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Foreign Affairs Committee

Human Rights Annual Report 2008

Seventh Report of Session 2008–09

Report, together with formal minutes, oral and written evidence

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The Foreign Affairs Committee

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Conclusions and recommendations

The structure of the FCO report

1. We conclude that the FCO's inclusion in its report of extensive sections on what steps it is taking to promote equality and democracy, including women's and children's rights, is welcome. We recommend that next year's report includes what the FCO is doing both to extend the right of freedom of association, and to achieve progress amongst Commonwealth countries in implementing the human rights provisions of the Harare Declaration. (Paragraph 10)

US policy on extraordinary rendition

2. We conclude that the shift in attitude of the new US Administration on the definition of torture and in its approach to extraordinary rendition is to be welcomed. We recommend that, in its response to this Report, the Government supplies us with a full assessment of whether, in its opinion, the present US policy in relation to secret and transitory detention and permitted interrogation techniques fully conforms to international human rights standards as interpreted by the UK. (Paragraph 20)

Rendition

3. We conclude that it is unacceptable that the Government has not taken steps to obtain the full details of the two individuals who were rendered through Diego Garcia. We recommend that the Government presses the new US Administration to provide these details, and that it should then either publish them, or explain the reasons why it considers it would not be in the public interest to publish them. (Paragraph 28)

4. We conclude that the use of Diego Garcia for US rendition flights without the knowledge or consent of the British Government raises disquieting questions about the effectiveness of the Government's exercise of its responsibilities in relation to this territory. We recommend that in its response to this Report, the Government indicates whether it considers that UK law has effect in British Indian Ocean Territory, and whether it considers that either UK law or the agreements between the US and UK over the use of BIOT were broken by the admitted US rendition flights in 2002. (Paragraph 30)

5. We conclude that, in the light of the controversy over the use of British Indian Ocean Territory for purposes of rendition by the US, it is important that full records of flights through the territory are kept, and retained for an indefinite period. We conclude that it is to be welcomed that the British representative on Diego Garcia now keeps flight records. We recommend that the Government discloses how, why and by whom the records relating to flights through Diego Garcia since the start of 2002 were destroyed. We further recommend that the Government provides, in its response to this Report, full details of its record-keeping and record-disposal policy in relation to flights through British territory, particularly BIOT, and state for how

long it now retains such records. We recommend that, in its response, the Government addresses the question of whether it considers that current aviation law and aircraft identification procedures are sufficient to identify flights which may be carrying out rendition both through Diego Garcia or elsewhere through UK airspace. (Paragraph 33)

6. We conclude that it is a matter of concern that many allegations continue to be made that the two acknowledged instances of rendition through British Indian Ocean Territory in 2002 do not represent the limit of the territory's use for this purpose. We further conclude that it is extremely difficult for the British Government to assess the veracity of these allegations without active and candid co-operation from the US Administration. We recommend that the Government requests the Obama Administration to carry out a further, comprehensive check on its records relating to the use of BIOT with a view to testing the truth of the specific allegations (including those set out in paragraph 34 above) relating to rendition through the territory. We conclude that it is unsatisfactory that the Government is not able to give us a categorical assurance that re-victualling of ships anchored outside BIOT's territorial waters by any vessel from BIOT, for purpose of assisting rendition, has not occurred. We further conclude that it is unsatisfactory that the US has only undertaken to inform the UK of the movement of ships in Diego Garcia's territorial waters in normal circumstances but not in all cases. We recommend that the Government requests the US Administration to supply details of any movement of ships in Diego Garcia's waters since January 2002 that were not notified at the time to the UK authorities, and seek assurances that at no point were these or other vessels used for re-victualling of vessels outside Diego Garcia's territorial waters which were being used for purposes of rendition. (Paragraph 37)

7. We reiterate our previous conclusion that it is deplorable that previous US assurances about rendition flights through Diego Garcia have turned out to be false. We further conclude that the basis of trust in subsequent US assurances about the use of BIOT has been undermined. We recommend that the Government outline what practical action it is taking to ensure that it has full sources of information about US rendition activity on BIOT. (Paragraph 41)

8. We reiterate our earlier conclusion that the Government has a moral and legal obligation to ensure that flights that enter UK airspace or land at UK airports are not part of the rendition circuit. We acknowledge the practical difficulties in the way of monitoring all empty flights transiting UK territory or airspace. We recommend that the Government, in its response to this Report, sets out options for more effectively establishing whether flights, including those by civilian aircraft, are on their way to or from a rendition operation. (Paragraph 43)

9. We recommend that the Government complete its analysis of practicalities of signing the UN Convention on Enforced Disappearances as soon as possible. We further recommend that, having been supportive of the Convention at the drafting stage, the Government should declare its intention, in principle, to sign. (Paragraph 46)

Allegations of UK complicity in torture

10. We conclude that the practices of the Pakistani Inter-Services Intelligence (ISI) Agency continue to give cause for great concern, in the light of the allegations we have received that the Agency subjects detainees to mistreatment and torture. We further conclude that while the UK must, by necessity, maintain its relationship with Pakistani intelligence, we are very concerned by allegations that the nature of the relationship UK officials have with the ISI may have led them to be complicit in torture. We recommend that, in its response to this Report, the Government supplies us with details of the investigations it has carried out into the specific allegations of UK complicity in torture in Pakistan brought to public attention by Reprieve and Human Rights Watch, and the grounds it has for supposing those allegations to be baseless. We further recommend that the Government make an explicit statement that in future co-operation with the Pakistani authorities, UK officials should in no circumstances be uncritical of, or complicit in, abuses of human rights. We recommend that, in its response to this Report, the Government confirms that it is its policy, in respect of every case where allegations of torture in Pakistan are drawn to its attention, for such allegations to be passed to the Pakistani authorities and every available step taken to ensure that they are investigated and responded to fully. (Paragraph 54)

11. We conclude that the Government's intention to establish the same standards for dual and mono British nationals in relation to consular access is to be welcomed. We recommend that this change should be brought into effect as soon as possible, and that in its response to this Report the Government sets out a timetable for this to be achieved. We further recommend that all British nationals should be offered consular advice as soon as the Government is aware of their detention, and certainly before they are interrogated by any foreign intelligence service. (Paragraph 57)

12. We conclude that, notwithstanding the recent changes to House of Commons standing orders, the Intelligence and Security Committee (ISC) remains a creature of the Government, not a committee of Parliament, and that consequently there continues to be a deficit in the parliamentary scrutiny of intelligence and security matters. We reiterate our previous recommendation that the ISC should be reconstituted as a select committee of the House of Commons. (Paragraph 63)

13. We conclude that if the Investigatory Powers Tribunal is to be an effective safeguard it should be able to investigate allegations made by third parties. We recommend that the Government brings forward proposals to make this change. (Paragraph 64)

14. We conclude that, while we understand the Government's caution about publishing historical guidance to intelligence officers whilst current court cases are in progress, we are not convinced that the release of material that would be available to a court on request is likely to prejudice a case. We therefore recommend that such historical guidance should be placed in the public domain as soon as possible. (Paragraph 68)

15. We conclude that it is essential that there is a robust system of accountability to ensure that the Foreign Secretary uses section 7 of the Intelligence Services Act 1994 in a responsible fashion. We recommend that, in is response to this Report, the Government informs us whether the Intelligence Services Commissioner has ever

expressed any concern regarding the use of powers given to the Foreign Secretary under section 7 of the Act. (Paragraph 71)

16. We conclude that it is essential that the UK maintains effective intelligence relationships with other countries, and we note that these countries may include ones, such as Pakistan, where there are most serious concerns about human rights abuses of detainees. We further conclude that the Government is correct to base decisions about intelligence co-operation on an assessment of the risk of mistreatment of detainees, and we are heartened to learn that there have been cases in which on this basis co-operation had not taken place. We further conclude that it is essential that the Government emphasise to its foreign counterparts that torture is unacceptable, and that it should work pro-actively to persuade other states to renounce the use of torture against all detainees, whatever their nationality. (Paragraph 74)

17. We conclude that the use by the UK Government of intelligence information which may serve to avert a potentially catastrophic terrorist attack, but which is supplied by foreign states and which may have been obtained through torture, raises profoundly difficult moral questions. We further conclude that the Government has a duty to use information that comes into its possession, from whatever source and however obtained, if it believes this will avert the loss of life. At the same time, we strongly recommend that the Government should continue to exert as much persuasion and pressure as possible to try to ensure world-wide that torture is not employed as a method of interrogation. (Paragraph 79)

18. We conclude that it is imperative that the UK fulfils its legal obligations in respect of the prevention of torture, including any duty to act positively to prevent it, investigate allegations that it has taken place, and expose it. We further conclude that there is a risk that use of evidence which may have been obtained under torture on a regular basis, especially where it is not clear that protestations about mistreatment have elicited any change in behaviour by foreign intelligence services, could be construed as complicity in such behaviour. (Paragraph 83)

19. We conclude that it is essential to maintain secrecy in relation to intelligence work. We further conclude that allegations presented to us of UK complicity in torture are a matter of concern. However, both owing to the operation of the House's *sub judice* rule and because we are not in a position to subject these allegations to the necessary forensic scrutiny (involving examination and cross-examination) available to a court of law, we are not in a position to pronounce on the truth or otherwise of these allegations. We further conclude that any decision by the Government on whether to institute an independent judicial inquiry should await the conclusion of the current court cases. (Paragraph 85)

Transfers of detainees

20. We conclude that it is a matter of concern that the Government has not provided details of the fate of individuals detained by US forces in Iraq as a result of operations by UK forces, or those captured by UK forces and detained by US forces. We recommend that, in its response to this Report, the Government informs us of the number of such detainees, relevant details of the circumstances of their capture and

the degree of involvement of UK forces, and any assurances it has received from the US authorities about their treatment and whereabouts, on an individual basis. We further recommend that the Government, in its response, provides us with a full statement of its record-keeping practice in respect of persons captured by UK forces in Iraq and Afghanistan, whether or not UK forces make the eventual detention. (Paragraph 90)

21. We conclude that the Government should have waited for the European Court of Human Rights to rule on whether the transfer of Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi to the Iraqi authorities in December 2008 was consistent with its obligations under the European Convention on Human Rights before proceeding with the transfer. We further conclude that explicit assurances that the death penalty would not be used in the event of a conviction in these cases should have been obtained in writing from the Iraqi authorities at the highest level. We recommend that in future the Government obtains such explicit assurances in writing from any national authority to which it transfers a detainee. (Paragraph 95)

22. We conclude that the onward transfer to Afghanistan of two Pakistani men transferred from UK to US custody in Iraq in 2004 is of great concern. We do not regard the stated reason for this transfer, that US forces did not have sufficient linguists available in Iraq, as being convincing. We further conclude that it is not acceptable that the Government is unable to identify these detainees, or to provide assurances about their subsequent treatment. We recommend that the Government, in its response to this Report, identifies these men, and inform us of what steps it has taken to discover whether they have been treated in an acceptable way since being transferred to US forces. We conclude that the allegation by Reprieve that these two cases were not, as the Government asserts, isolated ones, gives cause for concern. We recommend that the Government investigates in detail any specific allegations put before it by Reprieve and reports to us the outcome of those investigations. (Paragraph 101)

23. We conclude that the potential treatment of detainees transferred by UK forces to the Afghan authorities gives cause for concern, given that there is credible evidence that torture and other abuses occur within the Afghan criminal justice system. We recommend that the Government institutes a more rigorous system for checking on the welfare of tranferees in Afghanistan, on an individual basis, and that in its response to this Report, it informs us of the steps proposes to take to achieve this end. (Paragraph 105)

24. We conclude that although there may be scope for argument about the extent of the legal obligation on the UK to monitor the welfare of individual detainees after it has transferred them to another country, there is no doubt in our view that the UK is under a moral obligation to do so. Such monitoring is desirable not only to enable the Government to intervene if it receives information that an individual is being ill-treated, but also because any evidence thus revealed of systematic ill-treatment will call into question whether future transfers to that country should take place. We recommend that the Government takes the necessary action to ensure that it has mechanisms in place to allow it effectively to monitor the welfare of individuals

transferred, and in its response to this Report sets out what specific steps it is taking. (Paragraph 113)

Oversight of private military security companies and contractors

25. We reiterate our previous conclusion that in cases like that of the allegations of abuse concerning the British Embassy in Baghdad, it is not appropriate for investigation of complaints against contractors' staff to be entrusted solely to the contractors. We conclude that the proper treatment of staff working for FCO-employed contractors overseas should be considered to be an FCO responsibility. Therefore we conclude that the inclusion of FCO officials in the team that investigated the latest allegations of abuse by KBR staff at the Baghdad Embassy is to be welcomed. We recommend that in order for the FCO reliably to monitor the compliance of its contractors with its own employment practices and standards, all similar allegations of serious misconduct by or against contracted staff should be investigated by a team that includes FCO representation. We further recommend that provision for this to happen should be explicitly made in future contracts. We conclude that it remains disappointing that the FCO is unwilling to reopen the investigation into the allegations in 2007 that female staff at the British Embassy in Baghdad had been abused by managers working for KBR, given the doubts that remain about the fairness and independence of the investigation. We recommend that the Government reconsider its position on this matter. (Paragraph 125)

26. We conclude that it is regrettable and disappointing that after such a long delay the Government has proposed a system of regulation for private military and security companies (PMSCs) based on a voluntary code of self-regulation. We remain unconvinced that anything other than a legislative solution can provide suitably strict regulation of PMSCs operating from the UK or employed overseas by the Government. We do not believe that a potential loss of business constitutes a sufficient sanction to control PMSCs' behaviour. We recommend that that when the Government issues its response to the recent consultation exercise, it commits itself to pursuing a legislative solution to the regulation of PMSCs at an EU or international level. (Paragraph 136)

27. We recommend that, in its response to this Report, the Government gives us full particulars of the individual members of staff who enjoy diplomatic immunity, and the grounds on which this has been justified, and that it supplies us with a full statement of its policy on the provision of diplomatic immunity to staff who are not directly employed by the Government.(Paragraph 138)

UN Human Rights Council

28. We conclude that the UN Human Rights Council's May 2009 resolution rejecting calls for investigation of human rights violations in Sri Lanka is deeply regrettable, and has damaged the credibility of the Council. We recommend that the Government continues to promote the view that significant transgressions of human rights committed by parties to internal political conflicts should not be regarded as being solely the "domestic business" of the state concerned. We conclude that the international community has both a right and a responsibility to express concern

about, and where appropriate to launch investigations into, situations where major abuses have been alleged. (Paragraph 152)

29. We conclude that other aspects of the work of the Human Rights Council are to be applauded, in particular the developing system of Universal Periodic Reviews, and the decision to continue the international investigation of human rights abuses in Sudan. We further conclude that the increase in 2008 in the number of Council resolutions which the Government was able to support is to be welcomed, and that it is to be hoped that the participation of the United States will lead to a strengthening of the positive work of the Council. (Paragraph 153)

The Durban Review Conference

30. We conclude that the UK's handling of the issue of participation in the "Durban Review Conference" held in Geneva in April 2009 was well-judged. The UK delegation left the conference hall in protest at President Ahmadinejad's offensive and anti-Semitic remarks, but did not allow his calculated provocation to derail the wider work of the conference, in which the UK played a full part. We recommend that the Government continues to support the positive work of the Durban review process in combating racism worldwide, while at the same time maintaining the right of freedom of expression in relation to ideologies and beliefs, and defending the rights of lesbian, gay, bisexual and transgender people. (Paragraph 160)

International Criminal Law

31. We conclude that there is mounting hostility to the International Criminal Court in Africa and elsewhere, manifested most dramatically in Sudan's refusal to co-operate with the Court. This reflects a deepening division between Western countries and some other countries, particularly those from the developing world, over issues of state sovereignty in relation to human rights—exemplified also in the UN Human Rights Council's recent rejection of international "interference" in the investigation of alleged human rights abuses in Sri Lanka. We further conclude that such attitudes, if they continue to spread, may have the effect of undermining the promotion of universal human rights worldwide. We recommend that the Government works to strengthen international support for the ICC, and for the principle of bringing to justice those who commit war crimes or crimes against humanity. We further recommend that it encourages the new Administration in the United States to accede to the Rome Statute of the ICC, which would mean that a majority of the Permanent Members of the Security Council would have acceded, marking a significant step towards the long-term aim of achieving universality of the Rome Statute. (Paragraph 168)

Countries of concern

Burma

32. We conclude that the scale of human rights abuses in Burma, and the extent of suffering caused to the Burmese people by their government's economic and political mismanagement, is intolerable. The Burmese government's indifference to the

welfare of its own people was demonstrated by its handling of Cyclone Nargis in 2008. We recommend that the British Government continues to exercise the strictest vigilance in ensuring that aid supplied to Burma is not misused by the authorities. We further recommend that the UK encourages Burma's regional neighbours, in particular China, India and Thailand, to bring pressure on the regime to improve its human rights record. (Paragraph 176)

China

33. We conclude that there remains little evidence that the British Government's policy of constructive dialogue with China has led to any significant improvements in the human rights situation. We recommend that the Government sets benchmarks and specific targets for making progress in this dialogue; these should take account of but not be restricted to the time-specific commitments given by China itself during its Universal Periodic Review process. We further recommend that in its response to this Report, the Government informs us of what action it is proposing to take in this regard. (Paragraph 183)

34. We reiterate the conclusions of our 2008 Report on *Global Security: Japan and Korea* that China is in breach of its obligations under the 1951 Refugee Convention as regards its treatment of North Korean migrants. We remain particularly exercised by China's continuing failure to allow the UN High Commission on Refugees access to its border region with North Korea, and by its practice of forcible repatriation of North Koreans who have not had access to a determination-of-status process. We recommend that the Government should urge the UN High Commissioner on Refugees to give a high priority to the issue of the treatment of North Korean migrants in China. We further recommend that the Government works internationally and more actively to encourage China to find ways of fulfilling its international obligations on this issue as part of the process of becoming a responsible global power. (Paragraph 184)

35. We conclude that the absence of any momentum towards resolving the dispute over Tibet is a matter of grave concern. We recommend that the Government continues to press its Chinese counterparts to lift restrictions on access to Tibet, to allow an independent assessment of the human rights situation there to be carried out by representatives of the UN High Commissioner for Human Rights. (Paragraph 190)

36. We conclude that the developing situation in Xinjiang, with significant violence arising from long-standing ethnic tensions between Uighurs and Han Chinese, gives cause for concern. We recommend that the Government, acting in conjunction with its EU partners, should monitor the situation and urge restraint upon the Chinese government. We further conclude that what appears to be a change in Chinese policy towards foreign media, allowing journalists free access to Xinjiang, is—if confirmed as events develop—to be welcomed. (Paragraph 193)

Colombia

37. We conclude that, despite some recent improvements, human rights abuses in Colombia remain systemic and widespread, with considerable evidence of complicity

by the Colombia authorities, police and armed forces. We note that, in particular, it is an extremely dangerous place to be a trade unionist. We recommend that, in its response to this Report, the Government supplies us with a detailed breakdown of its current and planned future aid to Colombia, with full costings, and information as to how this spending will be used to exert leverage on the Colombian government to improve its human rights record. We further recommend that the Government at the same time supplies us with any internal assessment that has been carried out of the effectiveness of its human rights training programme for the Colombian army; and that it informs us whether that programme was scheduled to finish when it did, or whether it was abandoned because of concerns about the scale of the army's continuing participation in abuses. (Paragraph 204)

Iran

38. We conclude that the events of June and July 2009 in Iran have revealed the extent of the desire amongst millions of Iranians for a fairer electoral process, as well as for greater personal freedoms and a normalisation of relations between Iran and the wider world, and that those events have also demonstrated the capacity of the present Iranian regime to respond with ruthless force in suppressing expressions of dissent. We further conclude that Iran's overall human rights record remains appalling. We recommend that the Government continues to act with firmness, in conjunction with its European partners and the wider international community, in pressing for the Iranian regime to respect the human rights obligations it has entered into, and in actively encouraging Iran to adopt a more civilised approach to the rights of its own citizens. (Paragraph 210)

39. We conclude that the detention of British Embassy staff by the Iranian authorities is deplorable, and we recommend that the FCO should keep us informed as this situation develops. We propose to return to the issues of the safety of Embassy staff and the extent to which they are protected by diplomatic immunity as part of our forthcoming inquiry into the FCO's Annual Report for 2008-09. (Paragraph 211)

Iraq

40. We conclude that with the departure of most British troops from southern Iraq, and the withdrawal of US troops from Iraqi towns and cities, the responsibility for creating security, which is an essential precondition of human rights, has passed decisively to the Iraqi government. We further conclude that many grave human rights concerns remain in a country which is, as the FCO puts it, making a "difficult transition". The plight of Iraqi refugees, both within Iraq and beyond its borders, and the discrimination suffered by women, contrary to the Iraqi constitution, are of particular concern. We recommend that the British Government continues to discharge its responsibility to the Iraqi people by offering their government and Parliament full and effective assistance, both practical and financial, in creating the institutions and attitudes necessary to underpin the effective upholding of human rights. (Paragraph 217)

North Korea

41. We reiterate the conclusions of our 2008 Report on *Global Security: Japan and Korea* as regards North Korean human rights and British Government policy on the issue, including our conclusions that the North Korean regime is one of the worst human rights abusers in the world and that the Universal Periodic Review which North Korea is to undergo at the UN Human Rights Council in December 2009 offers a major opportunity to advance the international effort to secure improvements in human rights in the country. We recommend that in its response to this Report the FCO sets out what steps it is taking to achieve this advance. We further recommend that the Government provides an assessment of any ways in which its work on North Korean human rights issues is being affected by the deterioration of North Korea's relations with the West and with the other participants in the Six-Party Talks. (Paragraph 224)

Pakistan

42. We conclude that human rights abuses in Pakistan continue to be widespread. In particular, women and girls continue to be subjected to violence and discrimination. (Paragraph 233)

43. We conclude that the work of the Forced Marriages and Child Abduction Unit at the British High Commission in Islamabad is to be commended. We recommend that in its response to this Report, the FCO should supply us with an update on the work of the Unit, and on the implementation of the UK/Pakistan Judicial Protocol on Child Abduction, and detail its plans for supporting and promoting the work of the Unit in future. (Paragraph 234)

Russia

44. We conclude that President Medvedev's commitment to promoting the rule of law in Russia is undermined by continuing human rights violations. The extent of the threat to press freedom arising from intimidation and even murder of journalists is particularly worrying, as is the rise in xenophobia and racism. We further conclude that there is substantial evidence of major human rights abuses in the republics of the Russian Federation in the North Caucasus. We recommend that the British Government continues to work with its international partners to maintain a constructive relationship with Russia, whilst at the same time taking effective steps to encourage that country to develop a human rights culture which reflects more closely the international norms and commitments to which Russia has voluntarily signed up. (Paragraph 241)

Saudi Arabia

45. We conclude that human rights continue to be violated on a massive scale in Saudi Arabia. We consider that the FCO's latest report pulls its punches on this matter. Although it lists Saudi Arabia as a "country of concern", it lays emphasis on the degree of cultural acceptance of severe punishments and of discrimination against women. Whilst we agree with the Government that "sustainable reform cannot be

imposed on a country", we conclude that the current policy of "assisting with gradual reform" has borne very little fruit. The fact that Saudi Arabia is a strategic ally of the UK should not lead to an official policy of turning a blind eye to its human rights failings. We repeat our recommendation in last year's Report that the UK's ongoing dialogue with Saudi Arabia should have measurable and time-limited objectives in relation to human rights, and specifically in relation to women's rights, and that the Government informs us of these objectives in its response to this Report. (Paragraph 247)

Somalia

46. We conclude that the FCO is to be commended for including Somalia as a "country of concern" in its latest report, following our previous recommendation. We further conclude that serious human rights abuses, including violence against women, are continuing across much of Somalia, particularly in Mogadishu and in central and southern Somalia. We conclude that the Government's support for a UN commission of inquiry into abuses in Somalia is to be welcomed, though we do not accept its view that the time is not yet right for such a commission to be established. We recommend that, in its response to this Report, the FCO states what conditions must be satisfied before the time is deemed to be right for a commission to be set up. We further recommend that, in that response, the FCO indicates what steps it is taking to ensure that UK aid is not supplied to Somali police forces where there is reason to suppose that those forces have been complicit in human rights abuses. (Paragraph 256)

Sri Lanka

47. We conclude that the FCO's decision to include Sri Lanka as a "country of concern" in next year's human rights report is amply justified by recent events in that country, and is to be welcomed. We recommend that, notwithstanding the regrettable vote in the UN Human Rights Council on 27 May, the Government should press for the setting up of an international war crimes inquiry, to investigate allegations of atrocities carried out by both sides in the Sri Lankan civil war. We further recommend that the Government uses such leverage as it has at its disposal to encourage the Sri Lankan government to tackle what the FCO refers to as "the prevalent culture of impunity". (Paragraph 274)

Sudan

48. We conclude that continuing widespread abuses of human rights in Sudan are a matter of great concern. We further conclude that the recent decision of the UN Human Rights Council, by a narrow majority, to continue the investigation of human rights abuses in Sudan is to be welcomed. We recommend that the British Government continues to be pro-active in offering support for the Darfur peace process and for UN peacekeeping forces. We further recommend that the Government works closely with its international partners in an effort to ensure that the writ of the International Criminal Court operates in Sudan. (Paragraph 283)

Zimbabwe

49. We conclude that the human rights and humanitarian situation in Zimbabwe continues to be appalling, although the participation of the opposition in a transitional coalition government, and the recent measure of economic stabilisation, offer glimmers of hope. We further conclude that it is difficult to see how fundamental reforms in governance, the rule of law, and ending human rights abuses can be achieved as long as Robert Mugabe and his supporters are still in power and control the security apparatus. We recommend that the Government should provide immediate aid to Zimbabwe's suffering people, subject to safeguards against its falling into the hands of Mr Mugabe and his supporters, of encouraging progress towards the early holding of fair and free elections, and of making preparations for a long-term reconstruction package to be delivered when a genuinely democratic and representative government is finally in place. We further recommend that the FCO should continue to raise the gross violations of human rights in Zimbabwe at the UN Security Council. (Paragraph 294)

Overseas Territories

50. We conclude that the deliberate omission of reference to sexual orientation as a prohibited ground for discrimination in the Cayman Islands draft constitution is deplorable. The possibility cannot be ruled out that the drafting of the constitution in this regard may result in Cayman Islands courts affording to citizens of those islands less than the full protection which they are entitled to under the European Convention on Human Rights. (Paragraph 302)

51. We recommend that in all future discussions with Overseas Territories about revisions to their constitutions, the FCO insists that no specific religion or faith community be singled out for privileged mention, and that anti-discrimination provisions make explicit mention of sexual orientation. (Paragraph 303)

1 Introduction

Our inquiry

1. Since 1998 the Government has produced regular, usually annual, reports on human rights, and the Foreign Affairs Committee has subsequently published its comments on these. The Foreign and Commonwealth Office (FCO) published its *Annual Report on Human Rights 2008* in March 2009.[1]

2. In conducting our annual inquiry into human rights, based on the FCO's report, we have this year adopted a slightly different approach to that of previous years. In addition to reviewing the matters dealt with in the FCO's report, which broadly relate to the work of the FCO in relation to promoting human rights in other countries, we decided to consider a number of further issues, which might be summarised under the heading of the responsibilities of the FCO for securing the human rights of British citizens and others overseas.

