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# Incorporating International Human Rights: Securing the right to rehabilitation from torture in Scots law

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## SUMMARY OF KEY POINTS

- Torture and other cruel, inhuman or degrading treatment or punishment is all too common and can have devastating consequences for individuals and communities.
- Rehabilitation from torture can include a whole number of elements such as psychological and legal services.
- Incorporation of international human rights into domestic law is a significant step towards the protection and realisation of rights.
- Incorporation of the right to rehabilitation from torture should be fully considered within development of a new human rights statutory framework for Scotland.

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## TORTURE

Torture<sup>1</sup> is **all too common** – between January 2009 and May 2013, Amnesty International received reports of torture in 141 countries, from every region of the world<sup>2</sup>. More than 1000 torture survivors are referred to Freedom from Torture services in the UK each year<sup>3</sup>. The UK has been involved in torture – for example, in 2018, two hard-hitting reports from the government's Intelligence and Security Committee showed that the UK allowed the rendition, kidnap and torture of people accused of terrorism after the 9/11 terror attacks in the United States<sup>4</sup>. We know too that people have experienced torture within the UK for example historic childhood abuse within children's homes.

Torture and other cruel, inhuman or degrading treatment or punishment can have devastating consequences for victims, their families and the broader community. As well as **impacts on physical health and wellbeing**, a high proportion of torture survivors suffer from extreme levels of depression and anxiety. They can experience chronic insomnia, recurring and intrusive memories and flashbacks, poor self-esteem, difficulty in concentrating, sadness, fear, anger and psychosomatic complaints. The severe mental and emotional strain can lead to breakdown in personal and family relationships and make full integration into employment, culture or communities very difficult. Physical and psychological suffering resulting from torture can last for decades and

impacts not only the victims but also their families, including children<sup>5</sup>.

## THE RIGHT TO REHABILITATION FROM TORTURE

The UN Convention Against Torture, Article 14 sets out that:

*'Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.'*

The UN Committee Against Torture General Comment No. 3 (2012) states that:

*'Rehabilitation should aim to restore, as far as possible, torture victims' independence, physical, mental, social and vocational ability, as well as their full inclusion and participation in society.'*

Rehabilitation from torture specialist services can include medical care, psychological and emotional services, and legal services. It can include individual or group therapy, and must be holistic and designed around what the survivor wants and needs.

Specialist rehabilitation services for torture survivors are crucial – they can enable torture survivors to talk and work through their traumatic experiences, to take control over their lives and recovery, to increase their resilience, to have their agency restored, to have stability, to recover their mental and psychological health, and rebuild their lives. Rehabilitation services can enable survivors to contribute fully to their communities, families and society.

*'The effects of torture are not limited to the person who has been assaulted. It travels through families, it travels through generations. And we can see in*

*society that when we do well in terms of helping people rebuild their lives, we can stop that transfer and we can enable people to live fulfilling lives in their own country or their host country.'* Asger Kjaerum, International Rehabilitation Council for Torture Victims<sup>6</sup>

## INCORPORATING INTERNATIONAL HUMAN RIGHTS INTO DOMESTIC LAW

The UK ratified the Convention Against Torture in 1988 which means that the UK Government, and Scottish Ministers as set out in the ministerial code<sup>7</sup>, are bound to act in accordance with this treaty. Every four years, the Committee against Torture reviews the UK's progress in recognising and implementing this treaty, making recommendations for actions for the UK and devolved governments.

The UN Committee Against Torture, in its most recent report to the UK stated:

*'While taking note of the fact that the United Kingdom has a dualist legal system and that a combination of policies and legislation has been put in place to give effect to the Convention, the Committee is concerned that, 30 years after ratifying the Convention, the State party has not yet incorporated it into the domestic legal order.'*<sup>8</sup>

Incorporation of an international treaty into domestic law is a significant legal step towards enforceable human rights that will directly progress implementation of the treaty<sup>9</sup>. Incorporation can have significant impacts on rights realisation for individuals and communities, bringing accountability, empowerment and remedy. At a strategic level, human rights incorporation can lead to human rights realisation being embedded into budgeting, policy and priority setting. It can help build a human rights-based culture.<sup>10</sup>

Incorporation of international human rights creates consistent standards<sup>11</sup> and a 'race to the top' across the UK but also creates the conditions for benchmarking internationally. It enables rights realisation in the UK to fully benefit from the international system of monitoring and review and case law, enabling it to consistently improve over time. International rights obligations can also bring an important security for people who move to a different country, particularly relevant for refugee survivors of torture.

