



Asamblea General

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Tema 2 de la agenda

**Informe anual del Alto Comisionado de las Naciones Unidas
para los Derechos Humanos e informes de la Oficina
del Alto Comisionado y del Secretario General**

Información presentada por la Comisión para la Igualdad y los Derechos Humanos de Gran Bretaña*

Nota de la Secretaría

La Secretaría del Consejo de Derechos Humanos transmite adjunta la comunicación presentada por la Comisión para la Igualdad y los Derechos Humanos de Gran Bretaña**, que se reproduce a continuación de conformidad con el artículo 7 b) del reglamento que figura en el anexo de la resolución 5/1 del Consejo, según el cual la participación de las instituciones nacionales de derechos humanos se basará en las disposiciones y prácticas convenidas por la Comisión de Derechos Humanos, incluida la resolución 2005/74, de 20 de abril de 2005.

* La institución nacional de derechos humanos tiene la acreditación de la categoría "A" ante el Comité Internacional de Coordinación de las Instituciones Nacionales para la Promoción y la Protección de los Derechos Humanos.

** Se reproduce en el anexo como se recibió, en el idioma en que se presentó únicamente.

Anexo

[English only]

Restraint against children within the juvenile justice system

The Equality and Human Rights Commission (hereafter the Commission) welcomes the joint report and the recommendations contained therein which our analysis shows would reduce the risk of violence to children detained in England and Wales as well as elsewhere. The Commission has recently submitted a comprehensive report to the UN Committee Against Torture prior to the List of Issues being set for the forthcoming examination of the UK. In that report we addressed in some detail the issue of restraint in the secure estate, where children are detained.

Restraint of children and young people in custody

The Commission's Human Rights Review 2012 found that children and young people in custody are at risk of cruel, inhuman or degrading treatment.

Children and young people, aged 15-18, who have been convicted of crimes in England and Wales may be detained in the youth secure estate (made up of young offender institutions, secure training centres and secure children's homes). In June 2012 there were 1690 children under-18 in custody¹.

Children and young people detained in these institutions are under the control and care of the authorities, so the responsibilities of the state are enhanced.

All children and young people in custody are vulnerable due to their age and immaturity. Many will have experienced neglect, abuse, domestic violence, poor parenting and poverty. They are also more likely to have poor educational experiences and have learning disabilities. Such children are likely to have behavioural difficulties and may come into conflict with other children or staff in the youth secure estate. In extreme situations, staff can rely on restraint of children to prevent harm to either the child or to others.

The use of physical force for chastisement is unlawful and any use of physical force that is not strictly necessary to protect the safety of an individual, whether children or staff, is in principle a breach of Article 3 ECHR and Article 16 UNCAT. The UNCRC also provides that children have the right to be protected from being hurt and mistreated, either physically or mentally, that no-one is allowed to punish children in a cruel or harmful way when they are in custody, and that children who break the law should not be treated cruelly. The UN Committee on the Rights of the Child has urged the UK Government to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

Unlawful use of restraint occurs where restraint is used for reasons other than those stated in the rules. For example restraint cannot be used as a punishment or to force compliance with an instruction. Even where restraint is used lawfully, it may still be an inappropriate response to an incident because it is not the last resort and alternative measures are available. Inappropriate use may be inferred from the evidence of high use and frequency.

¹ <http://www.justice.gov.uk/statistics/youth-justice/custody-data>

Since 2006, reports² have drawn attention to restraint used for purposes other than safety.

In 2011, the UK National Preventive Mechanisms also questioned the extent to which restraint is being used safely and only when absolutely necessary and whether appropriate methods are used on children.

Authorised restraint techniques

The approved methods of restraint in young offender institutions and secure training centres do not meet internationally agreed standards, which prohibit the use of intentional pain. The European Committee for the Prevention of Torture recommended the discontinuation of the use of manual restraint based upon pain compliant methods.