3. When we announced the launch of our inquiry on 2 April 2009, we stated that these issues would include:

- The case of Binyam Mohamed
- Allegations of UK complicity in torture
- Extraordinary rendition (including the possible role of Diego Garcia)
- Transfer of prisoners in Iraq and Afghanistan
- Allegations of abuse at the British Embassy in Iraq
- The oversight of contractors, including private security companies, employed by the FCO and UK Posts overseas

4. In the event, our inquiry has been limited in its scope by the House of Commons *sub judice* resolution which states that "cases in which proceedings are active in United Kingdom Courts shall not be referred to in any motion, debate or question".[2] This is a self-denying ordinance designed to prevent things said in, or published by, the House from intruding upon the fair and proper conduct of cases in the law courts. We took advice from the House of Commons authorities on individual cases that should not be discussed as a result. These included the case of Binyam Mohamed, on which we therefore do not comment in this Report. As a result of *sub judice* concerns, one of our oral evidence sessions (at which we heard evidence from Amnesty International, Human Rights Watch and Reprieve) was held in private, on 10 June 2009. We expressed our intention to put subsequently as much as possible of the transcript of that session in the public domain, but

1 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009

2 Standing Orders of the House of Commons, Public Business, 2009,Appendix 1 (page 165), http://www.publications.parliament.uk/pa/cm200809/cmstords/2/2.pdf

reserved the right to sideline parts of it to comply with the terms of the *sub judice* resolution.[3] A sidelined version of that transcript is accordingly published with this Report, as are sidelined versions of some of the written evidence we received. We hope that in future, at the conclusion of the legal cases in question, it may be possible to publish full versions of all the oral and written evidence we have taken.

5. In addition to this oral evidence heard in private, we also took evidence in public from Amnesty International and Human Rights Watch, also on 10 June. We then took evidence in public from the Foreign Secretary, on 16 June. We are grateful to all those who submitted written and oral evidence to us.

6. As a consequence of our decision to deal in this Report with the additional matters we have referred to above, our discussion of the contents of the FCO's report is not as full as it has been in previous years.

The FCO report: key human rights themes

7. In previous years we have made suggestions as to how the FCO could improve the format of its Annual Report on Human Rights. We believe that the structure of the 2008 Report strikes a good balance between, on the one hand, addressing major countries of concern, and, on the other, discussing thematic issues. We recommended last year that the key issues of women's rights, children's rights, and the promotion of democracy should be given greater prominence in the next edition of the FCO report.[4] We are pleased that the FCO has accepted this recommendation. We consider below two further issues which we believe would benefit from receiving thematic treatment in future editions of the FCO report.

8. The right of freedom of association, including the right to belong to a free trade union, is of great importance, yet is under threat—or in some cases does not exist at all—in a number of countries. In our Report we make specific comments on this subject in relation to China/Tibet, Colombia, Sudan and Zimbabwe. We note, for instance, that Colombia is reputed to be one of the most dangerous places in the world to be a trade unionist.[5] The enforcement of International Labour Organisation (ILO) conventions, setting out minimum standards in relation to freedom of association and collective bargaining, discrimination, forced labour, and child labour, is also a matter of great concern. The FCO's report refers to limitations on freedom of association in a number of specific countries, but does not set out what action the FCO is taking.

9. Another important topic which receives scant attention in the FCO's report is that of progress towards full implementation of the Harare Declaration. The Declaration, agreed to by Commonwealth countries in 1991, contained a commitment to respect fundamental human rights. The Commonwealth Ministerial Action Group monitors the extent to which individual Commonwealth countries have upheld the values of the Declaration, and recommends measures for collective action in cases where countries are deemed seriously

3 Q1

4 Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, para 12

5 See para 198 below.

or persistently to have infringed the Harare principles. Recent cases where countries have been suspended from the Commonwealth for such infringements have been those of Fiji (suspended in December 2006) and Pakistan (suspended in November 2007, re-admitted in May 2008).[6] The FCO's report contains a short passage dealing with the Harare Declaration, but in our view a more detailed analysis, setting out what action the FCO is taking to secure Commonwealth members' adherence to the Harare principles on a country-by-country basis, would be valuable.

10. **We conclude that the FCO's inclusion in its report of extensive sections on what steps it is taking to promote equality and democracy, including women's and children's rights, is welcome. We recommend that next year's report includes what the FCO is doing both to extend the right of freedom of association, and to achieve progress amongst Commonwealth countries in implementing the human rights provisions of the Harare Declaration.**

6 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 58-59

2 Rendition

Definitions of rendition and extraordinary rendition

11. There is dispute over the definition of "rendition" and "extraordinary rendition". The House of Commons Library has supplied a helpful analysis:

> Definitions of 'Extraordinary Rendition' and 'Rendition' do not exist in international law; they are political terms of art. The phrase 'Extraordinary Rendition' is generally used to describe activities involving the clandestine and deliberate transfer of terrorist subjects to foreign countries for interrogation using torture, inhuman or degrading treatment in order to gain intelligence for the 'war against terrorism'. The process exists entirely outside normal, formal extradition proceedings. It is also referred to as 'torture by proxy' or 'outsourcing torture'.
>
> In contrast, while 'Rendition' is also used to refer to cases while individuals are transferred to other jurisdictions outside normal legal processes, the term generally implies that torture is not used.[7]

12. The House of Commons Library adds that:

> The distinction is important because although they are often used interchangeably, Extraordinary Rendition would almost certainly always be illegal under international law, while there are some instances of rendition which, under some interpretations of international law, may be regarded as legal.[8]

13. The British Government does draw a distinction between two types of rendition, as set out in its most recent human rights report:

> If we were requested to assist another state in a rendition operation, and our assistance would be lawful, we would decide whether or not to assist taking into account all the circumstances. We would not assist in any case if to do so would put us in breach of UK law or our international obligations. […]
>
> UK policy on […] extraordinary rendition is categorical: we unreservedly condemn any rendition to torture.[9]

14. Other witnesses in our inquiry argued that this distinction is a false one. Clive Stafford Smith, Director of Reprieve, told us:

> I wish someone could tell me what the difference is. As a lawyer, the legal term is kidnapping. Rendition is one of these euphemisms that we have seen far too many of in this whole process […] I think that we should just get back to the rule of law—if

7 House of Commons Library, *Standard Note on Extraordinary Rendition*, March 2006

8 *Ibid*.

9 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, pages 16–17

> you want to move someone involuntarily from one country to another, you use legal procedures.[10]

Kate Allen, UK Director of Amnesty International, agreed:

> people are being moved outside of the due process of law—outside of any methods of extradition. We, at Amnesty, have absolute clarity that rendition is illegal, as is extraordinary rendition. Just because you do not torture people does not mean that snatching them off the streets in one country, putting them on your plane and taking them to another country without any due process somehow becomes legal.[11]

Benjamin Ward, Associate Director of Human Rights Watch, told us:

> the argument about rendition to justice is a bit of a red herring. It is put forward as an example where, because in some instances it produces outcomes that may be deemed acceptable, it means that one should not take an unequivocal position against rendition as a whole. One should not fall into that trap. It is, as my colleagues have said, kidnapping or abduction—whatever the outcome may be.[12]

15. In this Report we use the term 'rendition' to refer to the transfer of individuals to other jurisdictions outside normal legal processes. 'Rendition' in this sense may or may not be 'extraordinary rendition' in the sense in which that term is commonly used, i.e. rendition for the purposes of torture.

US policy on extraordinary rendition

16. In previous Reports we have examined allegations that the United States has regularly practised extraordinary rendition and that the 'rendition circuit' included a series of CIA prisons known as "black sites", alleged to be located in Eastern Europe, Asia and elsewhere.[13] In a speech on 6 September 2006, President Bush admitted that the CIA operated a network of secret detention centres.[14] The USA does not deny having used rendition but has denied using torture. On 5 September 2006 the then US Secretary of State, Condoleezza Rice, said that "the United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture."[15] US policy has now substantially shifted. In an Executive Order issued on 22 January 2009, President Obama ordered the establishment of a special task force to consider policy options for transfer of prisoners, to assess rendition and other policies to ensure they comply with US obligations, and to assess policy on interrogation. He also

10 Q 6

11 Q 12

12 Q 13

13 Foreign Affairs Committee, Sixth Report of Session 2004–05, *Foreign Policy Aspects of the War against Terrorism*, HC 36; Foreign Affairs Committee, Fourth Report of Session 2005–06, *Foreign Policy Aspects of the War against Terrorism*, HC 573; Foreign Affairs Committee, First Report of Session 2005-06, *Human Rights Annual Report 2005*, HC 574; Foreign Affairs Committee, Third Report of Session 2006-07, *Human Rights Annual Report 2006*, HC 269; Foreign Affairs Committee, Ninth Report of Session 2007–08, *Human Rights Annual Report 2007*, HC 533;

14 Bush admits that terrorist suspects were held in secret prison network, *The Times*, September 7 2006 http://business.timesonline.co.uk/tol/business/law/article630672.ece

15 FCO, Response to the Foreign Affairs Committee's Third Report of Session 2006–07, *Human Rights Annual Report 2006*, Cm 7127, para 45

ordered the CIA to close "all existing detention facilities" and prohibited their future use. The task force is due to report to the President within 180 days.[16] We have previously expressed concern that the definitions of torture used by the US and UK have differed in relation to techniques such as waterboarding.[17] President Obama has now stated that he believes waterboarding to be torture.[18]

17. Some of our witnesses expressed continuing concerns about US policy. Kate Allen told us that "we still see the ability to use rendition in transitory detention, so although there have been some progressive moves, we have not seen the complete end of rendition and its use in temporary and short-term measures."[19] Benjamin Ward expressed concern about "the military commissions and proposals for administrative detention".[20] Clive Stafford Smith told us that there was still much that needed to change:

> there is an awful lot that he is not doing. He is one person who has a lot of poisoned chalices to deal with. Let us be clear: rendition is still going on and it will continue to go on. The business of closing CIA prisons is chimerical because the vast majority were not CIA prisons and they still exist. For example, the two people rendered by the British to Afghanistan are still being held in secret detention, and we don't know what their names are. President Obama is no more likely to make that public than President Bush was. An awful lot of work remains to be done, and a lot of the prisons that we have dealt with—that in Djibouti, for example, and I am sure that we will talk a little about Diego Garcia—still exist. They are not CIA prisons but are very active. We delude ourselves if we think that Obama's first few pronouncements have solved the problem. [21]

18. Our witnesses further criticised the stance taken by the UK in relation to the US. Kate Allen told us that

> the UK Government have been consistently slow to articulate their position on some of the abuses of human rights by the American Administration. It would be very good if pressure was brought to bear for them to articulate their position on transitory detention, […] on the issues that Clive has raised, and on some of the disquiet that we still have about the content of US Army field manuals, and some of the permitted techniques that remain there. It would be interesting and useful to hear the UK Government say what they think about those issues, given that background of being consistently reticent on such matters.[22]

19. However, Benjamin Ward noted that the election of President Obama provides an opportunity for the UK Government "to point to Washington and say, 'Look, now there is

16 White House Press Release, 22 January 2009

17 Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, para 53

18 Obama: 'I believe waterboarding was torture, and it was a mistake', *The Guardian*, 30 April 2009 http://www.guardian.co.uk/world/2009/apr/30/obama-waterboarding-mistake

19 Q 2

20 Q 2

21 Q 2

22 Q 2

an opportunity to really draw a line under what has been happening in the past five or six years,' and to put in place some really effective measures to deal with it."[23]

20. **We conclude that the shift in attitude of the new US Administration on the definition of torture and in its approach to extraordinary rendition is to be welcomed. We recommend that, in its response to this Report, the Government supplies us with a full assessment of whether, in its opinion, the present US policy in relation to secret and transitory detention and permitted interrogation techniques fully conforms to international human rights standards as interpreted by the UK.**

UK policy on extraordinary rendition

21. We have set out in paragraph 13 above the FCO's statement of its policy on assisting "rendition". The FCO adds:

> We have not approved and will not approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture.[24]

22. It has been alleged that the UK Government has not fulfilled these commitments. In July 2007 the Intelligence and Security Committee (ISC) reported on rendition in the wake of:

> allegations that the UK Government has not done enough to ensure that the UK is not involved in such operations, and, furthermore, that it has not sufficiently investigated these allegations, which might be counter to its obligations under UK and international law […] There have also been allegations of direct involvement in these operations by the UK intelligence and security Agencies and by Her Majesty's Government more widely.[25]

Clive Stafford Smith was emphatic that "there is zero probability that the British officials did not know about rendition and were not complicit in it."[26] Kate Allen was less categorical, concluding that:

> I think that at a minimum what we see is a complete lack of grip by the British Government in terms of who is passing through British territory. We see a lack of control. We have seen false information given to Parliament on this issue, and we see a rather passive response by the UK Government in asking the American Administration, but not being able to look at their own records, being very minimalist in the questions that they are asking and the definitions of rendition that they are using."[27]

23 Q 3

24 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, pages 16–17

25 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, para 2

26 Q 3

27 Q 3

Initial denials of UK involvement in extraordinary rendition

23. On 20 January 2006, the then Foreign Secretary, Rt Hon Jack Straw MP, summarised the results of a search of files stretching back to 1997 which revealed four rendition requests made by the US, all in 1998. Of these, two had been accepted and two had been rejected. [28] On 21 February 2008 the present Foreign Secretary, Rt Hon David Miliband MP, provided additional details of the two accepted requests, stating that "they were renditions to the US system, and there were full legal rights for the accused in those cases".[29] The Intelligence and Security Committee has identified the individuals and concluded that these were so-called 'renditions to justice', not extraordinary renditions.[30] Mr Straw told the House that, apart from these two cases, "there was no evidence of detainees being rendered through the UK or its overseas territories since 1998." The Government thereafter insisted on a number of occasions, including in evidence to us, that this remained the position and that US assurances could be relied upon.[31]

Rendition flights through Diego Garcia in 2002

24. An allegation which was, over a period of years, repeatedly rejected by the Government was that the UK Overseas Territory of Diego Garcia (British Indian Ocean Territory) has been used for detention and rendition.[32] However, in a statement on 21 February 2008 the Foreign Secretary admitted that, contrary to previous assurances, Diego Garcia had been used for rendition flights when, on two occasions in 2002, a US plane with a single detainee aboard refuelled at the US facility on the island. Neither detainee was a British national or a British resident. Mr Miliband said that one detainee was taken to Guantánamo Bay whilst the other was released, and neither detainee was "taken to a secret detention facility or subject to water-boarding or other similar forms of interrogation".[33] Subsequently, in answer to a Parliamentary Question, the Government revealed that both men have now been released.[34] In his February 2008 statement, Mr Miliband stated that he had made clear to the US:

> first, that we expect them to seek permission to render detainees via UK territory and airspace, including overseas territories; secondly, that we will grant that permission only if we are satisfied that rendition would accord with UK law and our international obligations; and thirdly, how we understand our obligations under the UN convention against torture. Secretary Rice has underlined to me the firm US understanding that there will be no rendition through the UK, UK airspace or overseas territories without express British Government permission. [35]

28 HC Deb 20 January 2006, Col 38WS

29 HC Deb 21 February 2008, Col 558

30 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, para 44

31 See Foreign Affairs Committee, Third Report of Session 2006-07, *Human Rights Annual Report 2006, HC 269* and Government response to Foreign Affairs Committee report on Human Rights Annual Report 2006

32 http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdf

33 HC Deb 21 February 2008, Col 547

34 HC Deb 12 February 2009, col 2002W

35 HC Deb 21 February 2008 Col 547

25. In his February 2008 statement the Foreign Secretary announced that officials would compile a list of flights where the FCO had been "alerted to concerns regarding rendition through the UK or our overseas territories".[36] A list of 391 flights was subsequently passed to the US Government on 15 May 2008 and published on the FCO website.[37] On 3 July 2008 the Foreign Secretary announced that "the United States Government confirmed that, with the exception of two cases related to Diego Garcia in 2002, there have been no other instances in which US intelligence flights landed in the United Kingdom, our Overseas Territories, or the Crown Dependencies, with a detainee on board since 11 September 2001."[38] Andrew Tyrie MP suggested to us that the review did not provide sufficient assurances:

> This list did not include flights through UK airspace that did not land at UK airports and the Foreign Secretary failed to ask the US to confirm whether any of the flights on the list were 'rendition circuit' flights. He appeared not to know whether the US had cross-checked the list of flights with their own records before providing renewed assurances on this issue.[39]

We discuss the issue of "empty flights" in paragraphs 42 and 43 below.

Details of the 2002 renditions through Diego Garcia

26. The Government has claimed to have only limited information about the flights that landed on Diego Garcia in 2002 and the individuals in question. When we questioned the Foreign Secretary about why details of the cases had not been published by the Government he answered that "we have no confirmation of their names, and that is why we have not put them into the public domain".[40] In answer to a Parliamentary Question by Andrew Tyrie MP, the FCO Minister of State, Bill Rammell MP, stated that "We have very limited specific information about these flights and, despite enquiry, have not been able to establish further details that would be essential for purposes of further investigation."[41] Mr Tyrie told us that "the implication is that the US is withholding information about these flights" and that this information would be essential for investigation of whether criminal offences were committed.[42]

27. From the information provided, Reprieve believe that have identified one of the men rendered through Diego Garcia in 2002 as Mohammed Saad Iqbal Madni. They urge that the Government should clarify further what it knew of his apprehension, transfer and treatment, whether British personnel had contact with him and provide details of assurances sought by the UK regarding his treatment.[43] Clive Stafford Smith told us that evidence for this assertion was "pretty much indisputable" but that the Government had

36 HC Deb 21 February 2008 Col 547

37 http://www.fco.gov.uk/resources/en/pdf/3052790/fs-wms-rendition-030708

38 HC Deb 3 July 2008, col 58 WS

39 Ev 64

40 Q 95

41 HC Deb 26 February 2009 Col 948W

42 Ev 64

43 http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdfand Q11

failed to respond to the claim. He believes the second prisoner was Shaikh Ibn Al-Libi but told us that "we are by no means certain."[44]

28. **We conclude that it is unacceptable that the Government has not taken steps to obtain the full details of the two individuals who were rendered through Diego Garcia. We recommend that the Government presses the new US Administration to provide these details, and that it should then either publish them, or explain the reasons why it considers it would not be in the public interest to publish them.**

The agreement between the US and UK on the use of Diego Garcia

In our 2008 Report on Overseas Territories we noted that the US lease on Diego Garcia is due to expire in 2016. The FCO told us that the 1966 Exchange of Notes which established the agreement would "continue in force for a further twenty years beyond 2016", unless it was ended by "either government giving notice of termination, in accordance with its terms".[45] However, at that time, Ministers had not discussed the possibility of terminating the lease or altering the terms of the agreement to increase UK oversight of activities on the Island.[46] Referring to the acknowledge rendition through Diego Garcia, Andrew Tyrie MP has argued that "if the agreements in place were not breached, then they appear inadequate for the purpose of preventing British involvement in extraordinary renditions."[47] Clive Stafford Smith also told us that

> there is no doubt that it violated that agreement, but it violated a lot of other things. British law applies in Diego Garcia, notwithstanding what some other people have said. It has very interesting aspects. In fact, the law provides for a Diego Garcia supreme court that is meant to apply British law, of which there is no such thing. […]The whole process has been one to skirt the law[48]

29. We questioned the Foreign Secretary about whether the use of Diego Garcia for rendition flights would breach the terms of the agreement between the UK and the US on the use of the island. He told us:

> In our view there should be consultation. I think there was consultation about a previous case—there were a couple of cases in the 1990s. That is certainly the procedure that now exists […] the US Administration have said that they will consult us if they ever want to use it. So they obviously share that view.[49]

He did not believe that there were grounds to examine the terms of the agreement that govern the use of the island, adding:

> If the American Administration were now saying that they did not need to consult us, that would be a *prima facie* case for reviewing the arrangements. I am sure in

44 Q 11

45 Foreign Affairs Committee, Seventh Report of Session 2007–08, *Overseas Territories*, HC 147, para 49

46 *Ibid*., para 60

47 Ev 64

48 Q 9

49 Q q 99–100

> 2016 we will want to look at whether they are adequate for the times; there is no limitation on that. In respect of the use of Diego Garcia for rendition there is an absolutely clear position from the British Government and the American Government about the appropriate way to act. In that respect, there is no lack of clarity.[50]

30. **We conclude that the use of Diego Garcia for US rendition flights without the knowledge or consent of the British Government raises disquieting questions about the effectiveness of the Government's exercise of its responsibilities in relation to this territory. We recommend that in its response to this Report, the Government indicates whether it considers that UK law has effect in British Indian Ocean Territory, and whether it considers that either UK law or the agreements between the US and UK over the use of BIOT were broken by the admitted US rendition flights in 2002.**

Flight records

31. The Intelligence and Security Committee's July 2007 report on rendition commented that:

> We are concerned that Government departments have had such difficulty in establishing the facts from their own records in relation to requests to conduct renditions through UK airspace. These are matters of fundamental liberties and the Government should ensure that proper searchable records are kept.[51]

The Government has admitted that flight records from Diego Garcia covering the period during which renditions are known to have occurred through the island have been destroyed.[52] In its submission, Reprieve questioned why accurate records were not kept and argued that the Government should make available details of how, why and by whom records were destroyed.[53] When we asked the Foreign Secretary whether the Government would be willing to do this, he replied: ""I have never been asked that before and there is no proposal to do it."[54] He stated that on Diego Garcia since 2008 "all flight records are now held by the British representative"[55] and outlined his intention to make improvements in record keeping:

> The record-keeping systems that have to be improved are partly a matter of what happens on the base and partly a matter of what happens back in London. In respect of all detainee issues, there is now a central point in the Foreign Office for arranging that, and I think that is the right way forward.[56]

50 Q 101

51 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, page 17

52 HC Deb 6 November 2008, c688W

53 http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdf

54 Q 109

55 Q 110

56 Q 109

32. Non-commercial, non-state flights do not require permission to land in the UK.[57] Redress has previously suggested that the law covering the use of civil aircraft for rendition and the procedures for authorising the entry of 'state aircraft' into UK territory should be assessed.[58] They comment in particular that although many rendition flights are designated as 'civil' flights, they might more accurately be described as 'state' flights and therefore should require more explicit authorisation.[59] Benjamin Ward was

> supportive of the initiative by the all-party parliamentary group on rendition to create a permission system for rendition flights, including for overflights, similar to that which exists already in extradition cases under the European Convention on Extradition. That proposal was put forward to the Government in 2006 and, as far as I am aware, nothing ever came of it. Obviously that would not entirely eliminate the risk of transfers, but effectively requiring a transferring state to certify, in advance, what opportunity the prisoner had had to challenge any risk of human rights abuse that they might be subject to would make it much more difficult and much less attractive to use UK territory and UK airspace for such transfers. It would be a very important and symbolic change and it is not clear to me why that was not taken up.

