



CPT/Inf (2003) 18

**Report to the Government of the United Kingdom
on the visit to the United Kingdom
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 17 to 21 February 2002

The United Kingdom Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2003) 19.

Strasbourg, 12 February 2003

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Copy of the letter transmitting the CPT's report

Strasbourg, 18 July 2002

Dear Ms Cross,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of the United Kingdom drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the United Kingdom from 17 to 21 February 2002. The report was adopted by the CPT at its 48th meeting, held from 2 to 5 July 2002.

The CPT requests the authorities of the United Kingdom to provide within three months a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions to its comments and requests for information. The recommendations, comments and requests for information are set out in **bold type** in the text of the report (cf. paragraphs 12, 13, 16, 17, 18, 19, 23, 27, 28, 30, 32, 35, 36 and 37). It would also be most helpful if the United Kingdom authorities could provide a copy of the response in a computer readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the United Kingdom from 17 to 21 February 2002. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Mario FELICE (Head of the delegation)
- Eugenijus GEFENAS.

They were assisted by Aziz TAALAB, interpreter, and accompanied by Jan MALINOWSKI of the CPT's Secretariat.

B. Context of the visit

3. In the aftermath of the unprecedented terrorist attacks of 11 September 2001, the United Kingdom sought to reinforce measures designed to prevent similar attacks and, on 14 December 2001, enacted the Anti-Terrorism, Crime and Security Act 2001. The Act provides inter alia for the administrative detention (by decision of the Secretary of State) for an indefinite period of foreigners believed to pose a risk to national security and suspected of being international terrorists who, for legal or practical reasons, cannot be removed from the United Kingdom.¹ It is not required that those persons be charged with - or indeed suspected of - concrete criminal offences; they are considered immigration detainees.

The United Kingdom also derogated from Article 5 (1) of the European Convention on Human Rights but, at the same time, reiterated the commitment not to remove foreign nationals to a country where they would run a risk of being subjected to torture or to inhuman or degrading treatment or punishment.²

¹ Cf. Sections 21 to 23 of the Anti-Terrorism, Crime and Security Act 2001. Pursuant to Section 29 of the Act, Sections 21 to 23 will be in force for an initial period of 15 months, which can be extended for subsequent periods not exceeding 12 months; unless re-enacted, they will cease to have effect on 10 November 2006.

² On 18 December 2001, the United Kingdom informed the Secretary General of the Council of Europe of its decision to avail itself of the right of derogation conferred by Article 15 (1) of the European Convention on Human Rights to the extent that the exercise of the power of detention contained in the Anti-Terrorism, Crime and Security Act 2001 may be inconsistent with the United Kingdom's obligations under Article 5 (1) of that Convention.

4. It should be made clear at the outset that it is not for the CPT to consider issues related to the derogation from Article 5 (1) of the European Convention on Human Rights made by the United Kingdom authorities. However, it does fall to the CPT to examine the treatment of persons deprived of their liberty, including suspected international terrorists detained by decision of the Secretary of State pursuant to the Anti-Terrorism, Crime and Security Act 2001.

In this connection, the CPT would stress that, while terrorist activities rightly meet with a strong response from State institutions, under no circumstances should that response be allowed to degenerate into violations of fundamental rights by those institutions or by State officials.

5. On 20 December 2001 and 30 January 2002, the CPT requested information from the United Kingdom authorities on the use being made of the detention powers contained in the Anti-Terrorism, Crime and Security Act 2001 and the procedures applied - and rights recognised - to persons detained pursuant to the Act. It also requested information on the places used to hold such persons and an account of the regime offered to them.

In the light of the information received in response, the Committee decided to carry out a visit to the United Kingdom in order to examine the situation of persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001. In the course of the visit, the CPT's delegation interviewed, in private, all of the persons who were then being detained under the Act and reviewed their conditions of detention in Belmarsh and Highdown Prisons. It also interviewed a small number of persons detained on charges of criminal activities of a terrorist nature.

C. Cooperation received and consultations undertaken during the visit

6. The information referred to in paragraph 5 above was promptly supplied to the Committee.

Further, during the visit, the CPT's delegation had rapid access to the detention facilities visited and to the persons it wished to interview. However, on one occasion, the delegation's work was delayed by a rigid attitude displayed by officers at Belmarsh Prison (who refused to open cell doors during their teatime).