Most importantly, fully incorporating our international human rights into national law brings state accountability that can give real power and agency to people to claim their rights. Torture all too often renders victims feeling powerless and robbed of dignity – giving individuals the right in law to get the support that they need to rebuild their lives is of critical importance and value.

## INCORPORATION OF INTERNATIONAL HUMAN RIGHTS IN SCOTLAND

The UK has a history of incorporating international human rights having put the European Convention on Human Rights into our law through the Human Rights Act in 1998. Rather than individuals having to go to Strasbourg to enforce their rights, the Human Rights Act meant that cases could be taken to court in the UK. Public bodies have a duty to act compatibly with the Human Rights Act and in Scotland, if an Act of the Scottish Parliament is found to be incompatible with the ECHR, then it is in fact, not law.

In Scotland, there have long been calls for human rights to be more fully embedded into our culture, policy, practice and law. For example, the Scotland Declaration on Human Rights, a civil society statement in light of Brexit and negative rhetoric on human rights, was supported by over 200

organisations and 'calls on law and policy makers to take all possible steps to protect our rights and to make Scotland a world leader in both rights protection and implementation'.<sup>12</sup> These calls were rightly only heightened by concern about the potential impact of Brexit on rights protections, a concern that has already been borne out in the loss of the EU Charter of Fundamental Rights in UK law. However, support for human rights and the Human Rights Act 1998 specifically, remains high in Scotland, with MSPs having voted in support of this Act several times.

Support and understanding around incorporation of international human rights has also been increasing. In September 2020, the Scottish Government introduced a bill to the Scottish Parliament to incorporate the UN Convention on the Rights of the Child into Scots law. Widely supported by civil society, politicians and children and young people themselves, this Bill adopts a maximalist approach to incorporation.

Simultaneously, a National Taskforce on Human Rights Leadership is developing proposals for a new human rights statutory framework for Scotland. Starting from recommendations of a First Minister's Advisory Group<sup>13</sup>, this Taskforce is considering how best to incorporate economic, social and cultural rights into Scots law, as well as treaties for particular groups – the Convention for the Elimination of Discrimination Against Women (CEDAW), the Convention of Rights of Disabled People (UNCRPD) and the Convention to Eliminate Racial Discrimination (CERD).

In particular, it is proposed that this new law should include the right to the highest attainable level of physical and mental health – the right to rehabilitation from torture in national law can often have its legal foundation in the right to health.

## INCORPORATION OF THE RIGHT TO REHABILITATION FROM TORTURE INTO SCOTS LAW?

Significantly, it should be noted that **the Scottish Government has already recognised the importance of redress for survivors of abuse by the state** in its introduction of advance payments to survivors of historic childhood abuse and work of the Scottish Child Abuse Inquiry. The Scottish Parliament is currently considering the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill. This Bill sets out the conditions and rights of these survivors to receive compensation in a scheme which is at least part-funded through those organisations that had historic functions in relation to the safeguarding, protection or care of children. The Bill also enables Scottish Ministers to provide emotional, psychological or practical support to those applying to the redress scheme (though notably does not give survivors the right to this support).

In addition to all of the potential benefits of incorporation of international human rights outlined above, there are clear reasons to include the right to rehabilitation from torture in Scots law:

- all those traumatised by historic child abuse would have the right to get the vital psychological and support services that they need. Given the extent of their trauma and suffering at the hands of public officials, Scotland has a moral obligation to provide what these survivors need to recover.
- without rehabilitation services, refugees who are torture survivors will not be able to recover their mental, psychological and physical health, and they will not be able to fully integrate and make a full contribution to their families and communities. Incorporating this right would demonstrate Scotland's commitment to ensuring

that all refugees – no matter who they are or where they are from – can find a welcome here and can truly call Scotland home.