33. **We conclude that, in the light of the controversy over the use of British Indian Ocean Territory for purposes of rendition by the US, it is important that full records of flights through the territory are kept, and retained for an indefinite period. We conclude that it is to be welcomed that the British representative on Diego Garcia now keeps flight records. We recommend that the Government discloses how, why and by whom the records relating to flights through Diego Garcia since the start of 2002 were destroyed. We further recommend that the Government provides, in its response to this Report, full details of its record-keeping and record-disposal policy in relation to flights through British territory, particularly BIOT, and state for how long it now retains such records. We recommend that, in its response, the Government addresses the question of whether it considers that current aviation law and aircraft identification procedures are sufficient to identify flights which may be carrying out rendition both through Diego Garcia or elsewhere through UK airspace.**

Further allegations in relation to Diego Garcia

34. The lack of historical flight data makes it very difficult to test allegations that the two flights in 2002 do not represent the full extent of Diego Garcia's involvement in the rendition circuit. It is claimed that the island was used by the CIA as a 'black site'. During our inquiry into Overseas Territories it was further alleged that ships in or near the island's territorial waters had been used to hold detainees and facilitate rendition.[60] Such allegations include the following:

- US Army General Barry McCaffrey, former head of Southcom, has stated twice in public that Diego Garcia has been used by the US to hold prisoners, stating in a

57 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, para 188

58 Redress, The United Kingdom, *Torture and Anti-Terrorism: Where the Problems Lie*, December 2008, page 28

59 Redress, The United Kingdom, *Torture and Anti-Terrorism: Where the Problems Lie*, December 2008, page 30

60 Foreign Affairs Committee, Seventh Report of Session 2007-08, *Overseas Territories*, HC 147, Ev 182, 203

radio interview in May 2004 "We're probably holding around 3,000 people, you know, Bagram Air Field, Diego Garcia, Guantánamo, 16 camps throughout Iraq."[61]

- In October 2003 Time magazine reported that the Al-Qaeda operative known as Hambali had been interrogated on the island.[62]
- A former senior American official told Time magazine in July 2008 that "a CIA counterterrorism official twice said that a high-value prisoner or prisoners were being held and interrogated on the island. The identity of the captive or captives was not made clear."[63]
- In August 2008, the Observer reported that former American intelligence officers "unofficially told senior Spanish judge Baltasar Garzón that Mustafa Setmarian, a Spanish-based Syrian accused of running terrorist training camps in Afghanistan, was taken to Diego Garcia in late 2005 and held there for months."[64]
- Reprieve allege that Abu Zubaydah and Khaled Skeikh Mohammed, currently held at Guantánamo, were also held on the island.[65]
- The Observer has reported that Manfred Novak, the United Nations special investigator on torture, told the paper that "he had talked to detainees who had been held on the archipelago in 2002, but declined to name them."[66]

35. In its 2008 Annual Report on Human Rights the FCO stated that:

> The US government denies having interrogated any terrorist suspect or terrorism-related detainee on Diego Garcia since 11 September 2001. They have also informed us that no detainees have been held on ships within Diego Garcia's territorial waters over that period, and that they do not operate detention facilities for terrorist suspects on board ships.[67]

36. We asked the Foreign Secretary whether this assurance extended to the use of Diego Garcia as a victualling point for ships outside its territorial water which may have been used for renditions. He stated that "we have no information, either of vessels inside territorial waters being used for rendition or of supplies from Diego Garcia going to ships outside the territorial waters.[68] The FCO state that such re-victualling would be "highly unlikely to occur" because:

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61 http://www.msnbc.msn.com/id/4924989 ; http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdf

62 The Terrorist Talks, TIME magazine, 5 October 2003 http://www.time.com/time/magazine/article/0,9171,1101031013–493256,00.html

63 US Used UK Isle for Interrogations, TIME magazine, 31 July 2008 http://www.time.com/time/world/article/0,8599,1828469,00.html

64 US 'held suspects on British territory in 2006', *The Observer*, 3 August 2008

65 http://www.reprieve.org.uk/static/downloads/Microsoft_Word_-_2009_05_20_FAC_Submission_DG.pdf

66 US 'held suspects on British territory in 2006', *The Observer*, 3 August 2008

67 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, page 17

68 Q 104

> The territorial waters of Diego Garcia extend to 3 nautical miles. Replenishment at Sea […] requires a stable transfer system between the two vessels concerned. This would usually be provided by an auxiliary vessel. No such vessels are currently berthed in Diego Garcia and consequently all vessels have to come into port to be replenished.[69]

The Foreign Secretary undertook to supply us with an assessment of whether, under the US/UK agreements on the use of BIOT, the British Government's prior consent would be required for the use of the territory as a re-victualling point for vessels outside territorial waters. He later told us that:

> Under the UK/US Exchange of Notes which govern the use of the British Indian Ocean Territory for Defence purposes, the US undertakes to inform the UK of intended movements of its ships in BIOT territorial waters in "normal circumstances".[70]

37. **We conclude that it is a matter of concern that many allegations continue to be made that the two acknowledged instances of rendition through British Indian Ocean Territory in 2002 do not represent the limit of the territory's use for this purpose. We further conclude that it is extremely difficult for the British Government to assess the veracity of these allegations without active and candid co-operation from the US Administration. We recommend that the Government requests the Obama Administration to carry out a further, comprehensive check on its records relating to the use of BIOT with a view to testing the truth of the specific allegations (including those set out in paragraph 34 above) relating to rendition through the territory. We conclude that it is unsatisfactory that the Government is not able to give us a categorical assurance that re-victualling of ships anchored outside BIOT's territorial waters by any vessel from BIOT, for purpose of assisting rendition, has not occurred. We further conclude that it is unsatisfactory that the US has only undertaken to inform the UK of the movement of ships in Diego Garcia's territorial waters in normal circumstances but not in all cases. We recommend that the Government requests the US Administration to supply details of any movement of ships in Diego Garcia's waters since January 2002 that were not notified at the time to the UK authorities, and seek assurances that at no point were these or other vessels used for re-victualling of vessels outside Diego Garcia's territorial waters which were being used for purposes of rendition.**

Acceptance of US assurances

38. The Government has repeatedly demonstrated a willingness to accept US assurances in relation to the use of BIOT for rendition flights. A report from the Council of Europe in 2007 criticised the Government for having accepted these assurances "without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner".[71] The 2007 ISC report on rendition exonerated

69 Ev 51

70 Ev 51

71 Council of Europe Committee on Legal Affairs and Human Rights, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe Member States: a second report*, June 2007, page 16

the Government from this charge, but did so before the revelation in February 2008 about the use of BIOT for rendition purposes.[72] In our own Report on the Overseas Territories, published in July 2008, we concluded that "it is deplorable that previous US assurances about rendition flights have turned out to be false."

39. The Foreign Secretary continues to argue that US assurances, such as those given by former Secretary of State Condoleeza Rice, can be relied upon:

> I have had assurances, as I say, at the highest level that there are no cases beyond those two, and also that if there was any desire on the part of the United States to use Diego Garcia for so-called extraordinary rendition, or for any kind of rendition, the British Government would be consulted.
>
> We can be confident that our closest intelligence and foreign policy ally seeks to honour its trust with us in all respects. The degree of intelligence co-operation that exists between the US and the UK is of a unique standard and standing. It is based on mutual trust. It is not only one-way traffic. The US Government understand the importance of transparency and full openness with us. When the Secretary of State of the United States gives you her word, you take it very seriously. [73]

40. Mr Miliband argued that:

> It was certainly proactive on the part of the US to notify us in the first place of this new evidence that arose in February 2008. That did not emerge because I had been in touch with them about a particular case—they came to us. They were clearly proactive in that instance. I think that they have subsequently looked hard at their own systems, but they have been clear with me, in a way that I have then reported in full to Parliament, about the limits of their use of Diego Garcia. [74]

The Foreign Secretary assured us that in future the US would seek agreement for use of Diego Garcia for rendition flights:

> Just to be clear, the information came out because the Americans found it; they found it and they told us. We said, very clearly, that our understanding of the agreement in respect of Diego Garcia was that there had to be agreement. They subsequently said, "We give you absolute assurance that, in all future cases, there will be; we will see that agreement." So there is no mystery about that.[75]

41. **We reiterate our previous conclusion that it is deplorable that previous US assurances about rendition flights through Diego Garcia have turned out to be false. We further conclude that the basis of trust in subsequent US assurances about the use of BIOT has been undermined. We recommend that the Government outline what practical action it is taking to ensure that it has full sources of information about US rendition activity on BIOT.**

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72 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, para 210

73 Qq 96, 98

74 Q 97

75 Q 110

Empty flights and the use of UK airports

42. In our last human rights Report we commented on the use of UK territory by aircraft on their way to conduct rendition operations or returning empty from such operations.[76] In its response to that Report, the Government stated that it:

> does not consider that a flight transiting UK territory or airspace on its way to or from a rendition operation constitutes rendition. Nor do we consider that permitting transit or refuelling of an aircraft without detainees on board without knowledge of what activities that aircraft had been or would be involved in, or indeed whether or not those activities were unlawful, to be unlawful in itself. There are more than two million flights through UK airspace annually. It would be unreasonable and impractical to check every aircraft transiting UK airspace on the basis that it may have been, at some point in the past, and without UK knowledge, involved in a possible unlawful operation. Instead an intelligence-led approach is and must be employed.[77]

In his submission, Andrew Tyrie MP pointed out that the list of flights which was sent to the US in May 2008 "did not include flights through UK airspace that did not land at UK airports". He added that "the Foreign Secretary failed to ask the US to confirm whether any of the flights on the list were 'rendition circuit' flights. He appeared not to know whether the US had cross-checked the list of flights with their own records before providing renewed assurances on this issue."[78]

43. **We reiterate our earlier conclusion that the Government has a moral and legal obligation to ensure that flights that enter UK airspace or land at UK airports are not part of the rendition circuit. We acknowledge the practical difficulties in the way of monitoring all empty flights transiting UK territory or airspace. We recommend that the Government, in its response to this Report, sets out options for more effectively establishing whether flights, including those by civilian aircraft, are on their way to or from a rendition operation**.

The UN Convention on Enforced Disappearances

44. The UK has not signed the UN Convention on Enforced Disappearances but told us that it played a "supportive role" in the drafting process.[79] The Convention was adopted by the UN General Assembly in December 2006 and will come into force once ratified by twenty Member States. At present 81 states have signed the Convention, but only ten Members States (Albania, Argentina, Bolivia, Cuba, France, Honduras, Kazakhstan, Mexico, Senegal and Uruguay) have ratified it. [80] Amnesty International recommended that signing the Convention should be a priority for the UK:

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76 Foreign Affairs Committee, Ninth Report of Session 2007–08, *Human Rights Annual Report 2007*, HC 533, para 47

77 Government response to Foreign Affairs Committee, Ninth Report of Session 2007–08, *Human Rights Annual Report*, Cm 7463, para 23

78 Ev 64

79 Ev 52

80 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

> We would be pleased if the British Government would sign it. It is one of the few signatures, in terms of Europe, that is not on that convention. The British Government suggest to countries such as Sri Lanka and Pakistan that they might like to sign up to the convention. It would be interesting if this Committee would ask the Foreign Secretary what discussions he has had with the US Administration about this convention and whether any of those discussions are getting in the way of the British Government signing up to the UN convention on enforced disappearances. [81]

45. The FCO told us that

> The Government is currently examining the potential impact of the Convention on the law of the United Kingdom. In particular, lawyers are analysing the extent to which common law provisions may need to be replicated in statute law, and the introduction of one or more specific criminal offences. If the Government decides to ratify the Convention, these changes to the law would require primary legislation, which would be introduced when Parliamentary time allowed. Decisions would also need to be taken in due course on whether the United Kingdom required any reservations or declarations upon ratification. The complexity of these issues under consideration does not permit a deadline to be set at this time for completion of this analysis.[82]

46. **We recommend that the Government complete its analysis of practicalities of signing the UN Convention on Enforced Disappearances as soon as possible. We further recommend that, having been supportive of the Convention at the drafting stage, the Government should declare its intention, in principle, to sign**.

81 Q 6; Ev 76

82 Ev 52

3 Allegations of UK complicity in torture

The Government's policy towards torture

47. The UK Government has repeatedly asserted its opposition to the use of torture. In its response to our last annual report on human rights, the FCO stated that "we unreservedly condemn the use of torture and our clear policy is not to participate in, solicit, encourage, or condone the use of torture or inhuman or degrading treatment for any purpose".[83] Giving oral evidence to us in June 2009, the Foreign Secretary stated that:

> We abhor torture; we will not co-operate or collude with it; and, in line with our international commitments, we are honour-bound not just to avoid wrongdoing ourselves but to try to reduce, and if possible eliminate, the use of cruel or inhuman treatment or torture around the world.[84]

Allegations of UK complicity in torture

48. Notwithstanding these assertions by the Government, a number of allegations have been made that the UK has been complicit in torture perpetrated overseas. In late 2004, Craig Murray, formerly HM Ambassador to Uzbekistan, alleged that the UK was receiving information obtained under torture.[85] Mr Murray recently told the Joint Committee on Human Rights (JCHR) that in early March 2003, at a meeting in London, "I was told that it was now policy to accept intelligence that may have been obtained from torture [.] I was very surprised. I was told directly that that had been agreed, that it had the authority of the secretary of state and had come from Jack Straw." Mr Murray alleged that the Government's position creates a "market for torture".[86]

49. A number of allegations have been made in relation to individuals and their treatment in Pakistan, Egypt and elsewhere, some of which are the subject of active legal proceedings in the UK and are therefore subject to the House's *sub judice* resolution. Among these allegations are those made in the high-profile case of Binyam Mohamed, which has been referred by the Attorney-General to the Metropolitan Police and in which there are ongoing legal proceedings. In addition, a group of former Guantánamo detainees is taking legal action against the Government and named members of the security service, and allegations in relation to a number of individuals were collated in a dossier handed to the Metropolitan Police by Cageprisoner, a British monitoring group.

50. On 28 March 2009, the Daily Telegraph alleged that the UK security services had identified at least 15 cases of possible complicity by British officials in the torture of UK

83 Foreign and Commonwealth Office, Response to the Ninth Report of Session 2007–08 by the Foreign Affairs Committee, *Annual Report on Human Rights 2007*, Cm 7463, para 27

84 Q 92

85 Foreign Affairs Committee, Sixth Report of Session 2004–05, *Foreign Policy Aspects of the War against Terrorism*, HC 36, paras 88-89

86 Oral evidence taken before the Joint Committee on Human Rights, 28 April 2009, HC (2009–09) 230–ii Q96, 102

and foreign nationals.[87] We wrote to the Foreign Secretary, asking him to respond to the allegations in the article, and to tell us when Ministers first became of these cases. He replied that:

> Much of the information outlined in the article is contained in the Intelligence and Security Committee's (ISC) 2005 report into the handling of detainees by UK intelligence personnel in Afghanistan, Guantánamo Bay and Iraq. […] Beyond the information contained in the 2005 report, it is not clear from the article to which specific cases it may be referring. […] More generally, it would [be] inappropriate to enter into speculation or commentary on the work of the Attorney General or the police[88]

He set out the Government's general approach to such allegations:

> the Government takes all allegations of mistreatment very seriously, and investigates them as appropriate. If any cases of potential criminal wrongdoing come to light, the Government will refer them to the Attorney General to consider whether there is a basis for inviting the police to conduct a criminal investigation. In addition, individuals who believe their human rights have been infringed as a result of actions carried out by or on behalf of any of the intelligence Agencies can of course take their cases to the Investigatory Powers Tribunal.[89]

Mr Miliband emphasised that "if a British official is present while mistreatment is taking place, there are very clear rules about what he or she should do to report it and pull up whoever is doing it".[90]

51. The question has been raised of the extent to which Ministers would have been aware if officials were complicit in torture. On 31 May 2009, the Guardian reported comments by Sir Richard Dearlove, formerly head of the Secret Intelligence Service, who when asked whether Ministers would have known about alleged complicity in torture, stated that "the intelligence community was 'sometimes asked to act in difficult circumstances. When it does, it asks for legal opinion and ministerial approval … It's about political cover.'"[91] The Foreign Secretary assured us that "of course, all the activities of British agents, or British officials, are subject to an approval process that involves Ministers.[92]

Pakistan

52. We focussed in our human rights Report last year on allegations of complicity by UK officials in torture by the Pakistani Inter-Services Intelligence (ISI) Agency.[93] Tom

87 Torture inquiry reveals 15 new cases, *Daily Telegraph*, 28 March 2009, page 1 http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/5063053/Torture-inquiry-reveals-15-new-cases.html

88 Ev 60

89 Ev 60

90 Q 122

91 British agents would have had ministers' OK for collusion in torture – ex-MI6 chief, *The Guardian*, 31 May http://www.guardian.co.uk/uk/2009/may/31/british-agents-terror-suspects-torture

92 Q 114

93 "MI5 accused of colluding in torture of terrorist suspects", *The Guardian*, 29 May 2008

Porteous of Human Rights Watch told us then that: "the circumstances seem to amount to complicity and collusion in the mistreatment".[94] Lord Malloch-Brown denied that the Government had "outsourced" torture, but did express some concerns about the practices of the ISI,[95] which the FCO reiterated in their response to our Report.[96]

53. Allegations relating to Pakistan continue to appear in the press,[97] and both Human Rights Watch and Amnesty International told us that they continue to be concerned by the practices of the ISI and the nature of UK involvement with the Agency. Benjamin Ward claimed that:

> The UK relies on the Inter-Services Intelligence agency in Pakistan, which is well known for its use of torture in its counter-terrorism operations. Our research indicates that British Government agents put questions to detainees in ISI custody and visited detainees, who had obviously been tortured, without halting co-operation in those cases. We made that evidence available to the Joint Committee on Human Rights, and we also included a link to it in our submission to this Committee.
>
> It is simply not credible that UK Government officials visiting detainees in ISI custody could be unaware of the torture and abuse that they were subject to. We take the view that asking the Pakistani security services to interrogate a detainee suspected of terrorism, without being present to ensure the person is not mistreated, or conditioning co-operation on an end to these practices, is essentially a request to use torture to obtain information.[98]

Human Rights Watch have discussed these issues in similar terms in evidence submitted to the JCHR.[99] Brad Adams suggested that that whilst the Government has denied actively outsourcing torture, the question of "passive outsourcing" is open and could amount to a degree of complicity that would not comply with the UK's legal obligations (which we discuss in paragraphs 80 to 83 below).[100] Ali Hasan of Human Rights Watch further alleged that former members of the British security services had told him that elements within those services "are deeply uncomfortable with being party to this kind of activity".[101] On 20 March 2009 the Guardian reported that the FCO have not received any response from Pakistan in relation to allegations of torture and had not pursued the matter since 2006.[102]

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94 Foreign Affairs Committee, Ninth Report of Session 2007–08, *Annual Report on Human Rights 2007,* HC 533, Q 40

95 Foreign Affairs Committee, Ninth Report of Session 2007–08, *Annual Report on Human Rights 2007,* HC 533, para 58

96 Foreign and Commonwealth Office, Response to the Ninth Report of Session 2007–08 by the Foreign Affairs Committee, Annual Report on Human Rights 2007, Cm 7463, paras 27, 38

97 Mohamed 'not the only victim' , *The Guardian*, 12 March 2009, page 4, http://www.guardian.co.uk/world/2009/mar/12/torture-binyam-mohamed; *The Guardian*, What terror jury was not told: 'They tore my nails out. Then I was interrogated by MI5', 19 December 2008, page 11;MI5 torture allegations: 'Three of his fingernails were missing', *The Guardian*, 7 July 2009, http://www.guardian.co.uk/world/audio/2009/jul/07/mi5-accused-bribe-offer-torture , Revealed – the secret torture evidence MI5 tried to suppress, *The Guardian*, 8 July 2009, http://www.guardian.co.uk/world/2009/jul/08/mi5-torture-evidence-david-davis

98 Q 17

99 http://www.hrw.org/en/news/2009/02/02/uk-should-investigate-role-torture-pakistan; Oral evidence taken before the Joint Committee on Human Rights, 3 February 2009, HC (2008-09) 230-i, Q14

100 Oral evidence taken before the Joint Committee on Human Rights, 3 February 2009, HC (2008-09) 230-i, Q18-19

101 Oral evidence taken before the Joint Committee on Human Rights, 3 February 2009, HC (2008-09) 230-i, Q33

102 *The Guardian*, 20 March 2009, page 19

54. **We conclude that the practices of the Pakistani Inter-Services Intelligence (ISI) Agency continue to give cause for great concern, in the light of the allegations we have received that the Agency subjects detainees to mistreatment and torture. We further conclude that while the UK must, by necessity, maintain its relationship with Pakistani intelligence, we are very concerned by allegations that the nature of the relationship UK officials have with the ISI may have led them to be complicit in torture. We recommend that, in its response to this Report, the Government supplies us with details of the investigations it has carried out into the specific allegations of UK complicity in torture in Pakistan brought to public attention by Reprieve and Human Rights Watch, and the grounds it has for supposing those allegations to be baseless. We further recommend that the Government make an explicit statement that in future co-operation with the Pakistani authorities, UK officials should in no circumstances be uncritical of, or complicit in, abuses of human rights. We recommend that, in its response to this Report, the Government confirms that it is its policy, in respect of every case where allegations of torture in Pakistan are drawn to its attention, for such allegations to be passed to the Pakistani authorities and every available step taken to ensure that they are investigated and responded to fully**.

Consular access to British nationals in Pakistan

55. In last year's Report we commented on the provision of consular advice to British nationals detained in Pakistan, some of whom had claimed that they were mistreated. [103] The FCO's response to our Report noted that:

> The Government is currently aware of eight cases of British or dual British/Pakistani nationals having been detained on suspicion of terrorist offences in Pakistan since 2000 (and took steps to amend an earlier Parliamentary answer on this question as soon as its inaccuracy came to light). […] Consular officials were aware of six of the eight individuals at the time of their detention. Consular access was sought and given for both UK mono-nationals. In one case our request was initially denied, but subsequently access was given before deportation. Consular access was also sought, in two of the six dual national cases. In one of these cases access was not granted before the individual was released. The other individual remains in Pakistani custody and we continue to press for consular access.

The Government refused to comment on whether officials met any of the individuals on a non-consular basis. It confirmed that it is government policy to seek consular access in the case of mono-national British citizens, but not in the case of "dual nationals in their country of other nationality" unless "we consider that there is a special humanitarian reason to do so."[104] Giving oral evidence to us in June 2009, the Foreign Secretary confirmed that this remained the position, but he added that "in the future, we will establish the same standard for dual nationals as for mono nationals". [105] However, Mr Miliband could not confirm that British intelligence would see it as their duty to advise a

103 Foreign Affairs Committee, Ninth Report of Session 2007–08, HC 533, para 59–61; HC Deb 4 June 2008 col 1006 W

104 Foreign and Commonwealth Office, Response to the Ninth Report of Session 2007–08 by the Foreign Affairs Committee, Annual Report on Human Rights 2007, Cm 7463, paras 30–31

105 Q 119

British national detained abroad that they have the right to consular advice before any interview by a foreign intelligence service.[106]

56. On 20 March 2009 the Guardian reported that in Pakistan the FCO:

> intends to press for an agreement . . . which commits both parties to respond constructively within a certain number of days to requests for access to their own country's nationals who are being held by the other country's authorities, and to allegations of mistreatment.[107]

57. **We conclude that the Government's intention to establish the same standards for dual and mono British nationals in relation to consular access is to be welcomed. We recommend that this change should be brought into effect as soon as possible, and that in its response to this Report the Government sets out a timetable for this to be achieved. We further recommend that all British nationals should be offered consular advice as soon as the Government is aware of their detention, and certainly before they are interrogated by any foreign intelligence service.**

Oversight of the intelligence services

58. In his written submission Peter Gill, Professor of Intelligence Studies at Salford University, raised questions about the oversight of intelligence and security matters. He stated that:

> poorly co-ordinated oversight of security and intelligence networks is conducted by a combination of governmental, inter-governmental (e.g. Council of Europe), and civil society actors. In the absence of some supranational governing authority this combination will continue but serious thought needs to be given as to how this might be improved. For example, national authorities (governmental and parliamentary) should augment what is currently a highly informal network of interested actors with some serious investigative and administrative resources that could, say, establish relevant codes of conduct and mechanisms for monitoring.[108]

59. In a letter to us the Foreign Secretary described the current system for oversight of the intelligence services which consists of three strands: the Intelligence and Security Committee (ISC), the Intelligence and Interception Commissioners and the Investigatory Powers Tribunal.[109] On 18 March 2009 the Prime Minister announced an annual review of compliance by the Intelligence Services Commissioner, a request to the ISC to consider developments on detention and rendition, and a commitment to refer "cases of potential criminal wrongdoing" to the Attorney-General.[110] In a subsequent letter to Mr Brown, the JCHR sought a commitment that the Commissioner's report would be published, and requested to know whether the report would look at cases currently causing concern and

106 Q 120

107 *The Guardian*, 20 March 2009, page 19

108 Ev 99

109 Ev 51

110 HC Deb, 18 March 2009, 55WS

whether it will address systemic issues and policy as well as individual cases.[111] The JCHR has not yet published any response from the Prime Minister.

The Intelligence and Security Committee

60. The ISC was created by the Intelligence Services Act 1994 and exercises scrutiny of the Security Service, Secret Intelligence Service and the Government Communications Headquarters (GCHQ). Whilst its members are parliamentarians, they appointed by the Prime Minister and the Committee reports directly to the Prime Minister.[112] On a number of occasions we have affirmed our view that the ISC is therefore not a Committee of Parliament.[113]

61. In July 2008, the House amended its Standing Orders, in response to a proposal from the Government, to provide that "The Committee of Selection may propose that certain Members be recommended to the Prime Minister for appointment to the Intelligence and Security Committee", and that such a proposal may be put to the House for its approval.[114] Nonetheless, the ISC remains a body set up under statute rather than by the House; its members are still appointed by the Prime Minister, who is not obliged to accept nominations put forward by the Committee of Selection, or to confine himself to them in his choice of members, and the ISC still reports to the Prime Minister rather than the House.

