

Cruel, Inhuman and Degrading Treatment

Torture seeks to annihilate the victim's personality and denies the inherent dignity of the human being. The United Nations has condemned torture from the outset as one of the vilest acts perpetrated by human beings on their fellow creatures. Torture is a crime under international law. According to all relevant instruments, it is absolutely prohibited and cannot be justified under any circumstances. This prohibition forms part of customary international law, which means that it is binding on every member of the international community, regardless of whether a State has ratified international treaties in which torture is expressly prohibited. The systematic or widespread practice of torture constitutes a crime against humanity. ¹

Torture and cruel, inhuman and degrading treatment

When we talk about the Conventions of the United Nations or the Council of Europe, we often refer to them simply as "The Convention Against Torture". However, the full title is *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in the case of the United Nations; and the Council of Europe has *The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

The definition of torture is clear – it is deliberate treatment which causes very serious and cruel suffering, which may be mental, physical or a combination of the two. Such treatment must reach an intense level of severity in order to qualify as torture.

What constitutes "inhuman and degrading treatment"?

In order to come under this category, treatment must go beyond any legitimately inflicted punishment, and the circumstances of each case are relevant (e.g. the sex, age and health of the victim, the duration of the treatment and its physical and mental effects). It includes serious physical assault, psychological interrogation, cruel or barbaric detention conditions or restraints, serious physical or psychological abuse in a health or care setting, and threatening to torture someone, if the threat is real and immediate. Courts have been clear that the State does not necessarily have to *intend* to cause pain and suffering to violate Article 3. ²

¹ <https://www.ohchr.org/Documents/Publications/FactSheet4rev.1en.pdf>

² <https://rightsinfo.org/inhuman-degrading-treatment/>

Degrading treatment means treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors. These include the duration of the treatment, its physical or mental effects and the sex, age, vulnerability and health of the victim. This concept is based on the principle of dignity - the innate value of all human beings. ³

States must not do anything which results in inhuman and degrading treatment, but must also take reasonable steps to prevent ill-treatment, to protect those at immediate risk of ill-treatment and to provide remedies where ill-treatment has occurred. This may mean, for example, that there must be an investigation where there are credible allegations of serious ill-treatment by public officials.

Has the UK ever violated Article 3 by inflicting inhuman or degrading treatment on someone?

The Equality and Human Rights Commission on its website gives the following as an example of how Article 3 has been used:

A young man with mental health problems was placed in residential care. During a visit, his parents noticed bruising on his body. They raised the issue with the care managers but their concerns were dismissed. They were also banned from visiting their son. The parents raised their son's right not to be treated in an inhuman and degrading way and their right to respect for family life. The ban on visits was revoked and the bruising on the young man's body was investigated. ⁴

Here are two examples from the organisation **RightsInfo**:

A severely disabled woman was sentenced to prison for 7 days. The cell in which she was first placed was not adapted for a disabled person and she was forced to sleep in her wheelchair. Prison staff also had difficulty helping her on and off the toilet. The Human Rights Court said that she had been the victim of degrading treatment.

Some asylum seekers were denied support by the Government. The UK House of Lords (acting in its capacity as the Supreme Court) found that, as asylum seekers were not allowed to work, the refusal of support put them at risk of homelessness and poverty, violating their rights under Article 3. ⁵

In 2017, the organisation Liberty deemed that the government's "rape clause" constituted inhuman and degrading treatment. ⁶

The "rape exemption" is oppressive and will expose women to inhuman and degrading treatment, as well as violating the right to respect for a private and family life of mothers

³ <https://bit.ly/2q3M4um>

⁴ <https://bit.ly/2q3M4um>

⁵ <https://rightsinfo.org/inhuman-degrading-treatment/>

⁶ <https://bit.ly/2AdGucV>

and children alike.

In June 2018, it was reported that the government had forced 190 women to prove that they had been raped, in order to receive child benefits.⁷

Under the Council of Europe Convention, an unannounced visit can be made to places of detention⁸. In 2016 such a visit took place, and the report (published in 2017) contains the following observations:

At Cookham Wood Young Offenders Institution, juveniles on a normal regime spent on average only five hours out of their cells each day. The situation was particularly austere for those juveniles who were placed on 'separation' lists (denoted by vivid pink stickers of 'do not unlock' on their cell doors), who could spend up to 23.5 hours a day locked up alone in their cells. In the CPT's view, holding juveniles in such conditions amounts to inhuman and degrading treatment and all juveniles should be provided with a purposeful regime and considerably more time of cell than is currently the case.

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As regards the measure of long-term segregation (LTS) at Ashworth and Broadmoor Hospitals, the CPT has serious concerns relating to the necessity for its application, the manner in which it is applied and its duration. The 2016 visit found that patients could be kept in LTS for years on end with minimal human contact, and often the contact offered was not face-to-face and meaningful but via the hatch in the door to the patient's room. The CPT considers that, in certain cases, the impact of LTS on patients amounts to inhuman and degrading treatment. Steps should be taken as a matter of urgency to review its use in order to reduce resort to LTS and to cut radically the amount of time patients are held in LTS. Further, patients should have the right to appeal the measure of LTS to the Tribunal and the three-monthly external reviews should be put in place. It is also important that the ward designs provide a therapeutic environment adapted to the needs of LTS patients.

The report went on to highlight the chronic over-crowding in British prisons and emphasised that *as long as overcrowding persists, the risk of prisoners being held in inhuman and degrading conditions of detention will remain. Regrettably, the situation has deteriorated over the years to an unacceptable situation.*

The Council of Europe delegation was particularly concerned by the bleak situation for Young Offenders:

The delegation interviewed one juvenile who spent 23.5 hours a day lying on his bed, under his covers, blankly looking at a TV screen, talking to and meeting no one. It also met a 15-year-old who had been held in these conditions for several weeks and he had no information about how much longer he would be held under such a restricted regime. They were effectively being held in conditions of solitary confinement. In the CPT's view,

⁷ <https://ind.pn/2NGR9Qx>

⁸ <https://rm.coe.int/168070a773>

holding juvenile inmates in such conditions amounts to inhuman and degrading treatment.

Further information can be found on the websites of human rights organisations:

Council of Europe: <https://www.coe.int/web/portal/democracy>

RightsInfo: <https://rightsinfo.org/>

A detailed academic paper on “Defining Torture and Cruel, Inhuman and Degrading Treatment”, written for the University of Minnesota Law School in 2011 in response to the USA's “war against terror”, can be found at <https://bit.ly/2NHMe1S>

What can we do?

As ever – stay vigilant and contact your MP if examples of inhuman and degrading treatment come to your attention.

Check the Council of Europe website (see above) for updates on the UK and other countries.

AND – should this or any future government try to remove us from the Council of Europe Conventions on Human Rights and on the Prevention of Torture, join the campaign to keep us in!

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