of Europe cannot make binding laws, but it can, and does, enforce ECHR and other international agreements.

Overlapping concerns

The EU's European Court of Justice (ECJ) and the Council of Europe's European Court of Human Rights (EctHR) are completely separate. Concerns have often been expressed about the importance of consistency between the rulings of the two courts.

Cases against the European Union cannot be taken to the EctHR. The EctHR has ruled that states cannot escape their human rights obligations by saying that they were implementing EU law.

The EU has decided (to the surprise of many) not to be bound by the rulings of the Council of Europe's EctHR, but the ECJ gives "special significance" to the ECHR in deciding its own case law.

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How strong is Britain's continuing commitment to the prohibition of torture?

As mentioned above, the European Union (Withdrawal) Bill explicitly states that the EU's Charter of Fundamental Rights (CFR) will not be incorporated into UK law following secession from the EU. This includes the provisions prohibiting torture and inhuman or degrading treatment. Yet Britain remains a member of the Council of Europe, which is, after all, the primary human rights organisation. Nevertheless, we still have to see what provision might be made *in future UK law* to replace the CFR.

Freedom from Torture launched a petition in July, calling on the Prime Minister to reaffirm the UK's continuing commitment to opposing torture in all its forms, wherever it takes place. We urge all our readers to sign this petition, which can be found on line by going to freedomfromtorture.org.³

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A note on the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)

As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is a body of the Council of Europe, its work, and the UK's involvement, should be unaffected by Brexit.

Recently published reports from the Committee include a report from its November 2016 visit to Ukraine, expressing concern about police ill treatment of detainees, a report on its April 2016 visit to Latvia, expressing concern about violence and health care in prisons, and lack of access to lawyers. It even issued, in July of this year, a public statement on the ongoing failure of the Belgian authorities to guarantee the rights of inmates during periods of industrial action by staff; this had resulted in inmates being subjected to inhuman or degrading treatment and even danger to life and health.

The Committee has a long programme of visits scheduled for the coming year (as in all previous years). It is thorough, and its visits can be unannounced.

Friends may wish to reflect that this work will continue. It is work basically at state level; reports are made directly to the governments of the countries visited, and not normally published more widely without the consent of the governments concerned. Although the committee announces most of its visits, and reports of its activities, albeit without unilaterally publishing the details of its findings, its way of working essentially falls into the category which Friends would recognise as patient diplomacy rather than headline grabbing stuff.

Individuals can bring cases to the European Court of Human Rights (EctHR) if all more local remedies have been exhausted, but the process can take many years.

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An FCO view of the world?

Whatever happens in the specific context of Brexit, expect less supranational oversight of what goes on in the UK. Much more will depend on what world view our government adopts in the future, and much of that depends on interpretation.

In a recent Briefing we reported how Britain conveniently reassessed the situation in Eritrea, one of the world's most prolific users of torture, to justify reducing the number of asylum seekers from that country admitted to the UK.

To take another, more recent, example, the Foreign and Commonwealth Office's 2016 Annual Human Rights and Democracy Report, published a few weeks ago, restates the UK's affirmation of the absolute prohibition on torture. Yet it fails to include the use of torture in its list of violations in Iran – despite that country being one of the most prolific users of torture in the world.

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Refugees and asylum seekers – an update

We reported in a previous briefing [Briefing no 52 Victims of torture – matter of definition] on the case of seven asylum seekers who had been kept in asylum detention despite being alleged victims of torture. All seven had been accepted as victims of torture, but were still kept in detention because they had not been tortured by state officials. The government's "adults at risk" policy introduced last September had allowed their continued detention, but they were released pending an appeal to the High Court. This appeal was heard in the High Court in early March, but the Home Office declined to comment on the outcome, or on the cases of 340 further refugees who fell foul of the new more restrictive policy, and whose cases were *still* apparently under review! [See *Torture victims in high court challenge to Home Office over detentions* by Diane Taylor in Guardian, Tuesday 7 March 2017]

References:

¹the full text can be found at <https://publications.parliament.uk/bills2017>

see also article in wikipedia at [wikipedia.org/wik/RepealBill](https://en.wikipedia.org/wiki/Repeal_Bill)

²information on the Charter of Fundamental Human Rights and other documents and organisations mentioned here can easily be found by entering the appropriate term in your search engine

³freedomfromtorture.org/news-blogs/06_07_2017/join_us_in_calling_on_the_prime_minister...

What can we do?

First, sign the Freedom from Torture petition. Second, press your MP to obtain further clarity about the government's intentions – and to make a principled response. This is not about your (or your MP's) personal views on Brexit, it's about respect for human rights.

Find out more about the work of Council of Europe, and particularly its Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in these areas of concern. Both the Committee and the Council as a whole have excellent websites.

And keep a watch on Britain's commitment to take a stance against torture, whatever the outcome of current negotiations. We have not mentioned, for example, what pressures Britain may be under when securing trade deals with third countries - we simply don't know yet, so keep watching.

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The next Newsletter is planned for September. The next Briefing is planned for Mid October.

ARE YOU PLANNING TO JOIN US? DO MAKE YOURSELF KNOWN TO OTHERS WITH Q-CAT PLACARDS AND BRING YOUR OWN IF YOU CAN.

Protest at the Arms Fair (Defence and Security Equipment International) Excel Centre

This Fair is to be held from 12th to 15th September in London. We plan to be part of the Quaker Peace and Social Witness demonstration against it, in the run-up, on the No Faith in War Day Tuesday 5th September from 9 a.m., when a coalition of faith groups will gather for a day of worship, prayer and nonviolent resistance, as truckloads of equipment arrive at DSEI. Information from www.stopthearmsfair.org.uk/events is below*. (There is also a Big Day of Action on Saturday 9th September and a silent vigil in the evening of Monday 11th September.) Q-CAT placards will focus on **UK must not sell tools for torture.**

*On Tues. 5th September, faith groups of all kinds will come together for a day of worshipful and peaceful nonviolent resistance and prayer to say no to the arms trade and no to profiteering from war.

In the morning, [Wake Up London](#) will lead a [Peace Sit](#) meditation followed by a Quaker Meeting for Worship and a recitation of the Kaddish, the Jewish prayer for the dead. An Imam will lead midday prayers followed by an international prayer for peace and a bring-and-share picnic. In the afternoon, speakers will be exploring the relationship between faith and militarism and the effects of militarism on different faith groups followed by prayers from the [Anglican Pacifist Fellowship](#) and a liturgy from [Pax Christi](#). There will be street theatre taking place throughout the day.

Together we will be present to bear witness and say 'no faith in war'.

Where? Outside the ExCel Centre at the eastern end. The ExCel Centre is on the Docklands Light Railway (DLR) and the nearest station is Prince Regent.

When? Tuesday 5th September from 9am

What should I bring? Prayers, music, food, water, your mates, weather-appropriate clothing – come ready for a full day outside! If you want to you can bring prayer flags and symbols of your faith to decorate our inter-faith prayer space and food to share at the bring-and-share picnic (please consider the religious and other dietary requirements of the other picnickers if at all possible). And, of course, your placards and banners.