62. The Foreign Secretary asserted that the ISC "should have an important role"[115] and that "the way it is set up squares the circle between accountability and secrecy. […] As the High Court recently said, the ISC 'is a very significant means of democratic accountability'."[116] Kate Allen disagreed with this assessment:

> From the perspective of Amnesty International, the Intelligence and Security Committee is appointed by the Prime Minister, reports to the Prime Minister, and the Prime Minister decides what the rest of us see. That is not an investigation that Amnesty International could have confidence in.[117]

Both Clive Stafford Smith and Kate Allen stressed the importance of independence. Mr Stafford Smith told us that "you need political accountability in terms of having politicians involved, but there must also be other people who have absolutely no concerns about their own situation, for example. We want independent people,"[118] whilst Ms Allen stated

111 Letter to the Prime Minister from the Chairman of the Joint Committee on Human Rights, 26 March 2009 http://www.parliament.uk/documents/upload/PM_UNCAT260309.pdf

112 http://www.cabinetoffice.gov.uk/intelligence.aspx

113 For example, Q 93–94,Foreign Affairs Committee, Ninth Report of Session 2002–03, *The Decision to go to War in Iraq*, paras 158–165,

114 Standing Orders for Public Business (December 2008) S.O. No. 152E (Members of the Intelligence and Security Committee)

115 Ev 51

116 Q 117

117 Q 14

118 Q 37

> There needs to be openness, and information should not be declared as confidential or not, by those releasing it. We need an independent judicial aspect to this, or we will never be in the position in which people are held accountable; there will always be secrecy around these issues. [119]

63. **We conclude that, notwithstanding the recent changes to House of Commons standing orders, the Intelligence and Security Committee (ISC) remains a creature of the Government, not a committee of Parliament, and that consequently there continues to be a deficit in the parliamentary scrutiny of intelligence and security matters. We reiterate our previous recommendation that the ISC should be reconstituted as a select committee of the House of Commons.**

The Investigatory Powers Tribunal

The Investigatory Powers Tribunal (IPT) is the body appointed under statute with the task of investigating alleged misconduct of the security services. Ian Cobain of the Guardian told the JCHR that the IPT is not able to do so effectively. Third-party claims cannot be considered[120] and the IPT itself states that "the Tribunal can not investigate conduct by law enforcement agencies that does not relate to interception, intrusive surveillance, entry onto or interference with property or wireless telegraphy, directed surveillance or use of Covert Human Intelligence Sources."[121] Mr Cobain asserted that the IPT was "hamstrung by its remit and not able to look at patterns in cases.[122] We questioned the Foreign Secretary on the merits of giving the IPT the power to look at third party allegations. He responded that:

> It has a very specific purpose, which is to take up individual complaints. I do not think that it should become an alternative. It is better done as it is. The law exists as one means of redress, the IPT exists as another means of address—you represent yourself in the IPT. I think that that is the right way of doing it.[123]

64. **We conclude that if the Investigatory Powers Tribunal is to be an effective safeguard it should be able to investigate allegations made by third parties. We recommend that the Government brings forward proposals to make this change.**

Guidance to intelligence officers

65. In his 18 March 2009 statement, the Prime Minister announced that the Government would publish its guidance to intelligence officers and service personnel about "the standards that we apply during the detention and interviewing of detainees overseas". This will take place "once it has been consolidated and reviewed" by the ISC.[124] Kate Allen of Amnesty International welcomed the fact that the guidance was to be published, but argued that historical guidance relating to the period to which recent allegations relate

119 Q 37

120 http://www.ipt-uk.com/default.asp?sectionID=FAQ

121 http://www.ipt-uk.com/default.asp?sectionID=2

122 Oral evidence taken before the Joint Committee on Human Rights, 3 February 2009, HC (2008-09) 230-i, Q56-61

123 Q 141

124 HC Deb, 18 March 2009, 55WS

should also be published.[125] She added that "beyond the guidance, what is the means of ensuring that that guidance is implemented and what is the scrutiny that goes with that? I think that there has been a lack of absolute rigour around these issues." [126]

66. The Foreign Secretary told us that the Government was unwilling to publish historical guidance "not least because of the legal cases that are under way", and that even at their conclusion "there is then a bridge quite a long way further down the road that might have to be crossed". Mr Miliband acknowledged that "the defence counsel in any of these cases can call for whatever papers they want […] But the defence counsel having the papers is not the same as putting them on the internet".[127] He pointed to "the existing accountability system", stating that "the guidance has already been subject to scrutiny by the Intelligence and Security Committee", and added that "it is difficult to keep saying that nothing we publish must give succour to our enemies—that is obviously true".[128] The Foreign Secretary confirmed the nature of the guidance, that "before 2004, the guidance was informal. Since 2004, it has been formal and has had a comprehensive legal basis."[129]

67. On 18 June 2009, the Guardian published details of what purported to be written guidance to intelligence officers, dating from January 2002. This guidance states that they:

> could not "be seen to condone" torture and that they must not "engage in any activity yourself that involves inhumane or degrading treatment of prisoners" […] they were also told they were not under any obligation to intervene to prevent detainees from being mistreated. "Given that they are not within our custody or control, the law does not require you to intervene to prevent this," the policy said. […]The policy […] told them they might consider complaining to US officials about the mistreatment of detainees "if circumstances allow".[130]

We queried with the Foreign Secretary the authenticity of these extracts. In a response dated 3 July 2009, he told us that the extracts were from "instructions sent to Agency staff in Afghanistan in January 2002", which had been made public in the ISC's Report on Detainees in 2005.[131]

68. **We conclude that, while we understand the Government's caution about publishing historical guidance to intelligence officers whilst current court cases are in progress, we are not convinced that the release of material that would be available to a court on request is likely to prejudice a case. We therefore recommend that such historical guidance should be placed in the public domain as soon as possible.**

125 Q 19

126 Q 20

127 Q 129

128 Qq 116-118

129 Q 131

130 Blair knew of secret policy on torture: Exclusive Letter reveals former PM was aware of guidance to UK agents: Blair knew of secret policy on terror interrogations, *The Guardian*, 18 June 2009.

131 Ev 53; Intelligence and Security Committee, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, Cm 6469, March 2005, para 47

Intelligence Services Act 1994

69. In its written submission to the inquiry Human Rights Watch argued that

> the government should legislate to close the apparent loopholes in section 134 of the Criminal Justice Act 1988 and section 7 of the Intelligence Services Act 1994 which appear to immunize from prosecution British agents who commit torture (and other criminal acts in the case of the ISA) if they were to commit the acts with the authorization of the government. We note that the UN Convention against Torture, which section 134 is intended to implement, contains no such exception to the obligation to prosecute those responsible for torture. Indeed the Convention specifically prohibits reliance on orders from superiors or a public authority as a justification of torture (Article 2).[132]

Clive Stafford Smith told us that the provision under section 7 of the 1994 Act was "certainly not compatible with the UK's obligations under international human rights law" and Kate Allen told us that "I don't think we should be talking about British agents being allowed to torture, or assist in disappearances or extra-judicial executions under section 7 of that legislation."[133]

70. In a joint response to a request by JCHR for further information on how such powers have been exercised, the Foreign and Home Secretaries stated that "the Intelligence Services Commissioner has oversight of warrants and authorisations issued under the Intelligence Services Act 1994", and they pointed out that a report is passed to the Prime Minister each year. They declined to give further detail of how the powers under section seven had been exercised.[134] The Foreign Secretary confirmed to us that he would not be willing to publish details of how section 7 had been used.[135]

71. **We conclude that it is essential that there is a robust system of accountability to ensure that the Foreign Secretary uses section 7 of the Intelligence Services Act 1994 in a responsible fashion. We recommend that, in is response to this Report, the Government informs us whether the Intelligence Services Commissioner has ever expressed any concern regarding the use of powers given to the Foreign Secretary under section 7 of the Act.**

UK relationship with countries that use torture

72. The UK's intelligence services co-operate with those of other countries as a matter of necessity. The Foreign Secretary told us that

> we cannot act in isolation in order to protect British citizens. UK terror networks nearly always have overseas links which must be investigated if attacks in the UK are to be stopped. We therefore need to work in cooperation with partners all over the

132 Ev 102; see also Q 20

133 Q 35

134 Letter from the Foreign Secretary and Home Secretary to the Chairman of the Joint Committee on Human Rights, 26 February 2009, http://www.parliament.uk/documents/upload/Smith_Miliband260209.pdf

135 Q 140

> world. Some other countries have different legal obligations—and different standards—to our own in the way they detain people and treat those they have detained. That cannot stop us from working with them, where we can, in order to protect this country's national security, but it does mean we have to work hard to ensure we do not cooperate or collude in torture, and to seek to reduce and eradicate it.[136]

He stressed the importance of "clarity"[137] and described how this policy was understood by partners of the UK:

> I think that at both political level and official level, there is very clear—or certainly clearer—understanding than there might have been in the past about the position of Britain. Certainly, there is no question that if ever there was a request for a British agent to do something which involved co-operating with torture, a Minister would ever agree to it. Of course, all the activities of British agents, or British officials, are subject to an approval process that involves Ministers.[138]

The Foreign Secretary stated that "it is not always possible to eradicate the risk of mistreatment", and he emphasised the importance of making a judgment of the risk based on "what we know, what the record is, what the history of different relationships is, as well as the commitments that different countries make to us". He noted that operations have been blocked because the risk of mistreatment was too high. [139]

73. We explored with the Foreign Secretary his attitude to co-operation with governments who mistreat foreign nationals. He told us that

> If British nationals are being interrogated according to the appropriate legal standards that we hold, then for us to say, we will have nothing to do with that country because of what they are alleged to do in other domains, would be a very big thing to do.[140]

He denied that this was a double standard because the Government seeks, as its commitments under international law require, "to seek to reduce the amount of mistreatment that happens"[141]

74. **We conclude that it is essential that the UK maintains effective intelligence relationships with other countries, and we note that these countries may include ones, such as Pakistan, where there are most serious concerns about human rights abuses of detainees. We further conclude that the Government is correct to base decisions about intelligence co-operation on an assessment of the risk of mistreatment of detainees, and we are heartened to learn that there have been cases in which on this basis co-operation had not taken place. We further conclude that it is essential that the Government**

136 Ev 50

137 Q115

138 Q 114

139 Q 115

140 Q 124

141 Q 126

emphasise to its foreign counterparts that torture is unacceptable, and that it should work pro-actively to persuade other states to renounce the use of torture against all detainees, whatever their nationality.

The use of intelligence which may have been gained through torture

75. The question of whether the Government should ignore intelligence supplied by states which may use torture, even if that intelligence provides potentially life-saving information, is a deeply controversial one. The Security Service, with the agreement of the Secret Intelligence Service, stated its position to the ISC, as reported in that committee's 2005 report on detainees:

> We have however received intelligence of the highest value from detainees, to whom we have not had access and whose location is unknown to us, some of which has led to the frustration of terrorist attacks in the UK or against UK interests.[142]

In its report on rendition, the ISC point out that when intelligence information is shared "the location, circumstances or treatment of a detainee (or even the fact that the source is a detainee) would […] not usually be shared".[143] However, the UN Special Rapporteur, Martin Scheinin, argued that "because of the desire to maintain cooperation from (especially more powerful) foreign agencies, intelligence services have limited incentives to request clarification on how certain information has been obtained."[144] It could be argued that such a policy, if applied with sufficient frequency, could be considered to constitute complicity in torture.

76. Human Rights Watch expressed concern about the language used in the FCO's Report and the CONTEST II strategy in which the Government assert that, whilst not admissible in court, such evidence could not be rejected out of hand:

> intelligence material does not arise in a vacuum. It arises in the context of a relationship between the British security services and a foreign intelligence service. […] the relationship between British security services and the security services in countries with poor records on torture, such as Pakistan, carries a risk of British complicity in that torture when the British position is that it can and should use evidence obtained by torture. […] it is difficult to see the assertion of the right to use this material as anything other than an attempt to leave the door open to torture material and to continued uncritical cooperation with security services in countries with poor records on torture.[145]

The UN Special Rapporteur argues that

142 Intelligence and Security Committee, *The handling of Detainees by UK intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, March 2005, Cm 6469, para 78

143 Intelligence and Security Committee, *Rendition*, Cm 7171, July 2007, para 32

144 *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, February 2009, para 48

145 Ev 102

> The continuous engagement and presence of foreign officials has in some instances constituted a form of encouragement or even support. [...] At a minimum, States which know or ought to know that they are receiving intelligence from torture or other inhuman treatment, or arbitrary detention, and are either creating a demand for such information or elevating its operational use to a policy, are complicit in the human rights violations in question. […] States also claim that in practice it is difficult to assess under what conditions the information has been gathered: intelligence is usually not shared as raw intelligence, but as a refined product. While the Special Rapporteur recognizes that this is done as a matter of convenience, he is concerned that this practice also is maintained in order to give intelligence services the possibility of denying responsibility for the use of information that has been obtained in breach of international law. [146]

77. This is not a hypothetical question, even in relation to the US. Historically, the definition of torture used by the US and the UK has differed.[147] The decision by the Obama Administration to release US Justice Department memoranda that authorised the use of "harsh interrogation" has raised the question of how far UK officials would have been aware that information they were provided by the US had been extracted using such techniques. According to *the Times*, such information included that which prompted former Prime Minister Tony Blair to deploy light tanks at Heathrow in February 2003.[148]

78. The Foreign Secretary reiterated to us the Government's position that it "would never procure intelligence or procure evidence through torture: "We would never say to another intelligence agency, 'Please get us information about X,' and abandon our legal and ethical commitments in respect of how they find that."[149] He also stressed that in deciding whether to use information which might have been garnered as a result of torture, the Government "have referred to the significance of a threat to life, and therefore being part of a balanced judgment about whether or not a piece of intelligence can be used if one has concerns about its provenance."[150] When asked if the use of material gained through torture would mean that the Government was complicit in torture, Clive Stafford Smith told us

> Not if they raise complaints about it. If Britain tries to stop it, that is very important. It is a myth to say that if we stand up for our principles, somehow our entire intelligence service will collapse. That is not what happens. [151]

79. **We conclude that the use by the UK Government of intelligence information which may serve to avert a potentially catastrophic terrorist attack, but which is supplied by foreign states and which may have been obtained through torture, raises profoundly difficult moral questions. We further conclude that the Government has a duty to use**

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146 *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, February 2009, paras 54–56

147 Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, paras 48–53

148 *The Times*, 18 April 2009, page 6

149 Q 133

150 Q 133

151 Q 30

information that comes into its possession, from whatever source and however obtained, if it believes this will avert the loss of life. At the same time, we strongly recommend that the Government should continue to exert as much persuasion and pressure as possible to try to ensure world-wide that torture is not employed as a method of interrogation.

International legal obligations in relation to torture

80. The UK ratified the UN Convention against Torture (UNCAT) in 1988, and is a state party to a range of other relevant treaties, including the International Covenant on Civil and Political Rights, the Geneva Conventions, the Universal Declaration of Human Rights and the 1951 Refugee Convention.[152] We heard claims from some of our witnesses that the UK has not fulfilled its positive duty to prevent torture under its international legal commitments. Clive Stafford Smith of Reprieve explained his understanding of the Government's obligation under the Convention against Torture, "which says that when you have evidence of torture you are legally obliged to investigate it and expose that material. That is pretty simple."[153] Redress stated that:

> There is prima facie evidence that the UK has not fulfilled its obligations under the UN Torture Convention in numerous respects, including failure to prevent torture and other prohibited ill-treatment, but also a subsequent failure to properly investigate the allegations.[154]

Both Clive Stafford Smith and Benjamin Ward of Human Rights Watch agreed that the Government's current position did not comply with its obligations under the Convention against Torture, respectively because "it doesn't even help us to identify the people who are being tortured in Bagram right now",[155] and because "the assertion of the right to rely on material from countries that has been obtained under torture is not consistent with the obligation".[156]

81. Human Rights Watch argued that whilst in the case of "A and others vs. The Secretary of State for the Home Department, the House of Lords concluded that reliance on third country material obtained under torture is lawful for intelligence and policing purposes […] in our view, the Law Lords misinterpreted the scope of the obligation to prevent torture under the UN Convention against Torture".[157] The JCHR has examined the advice given by Sir Michael Wood, the FCO's legal adviser, who told that Committee that:

> Your record of our meeting with HMA Tashkent recorded that Craig [Murray] had said that his understanding was that it was also an offence of the UN Convention on Torture to receive or possess information under torture. I said that I did not believe that this was the case, but undertook to re-read the Convention. I have done so.

152 *Extraordinary Rendition*, House of Commons Library Standard Note, SNIA/3816, June 2007; Q 92

153 Q 19

154 Ev 135

155 Q 31

156 Q 32

157 Ev 101

> There is nothing in the Convention to this effect. The nearest thing is Article 15 which provides [for the inadmissibility in evidence of any statement which is established to have been made as a result of torture]. This does not create any offence.[158]

Responding to this, Professor Philippe Sands QC, Professor of Law at University College London, said that "insofar as the letter seeks to address a very narrow question it is not formally inaccurate but it misses the bigger point […] namely in what circumstances might the receipt of information obtained through torture constitute complicity within the meaning of article 4 of the convention". He went on to interpret a ruling given by Lord Bingham in the case A & Others (House of Lords, 8 December 2005):

> a tiny door is open to use in certain limited circumstances material that may have been obtained by torture, but that does not mean that all material used or obtained in all circumstances does not cross the line into complicity. The grey, complex area is: at what point does the systematic receipt of information cross the line into complicity?[159]

82. The Foreign Secretary agreed that there was a responsibility to act "by exposing what is happening, confronting those who are doing it, and seeking to have it changed."[160] However, he could not provide an assessment of whether using information which may have been derived from torture would be a breach of the UK's obligations under the UN convention on torture or the Human Rights Act, stating simply that "We always seek to act within our legal commitments"[161] and "that we are known as a country for the way in which we zealously pursue our commitments, which includes campaigning for changes in the practices of other countries. That is an important part of the balance sheet."[162] The Foreign Secretary later wrote to us clarifying his position:

> the UN Convention Against Torture and the European Convention on Human Rights, which is incorporated directly into UK law by the Human Rights Act, do not impose a positive obligation to report on or seek to prevent acts of torture carried out by other states abroad. The UK is, however, very clearly committed to the prevention of torture.[163]

83. **We conclude that it is imperative that the UK fulfils its legal obligations in respect of the prevention of torture, including any duty to act positively to prevent it, investigate allegations that it has taken place, and expose it. We further conclude that there is a risk that use of evidence which may have been obtained under torture on a regular basis, especially where it is not clear that protestations about mistreatment have elicited any change in behaviour by foreign intelligence services, could be construed as complicity in such behaviour.**

158 Oral evidence taken before the Joint Committee on Human Rights, 28 April 2009, HC (2008-09) 230–ii, Q 155

159 Oral evidence taken before the Joint Committee on Human Rights, 28 April 2009, HC (2008-09) 230–ii, Q 155

160 Q 137

161 Q 134

162 Q 135

163 Ev 51

Judicial inquiry

84. There have been widespread calls for a full judicial inquiry into the allegations of UK complicity in torture and rendition. These were reiterated by a number of those who submitted written and oral evidence to this inquiry.[164] The Foreign Secretary told us that he was reluctant to agree to such a demand:

> because the constitutional arrangements that we have are designed to preserve secrecy. There have been calls for a public inquiry. Everything that we have been talking about today and the constraints that exist on our work—by definition, intelligence work is secret—are not susceptible to public inquiry. If you want to have intelligence agencies that defend the country and defend the people of the country, then you have to establish mechanisms that hold them accountable that preserve their ability to act secretly. I think that that is very important.[165]

85. **We conclude that it is essential to maintain secrecy in relation to intelligence work. We further conclude that allegations presented to us of UK complicity in torture are a matter of concern. However, both owing to the operation of the House's *sub judice* rule and because we are not in a position to subject these allegations to the necessary forensic scrutiny (involving examination and cross-examination) available to a court of law, we are not in a position to pronounce on the truth or otherwise of these allegations. We further conclude that any decision by the Government on whether to institute an independent judicial inquiry should await the conclusion of the current court cases.**

164 Q3; Ev 67, 73, 137

165 Q 142

4 Transfers of detainees

86. At a joint evidence session held with the Defence Committee in October 2008, we questioned the Foreign Secretary and the then Defence Secretary on issues relating to transfers of prisoners from UK custody in Iraq and Afghanistan, and the possibility that transferred prisoners may have subsequently suffered ill treatment.[166] In our current inquiry we have returned to some of the issues raised at that hearing.

The Government's review of records of detention

87. The then Secretary of State for Defence, Rt Hon John Hutton MP, made a Statement to the House on 26 February 2009 giving the results of a Ministry of Defence review of records of detention resulting from security operations carried out by UK armed forces in Iraq and Afghanistan.[167] The review had been prompted by the allegations made by Ben Griffin, a former member of UK special forces. The website of the 'Stop the War Coalition' reports Mr Griffin as stating that:

> Individuals detained by British soldiers […] have ended up in Guantánamo Bay Detention Camp, Bagram Theatre Internment Facility, Balad Special Forces Base, Camp Nama BIAP and Abu Ghraib Prison. […] I have no doubt in my mind that non-combatants I personally detained were handed over to the Americans and subsequently tortured.[168]

In February 2009 Mr Griffin was served with a High Court order preventing him from repeating these allegations or making any fresh allegations of a similar nature arising from his experience of UK special forces' operations.[169]

88. The Defence Secretary's statement on 26 February detailed that of 479 individuals detained by the UK between July 2006 and December 2008, 254 were subsequently transferred to Afghan authorities, 217 were released and 8 had died. The statement asserts that there were "a further seven individuals detained by UK forces between 2001 and April 2006", but it does not state what became of them.[170] The Foreign Secretary gave us an updated set of figures when he gave oral evidence to us in June 2009, but later revised these in writing to clarify that there had been 549 detentions in the period between July 2006 and 16 June 2009. Of these "257 have been released, 283 transferred to the Afghans, 8 died, and 1 is receiving medical treatment".[171]

89. In his February 2009 statement, the Defence Secretary noted that previous estimates of the number of prisoners held by the UK in Iraq had been considerably overstated, and he

166 Oral evidence taken before the Defence and Foreign Affairs Committees on 28 October 2008, HC (2007-08) 1145-i

167 HC Deb, 26 February 2009, cols 394-97

168 Statement of Ben Griffin, 25 February 2008, http://stopwar.org.uk/content/view/533/27/

169 *The Guardian*, "Court gags ex-SAS man who made torture claims", 29 February 2009

170 HC Deb, 26 February 2009, col 394

171 Q 163

apologised for this and other inaccuracies in information given to the House. In addition, he admitted that one category of detainee was not included in the review figure:

> In areas outside multi-national division South East, UK forces have undertaken operations to capture individuals who were subsequently detained by the US. These individuals do not feature in the data I set out above, and I do not intend to provide further details on these detentions today.[172]

We remain unclear as to what has been the fate of detainees captured in this way. Reprieve highlighted this issue in a press release in February 2009, stating that it was "deeply concerned about the inadequate scope of the MOD review […] specifically that it does not include the participation of UK personnel in joint operations under the overall command of the US".[173] In his evidence to us Clive Stafford Smith questioned

> whether their review has been enough. The letter that the Minister wrote is very carefully written, and it is very carefully written to exclude, for example, Task Force 36, where the British were working with the Americans on the big-name people—Al-Zarqawi and people like that. The people who have been reviewed and admitted publicly are by definition the less significant people, […] It is important to follow up on that, because we are responsible for those people. [174]

90. **We conclude that it is a matter of concern that the Government has not provided details of the fate of individuals detained by US forces in Iraq as a result of operations by UK forces, or those captured by UK forces and detained by US forces. We recommend that, in its response to this Report, the Government informs us of the number of such detainees, relevant details of the circumstances of their capture and the degree of involvement of UK forces, and any assurances it has received from the US authorities about their treatment and whereabouts, on an individual basis. We further recommend that the Government, in its response, provides us with a full statement of its record-keeping practice in respect of persons captured by UK forces in Iraq and Afghanistan, whether or not UK forces make the eventual detention.**

Transfers in Iraq

Transfers to Iraqi authorities

91. In 2004 the UK agreed a Memorandum of Understanding (MoU) with the Iraqi Government in respect of detainees captured by UK forces and their subsequent transfer to Iraqi custody.[175] The last two prisoners held by the UK in Iraq (Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi) were transferred to Iraqi custody on 31 December 2008. The FCO states that "they had been detained on behalf of the Iraqi authorities" and that "UNSCR [UN Security Council Resolution] 1790, which expired on 31 December, had

172 HC Deb, 26 February 2009, col 394

173 Reprieve press release, 26 February 2009,

174 Q 49

175 The Committee printed the Memorandum of Understanding with evidence taken jointly with the Defence Committee on Iraq and Afghanistan on 28 October 2008, HC (2007-08) 1145–i.

previously provided the legal basis for this detention".[176] The two prisoners are accused of involvement in the killing of two UK service personnel. The FCO's human rights report states that the transfer was made "in response to requests from the Iraqi authorities" and "following the approval of the UK courts". The MoU with Iraq, unlike that with Afghanistan, does not explicitly prohibit use of the death penalty.[177] However, the Government states that it has received assurances in relation to the two men from:

> President of the Iraqi High Tribunal, President Aref, that a death sentence would be commuted, as well as written assurances from Deputy Justice Minister Posho that the two detainees will be treated humanely whilst in Iraqi detention. We are satisfied that the Government of Iraq is aware of its earlier assurances and have no reason to believe that they are not being adhered to.[178]

In its human rights report the FCO expresses concern about anecdotal evidence of abuse of detainees in Iraq.[179] The transfer of the two men is currently the subject of a judicial review.