- an opportunity for Scotland to be world-leading in developing innovative, survivor-centred rehabilitation services for torture survivors

*'The ability to enshrine the right to rehabilitation in law allows for a really comprehensive crosscutting programme that ...allows for a holistic approach to allows for the optimal rehabilitation of people... it is really vitally important that survivors are at the heart of the process, and by having a process that is enshrined in law, it will allow Scotland to pioneer a progressive approach to working with survivors to design a crosscutting range of services that are survivor centred and survivor guided, and that is really an opportunity that cannot be missed at this point.'* Tracy Doig, *Freedom from Torture*<sup>14</sup>

- ensure that services for torture survivors are not sidelined but are prioritised and planned for – currently, demand for support services for survivors of torture in Scotland far outweighs available provision. For example, Freedom from Torture services in Glasgow which provides psychological support to torture survivors were only able to provide support to 59% of referrals in 2019 and 54% of referrals in 2020.
- demonstrate the Scottish Government's commitment to the system of international UN review and monitoring, taking on board the consistent and frequent UN recommendations to incorporate all treaty rights into national law.
- contribute to progressing the National Performance Framework. This right directly relates to the NPF purposes to: give opportunities to all people living in Scotland; and increase the wellbeing of people living in Scotland. The NPF value of treating all people with kindness, dignity and compassion could not be more borne out

than through ensuring that all those in Scotland who had to suffer torture in their lives can rebuild them with dignity. In addition, this would clearly directly relate to the outcome to 'respect, protect and fulfil human rights';

**In conclusion, it is clear that, as a new human rights statutory framework is developed for Scotland, the incorporation of the right to rehabilitation from torture must be fully considered.** Incorporating the right to rehabilitation from torture into Scots law would show human rights leadership and would be an important step towards Scotland's duties to 'respect, protect and fulfil' human rights. More than anything, it would empower and enable individuals who have experienced traumatic experiences, to rebuild and restore their lives and dignity.

**#AllOurRights**

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## Footnotes:

- 1 Torture in international human rights law has three elements: the intentional infliction of severe mental or physical suffering; by a public official, who is directly or indirectly involved; for a specific purpose. See further detail at Association for the Prevention of Torture, <https://www.apr.ch/en/what-we-do/torture-prevention/definition-torture>
- 2 Amnesty International, at Torture | Amnesty International
- 3 Freedom from Torture, at [proving\\_torture\\_a4\\_final.pdf](#) ([freedomfromtorture.org](http://freedomfromtorture.org))
- 4 <https://www.theguardian.com/uk-news/2018/jun/28/uk-role-torture-kidnap-terror-suspects-after-911-revealed>
- 5 OSCE UNCAT Implementation Tool 5/2018, Providing Rehabilitation to Victims of Torture and Other Ill-Treatment (an overview of how states have implemented the right to rehabilitation) – found at <https://www.osce.org/files/f/documents/2/a/385497.pdf>
- 6 Human Rights Consortium Scotland: HumanRights2020s Podcast, available at: #HumanRights2020s: The Right to Rehabilitation from Torture – Human Rights Consortium Scotland ([hrcscotland.org](http://hrcscotland.org))
- 7 Although not a statutory obligation the Scottish Ministers are under a duty to act in accordance with international law, including treaty obligations, under the Ministerial Code (2018), para.1.3
- 8 Committee Against Torture, at Treaty bodies Download ([ohchr.org](http://ohchr.org))
- 9 University of Edinburgh at al, see: Incorporation infographics full ([hrcscotland.org](http://hrcscotland.org))
- 10 For multiple papers and articles on the benefits of incorporation, see: [Incorporating International Human Rights – Human Rights Consortium Scotland](#) ([hrcscotland.org](http://hrcscotland.org))
- 11 Katie Boyle, Models of Incorporation, 2018: [models\\_of\\_incorporation\\_escr\\_vfinal\\_nov18.pdf](#) ([scottishhumanrights.com](http://scottishhumanrights.com))
- 12 Full text at [www.humanrightsdeclaration.scot](http://www.humanrightsdeclaration.scot)
- 13 First Minister Advisory Group on Human Rights Leadership recommendations available at [www.humanrightsleadership.org](http://www.humanrightsleadership.org)
- 14 Human Rights Consortium Scotland: HumanRights2020s Podcast, available at: #HumanRights2020s: The Right to Rehabilitation from Torture – Human Rights Consortium Scotland ([hrcscotland.org](http://hrcscotland.org))