7. The delegation had fruitful talks with Martin NAREY, Director General of the Prison Service, and Peter ATHERTON, Director of High Security Prisons. It also had consultations with Mark de PULFORD, Head of the Human Rights Unit in the Lord Chancellor's Department, and Robert WHALLEY, Head of the Terrorism and Protection Unit in the Home Office's Organised and International Crime Directorate.³

8. To sum up, the CPT is pleased to note that, on the whole, the cooperation received by its delegation was very good.

³ Other authorities met during the visit include Harriet Cross and Mike Schingler of the Foreign and Commonwealth Office, Barbara White and Simon Beecroft of the Prison Service, and Steven Bramley, Nick Troake, Alexander Fraser and Stuart Horlock of the Home Office. The CPT's delegation also met a solicitor acting for several of the detained persons interviewed during the visit, as well as a representative from the non-governmental organisation Liberty. Further, both before and during the visit, the Committee received information/submissions from other solicitors and non-governmental organisations.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001

1. Preliminary remarks

9. Seven of the eight persons being detained at the time of the visit pursuant to the Anti-Terrorism, Crime and Security Act 2001 had been arrested on 19 December 2001 by police officers accompanied by immigration service officials. They had been taken to prison immediately following their arrest⁴. The remaining person had been detained under the Act upon his release from prison shortly before the visit.

Four of the detainees in question were being held in the High Security Unit at Belmarsh Prison and four in Highdown Prison; some of them had previously been held at Woodhill Prison. The delegation was informed that the persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 were treated as "Category A" remand prisoners, and they were being held together with (other) Category A prisoners⁵. They had initially been considered as being "high risk" and subsequently progressed to "standard risk".

2. Ill-treatment

10. The delegation heard no allegations of physical ill-treatment by police officers (or immigration service officials) of persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001. However, certain of the persons interviewed by the delegation claimed that some of the police officers involved had addressed them in a harsh and provocative manner.

11. Similarly, with one exception, none of the persons interviewed complained of physical ill-treatment by prison officers.

The above-mentioned exception concerned a person who alleged that, several weeks before the visit, he had been restrained in a painful manner by prison officers at Belmarsh Prison after he became agitated, and that one officer had punched him in the chest. He affirmed that health care staff had noted the bruising that he had sustained as a result of the alleged ill-treatment; however, at the time of the visit, the delegation's doctor found no record of injuries in his medical file.

Further, some of the persons interviewed claimed that prison staff had addressed them in an offensive way, making reference to the reasons for and the indefinite nature of their detention.

⁴ The Anti-Terrorism, Crime and Security Act 2001 does not specify the places where suspected international terrorists may be detained.

⁵ Category A is the highest security risk classification, reserved for prisoners whose escape it is considered would be highly dangerous to the public or the police or to the security of the State.

12. **The CPT recommends that prison officers in the High Security Unit at Belmarsh Prison be reminded that force should only be used as a last resort and must not be more than is strictly necessary.**

The Committee also trusts that police and prison officers dealing with persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 will bear in mind that all forms of ill-treatment, including verbal abuse, are not acceptable.

3. Safeguards against the ill-treatment of detained persons

- a. notification of custody, access to a lawyer and access to a doctor

13. The Anti-Terrorism, Crime and Security Act 2001 contains no reference to the right to notification of custody and to the rights of access to a lawyer and of access to a doctor, which the CPT regards as fundamental safeguards for detained persons (cf. also the report on the 1994 visit to the United Kingdom - CPT/Inf (96) 11, paragraph 36).

In response to the CPT's requests for information, the United Kingdom authorities indicated that the above-mentioned rights are guaranteed to immigration detainees in general and that, as a result, they also apply to persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001. However, **the United Kingdom authorities have to date failed to provide clarification as to the precise legal provisions which guarantee those rights.**⁶

At the time of their arrest, the persons detained under the Anti-Terrorism, Crime and Security Act 2001 were served documents informing them of the possibility to seek assistance from solicitors specialising in immigration matters. However, it emerged that, in practice, the operation of this and the other fundamental safeguards advocated by the CPT resulted only from the application of the Prison Rules 1999.

14. Upon their arrival in prison, detainees had been offered the possibility to inform a close relative of their situation and, shortly after their admission, they had also been screened by health care staff and medically examined. Given the short time that had elapsed between arrest and arrival in prison, these arrangements can be considered satisfactory (cf. however, paragraph 30).