92. On 30 December 2008 the Court of Appeal ruled that the detainees were held on the authority of the local criminal court and were therefore not under the jurisdiction of the UK for the purposes of the European Convention on Human Rights (ECHR).[180] Both Human Rights Watch and Amnesty International expressed concern to us that the Government ignored a European Court of Human Rights' (ECtHR) interim measure request not to make this transfer until the ECtHR had considered itself whether it was compatible with the ECHR. Human Rights Watch stated that it "risks undermining the authority of the Strasbourg court",[181] with Benjamin Ward adding that

> That case is extremely worrying; there was clearly jurisdiction, by virtue of the control that the UK exercised over that particular individual and other detainees in Iraq, which was accepted by the House of Lords in the Al-Jedda case. The UN Committee Against Torture has said that the Convention Against Torture applies to people in UK custody in Iraq. The question is whether there is a risk prior to transfer. There clearly have been risks in some cases, and we do not accept that the agreement of a memorandum of understanding disposes of that risk.[182]

The Government told us that it "considers that it has not breached its obligations under the European Convention on Human Rights. Proceedings in Strasbourg are ongoing."[183]

93. Amnesty International stated that the ECtHR is due to consider a number of cases which "centre on the extent to which individuals who claim to have suffered human rights violations at the hands of UK armed forces in Iraq should be entitled to the protection

176 Ev 45

177 Q52

178 Ev 53

179 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pages 143–144

180 Prisoners in Iraq are not under UK jurisdiction; Law Report, *The Times*, 4 February 2009, page 51.

181 Q52; Ev 75

182 Q 52

183 Ev 53

given by the ECHR, and to seek a remedy through the UK courts." The Government has been criticised by the UN Human Rights Committee which said that it was:

> disturbed about the [UK]'s statement that its obligations under the [International Covenant on Civil and Political Rights (ICCPR)] can only apply to persons who are taken into custody by the armed forces and held in British-run military detention facilities outside the United Kingdom in exceptional circumstances.

The UN Committee called on the UK to "state clearly that the [ICCPR] applies to all individuals who are subject to its jurisdiction or control". [184]

94. Amnesty International note that the UN Committee against Torture has also raised concerns that the UK has not accepted the applicability in this case of the Convention against Torture. Kate Allen told us that "it is quite shameful to see the UK having this tendency to limit the application of its international human rights obligations in this way".[185]

95. **We conclude that the Government should have waited for the European Court of Human Rights to rule on whether the transfer of Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi to the Iraqi authorities in December 2008 was consistent with its obligations under the European Convention on Human Rights before proceeding with the transfer. We further conclude that explicit assurances that the death penalty would not be used in the event of a conviction in these cases should have been obtained in writing from the Iraqi authorities at the highest level. We recommend that in future the Government obtains such explicit assurances in writing from any national authority to which it transfers a detainee.**

Transfers to US forces in Iraq

96. In his February 2009 statement (see paragraph 87 above), the Defence Secretary reported that two detainees originally captured by UK forces were, in February 2004, transferred to the US authorities and subsequently moved to Afghanistan, where they remain. In their written submission, the FCO state that the position of the US is that "it is neither possible nor desirable to transfer them to either their country of detention or their country of origin".[186] A due-diligence search by US officials has found that this was the only occasion on which UK-detained personnel transferred to US forces in Iraq were subsequently transferred out of the country. Mr Hutton admitted that brief references to the case were included in "lengthy" papers which went to the then Foreign and Home Secretaries (Rt Hon Jack Straw MP and Rt Hon Charles Clarke MP respectively) in April 2006, but that "the context provided did not highlight its significance at that point".[187] A subsequent Parliamentary Question revealed that an MoD official was copied a document noting the transfer on 7 October 2004. According to the Government, the document has not been found in MoD records and the official does not recollect receiving it. The then

184 Ev 75

185 Q 52

186 Ev 46

187 HC Deb, 26 February 2009, col 394

Defence Secretary stated that he was satisfied that his officials "were unaware of the case and that they acted in good faith at all times".[188] The two individuals were Pakistani members of the Lashkar-e-Taiba organisation in Iraq,[189] and the US claims the transfer occurred " because of a lack of relevant linguists to interrogate them effectively in Iraq"[190]

97. Amnesty International expressed concern about the transfer, stating that:

> On the basis of the limited public information about these two cases, it appears that the detainees would have been "protected persons" under the Fourth Geneva Convention and that the USA would have violated this provision when it transferred them to Afghanistan. Unlawful deportation or transfer or unlawful confinement, as well as torture and other inhuman treatment, in violation of the Geneva Conventions, are war crimes.[191]

They recommended that the Government should give further details of the cases of the two men transferred to Afghanistan from Iraq, including

> whether the two men […] were held in secret detention by the USA at any time; whether they were subjected to interrogation techniques or detention conditions that violated the prohibition of torture or other ill-treatment; and, if so, whether anyone has been held accountable.[192]

Reprieve recommended that the prisoners should be identified and given legal representation, and that a review take place to investigate possible UK involvement in such activities elsewhere.[193] Clive Stafford Smith argued that

> the British Government have admitted that we were involved in something that is illegal under British law […] It is inconceivable to me, quite frankly, that the British Government can say publicly, "We admit that we committed two criminal acts, but we are not going to tell you who the victims of those acts are." [194]

98. The Foreign Secretary told us that the transfer did not indicate shortcomings in record keeping, adding that:

> When the former Defence Secretary made his statement to the House of Commons, he made it clear that the transfer to Afghanistan should have been questioned at the time […] the future course of those two people should have been questioned at the time. There was no question of British personnel collaborating or colluding in rendition to Afghanistan.[195]

188 HC Deb, 3 March 2009, col 1439W

189 Q 145, 147; Ev 146

190 Ev 46

191 Ev 76

192 Ev 76

193 Reprieve press release, 26 February 2009, http://www.reprieve.org.uk/2009_02_26Renditionsadmission

194 Q 4

195 Q 145

He promised to provide us with the FCO's assessment of the legality of the transfer, adding that the answer would be:

> part governed by the fact that Iraq was under a chapter 7 mandate at the time and the law of armed conflict was in issue at the time in Iraq. I think that there would be a large number of unique legal issues at stake. That is what makes a difference. Iraq and Afghanistan have been and are governed by international legal commitments that are different from some of the other cases mentioned.[196]

The FCO later informed us that

> The US believes they had legal authority to make this transfer […] however, the United States is currently reviewing its policy in this area. We welcome this review and look forward to its outcome. In the particular case in question, we have sought and received assurances about the welfare of the individuals concerned and have put into place safeguards and guarantees to prevent repetition.[197]

99. We asked the Foreign Secretary whether he would provide details about these men's identities and give assurances about their treatment since the transfer. He replied that "the former Defence Secretary gave all the information that we had at the time of the statement to Parliament; I am not aware of any further information having come to light since then."[198] Correcting the transcript of the session, the Foreign Secretary subsequently noted that it would have been more correct to state that "We are unable to provide further information on this matter other than that given by my Rt. Hon. Friend the former Secretary of State for Defence in his statement of 26 February 2009."[199]

100. Clive Stafford Smith asserted that that this was not an isolated case:

> we have identified at least one other person. The facts are a bit different. He was not originally in British custody; he was turned over to the British, the British carried him around for a while and then turned him back over to the Americans, and the guy was then rendered—and that is certainly not included in the British report.[200]

He also suggested that the allegations made by Ben Griffin related to additional cases:

> Taking it a step further, you will be familiar with the gag order that was applied to Mr. Griffin when he started talking about these materials [see paragraph 87 above]. You will know that he was in Iraq only from 2005 onward—after the 2004 renditions that are discussed in the Minister's letter. To the extent that Mr. Griffin was talking about renditions that Britain was involved in that he knows about, those happened after the two that were dealt with in the Minister's letter[201]

196 Q 148

197 Ev 52

198 Q 149

199 Q 149

200 Q 50

201 Q 49

101. **We conclude that the onward transfer to Afghanistan of two Pakistani men transferred from UK to US custody in Iraq in 2004 is of great concern. We do not regard the stated reason for this transfer, that US forces did not have sufficient linguists available in Iraq, as being convincing. We further conclude that it is not acceptable that the Government is unable to identify these detainees, or to provide assurances about their subsequent treatment. We recommend that the Government, in its response to this Report, identifies these men, and inform us of what steps it has taken to discover whether they have been treated in an acceptable way since being transferred to US forces. We conclude that the allegation by Reprieve that these two cases were not, as the Government asserts, isolated ones, gives cause for concern. We recommend that the Government investigates in detail any specific allegations put before it by Reprieve and reports to us the outcome of those investigations.**

Transfers within Afghanistan

102. In 2006 the UK agreed a Memorandum of Understanding (MoU) with the Afghan Government in respect of detainees captured by UK forces.[202] It commits the UK Government to transferring detainees to the Afghan government at the earliest opportunity, and obliges the Afghan government to treat all prisoners in line with its international legal obligations.

103. Redress told us that it was significant that in its latest annual human rights report the FCO did not repeat the assertion it had made in its previous report, that it is confident about the treatment of detainees handed over to the Afghan authorities.[203] Giving oral evidence as part of our recent inquiry into "Global Security: Afghanistan and Pakistan", Elizabeth Winter, Adviser to the British and Irish Agencies Afghanistan Group, told us that it was not possible to be certain that detainees will not be tortured, adding "experience has shown that we cannot be sure. However much one might like to think that negotiations and keeping a watching brief would prevent it, I think it would be much better not to hand them over, to be honest."[204] Redress argued that, in the light of evidence that torture is used in Afghanistan, the MoU:

> cannot provide an effective safeguard against torture and other ill-treatment, and other serious human rights violations. Relying on […] it to facilitate the transfer of people where there are substantial grounds for believing that they would face a real risk of torture is fundamentally inconsistent with the principle and obligation of non-refoulement in international human rights law.[205]

104. The Foreign Secretary disagreed with this view. He told us that the MoU provided a satisfactory basis on which to make transfers. He stressed the safeguards in place:

> For me, one important indicator is the access of independent groups to detention centres, and elsewhere. I take very seriously the reports that I get from the

202 The Committee printed the Memorandum of Understanding as an Appendix to its report on Guantanamo Bay. (Visit to Guantanamo Bay, Second Report on Session 2006-07, HC 44)

203 Ev 136

204 Foreign Affairs Committee, Eighth Report of Session 2008–09, HC 302, Q88

205 Foreign Affairs Committee, Eighth Report of Session 2008–09, HC 302, Ev 146

> International Committee of the Red Cross, the Red Crescent, and the Afghan Independent Human Rights Commission. They have access to Afghan detainees, as well as there being access for our officials, although with the best will in the world our officials cannot be everywhere. But those independent, third party corroborations are important.
>
> […] our officials and the Royal Military Police all visit detainees transferred into Afghan custody to try to ensure that standards are maintained. That is the right thing to do. We have an ongoing relationship. It is not like an MoU that is plastered on a wall, or put on to a shelf—we seek to honour it in all our engagements with the Afghan authorities. Equally, as you know from your trips to Afghanistan, it is a country without the state machine and traditions that we have. If there was any suggestion of mistreatment, our people would take that extremely seriously.[206]

105. **We conclude that the potential treatment of detainees transferred by UK forces to the Afghan authorities gives cause for concern, given that there is credible evidence that torture and other abuses occur within the Afghan criminal justice system. We recommend that the Government institutes a more rigorous system for checking on the welfare of tranferees in Afghanistan, on an individual basis, and that in its response to this Report, it informs us of the steps proposes to take to achieve this end.**

US detentions

106. Amnesty International has urged the British Government to press the US "to be more transparent about its detentions in Afghanistan". Amnesty has expressed concern in particular about the treatment of detainees held at Bagram air base, stating that further details should be sought of "who is being held, where they are being held and how long they have been held for".[207] Clive Stafford Smith of Reprieve told us that

> I had an e-mail from an American captain, who was in the Waghez district of Afghanistan a while back—I met him in Guantánamo—and he was convinced that these two chaps in Bagram were innocent. He set about trying to show it and he asked us to help him. We did it all above board—we told the US military—and he was threatened with court martial for that. They are not allowing these people any legal rights, and we are doing essentially what happened over in Guantánamo, but there are many, many more prisoners in Bagram, who are far worse off than in Guantánamo.[208]

Such allegations have also been reported in the press.[209] Responding to these concerns about Bagram, the Foreign Secretary told us that there had been "an ICRC [International Committee of the Red Cross] investigation and ICRC access there", and that the

206 Qq 161-2

207 Ev 75; Q 53

208 Q 53

209 Bagram detainees allege abuse by US soldiers, *Guardian Unlimited*, 25 June 2009.

Government had received "American assurances in respect of the humane treatment of people there".[210]

Legal responsibility for detainees after transfer

107. During our joint evidence session with the Defence Committee on Iraq and Afghanistan in October 2008, we explored the issue of the responsibility that the UK retains for detainees following their transfer. During that session the then Defence Secretary, Mr Hutton, appeared to suggest that such a responsibility existed,[211] but in a subsequent memorandum he corrected his position:

> I […] want to take this opportunity to confirm our legal position with regard to detainees. The UK does not have legal obligations towards the treatment of individuals we have detained once they have been transferred to the custody of another state, whether in Iraq or Afghanistan or through the normal judicial extradition process.[212]

In a subsequent letter the Foreign Secretary confirmed that the FCO concurred with this position, adding:

> HMG takes meticulous care that any transfer takes place in accordance with the strategic framework of memoranda of understanding and other assurances, so that we can be abundantly certain that it is consistent with any applicable international human rights obligations of the United Kingdom.[213]

108. Andrew Tyrie MP provided us with a legal opinion published on 29 September 2008, prepared by Michael Fordham QC and Tom Hickman, barristers at Blackstone Chambers who specialise in human rights law. Mr Tyrie told us that:

> The Opinion makes clear that assurances provided by another state, that an individual handed over by UK forces would not be mistreated, would not absolve the UK government of the obligation to examine whether the assurances provide a sufficient guarantee that the individual will be protected against the risk of ill-treatment. Importantly, the Legal Opinion highlights "specific concerns about the legality of the UK having accepted such assurances" from the US.[214]

109. Mr Tyrie subsequently wrote to the Chairman of the Defence Committee, Rt Hon James Arbuthnot MP, setting out his grounds for challenging the validity of Mr Hutton's statement:

> if an individual has been transferred in circumstances where the transfer arguably breached the European Convention on Human Rights, and the Human Rights Act,

210 Q161

211 Evidence taken before the Defence and Foreign Affairs Committees on 28 October 2009, Iraq and Afghanistan, HC (2007–08) 1145–I, Q24-25

212 Evidence taken before the Defence and Foreign Affairs Committees on 28 October 2009, Iraq and Afghanistan, HC (2007-08) 1145–I, Ev 20

213 Foreign Affairs Committee, Eighth Report of Session 2008–09, HC 302, Ev 161

214 Foreign Affairs Committee, Eighth Report of Session 2008–09, HC 302, Ev 160

> then there may be a continuing obligation on the UK to investigate the circumstances of that transfer. This appears to have been contradicted by the Secretary of State's letter;
>
> although there are obligations up to the point of transfer to ensure that a detainee is treated in accordance with the rights set out in the ECHR, this is not mentioned by the Secretary of State in his letter;
>
> agreements between the UK and the Afghan authorities and between the UK, Australia and the US, give the UK powers that appear inconsistent with the Secretary of State's assertion that the UK no longer has any legal obligations towards transferred detainees;
>
> there may also be continuing obligations under criminal law or tort law once a detainee has been transferred. This also appears to have been contradicted by the Secretary of State's letter.[215]

110. Kate Allen of Amnesty International was clear that "the legal obligation still rests with the UK", [216] and Benjamin Ward indicated that the UK has

> to make a risk assessment before the transfer. If there is a real risk, they are responsible for any treatment that the person is subject to after the transfer. They would then be obliged to take steps to remedy that, such as providing compensation and carrying out an investigation. Obviously, if a person has been tortured, you cannot untorture them.[217]

111. A further issue is the extent to which the Government follows up in individual cases the welfare of detainees that have been transferred. Clive Stafford Smith told us that

> You cannot assess whether you have got it right if you do not find out what happened to the guys. I cannot answer this quite frankly, but I doubt very much that our Government know what happened to all the people who were turned over. [218]

112. The Foreign Secretary told us that the Government does follow up what has happened to the detainees that are transferred:

> If you mean by systematic an ongoing, detailed, in person investigation, then that has been going on. To put that in perspective, it is useful to have some numbers. As of last week, 544 people had been detained, 295 had been transferred to the Afghan authorities and 259 had been released. That gives you some idea of the scale that we are talking about. That is why, when I talk about British embassy officials from Kabul, or the Royal Military Police investigating it, given the scale of that detention, it is reasonable to talk about an ongoing, in person, careful review of the situation.[219]

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215 http://www.extraordinaryrendition.org/index.php/appg-letters-on-extraordinary-rendition/uk-committees?start=5

216 Q 55

217 Q 55

218 Q 55

219 Q 163

113. **We conclude that although there may be scope for argument about the extent of the legal obligation on the UK to monitor the welfare of individual detainees after it has transferred them to another country, there is no doubt in our view that the UK is under a moral obligation to do so. Such monitoring is desirable not only to enable the Government to intervene if it receives information that an individual is being ill-treated, but also because any evidence thus revealed of systematic ill-treatment will call into question whether future transfers to that country should take place. We recommend that the Government takes the necessary action to ensure that it has mechanisms in place to allow it effectively to monitor the welfare of individuals transferred, and in its response to this Report sets out what specific steps it is taking.**

5 Oversight of private military and security companies and contractors

Allegations of abuse at the British Embassy in Iraq

The original 2007 allegations

114. In our Report published in February 2009 on the FCO's annual report for 2007-08, we examined the allegations that female staff at the British Embassy in Baghdad had been abused by managers working for Kellogg Brown & Root (KBR), a defence services provider contracted to the FCO.[220] In April 2008 we had received a complaint from a member of the public that:

> Basically, British KBR managers were abusing their Iraqi female staff. One of these women was fired after she did not perform sexual favours. The Embassy conducted an initial investigation and interviewed that woman along with two other local KBR employees. They were all credible, their statements were consistent and they had no motive to lie. The Deputy Ambassador believed them and concluded that there were significant grounds to warrant a further investigation.

115. The complainant claimed that the FCO had subsequently failed to carry out an independent investigation into the allegations, instead entrusting the task to KBR itself, and that Iraqis who had spoken about the incident had lost their jobs with KBR.[221]

116. In subsequent written and oral evidence we raised with the FCO our concerns about this matter. We questioned in particular why members of the KBR management team who had been suspended continued to have access to KBR local staff; why the complainant and three key personnel had not been interviewed by the KBR investigatory team; and what the grounds were for dismissal of two of the principal witnesses.[222] Tom Porteous of Human Rights Watch expressed concern that "no disciplinary measures were taken against the KBR staff. However, the complainant and local staff who had supported the complainant's allegations were dismissed."[223]

117. In relation to the obligations that the FCO has for the treatment of staff employed by contractors overseas, Sir Peter Ricketts, Permanent Under-Secretary at the FCO, told us that:

> The legal position is that we have a duty of care for all the staff in our compound, in terms of their physical safety. As good employers, we want to make sure that all our staff and contractors are aware of our policies on discrimination and sexual

220 Foreign Affairs Committee, Second Report of Session 2008-09, *Foreign and Commonwealth Office Annual Report 2007-08*, HC 195, paras 174–80

221 *Ibid*., Ev 99

222 Foreign Affairs Committee, Second Report of Session 2008-09, *Foreign and Commonwealth Office Annual Report 2007-08*, HC 195, Ev 130

223 Q 56

> harassment. But it remains the obligation of the contractors to manage their staff; we cannot take on the management of their staff.[224]

118. In our February 2009 Report we commented:

> We conclude that although the FCO feels it has acted conscientiously and effectively in its handling of recent allegations relating to the British Embassy in Baghdad, we do not believe that it is appropriate in such circumstances for the investigation of complaints against contractors' staff to be entrusted solely to the contractors. We recommend that the Government should introduce more effective means of monitoring the behaviour of Embassy contractors including through the inclusion of relevant provisions in its contractual agreements with future suppliers of services. [225]

119. In its response to our Report, published in April 2009, the Government continued to assert that it had "dealt correctly" with the allegations, but it also outlined steps it proposed to take in future to ensure that contractors fulfil their duty of care "both during the procurement and contract letting, and during contract performance".[226]

Fresh allegations in 2009

120. In March 2009 Sir Peter Ricketts wrote to us about a further set of allegations relating to KBR staff in Baghdad:

> These allegations, which were made to Embassy senior management by an Iraqi member of KBR staff and immediately reported to FCO, concerned misconduct by a female member of KBR's Iraqi staff, in the form of abusive behaviour towards other locally-hired KBR colleagues. It was further alleged that she was able to behave in this way without sanction because of an improper but consensual relationship with an expatriate KBR staff manager.[227]

An investigation team composed of two FCO officials and two UK-based KBR staff were deployed within four days and found:

> no evidence to corroborate rumours of sexual misconduct between the expatriate manager and the female local staff member who was the subject of the complaint. They did find however that the female member of staff had encouraged such rumours; that she and four of her colleagues had engaged in violent, abusive and intimidating behaviour towards other KBR local staff; and that local KBR management had failed to deal satisfactorily with this behaviour. As a result, KBR

224 Foreign Affairs Committee, Second Report of Session 2008-09, *Foreign and Commonwealth Office Annual Report 2007-08*, HC 195, Ev 130., Q 192

225 Foreign Affairs Committee, Second Report of Session 2008-09, *Foreign and Commonwealth Office Annual Report 2007-08*, HC 195, para 180

226 Response of the Secretary of State for Foreign and Commonwealth Affairs to the Second Report of the Foreign Affairs Committee, Session 2008-09, *Foreign and Commonwealth Office Annual Report 2007-08*, Cm 7585, para 35

227 Letter from the Permanent Under Secretary of State, FCO, DR 323, 4 March 2009, published on the Committee's website, http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfaff/memo/departmentreport/ucm32302.htm

> have dismissed the five local staff concerned for gross misconduct, and the expatriate manager concerned has been removed from the FCO contract in Iraq[228]

KBR acknowledged a failure of management standards, which Sir Peter Ricketts described as being "of particular concern in the light of the 2007 allegations". To address these failures, KBR and the FCO agreed:

> a thorough review of KBR's local management systems, structures and practices in Baghdad. This will include ensuring there are robust procedures in place to enable KBR's local staff to raise grievances in confidence, and for better oversight of expatriate KBR staff. We also agreed that the requirement for high standards of behaviour and management should be codified through new clauses in our contract with KBR. We will also apply these provisions to similar contracts between the FCO and other contractors as appropriate.[229]

121. Despite continuing to maintain that "the primary responsibility for dealing with problems between and among staff employed by a contractor should lie with the company concerned," Sir Peter Ricketts stated that "as our response to these allegations shows, however, we accept that occasions may arise when it is right to take action jointly."[230]

122. When we took oral evidence from the Foreign Secretary in June 2009, we questioned him about the FCO's handling of this matter. He denied that the inclusion of FCO staff in the investigation team was an admission that KBR, and contractors more generally, cannot be trusted to investigate allegations of misconduct properly. He told us that :

> We have contracts with them which uphold our own employment practices and best standards, as well as what we expect them to deliver as contractors of the UK Government. We expect them to hold to those standards. There are various disciplinary—and other—procedures available if they do not. The FCO involvement in the 2009 case reflected that case.[231]

Mr Miliband also denied that the problem lay in the contract in place with KBR:

> there is a local issue there, to make sure that all staff—including locally employed staff—are aware of our dignity at work policy and other practices. We have a dense procurement relationship with a whole range of organisations and I do not think the problem has been in the contract—or the allegation of a problem has not been in the contract. However, we have a responsibility to make sure it is properly understood.[232]

123. Others remain less convinced that the 2007 allegations were properly investigated. Samer Muscati, a Canadian lawyer who contacted us about the original allegations, told The Times that the FCO "could have taken care of the situation 18 months ago […] but by choosing to ignore the problem rather than deal with it, they left the door open for more

228 *Ibid*.

229 *Ibid*.

230 *Ibid*.

231 Q 172

232 Q 174

misconduct". Tom Porteous was clear that "the FCO does have a responsibility for the behaviour of its contractors within its embassy in Iraq".[233] He stated that the investigation into the original allegations was inadequate, adding that subsequent allegations of abuse were a "consequence of the impunity that stemmed from this flawed investigation".[234] In its written submission Human Rights Watch alleged that the affair has "seriously compromise[d] the ability of the FCO to credibly promote respect for human rights outside of the Embassy when it cannot even protect vulnerable Iraqis working within it".[235]

124. The Foreign Secretary confirmed to us in his oral evidence that the FCO remains unwilling to reopen the investigation into the original allegations. [236] In March 2009, Sir Peter Ricketts told us that the team that investigated the 2009 allegations believed that reopening an investigation into the original 2007 allegations "would have been impossible, given the passage of time". He added that:

> in the course of an extremely thorough investigation, they did not encounter any suggestion that sexual abuse or harassment of local staff by expatriate managers was taking place, or had done so in the past. I would also reiterate the point made by the Foreign Secretary in his letter to you of 19 May 2008: that the conduct and outcome of the 2007 investigation was collectively reviewed in 2008 by a new Embassy senior management team, and that senior officials in the FCO accepted their recommendation that there were no grounds for re-opening the issue. That remains our position.[237]

125. **We reiterate our previous conclusion that in cases like that of the allegations of abuse concerning the British Embassy in Baghdad, it is not appropriate for investigation of complaints against contractors' staff to be entrusted solely to the contractors. We conclude that the proper treatment of staff working for FCO-employed contractors overseas should be considered to be an FCO responsibility. Therefore we conclude that the inclusion of FCO officials in the team that investigated the latest allegations of abuse by KBR staff at the Baghdad Embassy is to be welcomed. We recommend that in order for the FCO reliably to monitor the compliance of its contractors with its own employment practices and standards, all similar allegations of serious misconduct by or against contracted staff should be investigated by a team that includes FCO representation. We further recommend that provision for this to happen should be explicitly made in future contracts. We conclude that it remains disappointing that the FCO is unwilling to reopen the investigation into the allegations in 2007 that female staff at the British Embassy in Baghdad had been abused by managers working for KBR, given the doubts that remain about the fairness and independence of the investigation. We recommend that the Government reconsider its position on this matter**.