Currently, the two authorised methods of restraint used in young offender institutions and secure training centres in England and Wales are called 'control and restraint' and 'physical control in care'. 'Control and restraint' is a system that uses holds which can be intensified to cause pain. 'Physical control in care' authorises the use of distraction techniques such as the thumb technique.

The UK government is currently rolling out a new system of restraint to be used across young offender institutions and secure training centres. However, pain-compliant techniques remain part of the new restraint system, and a new 'mandibular angle technique' has been introduced.

Extent of the use of restraint

Youth Justice Board statistics in 2010/11³ revealed that there were a total of 7,191 incidents of reported use of restraint in England and Wales. On average, this means 599 restraints per month. Of these 7,191 incidents, 259 resulted in the injury of a child, of which 246 were a minor injury requiring medical treatment, which could include cuts, scratches, grazes, bloody noses, concussion, serious bruising and sprains. The remaining 13 were classified as a serious injury requiring hospital treatment and could include serious cuts, fractures, loss of consciousness and damage to internal organs.

However restraint statistics are likely to be an underestimate and it remains unclear from the available literature whether all incidents across detention centres are captured.

² The Howard League for Penal Reform convened an independent inquiry into young offender institutions, secure training centres and secure children's homes in 2006 and found that restraint was used both as a punishment and to secure compliance. Evidence submitted by Her Majesty's Inspectorate of Prisons to the Carlile Inquiry into children in custody states that in 2011, restraint is still being used to secure compliance with instructions in all young offender institutions, and only two institutions report a proportionate but slow decrease in the use of restraint. The inspection in 2010 to Ashfield young offender institution stated: 'The use of force was slowly decreasing, but there were examples of force being used to secure compliance, which was inappropriate.' The 2009 inspection of Hindley young offender institution found that restraint was sometimes used inappropriately. In 2008, when the UK Parliaments' Joint Committee on Human Rights (JCHR) carried out an inquiry into the use of restraint in secure training centres they found that the high use of restraint suggested that it was being used more frequently than absolutely necessary.

³ Youth Justice Statistics Supplementary Tables (published January 2012), Tables 8a2 and 8a7, <http://www.justice.gov.uk/statistics/youth-justice/statistics>. The EHRC's 2012 submission to the UN Committee Against Torture for the List of Issues included statistics for 2009/2010.

Investigations of incidents of alleged mistreatment⁴

If a child in custody shows signs of injury after restraint has been employed, the authorities have an obligation to prove that the force used 'was necessitated by the detainee's own conduct and that only such force as was absolutely necessary was used'. The state also has an obligation to carry out an effective investigation that is capable of identifying and punishing the individual or individuals responsible for any acts of ill-treatment.

There is no national database that records the number of times physical restraint was used, whether injuries were caused, or links this to whether an investigation was conducted. Neither is there a record of the outcome of any such investigation. Reports from non-governmental organisations that provide advice to children in these settings suggest that children and young people are reluctant to pursue complaints about their treatment in custody; as a consequence cases of use of restraint are going unaddressed. Children have little faith that the complaints' system will be effective for them, believing that their complaints will be ignored or fearing reprisals if they complain. This is felt more strongly by ethnic minority children in custody⁵. The failure to complain does not, however, excuse the lack of investigations because the state has a duty to investigate whenever there is a reasonable suspicion of ill-treatment, regardless of how it comes to their attention.

We encourage the Special Representative to continue their work on prevention of and responses to violence against children within the juvenile justice system and to work with National Human Rights Institutions to achieve this goal.

The Equality and Human Rights Commission
August 2012

⁴ In response to the criticisms of the complaints system, the Youth Justice Board commissioned a review of complaints mechanisms in 2011. The action plan for improvement published in March 2011 recommended that complaints systems should be easy to use, that written responses should be timely and of a high quality, and that responses to complaints should be discussed with the young person involved.

⁵ The 2010-11 HMI Prisons survey found that fewer than a quarter (24%) of 15-18 year old ethnic minority men in custody believed that a staff member would take it seriously if they reported that they were being victimised (compared to 36% of their white counterparts).