15. By contrast, in practice, access to a lawyer had not been guaranteed as from the outset of detention. None of the persons interviewed by the delegation had seen a solicitor on the day of their arrest and, apparently, it was only as a result of the insistence of the solicitor(s) concerned that a few of them were able to see a lawyer on the following day. Most of the detainees complained that they had been made to wait for up to one week or more before they were allowed to have a first contact with a solicitor. The delegation was informed that these delays had been the result of clearing procedures applied to Category A prisoners. Complaints were also received, including from solicitors, that subsequent professional visits had on occasion been hindered.

⁶ The CPT already raised the question of the status of the provisions dealing with fundamental safeguards offered to immigration detainees following its 1994 visit to the United Kingdom (cf. CPT/Inf (96) 11, paragraphs 233 and 234).

16. To sum up, while practical arrangements for notification of custody and access to a doctor were satisfactory, the situation in respect of access to a lawyer described in paragraph 15 is not acceptable. **The CPT recommends that steps be taken to ensure that, in case of any further detentions pursuant to the Act, the right of access to a lawyer is guaranteed as from the very outset of custody.**

b. other procedural safeguards

17. The CPT has noted that persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 may apply for bail and may lodge an appeal (by way of "judicial review") against the administrative measures taken in their respect, i.e. their "certification" by the Secretary of State as suspected international terrorists, which led to their detention. The Act also provides for the review of the certification at regular intervals. Bail, appeal and review procedures lie with the Special Immigration Appeals Commission (the SIAC).⁷

However, the CPT is concerned to note that the SIAC may consider evidence against a person without disclosing it and can exclude the interested party and his/her lawyer from hearings.⁸

18. Reference should also be made to the position advanced by the United Kingdom⁹ that "it is open to a detainee to end his detention at any time by agreeing to leave the United Kingdom" (cf. however, paragraph 25, second sub-paragraph).

In this connection, some detainees told the delegation that, in principle, they would have no objection to returning to their country of origin or going to another country willing to receive them. However, they also stated that they had been wrongfully profiled as "international terrorists" and that, if they accepted to leave the United Kingdom, they would relinquish the possibility to reinstate their reputation and clear their name. They also expressed regret that, at present, they were not being offered the possibility effectively to contest the broad accusations made against them. This was a source of considerable distress.

The CPT would like to receive the comments of the United Kingdom authorities on the above remarks.

19. It is also noteworthy that Section 28 of the Anti-Terrorism, Crime and Security Act 2001 stipulates that a person will be appointed to review the operation of Sections 21 to 23 of the Act. **The CPT would like to receive information on the precise terms of reference and powers that will be given to the person in question, as well as information on the procedure proposed to select that person and further particulars concerning the impartiality and objectivity of the review.**

⁷ Cf. Sections 24 et seq. of the Anti-Terrorism, Crime and Security Act 2001, as well as the Special Immigration Appeals Commission Act 1997.

⁸ Cf. Section 5 (3) (a) and (b) of the Special Immigration Appeals Commission Act 1997.

⁹ Cf. Declaration by the United Kingdom in the context of the derogation from Article 5 (1) of the European Convention on Human Rights.

4. Conditions of detention

20. As already indicated, all persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 were being held in prison, as standard risk Category A remand prisoners.

The conditions offered to detainees were on the whole acceptable from a material standpoint. They were all being held one to a cell measuring between 6.7 m² (at Belmarsh) and 7.5 m² (at Highdown); the cells were clean and in a reasonable state of repair, had adequate lighting (including access to natural light) and ventilation, and were equipped with in-cell sanitation (lavatory and washbasin). They were adequately furnished (bed, table, cupboard).

21. The situation was far less favourable as regards activities. None of the persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 were being offered work, educational or cultural activities, and only some of them had just received permission to use the gym. The only organised activity offered to them was the Friday prayer.

Detainees were being offered between two hours (at Belmarsh Prison) and four hours (at Highdown Prison) of out-of-cell time, during which they had contact with other Category A prisoners and took outdoor exercise, had access to shower facilities and made telephone calls. However, the already modest out-of-cell time could on occasion be reduced further due to "operational requirements" (staff shortages or agreed working conditions), e.g. to a mere 30 minutes of outdoor exercise. The delegation was told that the situation of some inmates had been better before their transfer from Woodhill Prison, where they had enjoyed up to six hours of out-of-cell time every day and had been offered some organised activities.

Detainees could read and listen to the radio in their cells and, at Highdown, watch television. However, several complaints were heard that the radios available could only receive a limited number of radio stations (and, in particular, no broadcasts in Arabic).