233 Q 56

234 Q 56

235 Ev 106

236 Q 173

237 Letter from the Permanent Under Secretary of State, FCO, DR 323, 4 March 2009, published on the Committee's website, http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfaff/memo/departmentreport/ucm32302.htm

The regulation of private military and security companies

126. As long ago as February 1999, our predecessor Committee called upon the Government to publish "within eighteen months […] a Green Paper outlining legislative options for the control of private military companies which operate out of the United Kingdom, its dependencies and British Islands".[238] This followed an examination of the involvement of the private military and security company (PMSC) Sandline in Sierra Leone. A Green Paper was subsequently published in February 2002. In its foreword the then Foreign Secretary described the Committee's recommendation as "a timely and useful suggestion".[239] The Committee addressed the matter further in a subsequent Report,[240] and its call for regulation of PMSCs was supported by the House of Commons Defence Committee in its 2005 Report on post-conflict operations in Iraq.[241]

127. Notwithstanding these repeated recommendations from Committees of the House, there has been a significant delay on the part of the Government in bringing forward concrete proposals. A review completed in 2005 identified a variety of regulatory options, including self-regulation through a code of conduct, legislation and a register of approved companies. The Government has also considered international regulation.[242] Last year Lord Malloch-Brown, Minister of State at the FCO, admitted to us that

> [T]he delay has not been acceptable, and we are hoping that on our watch David Miliband and I will solve this persistent irritant. I have to say that I do not think that the delay has been because of any aberrant desire to prevent regulation. It has had more to do with the fact that regulation is quite tricky for an international business where most activities take place offshore. There is concern about how we can develop a regulatory structure that is credible and effective enough without just driving companies, if you like, offshore to register somewhere else.

He added that the Government was "now in the late stages of trying to get agreement across Whitehall on a way forward on this, so I hope that relief is in sight".[243] In our human rights Report last year, we repeated our call for action, recommending that:

> the Government should announce its intention to introduce the relevant legislation in the forthcoming Queen's Speech. We further recommend that such legislation should impose strict regulation on private security companies, and ensures that these companies can be prosecuted in British courts for serious human rights abuses committed abroad."[244]

The Government response to our Report noted that:

238 Foreign Affairs Committee, Second Report of Session 1998-99, *Sierra Leone*, HC 293, para 96

239 *Private Military Companies*: *Options for Regulation*, FCO 2001-02, HC 577

240 Foreign Affairs Committee, Ninth Report of Session 2001-02, *Private Military Companies*, HC 922, para 108

241 Defence Committee, Sixth Report of Session 2004–05, Iraq: *An Initial Assessment of Post-Conflict Operations,* HC 65

242 Response to FAC, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, Foreign and Commonwealth Office, Cm7463, September 2008, para 47.

243 Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, Q89

244 *Ibid*.,para 82

there is already legislation penalising grave breaches of the Geneva Conventions, as well as torture, genocide, war crimes and crimes against humanity. This applies to acts committed by United Kingdom nationals overseas abroad, ensuring that such persons can be prosecuted for these most heinous acts even if they take place overseas.[245]

The April 2009 government consultation

128. On 24 April 2009, the Foreign Secretary made a Written Statement announcing the launch of a public consultation on the regulation of PMSCs, describing their role as follows:

> Private Military and Security Companies (PMSCs) provide security abroad for private sector contractors, governments and other bodies, including aid agencies and NGOs. They carry out a variety of duties, from close protection of personnel and static protection of premises such as ministries and embassies, to risk and security consultancy. They provide a vital and necessary role in hostile environments, and enable the Government to fulfill its policy objectives in Iraq and Afghanistan by providing essential security services, as well as ensuring operational NGOs are able to carry out important humanitarian work.[246]

129. The closing date for the consultation was 17 June 2009. The consultation paper proposed a government policy which would not involve legislation but would rely on voluntary self-regulation by the companies concerned. The paper set out the Government's proposed strategy as follows:

> Working with the UK industry to promote high standards through a code of conduct agreed with and monitored by the Government;
>
> Using our status as a buyer to contract only those companies that demonstrate that they operate to high standards; and
>
> An international approach to promote higher global standards, based on key elements of the UK approach.
>
> […] To this end, we will:
>
> Build on the initiative by the Swiss government and the International Committee of the Red Cross to create internationally agreed industry standards within two years[247]; and

245 Response to FAC, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, Foreign and Commonwealth Office, Cm7463, September 2008, para 49

246 FCO, Consultation on promoting high standards of conduct by Private Military and Security Companies (PMSCs) Internationally, Impact Assessment, April 2009, para 1

247 Launched in 2005 by the Swiss Ministry of Foreign Affairs' Legal Directorate and the International Committee of the Red Cross (ICRC), to promote respect for international humanitarian law (IHL) and human rights law (HRL) on the part of PMSCs operating in situations of armed conflict or post-conflict. It was a multi-stakeholder initiative that included states, NGOs, industry and academia. The states taking part – including the UK – agreed the document in the Montreux plenary on 17 September 2008.

> Build a convention of states and key buyers that will be able to insist that PMSCs wishing to bid for future contracts will be required to adhere to the internationally agreed standards. This will set a benchmark for private security procurement and practice, and help drive up standards globally.[248]

The accompanying impact assessment described the preferred option as "high impact and high feasibility", on the basis that it can be introduced quickly, as "fair cost" and as "the most pragmatic solution […] and the only one that is results-focussed". The consultation included two further options described as "low impact, low feasibility": to license individual operations, or to license individual operations with a Government-approved register of contractors.[249] The consultation paper argued that licensing would prove unenforceable since breaches would likely take place outside the UK, in situations where obtaining evidence would be difficult and in countries from which extradition might not be possible. The Government argued that licensing could drive companies to move contracts offshore or to subcontract to others, and that introducing a system of licensing would be disproportionate to the scale of the problem and incur excessive costs. It further argued that, were a register to be kept, the criteria for inclusion could easily be challenged in the courts and that the system could be perceived as placing non-UK EU based companies at a competitive disadvantage.[250]

Criticisms of the government proposals

130. Hitherto PMSCs have adopted a self-regulatory approach through their trade body, the British Association of Private Security Companies (BAPSC), formed in 2006. Professor Nigel White, Professor of International Law at the University of Sheffield, told us that BAPSC attempts to regulate its members through "aggressive self-regulation" using "financial sanctions and suspending or withdrawing membership rights", and that it has "lobbied the Government for the introduction of an effective complaint system such as an independent ombudsman". Professor White states that the industry believes that self-regulation "must be complemented by national or international regulatory or oversight schemes" and that "the Government is avoiding any reputational risks of being associated with PMSCs or condoning illegal contracts by not committing to regulation or oversight."[251] The Campaign Against the Arms Trade argued that whilst the Government argues that licensing might drive PMSCs to move offshore, "the same could be said of those trading in military equipment, but this has not prevented the Government strengthening controls on trafficking and brokering".[252]

248 HC Deb, 24 April 2009, col 27WS

249 FCO, *Consultation on promoting high standards of conduct by Private Military and Security Companies (PMSCs) Internationally, Impact Assessment*, April 2009

250 *Ibid*., pages 12–13 and accompanying Impact Assessment, pages 3–4

251 Ev 156

252 Ev 84

Sanctions

131. A number of witnesses agreed with the view expressed by our predecessor Committee that "a voluntary code is insufficient to regulate the private military industry".[253] Amnesty International's Campaign Director, Tim Hancock, has stated that a self-regulatory system "would effectively grant [PMSCs] impunity to do whatever they like," adding "we need a robust system that is backed-up by legislation".[254] Kate Allen told us that:

> the proposals are absolutely insufficient and cannot hold overseas military or security operations to account. They are extraordinarily weak. There is a lack of jurisdiction to prosecute contractors in the UK for the crimes that they commit abroad. So we certainly call upon the Government to make their proposals ones that put in place legislation that enables contractors to be held to account. Given that about 70% to 85% of private military and security companies are based in the UK and the US, and that the UK Government are, as the Chairman reminded us, a major user of these companies, especially in Iraq and Afghanistan, it is essential for the UK Government to put in place greater restrictions, rather than a voluntary code of conduct that, even then, does not have to be signed up to.[255]

132. The Campaign Against the Arms Trade stress that the Government is only one employer of PMSCs.[256] Professor White cast doubt on the likely success of the scheme, suggesting that "in reality the main sanction is likely to be the naming and shaming of companies who regularly violate the codes of conduct. Certainly evidence of compliance with international codes of conduct by companies in other areas is sparse."[257]

133. In response to these criticisms, the Foreign Secretary asserted to us that the Government's proposed option was a viable solution with sufficient sanctions in place to punish violation of the code of conduct:

> The best sanction is that companies would no longer get contracts from either ourselves, the Americans, the Chinese or the Russians. We are trying to build on the Swiss initiative that you mentioned [see paragraph 129 above]. We have been working with not just the private military security companies themselves but human rights and other organisations, including Amnesty International, to try to ensure that this code is as robust as possible. It is critical that all the main countries adhere to it. It is not just about getting companies to sign up; it is not just self-regulation. It is about us as purchasers and contractors, as people who procure these services, doing so only with those companies that sign up.[258]

253 Foreign Affairs Committee, Ninth Report of Session 2001-02, *Private Military Companies*, HC 922

254 *The Guardian*, 24 April 2009, page 16 http://www.guardian.co.uk/world/2009/apr/24/private-military-firms-government

255 Q 58

256 Ev 84

257 Ev 157

258 Q 177

The international context

134. Both the United States and South Africa have opted to regulate PMSCs using legislation. Professor White describes the US approach as creating "licensing regimes" and the South African approach as operating a "heavily regulatory" regime. War on Want outlined the legislative approach in the US:

> [S]trident steps have been taken to legislate on this issue which puts the British government's record to shame. In 2007 the United States House of Congress passed the Expansion and Enforcement Act of 2007 which clarified USA jurisdiction to prosecute contractors of all USA agencies operating near a conflict area. The Bill established an FBI unit to investigate incidents of use of force by contractors and requires the Department of Justice to publically report on its handling of cases of contractor crime which are referred to it. President Obama then introduced companion legislation in the Senate, the Security Contractor Accountability Act of 2007 (S. 2147). In April 2009, the Transparency and Accountability in Security Contracting Act was introduced which would ban PMSCs from participating directly in battle or interrogating detainees. It would also require companies to provide detailed reports on their operations, which would then be stored on a state database for all security contracts, including costs and casualties. If contractors violate USA and international law they would be barred.[259]

135. The Foreign Secretary criticised the South African approach, arguing that:

> I think I am right in saying that South Africa has introduced a law but has no prosecutions under it […] The experience of this South African legislation is that, every year that goes by, it makes one more concerned that passing a law won't do the trick. If we can, along with the other main countries that use private military security companies, establish a set of international benchmarks for good practice that would be a quicker way of making progress.[260]

Professor White acknowledged the shortcomings of existing international regimes, proposing as an alternative a pan-European approach:

> Loopholes and insignificant penalties have undermined the effectiveness of the US and South African regimes and contrasting opinions on the value of each approach draws further attention to the difficulties of reaching agreement on the way forward. […] A European approach which takes into account these difficulties while pertaining to the minimum standards contained therein will reduce relocation of PMSCs, encourage compliance with the legislation and outlaw disreputable companies.[261]

259 Ev 153

260 Q -177

261 Ev 157

The Foreign Secretary told us that the Government intends to review the self-regulatory system after three years of operation, to assess "how the new system has worked, and how our contracting power has been used".[262]

136. **We conclude that it is regrettable and disappointing that after such a long delay the Government has proposed a system of regulation for private military and security companies (PMSCs) based on a voluntary code of self-regulation. We remain unconvinced that anything other than a legislative solution can provide suitably strict regulation of PMSCs operating from the UK or employed overseas by the Government. We do not believe that a potential loss of business constitutes a sufficient sanction to control PMSCs' behaviour. We recommend that that when the Government issues its response to the recent consultation exercise, it commits itself to pursuing a legislative solution to the regulation of PMSCs at an EU or international level.**

Diplomatic immunity

137. We asked the Foreign Secretary whether any PMSC employees would have diplomatic immunity that could protect them from prosecution under the national law of the country in which they operate.[263] In response he told us that:

> Some individuals contracted to the FCO in Iraq and Afghanistan to undertake private security contracts for the protection of our diplomatic missions do have certain immunities, including in particular immunity from criminal jurisdiction, under the Vienna Convention on Diplomatic Relations.[264]

138. **We recommend that, in its response to this Report, the Government gives us full particulars of the individual members of staff who enjoy diplomatic immunity, and the grounds on which this has been justified, and that it supplies us with a full statement of its policy on the provision of diplomatic immunity to staff who are not directly employed by the Government**.

262 Q 176

263 Q 170

264 Ev 52

6 The International Framework

UN Human Rights Council

139. The UN General Assembly established the new Human Rights Council in March 2006. It succeeded the Commission for Human Rights, which was abolished. Many Western states and NGOs had felt the Commission for Human Rights had been too soft on countries accused of serious human rights violations. In our 2006 Human Rights Report, we welcomed moves to establish the Council.[265]

140. The FCO's report states that "the Human Rights Council remains a difficult environment within which to deliver a progressive, active human rights policy". In particular, it notes that "the perceived clash between freedom of expression and the desire of certain countries to protect religions from defamation" is a source of division within the Council.[266]

141. However, the FCO also asserts that "despite the difficulties we face in the Council, there were positive moves in 2008". It notes that although in its view the Council still spends a disproportionate amount of time on the issue of human rights problems in the Occupied Palestinian Territories, there was a welcome reduction in the number of special sessions and resolutions on the subject.[267]

142. The FCO's report contains, for the second year in succession, a table showing the voting records of each country in the Council on key resolutions (originally included in response to a recommendation by the Committee[268]). In last year's report, the table showed that out of the ten key resolutions it provided, the Government voted against the resolution seven times, abstained three times, and did not vote in favour of any.[269] In this year's report, the table shows that the balance has shifted towards greater UK support for draft Council resolutions: out of eight key resolutions, the Government voted against the resolution twice, abstained three times, and voted in favour three times.[270]

143. The process of 'Universal Periodic Reviews' instigated by the Council is now well advanced. This involves a peer review of all member states of the UN once every four years on their human rights practices, followed by adoption of a document by the Council considering to what extent each state is meeting its obligations under international human rights law and any voluntary commitments it has made. The UK was the seventh country to have its human rights records reviewed by the Council. The FCO claims that "our open and comprehensive approach to the UPR helped set the tone for the process".[271]

265 Foreign Affairs Committee, First Report of Session 2005-06, *Human Rights Annual Report 2005*, HC 574, February 2006, para 15

266 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 41

267 *Ibid*., p41

268 In Foreign Affairs Committee, Third Report of Session 2006-07, *Human Rights Annual Report 2006*, HC 269, April 2007, para 19

269 Foreign and Commonwealth Office, *Annual Report on Human Rights 2007*, Cm7340, March 2008, pp 54-55

270 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 62-63

271 *Ibid*., p 41

144. A significant development since publication of the FCO's report has been the election of the United States to a seat on the Council for the first time. The Obama Administration has reversed the policy of its predecessor to boycott the Council (on grounds of its failure to condemn human rights violations in Darfur, and its alleged anti-Israel bias). In the vote by the UN General Assembly on 12 May 2009, the US received 167 votes, considerably more than the 97 needed in the secret ballot. In March, Secretary-General Ban Ki-moon had welcomed the announcement by the US that it would seek a seat on the Council, saying it embodies the country's commitment to a "new era of engagement."[272] The US took up its seat for the first time on 19 June 2009.[273]

145. Human rights groups have criticised the Council for its resolution passed on 27 May 2009, at a special session convened to discuss the human rights situation in Sri Lanka following the military defeat of the LTTE (Liberation Tigers of Tamil Eelam). The motion, proposed by the Sri Lankan government, was supported by 29 countries including China, India, Egypt and Cuba. It was opposed by 12 countries including the UK. It commends the Sri Lankan government for its "continued commitment […] to the promotion and protection of all human rights", praises its humanitarian record, condemns human rights abuses by the LTTE, and reaffirms "the principle of non-interference in matters which are essentially within the domestic jurisdiction of States".[274]

146. A spokesperson for Amnesty International said: "The vote is extremely disappointing and is a low point for the Human Rights Council. It abandons hundreds of thousands of people in Sri Lanka to cynical political considerations."[275] Tom Porteous, London director of Human Rights Watch, told us that "the performance of the Human Rights Council this year has been particularly dismal, particularly over Sri Lanka […] The resolution in May was absolutely appalling. It was an opportunity for the Human Rights Council to do what it is supposed to do, which is to protect human rights, but it completely failed".[276]

147. We discuss the human rights situation in Sri Lanka separately in paragraphs 257 to 274 below.

148. A more positive development has been the vote in the Council on 18 June 2006, albeit by a narrow majority (20 to 18, with 9 abstentions), to extend the mandate of the UN Special Rapporteur for Human Rights in Sudan, Dr Sima Samar.[277] This proposal was carried against the wishes of the Sudanese government. It has been reported that the United States played a significant part in negotiating the text finally agreed.[278] We discuss the human rights situation in Sudan in paragraphs 275 to 283 below.

272 "Ban welcomes US decision to seek seat on UN Human Rights Council", UN News Centre, 31 March 2009, http://www.un.org/apps/news

273 Reuters, "U. S. takes seat at U.N. rights forum, urges unity", 19 June 2009, http://www.reuters.com

274 UN Human Rights Council Resolution S-11/1, "Assistance to Sri Lanka in the promotion and protection of human rights", agreed at Eleventh Special Session, 29 May 2009

275 "UN rejects calls for Sri Lanka war crimes inquiry", *The Guardian*, 28 May 2009, www.guardian.co.uk

276 Q 62

277 Associated Press, "UN rights body votes to continue Sudan scrutiny", 18 June 2009, http://www.google.com/hostednews/ap

278 Reuters, "U. S. takes seat at U.N. rights forum, urges unity", 19 June 2009, http://www.reuters.com

149. Assessing the overall record of the Human Rights Council, Kate Allen of Amnesty International told us that the Council "continues to be politicised". However, she noted "reasons for optimism" about its work, in particular its promotion of Universal Periodic Reviews.[279]

150. On elections to the Council, Kate Allen commented:

> We are quite disturbed by the lack of competition for places: this is sort of sewn up ahead of the actual elections, so that we do not see votes taking place. That practice could come back to bite the Human Rights Council over time and we could start to see the likes of Zimbabwe and Sudan back here. But we also welcome the USA's election to the council. That is a change in terms of engagement that will, hopefully, start to provide some real support there.[280]

151. Mr Miliband told us that the result of the special session on Sri Lanka was "disappointing", and reflected "deep divisions" within the UN "between those who hold fast to a view that what goes on in a country is its own business and does not belong on the international agenda, and those who believe that it does". However, he defended UK engagement with the Council and pointed to the Universal Periodic Review process as a worthwhile achievement.[281]

152. **We conclude that the UN Human Rights Council's May 2009 resolution rejecting calls for investigation of human rights violations in Sri Lanka is deeply regrettable, and has damaged the credibility of the Council. We recommend that the Government continues to promote the view that significant transgressions of human rights committed by parties to internal political conflicts should not be regarded as being solely the "domestic business" of the state concerned. We conclude that the international community has both a right and a responsibility to express concern about, and where appropriate to launch investigations into, situations where major abuses have been alleged.**

153. **We conclude that other aspects of the work of the Human Rights Council are to be applauded, in particular the developing system of Universal Periodic Reviews, and the decision to continue the international investigation of human rights abuses in Sudan. We further conclude that the increase in 2008 in the number of Council resolutions which the Government was able to support is to be welcomed, and that it is to be hoped that the participation of the United States will lead to a strengthening of the positive work of the Council.**

The Durban Review Conference

154. The UN Durban Review Conference, the follow-up to the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, took place in Geneva in April 2009.

279 Q 62

280 Q 62

281 Q 179

155. The UK agreed to take part in the conference with reservations, having made clear that "we would not accept a repeat of the appalling anti-Semitism seen at the first Durban Conference in 2001". In negotiating in advance an outcome text, the Government stated that it had

> "resisted attempts for language calling for restrictions to the right of freedom of expression, including through the concept of 'defamation of religions', […] secured language on Holocaust remembrance […] and the fight against anti-Semitism, and successfully rebutted attempts to single-out any country for criticism […]. We also ensured the text included references to multiple forms of discrimination – which we interpret to cover also the rights of lesbian, gay, bisexual and transgender people – and the importance of the right to freedom of expression in combating racism.[282]

156. In the event, on the first day of the conference (20 April), President Ahmadinejad of Iran delivered a speech containing what the Foreign Secretary described as "offensive, inflammatory and utterly unacceptable" comments describing Israel as a "racist government" established on the "pretext of Jewish suffering". On instructions agreed between several like-minded countries, the UK delegation—along with a number of others—left the hall in protest. The delegation returned to the hall once the Iranian President had finished speaking. The Foreign Secretary justified the UK's decision to continue to participate on the grounds that

> "The fight against racism remains a global struggle. Victims of racism deserve better than political squabbling and intolerant polemics. I believe that the Government did the right thing by remaining in the conference, having our voices heard, and ensuring an acceptable outcome document." [283]

157. Human Rights Watch commented that it was "satisfied with the constructive role the UK subsequently played in [the Durban Review] Conference in obtaining an agreement that led to a dropping of language on defamation of religion". It noted that the UK's position was "in notable contrast to several of its European and other allies who boycotted the Conference, despite having obtained the language they wished".[284] Tom Porteous told us that

> I don't need to remind you […] of the importance of combating racism in all its forms. The Durban review process, albeit flawed and difficult, is the only process at the international level that makes that effort to address the problem of racism. It is an issue that we especially cannot afford to ignore in a time of global economic recession.[285]

158. Kate Allen told us that

> we absolutely reject and condemn what was said by the President of Iran, but we were pleased that the British Government were there to argue and face down those

282 Written Ministerial Statement, "United Nations Durban Review Conference", HC Deb, 28 April 2009, cols 41-42WS

283 *Ibid*.

284 Ev 103 (para 25)

285 Q 65

> kinds of issues and to engage in discussions about racism and how to tackle it. It was necessary to stay at the conference and confront those issues, not ignore them.[286]

159. Mr Miliband said that the Government had set two "red lines" for the conference: first, that the resultant text should "brook no doubt about the unique nature of the Holocaust, anti-Semitism and a range of other issues", and, second, that the UK would not participate if the conference turned into "a bit of a circus" like the original Durban conference in 2001. He argued that both red lines had been met. In particular, he claimed that President Ahmadinejad's "attempt to steal the show […] failed: all he did was expose his own isolation, including within the Islamic world, because one of the most significant things that happened at the conference was that important Islamic countries did not side with Iran".[287]

160. **We conclude that the UK's handling of the issue of participation in the "Durban Review Conference" held in Geneva in April 2009 was well-judged. The UK delegation left the conference hall in protest at President Ahmadinejad's offensive and anti-Semitic remarks, but did not allow his calculated provocation to derail the wider work of the conference, in which the UK played a full part. We recommend that the Government continues to support the positive work of the Durban review process in combating racism worldwide, while at the same time maintaining the right of freedom of expression in relation to ideologies and beliefs, and defending the rights of lesbian, gay, bisexual and transgender people.**

International criminal law

161. The International Criminal Court (ICC), based in the Hague, was set up under the "Rome Statute" in 2002. Proceedings are either active or pending in the ICC in relation to alleged war crimes and crimes against humanity in the Democratic Republic of Congo (the trial of the militia leader Thomas Lubanga Dyilo began in January 2009), Central African Republic (Jean-Pierre Bemba , a former Vice-President of the DRC, is in custody awaiting trial), Uganda (arrest warrants were issued in 2005 for senior leaders of the Lord's Resistance Army) and Darfur (see next paragraph).[288]

162. In 2007 arrest warrants were issued for the Sudanese government minister Ahmad Muhammad Harun and the Janjaweed militia leader Ali Kushayb in connection with alleged crimes in Darfur. These warrants remain outstanding, the Sudanese government having refused to respect them. On 4 March 2009 a warrant was issued for the arrest of the President of Sudan, Omar al-Bashir, accused of genocide, war crimes and crimes against humanity . Bashir has denied the charges and refused to co-operate with the court.

163. On 12 June 2009 the Guardian reported that:

286 Q 67

287 Q 181

288 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 47

> Efforts by the International Criminal Court to secure the arrest of Sudan's president, Omar al-Bashir, for alleged war crimes in Darfur have stalled and are unlikely to move forward in the foreseeable future, EU diplomats and Sudanese officials say.[289]

164. In its report, the FCO notes that:

> there has been some criticism directed at the Court in 2008, accusing it of bias against Africa. We strongly disagree. Although all four of the situations currently under investigation are in Africa, three of these were referred to the Court by the countries themselves. Thirty African states are party to the Rome Statute – only Europe has a higher rate of ratification.[290]

165. Three of the five permanent members of the UN Security Council (China, Russia and the US) have been critical of the Court and are not States Parties to the Rome Statute. The Obama Administration has not yet formally announced its policy in regard to the ICC, but Secretary of State Clinton indicated to the Senate Foreign Relations Committee that "we will end hostility to towards the ICC, and look for opportunities to encourage effective ICC action in ways that promote US interests by bringing war criminals to justice."[291]

166. Giving evidence to us, Tom Porteous commented that:

> There is increasing polarisation in the world, particularly between the west and the south, on the subject of sovereignty. As we see a redistribution of global power from the west to the east, the rise of China and the rise and influence of other states that do not have particularly good human rights records and that are keen to assert the principle of total sovereignty, we will see more of this kind of thing.[292]

167. Mr Miliband told us that after 10 years' existence the ICC has established itself and "there have been some notable successes", but that, overall, "the implementation of the Rome statute is clearly not going forward in the way that we would like". He said that the Government deplored the Sudanese government's rebuff to the Court over the prosecution of Omar al-Bashir, which was an important test case for the future of the ICC.[293] Asked about the prospects for participation in the ICC by the United States, Mr Miliband replied that "the new US Administration is distinctly more multilateralist although I don't think that the ICC is at the top of their list of multilateral re-engagement".[294]

168. **We conclude that there is mounting hostility to the International Criminal Court in Africa and elsewhere, manifested most dramatically in Sudan's refusal to co-operate with the Court. This reflects a deepening division between Western countries and some other countries, particularly those from the developing world, over issues of state sovereignty in relation to human rights – exemplified also in the UN Human Rights**

289 Simon Tisdall, The Guardian, 12 June 2009, "Sudan strengthened as United Nations members ignore warrant for arrest of Bashir"

290 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 48

291 http://www.amicc.org/docs/KerryClintonQFRs.pdf

292 Q 63

293 Q 182

294 Q 182

Council's recent rejection of international "interference" in the investigation of alleged human rights abuses in Sri Lanka. We further conclude that such attitudes, if they continue to spread, may have the effect of undermining the promotion of universal human rights worldwide. We recommend that the Government works to strengthen international support for the ICC, and for the principle of bringing to justice those who commit war crimes or crimes against humanity. We further recommend that it encourages the new Administration in the United States to accede to the Rome Statute of the ICC, which would mean that a majority of the Permanent Members of the Security Council would have acceded, marking a significant step towards the long-term aim of achieving universality of the Rome Statute.

7 Countries of concern

169. This section of our Report is not intended to be a comprehensive list of countries where human rights are of concern. Instead, we focus on countries where there have been significant developments that we have not covered in our previous annual Reports. In a number of cases we indicate that we intend to make comments on the human rights situation in specific countries in other Reports which we expect to publish in the near future.

Afghanistan

170. We deal with human rights issues in relation to Afghanistan in our forthcoming Report on *Global Security: Afghanistan and Pakistan*.

Burma (Myanmar)

171. The FCO report comments that the human rights situation in Burma deteriorated still further during 2008, particularly towards the end of the year when harsh sentences were given to over 200 democracy activists:

> The picture continues to be characterised by the persistent denial of almost all fundamental rights, including the ability of Burma's citizens to have any say in the country's future. The referendum on a new constitution in May [2008] was deeply flawed. […] Despite its natural resources, Burma remains one of the poorest countries in the world, and faces a range of humanitarian challenges.[295]

172. The FCO's report details the extent of human rights abuses in Burma. These include repression and intimidation of opposition activists, with severe sentences passed in 2008 on more than 200 political prisoners; continuing discrimination against ethnic minority communities and religious groups, such as the Muslim Rohingya in the west of the country; absence of measures to avert a famine affecting the Chin community on the border with India, despite this arising from a plague of rats which occurs on a wholly predictable 50-year cycle; and other problems arising from poor governance, economic mismanagement, and lack of civic participation.[296]

173. The contribution of the international community to alleviating the devastation caused in May 2008 by Cyclone Nargis, which killed some 130,000 people, was impeded by the refusal of the regime to permit access by foreigners to the affected areas.[297] The Government notes that "UK relief for Cyclone Nargis is delivered through the UN, Red Cross and international and local non-governmental organisations. We make every effort

295 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 125

296 *Ibid*., pp 125-26

297 See Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, paras 92–94

to ensure that all UK aid – both for cyclone relief and for our main aid programme – is delivered in compliance with EU sanctions."[298]

174. The plight of the pro-democracy campaigner Daw Aung San Suu Kyi under house arrest has continued to attract international attention. In June 2008 the Prime Minister and President Sarkozy of France wrote her a joint open letter reaffirming the two countries' commitment to her struggle to achieve democracy in Burma. On 18 May 2009 Ms Suu Kyi was put on trial in Rangoon, charged with breaching the terms of her house arrest, because of a visit by an American man who swam across a lake to her house earlier in May. Court proceedings have been repeatedly adjourned. UN Secretary General Ban Ki-moon visited Burma in July 2009 and called on the Burmese military junta to release Ms Suu Kyi and other political prisoners. However, his request to meet Ms Suu Kyi was denied.[299]

175. Human Rights Watch praises the FCO report's account of the situation in Burma, which it says mirrors its own reporting and analysis.[300] Tom Porteous, London Director of Human Rights Watch, told us that "we, Amnesty and the UK Government are all extremely concerned about the situation, particularly in the run-up to the so-called elections, which the Burmese authorities are holding as a result of their sham political reform process". He noted that the UK had limited leverage in respect of Burma, and that Burma's own neighbours, China, India and Thailand, have considerable economic interests in the country, which has led to a reluctance to criticise the Burmese regime.[301]

176. **We conclude that the scale of human rights abuses in Burma, and the extent of suffering caused to the Burmese people by their government's economic and political mismanagement, is intolerable. The Burmese government's indifference to the welfare of its own people was demonstrated by its handling of Cyclone Nargis in 2008. We recommend that the British Government continues to exercise the strictest vigilance in ensuring that aid supplied to Burma is not misused by the authorities. We further recommend that the UK encourages Burma's regional neighbours, in particular China, India and Thailand, to bring pressure on the regime to improve its human rights record.**

China

177. Despite the rapid economic development of the People's Republic of China, the country's human rights record has continued to give cause for concern. The FCO assesses that "China has made little progress towards greater respect for human rights in 2008". They draw attention to two key developments: the crackdown in Tibet in March 2008 (which we deal with in a separate sub-section below), and the holding of the Olympic Games in Beijing in August 2008, which led to human rights defenders being detained or expelled from the city. On a more positive note, the FCO comments that China ratified the International Covenant on the Rights of Disabled People (in conjunction with its hosting

298 Government Response to Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, Cm 7463

299 BBC news website, "UN chief calls for Burma releases", 3 July 2009, http://news.bbc.co.uk/1/hi/world/asia-pacific

300 Ev 104 (paras 34–35)

301 Q 82

of the Paralympic Games in September 2008); and that certain reductions in restrictions on foreign journalists, put in place before the Olympics, have subsequently been made permanent.[302]

178. These positive developments have to be set against the background of the continuing human rights concerns listed by the FCO. They include widespread use of the death penalty (with at least 470 people executed during 2007, according to published media reports—although the FCO considers the true figure likely to be "much higher"); torture; the lack of an independent judiciary; arbitrary detention; ill-treatment of prisoners; failure to protect human rights defenders; harassment of religious practitioners and Falun Gong adherents; and limitations on freedom of expression and association.[303]

179. Amnesty International likewise concludes that the human rights situation in China has seen little improvement. It comments that:

> China's hosting of the Olympics brought heightened repression throughout the country as the authorities tightened control over human rights activists, religious practitioners, ethnic minorities, lawyers and journalists. Hundreds of people remain in detention or unaccounted for after the protests and unrest in Tibet. The Chinese authorities have launched sweeping crackdowns on the Uighur population in the Xinjiang Uighur Autonomous Region. Tight control continues to be exercised over the flow of information, with many websites blocked, and journalists and internet users harassed and imprisoned.[304]

180. In November 2008 we published a Report on *Global Security: Japan and Korea*. One issue we addressed in that Report was that of China's treatment of emigrants from North Korea.[305] Large numbers of North Koreans have fled from their own country to China, either with the intention of settling there or of travelling through China en route to further destinations. The Chinese authorities regard these people as illegal economic migrants, and when caught they are returned to North Korea, where they reportedly face punishments including prison, labour or prison camp, torture, execution and, for women who have become pregnant by Chinese men, forced abortion.[306]

181. The Government's policy regarding human rights in China continues to be based on a mix of high-level engagement (the FCO's report lists expressions of concern about Tibet and other matters made by UK Ministers during 2008), through the "UK–China Human Rights Dialogue" (under which one meeting was held in 2008) and through project work on the ground (including monitoring of prison conditions and of the impact of the new foreign media regulations).[307]

302 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 127

303 *Ibid*., pp 127, 130

304 Ev 71 (para 32)

305 Foreign Affairs Committee, Tenth Report of Session 2007-08, *Global Security: Japan and Korea*, HC 449, paras 191–210

306 *Ibid*., para 196

307 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 130–31

182. Amnesty International is critical of the British Government's strategy towards China. It argues that the Government's focus on addressing China's emergence as a global economic and political force counts for more in determining UK policy than its professed concern for human rights. Amnesty claims that there is little evidence that the Government's policy of "engagement and co-operation" in its promotion of human rights with China is achieving tangible results. Amnesty notes that commitments made by China during its Universal Periodic Review process and in its newly published human rights action plan include some concrete targets for 2010, and recommends that the Government "should incorporate the delivery of these commitments into the objectives of its dialogue with China".[308]

183. **We conclude that there remains little evidence that the British Government's policy of constructive dialogue with China has led to any significant improvements in the human rights situation. We recommend that the Government sets benchmarks and specific targets for making progress in this dialogue; these should take account of but not be restricted to the time-specific commitments given by China itself during its Universal Periodic Review process. We further recommend that in its response to this Report, the Government informs us of what action it is proposing to take in this regard.**

184. **We reiterate the conclusions of our 2008 Report on *Global Security: Japan and Korea* that China is in breach of its obligations under the 1951 Refugee Convention as regards its treatment of North Korean migrants. We remain particularly exercised by China's continuing failure to allow the UN High Commission on Refugees access to its border region with North Korea, and by its practice of forcible repatriation of North Koreans who have not had access to a determination-of-status process. We recommend that the Government should urge the UN High Commissioner on Refugees to give a high priority to the issue of the treatment of North Korean migrants in China. We further recommend that the Government works internationally and more actively to encourage China to find ways of fulfilling its international obligations on this issue as part of the process of becoming a responsible global power.**

Tibet

185. In last year's report we commented in detail on the protests which took place in Tibet in March 2008 against Chinese rule, and China's response which involved sending troops into Tibet to restore order. We reported on the evidence session we had held with His Holiness the Dalai Lama in May 2008. We concluded that China's policies towards Tibet have fostered a culture of repression, and we condemned the use of violence either by Tibetans or the Chinese government during the recent disturbances. We recommended that the British Government should press the Chinese authorities to allow an independent and international investigation to take place in Tibet, and to impress on the Chinese government that they should recognise there is currently a significant window of opportunity to make progress in resolving the dispute over Tibet, based on the demand by the Dalai Lama for "genuine autonomy", not independence.[309]

308 *Ibid*., para 35

309 Foreign Affairs Committee, Ninth Report of Session 2007-08, *Human Rights Annual Report 2007*, HC 533, para 112

186. In its report the FCO concludes that "freedom of religion, expression and association of Tibetans continues to be severely restricted", and that it "remain[s] extremely concerned about the current situation in Tibet and its surrounding regions". The FCO notes that the 8th Round of Dialogue between Tibetan and Chinese representatives, held in Beijing in late October/early November 2008, ended in acrimony, with the Chinese refusing even to discuss the proposals presented by the Tibetans.[310] The British Government has urged the Chinese to allow the UN Special Rapporteur for Freedom of Religion and Belief, and other representatives of the Office of the High Commissioner for Human Rights, to visit Tibet to allow an independent assessment of the situation there.[311]

187. Amnesty International reports that "hundreds of people remain in detention or unaccounted for after the protests and unrest in Tibet".[312]

188. In October 2008 the Foreign Secretary announced a change in the British position on the status of Tibet. Since 1914 successive governments had recognised China's "suzerainty" over Tibet, but "on the understanding that Tibet was autonomous". Mr Miliband stated that:

> Our ability to get our points across has sometimes been clouded by the position the UK took at the start of the 20th century on the status of Tibet, a position based on the geopolitics of the time. Our recognition of China's "special position" in Tibet developed from the outdated concept of suzerainty. Some have used this to cast doubt on the aims we are pursuing and to claim that we are denying Chinese sovereignty over a large part of its own territory. We have made clear to the Chinese Government, and publicly, that we do not support Tibetan independence. Like every other EU member state, and the United States, we regard Tibet as part as part of the People's Republic of China. Our interest is in long-term stability, which can only be achieved through respect for human rights and greater autonomy for the Tibetans.[313]

189. We questioned the Foreign Secretary about this policy shift in December 2008. He told us: "our previous policy […] was getting in the way of a serious discussion about human rights in Tibet and good relations and engagement with China. The concept of suzerainty is not accepted or understood by anyone in the diplomatic world."[314]

190. **We conclude that the absence of any momentum towards resolving the dispute over Tibet is a matter of grave concern. We recommend that the Government continues to press its Chinese counterparts to lift restrictions on access to Tibet, to allow an independent assessment of the human rights situation there to be carried out by representatives of the UN High Commissioner for Human Rights.**

310 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 128–29

311 *Ibid*., p 129

312 Ev 71 (para 32)

313 HC Deb 29 October 2008 c30–32WS

314 Foreign Affairs Committee, Oral and written evidence, *Developments in the European Union*, Wednesday 10 December 2008, HC 79–i, Q 52

Xinjiang

191. The FCO states that "we are […] concerned about allegations of a crackdown on religious practices in the Xinjiang Uighur Autonomous Region, preventing individuals from displaying symbols of religious belief and observing religious festivals".[315] There has been longstanding tension in the western province of Xinjiang between the Chinese authorities and the mainly Muslim indigenous Uighur community. On 6 July 2009 Chinese state media reported that violence in Urumqi, the capital city of Xinjiang, had left at least 140 people dead and more than 800 people injured, with several hundred also having been arrested. The BBC reported that the violence appears to have arisen following street protests prompted by a deadly fight between Uighurs and Han Chinese in southern China last month. It added that "if the numbers of dead are to be believed—and state media say they may rise—this looks like the bloodiest violence in China since Tiananmen Square 20 years ago".[316] It was subsequently reported that vigilante mobs of Han Chinese had sought to carry out revenge attacks on Uighars, and that thousands of troops were on the streets of Urumqi to secure order.[317]

192. During the disturbances in Tibet in 2008, the Chinese authorities pursued a vigorous policy of excluding foreign journalists from affected areas. By contrast, following the recent protests in Xinjiang, the authorities appear to have adopted a policy of allowing the foreign media free access. As at 8 July 2009, it was reported that 60 foreign media organisations had sent representatives to Xinjiang and that the regional government local authorities were not seeking to restrict their movements or reporting.[318]

193. **We conclude that the developing situation in Xinjiang, with significant violence arising from long-standing ethnic tensions between Uighurs and Han Chinese, gives cause for concern. We recommend that the Government, acting in conjunction with its EU partners, should monitor the situation and urge restraint upon the Chinese government. We further conclude that what appears to be a change in Chinese policy towards foreign media, allowing journalists free access to Xinjiang, is—if confirmed as events develop—to be welcomed.**

Colombia

194. As in previous years, the FCO continues to be concerned about the human rights situation in Colombia, which it attributes to the decades-long internal armed conflict driven by control of the illegal drugs trade. It states that human rights defenders, trade unions and other civilians have been the victims of threats, intimidation, kidnappings, murders and forced displacement. The UN High Commissioner for Human Rights estimates that 3 million people have been internally displaced by the conflict, the second highest number in the world after Sudan.

315 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 127

316 *BBC news website*, "Scores killed in China protests", 6 July 2009, http://news.bbc.co.uk

317 *BBC news website*, "Uneasy calm in China's riot city", 9 July 2009, http://news.bbc.co.uk

318 *BBC news website*, "China seeks control through openness", 8 July 2009, http://news.bbc.co.uk

195. The FCO notes some recent improvements in the situation, commenting that in some respects Colombia is much safer than previously, but adding that it still faces huge challenges: "to stem the flow of cocaine; to bring to justice the armed groups that threaten Colombia's future; to tackle impunity; to reduce and eliminate abuses, including those committed or condoned by Colombia's armed forces and police; and to build a strong civil society".[319]

196. Human Rights Watch criticises the FCO report for downplaying the extent of corruption within the Colombian establishment:

> paramilitaries and their successors have infiltrated some of the highest levels of government. More than seventy members of the Colombian Congress—including approximately 35% of the Senate—are under investigation or have been convicted for rigging elections or collaborating with paramilitary groups. Nearly all the congresspersons under investigation are members of President Uribe's coalition. The Uribe administration has repeatedly taken steps that could undermine the investigations and keep the influence of these mafias in the political system intact. High-level government officials, including Uribe himself, have repeatedly attacked the Colombian Supreme Court, which started what are known as the "parapolitics" investigations.[320]

197. Human Rights Watch argues that "this problem should be an important focus of UK policy, as it will define the future of the rule of law and democracy in Colombia", and it draws attention to "the frequent practice of extrajudicial executions of civilians by the Colombian Army".[321]

198. Tom Porteous of Human Rights Watch told us that "there is no doubt that Colombia is by far the most dangerous place in Latin America at the moment. I would not want to make a comparison about whether it is more dangerous now than it was a year ago. It is very, very dangerous, particularly for journalists, trade unionists and human rights defenders."[322]

199. Mr Porteous called for greater clarity about British military assistance to Colombia:

> the main reason why the British Government are providing this military aid to Colombia is that they are simply following the dictates of the strategic alliance with Washington. Colombia has been a good ally of the United States, particularly under the Bush Administration. Here is the interesting thing: since the Democrats gained control of the US Congress a couple of years ago, US military aid to Colombia has become much more transparent: we know where it's going. The Democrats have managed to hold up some of that aid. In the UK, it is still an accountability-free zone. We would like to see much more transparency over UK military aid to Colombia.[323]

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319 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 131

320 Ev 104 (para 37)

321 Ev 104-05 (paras 37-38)

322 Q 88

323 Q 88

200. The Ambassador of Columbia, HE Noemi Sanin Posada, wrote to us in June 2009 to draw attention to what he argued were recent improvements in the human rights situation in Colombia. Noting that although Columbia is a long-standing democracy, "we have also been afflicted by severe violence for 52 years", he claimed that there had been significant reductions in recent years in the level of serious abuse. In particular, he stated that between 2002 and 2008 there had been a reduction in:

- The number of homicides by 44%
- The number of victims of massacres by 75%
- The number of extortive kidnappings by 88.5%
- The number of homicides of indigenous people by 66%
- That of journalists by 100%
- And that of union members by 80%.[324]

201. However, the Ambassador acknowledged that "as a result of the appalling terrorist violence and the weakness of the state, more than 2.5 million have been internally displaced", and that, "in this respect, we have to painfully recognise that human rights abuses still remain".[325]

202. Mr Miliband told us that "there are massive human rights issues in Colombia, but it is not legitimate to say that British engagement is party to human rights abuses in Colombia". He argued that "military aid" was a "very loaded" phrase, because it suggested "bombs, bullets and soldiers", whereas UK assistance to Colombia involved demining and human rights training for the Colombian army. The UK's demining work was part of a multilateral process, while the human rights training programme had been concluded. Mr Miliband said that that training meant that:

> the Colombian army, for the first time ever, has a set of human rights commitments that it is meant to adhere to—I say "meant to" adhere to—partly as a result of the engagement that we have had. It has never had that before.[326]

203. On 30 March 2009 the Government announced that the UK had reprioritised its financial assistance to Colombia. It stated that "our bilateral human rights projects with the Colombian Ministry of Defence will cease", and that funding would henceforward be channelled towards demining, counter-narcotics, tackling impunity, and projects in areas such as freedom of speech, democracy and tackling discrimination. The Government added that:

> Projects already approved for the next financial year and beyond total almost £1 million and a further £170,000 is to be allocated for human rights projects. With

324 HR 188, pp 2-3

325 HR 188, p 7

326 Q 193

> British trade union partners, we will continue to look at ways in which the UK can promote labour relations in Colombia.[327]

204. **We conclude that, despite some recent improvements, human rights abuses in Colombia remain systemic and widespread, with considerable evidence of complicity by the Colombia authorities, police and armed forces. We note that, in particular, it is an extremely dangerous place to be a trade unionist. We recommend that, in its response to this Report, the Government supplies us with a detailed breakdown of its current and planned future aid to Colombia, with full costings, and information as to how this spending will be used to exert leverage on the Colombian government to improve its human rights record. We further recommend that the Government at the same time supplies us with any internal assessment that has been carried out of the effectiveness of its human rights training programme for the Colombian army; and that it informs us whether that programme was scheduled to finish when it did, or whether it was abandoned because of concerns about the scale of the army's continuing participation in abuses.**

Iran

205. In March 2008 we published a Report on *Global Security: Iran* which considered Iran's human rights record.[328] We noted that during our visit to Iran in November 2007, we had had a "robust exchange" of views with the head of human rights in Iran's judiciary, Dr Mohammad Javad Larijani, and we expressed serious concern about the way that "senior figures within the Iranian regime used their religious and ideological beliefs to justify severe abuses of human rights in their country".[329] Our overall conclusion was that Iran's human rights record was "shocking". We recommended that the Government should ensure that human rights were not treated as a secondary concern to the nuclear issue in its dealings with Iran.[330]

206. In its reply to our Report, published in May 2008, the Government commented:

> The Iranian Government often claims that international concern about human rights in the country is an attempt to discredit and undermine the Islamic Republic, rather than a reflection of its failure to meet its freely undertaken human rights commitments. In that context the Government is grateful for the Committee's analysis of the situation, as an independent Parliamentary body, and we greatly welcome the fact that the Committee raised its own concerns with Iranian interlocutors during the course of the members' visit to Iran.[331]

207. In its most recent human rights report, the FCO states that Iran's record is "dismal". It notes that Iran has the highest execution rate *per capita* in the world, with at least 320 people being executed in 2008. Executions have been carried out in public, and sentences

327 Written Ministerial Statement, "Colombia", HC Deb, 30 March 2009, cols 40-42WS

328 Foreign Affairs Committee, Fifth Report of Session 2007-08, *Global Security: Iran*, HC 142, paras 99-103

329 *Ibid*., para 99

330 *Ibid*., para 103

331 Fifth Report of the Foreign Affairs Committee, Session 2007-08, *Global Security: Iran*: Response of the Secretary of State for Foreign and Commonwealth Affairs, Cm 7361, para 37

such as stoning to death and "being thrown from a height" continue to be handed down by judges. The death penalty remains on the statute books for adultery and consenting same-sex relations. Iran continues to execute juveniles: at least 130 young offenders are on death row.[332]

208. The FCO states that in 2008, Iran continued to harass activists and human rights defenders and clamped down rigidly on any form of dissent, opposition or organised protest, using charges such as "propaganda against the Islamic republic", "acting against national security" or "organising illegal gatherings". Religious and ethnic minorities, including members of the Bahá'í faith and converts to Christianity, have been persecuted. A draft penal code currently under consideration in the Iranian Parliament provides that "apostasy", "heresy" and "witchcraft" should be punishable by death. Gender inequality is widespread, and sustained by Iranian law. Trade unionists and campaigners for women's rights have been harassed.[333]

209. The FCO's report was produced before the disputed Iranian presidential elections in June 2009. At the time of producing our present Report, the events set in train by those elections are continuing to unravel. The Iranian government's restrictions on reporting by foreign news agencies following the elections make it difficult to arrive at a full assessment of the situation. However, it is clear that large numbers of people in Iran were outraged by what they considered to be deliberate manipulation of the election result, and do not now regard the government headed by Mahmoud Ahmadinejad as legitimate; that there were significant differences of opinion within the regime itself on this issue; and that the Supreme Leader's address on 19 June gave the green light for a policy of massive repression of the popular protests. The BBC has reported that there have been many arrests, and "scores—possibly hundreds—of opposition supporters and prominent reformists remain in prison".[334] Locally recruited staff of the British Embassy in Tehran have been particularly targeted, in line with the regime's policy of claiming that the protests were instigated by foreign powers, particularly the UK. Several staff members were arrested and, at the time of producing this Report, one (Hossein Rassam) remains in custody, charged with acting against national security.[335] Meanwhile, the stifling of free reporting has continued, with foreign correspondents expelled or confined to their quarters, and with sophisticated efforts being made to prevent electronic dissemination of information to the wider world by means of mobile phones, emails, or Internet media such as Twitter.