22. Although a prison is, by definition, not a suitable place in which to hold immigration detainees (cf. for example, the report on the 1999 visit to the United Kingdom - CPT/Inf (2001) 6, paragraph 89), the CPT does not wish to call into question the United Kingdom authorities' decision to hold persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 in prison under special security measures. However, the material conditions and regime offered to such persons should take due account of the fact that they have not been accused or convicted of any concrete criminal offence and of the indefinite nature of their detention.

As already indicated, the material conditions of detention were of an adequate standard. However, as regards out-of-cell time and activities, the situation described above leaves a great deal to be desired. The objective should be to ensure that persons detained pursuant to the Act spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, education, sport, recreation/association).

Further, security measures adopted in respect of persons detained pursuant to the Act should be based on individualised risk - and needs - assessments.

That present arrangements are not satisfactory would appear to have been recognised by the United Kingdom authorities. In particular, at Belmarsh, consideration was being given to moving persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 to a newly renovated landing, where they would be offered improved access to association and to activities.

23. The CPT recommends that the situation of persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 be reviewed, having regard to the remarks made in paragraphs 21 and 22.

The CPT also recommends that immediate steps be taken to ensure that all prisoners are guaranteed the basic requirement of at least one hour of outdoor exercise every day (cf. also the report on the 2001 periodic visit to the United Kingdom - CPT/Inf (2002) 6, paragraph 58).

5. Health care

24. As previously mentioned, the persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 had been screened by health care staff and medically examined shortly after their admission to prison.

By contrast, the CPT's delegation heard complaints, particularly at Highdown Prison, of delays in having access at later stages to health care staff and, more particularly, to a doctor. The medical files examined by the delegation's doctor tended to confirm these allegations. Further, several of the persons interviewed by the delegation at Belmarsh Prison complained that treatment which had been initiated before their detention had been discontinued following their arrival in prison, and that medical consultations and examinations took place in the presence of custodial staff.

25. The provision of psychological support and/or psychiatric treatment to persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 gives rise to particular concern.

In this context, the CPT would draw attention to the following factors. The United Kingdom authorities consider that the detainees in question would be at risk of serious human rights violations, including death or torture, in case of return to their countries of origin; indeed, this is the declared reason why they cannot be removed from the United Kingdom. It has apparently been recognised that at least some of them have previously been the victims of torture or inhuman or degrading treatment or punishment. As already indicated, the belief that they had no means to contest the broad accusations made against them also was a source of considerable distress, as was the indefinite nature of detention. The limited out-of-cell time and impoverished regime offered to them did little to alleviate the situation.

Further, at least two of the detainees had been diagnosed as suffering from post-traumatic stress disorder, and one (the person referred to in paragraph 11, second sub-paragraph) had a psychiatric history, including attempted suicides and in-hospital treatment.

26. The information set out in the preceding paragraph suggests that all persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 would - and should - benefit from psychological support. Moreover, some of them require psychiatric care. However, the delegation's doctor gained the impression that such care was, at the time of the 2002 visit, organised in a rather haphazard way.

As regards medication, the records examined by the delegation's doctor on occasion contained no indication of the reasons for prescribing psychotropic drugs, their dosage, or the person who had prescribed them.

27. The CPT recommends that health care arrangements for persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 be reviewed, in the light of the remarks made in paragraphs 24 to 26. More particularly, it recommends that consideration be given to the specific needs - both present and future - of detainees in terms of psychological support and/or psychiatric treatment and that steps be taken to ensure that they receive appropriate care in order to meet those needs.

The CPT also recommends that steps be taken to ensure medical confidentiality. All medical consultations and examinations of persons detained under the Act should be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of custodial staff.

6. Further remarks

a. staff-related issues

28. Law enforcement officials and staff dealing with immigration detainees and, more particularly, with persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 have an onerous task. There will inevitably be communication difficulties caused by language barriers, and persons deprived of their liberty for an indefinite period without being accused of concrete criminal offences will find their detention difficult to accept.

In addition to being carefully selected and appropriately trained, such officials/staff should possess well-developed qualities in the field of interpersonal communication, should be familiarised with the different cultures of the detainees and, at least some of them, should have relevant language skills. Moreover, staff selected to deal with persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 should be taught to recognise possible symptoms of stress reactions displayed by the persons concerned (whether post-traumatic or induced by their current situation) and to take appropriate action.

The CPT recommends that the United Kingdom authorities bear these points in mind when they assign staff to custodial duties vis-à-vis persons detained under the Act.

b. information for detainees and interpretation

29. As already mentioned, at the time of their arrest, persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 were provided information in writing about their situation (cf. paragraph 13). Further, the police officers and immigration officials carrying out the arrest were assisted by interpreters.

30. Upon admission to prison, information was also provided to them about the rules and the regime applied in the establishment. However, the persons interviewed by the delegation stated that interpretation had not been offered at this stage and that those who did not speak English had received no written information in a language which they understood (cf. also CPT/Inf (2002) 6, paragraph 79).

The CPT recommends that these shortcomings be remedied. In appropriate cases, recourse should also be had to the services of an interpreter at later stages (including during medical examinations).

c. contact with the outside world

31. The CPT has in previous reports stressed the importance for prisoners - and immigration detainees - to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to safeguard their relations with their family and friends, and especially with their spouse or partner and their children. The continuation of such relations can be of critical importance for all concerned. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources (cf. also the report on the 1997 visit to the United Kingdom - CPT/Inf (2000) 1, paragraph 91).

32. Following their arrival in prison, the persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 had apparently encountered significant difficulties in maintaining contacts with their families. Clearing procedures for visits and telephone numbers had in some cases taken several weeks. Further, at first, access to the telephone was very limited because detainees were not allowed to hold telephone conversations in their own language unless an interpreter was present.

By the time of the visit, the situation as regards contact with the outside world had improved. However, many of the detainees continued to complain about the arrangements for visits. They took place under closed conditions (in booths) and were limited to one visit per fortnight. Further, although in principle of about two hours duration, a visit apparently in practice often lasted little more than one hour.

Given the grounds on which the persons concerned had been detained, the CPT does not wish to call into question the closed nature of the visiting facilities. However, in line with the comments already made in previous reports, **the Committee encourages the United Kingdom authorities to explore the possibility of providing one visit per week to persons detained under the Act. Further, it invites them to verify that visiting time is not being reduced unduly.**

B. Persons detained on charges of criminal activities of a terrorist nature

1. Preliminary remarks

33. The main purpose of the visit was to examine the treatment of persons detained pursuant to the Anti-Terrorism, Crime and Security Act 2001. Nevertheless, in the course of the visit, the CPT's delegation also interviewed in Belmarsh and Highdown Prisons a small number of persons detained on criminal charges of a terrorist nature. The CPT would like to make a few remarks concerning these persons.

34. The delegation heard no allegations of ill-treatment of these persons by law enforcement officials or by prison officers.

2. Safeguards against the ill-treatment of detained persons

35. The information gathered in February 2002 suggests that, as regards persons detained on criminal charges of a terrorist nature, the three basic safeguards against ill-treatment by the police advocated by the CPT (rights of notification of custody, access to a lawyer and access to a doctor)¹⁰ on the whole operate in a satisfactory manner.

As regards, more particularly, the question of access to another lawyer when access to a specific lawyer is delayed, in their response to the report on the 2001 visit (cf. CPT/Inf (2002) 7, paragraph 8), the United Kingdom authorities indicated that full account would be taken of the CPT's recommendation that this matter be the subject of a legally-binding provision, when revising the Codes of Practice, which should be published in the Summer of 2002. **The CPT looks forward to receiving information on developments concerning this subject.**

36. The police can, on their own authority, detain terrorist suspects for a maximum of 48 hours, and a warrant for further detention may be obtained from a judicial authority; in all, a suspect can remain in police custody for up to seven days.¹¹ Pursuant to paragraph 33 of Schedule 8 to the Terrorism Act 2000, the person concerned is to be given the opportunity to make oral or written representations to the judicial authority on the question of the extension of police custody; however, the person concerned, and anyone representing him, may be excluded from any part of the hearing where such a measure is considered.

In the course of the visit, the CPT's delegation heard accounts to the effect that persons who had been detained under Section 41 of the Terrorism Act 2000 whose custody had been extended by judicial decision had not been brought physically before a judge while being detained by the police. **The CPT would like to receive the comments of the United Kingdom authorities on this matter.**

¹⁰ Cf. inter alia, Schedule 8, paragraphs 6 to 9, to the Terrorism Act 2000.

¹¹ Cf. Section 41 of the Terrorism Act 2000 and paragraphs 29 et seq. of Schedule 8 to the Act.

3. Conditions of detention

37. The conditions of detention and the regime offered to persons detained on criminal charges of a terrorist nature in prison were, in many respects, comparable with those described in paragraphs 20 and 21, i.e. material conditions were on the whole satisfactory and the regime was poor. They were all classified as Category A prisoners. **The CPT recommends that the United Kingdom authorities strive to develop regime activities for these prisoners at Belmarsh and Highdown Prisons.**