210. **We conclude that the events of June and July 2009 in Iran have revealed the extent of the desire amongst millions of Iranians for a fairer electoral process, as well as for greater personal freedoms and a normalisation of relations between Iran and the wider world, and that those events have also demonstrated the capacity of the present Iranian regime to respond with ruthless force in suppressing expressions of dissent. We further conclude that Iran's overall human rights record remains appalling. We recommend that the Government continues to act with firmness, in conjunction with its European partners and the wider international community, in pressing for the Iranian regime to**

332 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 141-42

333 *Ibid*., pp 142-44

334 "Fears grow for Iranian detainees", 3 July 2009, *news.bbc.co.uk*

335 *The Times*, "British embassy analyst faces prison sentence", 5 July 2009, http://www.timesonline.co.uk/tol/news

respect the human rights obligations it has entered into, and in actively encouraging Iran to adopt a more civilised approach to the rights of its own citizens.

211. **We conclude that the detention of British Embassy staff by the Iranian authorities is deplorable, and we recommend that the FCO should keep us informed as this situation develops. We propose to return to the issues of the safety of Embassy staff and the extent to which they are protected by diplomatic immunity as part of our forthcoming inquiry into the FCO's Annual Report for 2008–09.**

Iraq

212. The FCO's report states that "Iraq, a country where for so long human rights violations were endemic, is undertaking a long and difficult transition".[336] The report claims that "Iraqis are arguably freer now than at any time in the country's history", and that "the security situation in Iraq has improved vastly in the last few years, which has in turn improved the living conditions of the citizens of Iraq immeasurably, including women".[337] The FCO notes particularly the improvements in everyday life in Basra following the Iraqi-led Charge of the Knights operation in March 2008.[338]

213. However, the FCO report acknowledges that "significant challenges" in the field of human rights remain. It draws attention to allegations of abuse and over-crowding in Iraqi prisons, and to the large numbers of people detained without trial because of lack of capacity in the prison system. It notes continuing use of the death penalty, and the abuse of women's rights, both through violence (including so-called "honour killings") and through deprivation of opportunities in the fields of education, health care and employment. The FCO cites the estimate of the UN High Commissioner for Refugees that more than two million Iraqis are currently displaced internally and a similar number have fled to nearby countries. It notes that minorities, including Christians, have come under attack.[339]

214. Amnesty International comments that:

- Despite a marked reduction in violence in Iraq, civilians continue to be killed or injured by armed groups as well as the MNF and Iraqi government forces. The MNF and Iraqi authorities hold thousands of detainees, most without charge or trial—some for up to five years. The Iraqi authorities hold some detainees incommunicado in secret detention facilities. Iraqi forces continue to commit gross human rights violations. Prison guards and security forces are reported to commit torture; detainees held by Interior Ministry officials are particularly at risk.

- There is extensive use of the death penalty. Most death sentences follow flawed criminal procedures, with reports that 'confessions' are obtained under torture or other duress. Trials of former officials have been marred by political interference.

336 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 144

337 *Ibid*., p 146

338 *Ibid*., p 145

339 *Ibid*., pp 144-48

- Violence against women remains serious, with women threatened and attacked for not complying with strict codes of behaviour, including dress codes. The Iraqi authorities continue to fail to provide adequate protection against violence. Several million Iraqis remain displaced, both internally and abroad.[340]

215. Human Rights Watch argue that there are systemic problems in Iraq's criminal justice system, including the abuse of detainees with the aim of extracting confessions.[341] The FCO's report confirms that the Iraqi system has traditionally relied on confessional evidence to secure convictions, which all too easily leads to abuses taking place during the process. For this reason, the FCO comments, the UK is assisting Iraq by running a National Forensics Project, with the aim of developing forensic capacity to create a more professional investigative process and protect the rights of those under interrogation.[342]

216. Human Rights Watch criticises the FCO's report for making no mention of the FCO's handling of sexual abuse allegations concerning female Iraqi contractors at the British Embassy in Baghdad.[343] We discuss this matter in paragraphs 114 to 125 above.

217. **We conclude that with the departure of most British troops from southern Iraq, and the withdrawal of US troops from Iraqi towns and cities, the responsibility for creating security, which is an essential precondition of human rights, has passed decisively to the Iraqi government. We further conclude that many grave human rights concerns remain in a country which is, as the FCO puts it, making a "difficult transition". The plight of Iraqi refugees, both within Iraq and beyond its borders, and the discrimination suffered by women, contrary to the Iraqi constitution, are of particular concern. We recommend that the British Government continues to discharge its responsibility to the Iraqi people by offering their government and Parliament full and effective assistance, both practical and financial, in creating the institutions and attitudes necessary to underpin the effective upholding of human rights.**

Israel and the Occupied Palestinian Territories

218. We deal with human rights issues in relation to Israel and the Occupied Palestinian Territories in our forthcoming Report on *Global Security: Israel and the Occupied Palestinians Territories.*

North Korea

219. We commented on the human rights situation in North Korea (the Democratic People's Republic of Korea) in our Report on *Global Security: Japan and Korea*, published in November 2008. Our conclusions were as follows:[344]

340 Ev 72 (paras 38–40)

341 Ev 106 (para 49)

342 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 147

343 Ev 106 (para 50)

344 Foreign Affairs Committee, Tenth Report of Session 2007–08, *Global Security: Japan and Korea*, HC 449

> We conclude that the North Korean regime is one of the worst human rights abusers in the world, that its human rights practice is an affront to the international community, and that the main reason that the issue is not the subject of a larger international outcry is because it remains too little known. We conclude that the work of the FCO in attempting to address North Korean human rights, both bilaterally and with international partners, is to be commended. Although we conclude that human rights abuses are deeply linked to the nature of the North Korean regime, we recommend that the Government's efforts to address North Korea's human rights abuses should avoid language which Pyongyang might construe as threatening, and should be couched in terms of reference to specific obligations under international instruments to which North Korea has signed up. We further recommend that enabling the acquisition of more human rights information from inside North Korea should be a major goal of the Government's work, and that efforts should focus in particular on securing access for the UN Special Rapporteur. We further recommend that the Government should seek to co-ordinate its work on North Korean human rights with that of the South Korean Government, as Seoul's new willingness to raise human rights issues with Pyongyang may come to represent an important strengthening of the international effort in this field.[345]

> Given the failure of UN mechanisms so far to achieve any significant improvement in North Korea's human rights practice, we conclude that the Universal Periodic Review (UPR) which North Korea is to undergo at the UN Human Rights Council in December 2009 offers a major opportunity to advance the international effort to secure improvements in North Korean human rights, as well as to establish the credibility of the UPR process. We recommend that the Government should engage actively with Pyongyang and with international official and non-governmental partners to ensure that the potential of North Korea's UPR process is realised to the maximum extent possible.[346]

220. Since the publication of our Report, the political and diplomatic relationship between North Korea and the wider world has continued to deteriorate with the resumption of nuclear testing and long-range ballistic missile launches, and the decision by North Korea to withdraw from the Six-Party Talks and to declare that it no longer regards itself as bound by the 1953 armistice with South Korea that ended the Korean War.

221. In this context, it is unsurprising that the human rights situation in North Korea , insofar as it can be assessed by outsiders, remains extremely bleak. The FCO's report notes that:

> There is no freedom of expression, assembly, association, movement or information. There are no free and fair elections. The state tightly controls all media. […] There is no independent human rights monitoring organisation. […] The use of the death penalty, including public executions and extra-judicial killings, and the lack of

345 *Ibid*., para 175

346 *Ibid*., para 178

> transparency around this, also gives grave cause for concern. During the last year, the number of public executions seems to have risen markedly. […]
>
> North Koreans are subject to arrest and detention without trial. Depending on the offence, authorities can detain or punish entire families for the crimes of one member. […] Women do not enjoy equal rights. […] The government does not provide adequate nutrition and health services for all children.[347]

222. The FCO comments that large numbers of North Koreans cross the northern border with China for economic and political reasons—it is estimated that there may currently be between 20,000 and 40,000 such migrants in China's border provinces. The Chinese consider these people to be illegal economic migrants, and if caught they risk being forcibly repatriated to North Korea where they are subject to harsh penalties, including imprisonment, torture and execution. The FCO observes that in February 2008, "it was reported that a large group of people who had returned after having crossed the border were executed near the Chinese border".[348] We comment further on this issue in the section of this Report dealing with China (see paragraphs 180 and 184 above).

223. North Korea's human rights practice was highlighted—and its relations with the US further strained—when in June 2009 a closed North Korean court sentenced two US journalists to 12 years in labour camp for an unspecified "grave crime" and for allegedly illegally crossing into North Korea from China, where they were reporting on the issue of North Korean emigrants.

224. **We reiterate the conclusions of our 2008 Report on *Global Security: Japan and Korea* as regards North Korean human rights and British Government policy on the issue, including our conclusions that the North Korean regime is one of the worst human rights abusers in the world and that the Universal Periodic Review which North Korea is to undergo at the UN Human Rights Council in December 2009 offers a major opportunity to advance the international effort to secure improvements in human rights in the country. We recommend that in its response to this Report the FCO sets out what steps it is taking to achieve this advance. We further recommend that the Government provides an assessment of any ways in which its work on North Korean human rights issues is being affected by the deterioration of North Korea's relations with the West and with the other participants in the Six-Party Talks.**

Pakistan

225. In February 2008 a civilian government was elected in Pakistan, bringing to an end eight years of military rule. The FCO in its report points out that the new government faces challenges "including serious human rights issues, often related to weak state institutions".[349]

226. In our forthcoming Report on *Global Security: Afghanistan and Pakistan* we discuss specific human rights issues relating to the imposition of Shari'a law in Swat and other

347 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 140

348 *Ibid*. pp 140-41

349 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 153

districts of north-western Pakistan, and the subsequent campaign by Pakistani armed forces against Islamist militants in that region.[350] Earlier in this report we discuss allegations that the UK was complicit in the torture of British nationals in Pakistan (see Chapter 3 above).

227. The FCO draws attention to wider problems of human rights in Pakistan, listing:

> Issues of poor access to justice, impunity, discrimination and violence against vulnerable groups, including women and minorities, non-implementation of legislation relating to rights of children, arbitrary application of Islamic penal and blasphemy legislation, arbitrary application of the death penalty, extra-judicial killings, arbitrary detention and the use of torture, abuse of power by law enforcement officials and enforced disappearances.[351]

228. The FCO adds that:

> Sectarian and terrorist acts in Pakistan caused by extremists include indiscriminate killing, inadequate justice through impromptu Shari'a courts, and the destruction of girls' schools.[352]

229. The situation with regard to women's rights in Pakistan continues to be disturbing. Pakistan has a very low placing in the UN Gender Empowerment Index, at 82nd out of 93.[353] The FCO report draws attention horrific examples of "honour killings" such as the burial alive of five women in Baluchistan in August 2008 for planning to marry without family consent.[354]

230. During our visit to Pakistan in April/May 2009, we received a briefing on the work of the British High Commission's Forced Marriages Unit in Islamabad. We were told that forced marriages account for a large part of consular work at this Post, with 44 "rescue visits" since the establishment of the unit, and 124 cases investigated in the previous 12 months. We were told that every report from either a victim or a third party is followed up. At an operational level, staff from the consular division try to establish direct contact with anyone they feel is at risk, using a combination of planned visits and "cold-calling". Although the unit can approach the courts to request legal protection for victims, we were told that the unit has successfully used more low-key and nuanced approaches, including persuasion, to positive effect.

231. Human Rights Watch praises the FCO for including Pakistan as a "major country of concern" in this year's human rights report, and describes the entry for Pakistan as "generally good". However, it criticises the Government for mentioning abuses by the

350 Foreign Affairs Committee, Eighth Report of Session 2008-09, *Global Security: Afghanistan and Pakistan*, HC 302, paras 161–62

351 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 153

352 *Ibid*.

353 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 155

354 *Ibid*.

intelligence and policy authorities while "conspicuously fail[ing] to mention allegations of UK complicity in any of those abuses".[355]

232. Despite Pakistan's record of human rights abuses, the country retains a vigorous civil society and press, which can act as a positive influence. This is illustrated by the "long march" of summer 2008, in which thousands of lawyers and civil society activists took part in a country wide protest to demand the restoration to office of senior judges dismissed by then President Musharraf. Amnesty International commended "important work" done by the British Government in promoting an independent judiciary in Pakistan.[356]

233. **We conclude that human rights abuses in Pakistan continue to be widespread. In particular, women and girls continue to be subjected to violence and discrimination.**

234. **We conclude that the work of the Forced Marriages and Child Abduction Unit at the British High Commission in Islamabad is to be commended. We recommend that in its response to this Report, the FCO should supply us with an update on the work of the Unit, and on the implementation of the UK/Pakistan Judicial Protocol on Child Abduction, and detail its plans for supporting and promoting the work of the Unit in future.**

Russia

235. In our Report on *Global Security: Russia*, published in November 2007, we considered Russia's human rights record in detail.[357] We concluded that "the trend overall in Russia in recent years has been towards a less open and plural political environment, combined with continuing serious human rights concerns".[358] We recommended that the British Government could improve the effectiveness of its human rights dialogue with Russia by stressing to a greater extent that the political and human rights standards at issue are not Western, but international, that they are not foreign impositions but commitments to which Russia has voluntarily signed up, and that it was in Russia's interests to be taken seriously as an international actor which respects its international commitments.[359]

236. The FCO report makes an attempt to accentuate the positive, by stating that "the UK welcomes and supports new President Dmitri Medvedev's stated agenda of promoting the rule of law in Russia".[360] However, it also draws attention to concerns over media freedom, safety of journalists, civil society, racism and xenophobia, and the penal system. The FCO comments that the security situation in the North Caucasus remains fragile, with a particular deterioration in security in Ingushetia and Dagestan. It notes allegations that in those areas a culture of impunity on the part of federal law enforcement bodies is fuelling further human rights allegations including abductions, torture and extra-judicial killings.[361]

355 Ev 107, para 55

356 Ev 71, paras 23-26

357 Foreign Affairs Committee, Second Report of Session 2007–08, *Global Security: Russia*, HC 51, paras 40–91

358 *Ibid*., para 49

359 *Ibid*., para 70

360 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 157

361 *Ibid*., pp 159-61

237. Political and diplomatic relations between the UK and Russia have been strained in recent years. In our Report on *Global Security: Russia*, published in November 2007, we discussed the consequences of the "Litvinenko case" (the murder of former Russian intelligence agent Alexander Litvinenko in London in 2006).[362] In our Report on the FCO's annual report for 2007-08, we detailed the difficulties which have been faced by the British Council in Russia in recent years.[363]

238. The UK participates in six-monthly EU-Russia human rights consultations, and a UK-Russia bilateral consultation took place in January 2009. In 2008-09 the UK spent £1.5 million on projects supporting human rights and conflict prevention in Russia. These include work in the field of penal reform and support for NGOs working to promote media freedom. The FCO is encouraging Russia to engage constructively with the UN Universal Periodic Review mechanism.[364]

239. Human Rights Watch told us that the FCO's comments on Russia "could have been more hard-hitting". They noted that "Russia is one of the most dangerous countries in the world for journalists, with more than 14 outstanding unsolved murders of journalists in the last nine years". They criticise the FCO entry for lacking "any serious discussion of economic or social rights issues, the lack of democratic accountability, corruption (including the weakened judiciary) and Russia's lack of co-operation with international institutions".[365]

240. In a report published in July 2009, Amnesty International considered the human rights situation in the North Caucasus.[366] The report commented:

> On 16 April 2009 the Russian authorities declared an end to the counter-terrorism operation in Chechnya. Yet serious human rights violations continue to be committed in a climate of impunity in Chechnya and other parts of the North Caucasus, in particular in Ingushetia, Dagestan and Kabardino-Balkaria. The civilian population continues to live in an atmosphere of lawlessness that engenders fear and insecurity. Armed opposition groups in the region continue to mount attacks. Law enforcement officials conduct counter-terrorism measures which, in many instances, entail serious human rights violations. A legitimate aim—that of tackling violence by armed groups and bringing stability to the North Caucasus—is still being pursued by means which violate international human rights law.[367]

241. **We conclude that President Medvedev's commitment to promoting the rule of law in Russia is undermined by continuing human rights violations. The extent of the threat to press freedom arising from intimidation and even murder of journalists is particularly worrying, as is the rise in xenophobia and racism. We further conclude that there is substantial evidence of major human rights abuses in the republics of the**

362 Foreign Affairs Committee, Second Report of Session 2007-08, *Global Security: Russia*, HC 51, paras 110–24

363 Foreign Affairs Committee, Second Report of Session 2007-08, *Foreign and Commonwealth Office Annual Report 2007–08*, HC 195, paras 269–75

364 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 157–60

365 Ev 107 (paras 57–61)

366 Amnesty International, Rule without law: Human rights violations in the North Caucasus, July 2009

367 *Ibid*., p 4

Russian Federation in the North Caucasus. We recommend that the British Government continues to work with its international partners to maintain a constructive relationship with Russia, whilst at the same time taking effective steps to encourage that country to develop a human rights culture which reflects more closely the international norms and commitments to which Russia has voluntarily signed up.

Saudi Arabia

242. The UK has expressed concern to Saudi Arabia over use of the death penalty, corporal punishment, and the quality of judicial procedure. However, the FCO's report comments that "many of our concerns regard punishments proscribed [*sic*][368] by Islamic Shari'a law, a legal system supported by most Saudis".[369] The report also claims that the "severe restrictions" on women "have the support of the majority of Saudi men and women". The FCO states that the UK "take[s] every opportunity to urge Saudi Arabia to pursue laws and practices that foster tolerance and mutual respect".[370] It has run projects in the country that have supported shelters for victims of domestic violence and delivered training to women in the charity sector.

243. Human Rights Watch comments that "the UK continues to tread carefully around the issue of human rights in Saudi Arabia". It argues that the FCO's comment about Shari'a law is misplaced, because the Saudi government allows no debate about the meaning of Shari'a law and blocks all alternative interpretations to its own exceptionally harsh one:

> The report suggests that support for Shari'a equates with support for the harshest punishments. Yet many other Muslim countries which implement Shari'a manage to do so without chopping off hands and heads.[371]

244. Human Rights Watch refers to "the poor quality of the judicial system" in Saudi Arabia, and claims that "many of the most abusive features of the Saudi justice system are contrary to Shari'a". Tom Porteous told us that there had been a little progress, not least that Human Rights Watch itself is now admitted to Saudi Arabia on official visits.

245. Kate Allen of Amnesty International told us that she had found the section on women in Saudi Arabia in this year's FCO report difficult reading:

> It was apologist in tone, and seemed to imply that […] men and women in Saudi Arabia were pretty happy with the institutionalised nature of the discrimination that takes place against women. It talked about the ability of richer women to reclaim their rights by leaving Saudi Arabia, which does not really feel like progress in terms of women's rights. We at Amnesty continue to document women being treated as second-rate citizens, subordinate to men under family law, denied equal opportunities, not allowed to drive. […] And the latest case, this year, of an eight-

368 The word intended is presumably "prescribed".

369 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 160

370 *Ibid*., p 161

371 Ev 107, para 62

> year-old being offered to a 60-year-old man in marriage—only this year. This is still happening and this is still how women's rights are being treated..[372]

246. We commented in last year's Report that "the human rights situation in Saudi Arabia is one of the worst in the world", and recommended that the UK's dialogue with the country should have measurable and time-limited objectives.[373] The Government did not directly address this recommendation in its response. Whilst stating that it shared the Committee's concerns, the Government commented that it

> disagrees that our policy of assisting with gradual reform is not adequate. Sustainable reform cannot be imposed on a country. […] Whilst reform in Saudi Arabia is not at the pace which we would like to see, recent announcements on the reform of judiciary are significant and should be welcomed. These changes will improve access to the judicial system, including for women.

247. **We conclude that human rights continue to be violated on a massive scale in Saudi Arabia. We consider that the FCO's latest report pulls its punches on this matter. Although it lists Saudi Arabia as a "country of concern", it lays emphasis on the degree of cultural acceptance of severe punishments and of discrimination against women. Whilst we agree with the Government that "sustainable reform cannot be imposed on a country", we conclude that the current policy of "assisting with gradual reform" has borne very little fruit. The fact that Saudi Arabia is a strategic ally of the UK should not lead to an official policy of turning a blind eye to its human rights failings. We repeat our recommendation in last year's Report that the UK's ongoing dialogue with Saudi Arabia should have measurable and time-limited objectives in relation to human rights, and specifically in relation to women's rights, and that the Government informs us of these objectives in its response to this Report.**

Somalia

248. The protection of human rights in Somalia has been impeded for many years by the lack of strong state institutions. The international community has supported the Transitional Federal Government (TFG) in its civil conflict with Islamist militants. In January 2007, Ethiopian military forces entered the country and toppled the militants who had seized control of the capital Mogadishu. In January 2009 the mandate of the TFG was extended till 2011, at which time it is anticipated national elections will be held. As a consequence, Ethiopian forces have now withdrawn from Somalia.

249. Last year we criticised the FCO for its handling of Somalia in its human rights report for 2007. Somalia was not listed as a "country of concern", it received mention only in three paragraphs in a chapter on conflict prevention, and the report did not refer to alleged abuses carried out by Ethiopian troops in the country. We noted that "strong denials by the Ethiopian government are not sufficient cause for omitting these allegations". We recommended that the Government should ensure that human rights are central to its

372 Q 86

373 Foreign Affairs Committee, Ninth Report of Session 2007–08, *Human Rights Annual Report 2007*, HC 533, para 63

approach in Somalia, and that it should be included as a country of concern in next year's report.[374]

250. In its latest report the FCO has listed Somalia as a country of concern.[375] It comments that Somalia's human rights record remains poor, with violence and fighting continuing throughout most of the country, particularly in Mogadishu and other areas of southern and central Somalia. Violence against women, including sexual violence, is widespread. The FCO notes an incident in which a 13-year-old girl who had been raped was stoned to death, accused of adultery. It comments that this incident "has led to many Somali people protesting and questioning the use of such punishments within their own community".[376]

251. The FCO argues that the UK is "leading the international effort to re-build the Somali state", shaping UN Security Council policy and "continually press[ing] for greater focus on human rights capacity-building in Somalia". The UK is the second largest bilateral humanitarian and development donor. It has "raised its concerns with the Ethiopian government regarding alleged human rights abuses by its troops in Somalia".[377] However, the FCO comments on the lack of available information about the human-rights situation in Somalia, arguing that "there is little opportunity to monitor the limited institutional system, to gather and verify facts or to understand fully what's actually happening on the ground".[378]

252. The Government states that it supports the establishment of a UN commission of inquiry to investigate alleged human rights. However, it argues that "the timing must right", and that to launch an inquiry at the wrong time "could have unintended consequences and increase the threat to the humanitarian community and the UN". It notes the difficulty of gathering verifiable information about abuses.[379]

253. Human Rights Watch remains critical of the FCO for continuing to describe abuses committed by insurgent fighters in Somalia as fact, but abuses by Ethiopian and TFG security forces as "reported". Human Rights Watch argues that:

> In reality the evidence of war crimes and other serious abuses by Ethiopian and TFG forces in Somalia from late 2006 through the end of 2008 is overwhelming and undeniable. […] The UK government cannot engage effectively around these issues with either the Ethiopian government or the TFG unless it takes the position that these serious abuses have without question occurred.[380]

254. Human Rights Watch also claims that assistance to the TFG police from the UK and other donors has been "alarmingly free of human rights conditionalities". They argue that TGF policy forces have "committed serious conflict-related abuses and violent acts of criminality against civilians in Mogadishu", and the current Commissioner of Police, Abdi

374 Foreign Affairs Committee, Ninth Report of Session 2007–08, *Human Rights Annual Report 2007*, HC 533, para 174

375 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, pp 162–63

376 *Ibid*., p 162

377 *Ibid*., pp 162-63

378 *Ibid*., p 163

379 *Ibid*., p 163

380 Ev 107, para 64

Qeybdid, "is implicated in serious abuses and should be replaced as a condition of any further donor assistance to the police forces".[381]

255. The Government's support in principle for a UN commission of inquiry is welcomed by Human Rights Watch. However, they argue that the FCO report's concern about the timing of any commission is "overblown", on the grounds that the job of collecting evidence will be a major one and needs to begin as soon as possible, before the trail goes cold.[382]

256. **We conclude that the FCO is to be commended for including Somalia as a "country of concern" in its latest report, following our previous recommendation. We further conclude that serious human rights abuses, including violence against women, are continuing across much of Somalia, particularly in Mogadishu and in central and southern Somalia. We conclude that the Government's support for a UN commission of inquiry into abuses in Somalia is to be welcomed, though we do not accept its view that the time is not yet right for such a commission to be established. We recommend that, in its response to this Report, the FCO states what conditions must be satisfied before the time is deemed to be right for a commission to be set up. We further recommend that, in that response, the FCO indicates what steps it is taking to ensure that UK aid is not supplied to Somali police forces where there is reason to suppose that those forces have been complicit in human rights abuses.**

Sri Lanka

257. President Rajapakse took office in Sri Lanka in November 2005 in the context of a 2002 ceasefire agreement with the Tamil Tigers (Liberation Tigers of Tamil Eelam) that was already crumbling and political negotiations on a peace agreement that had gone nowhere. Government and Tamil Tiger militants clashed regularly during 2006 and 2007. By this point the ceasefire agreement was dead in all but name. During 2008 the Government finally declared it dead and launched a massive military offensive against the Tigers, which has now led to what appears to be their complete defeat.

258. On 18 May 2009 the Sri Lankan military reported that the leader of the Tigers, Velupillai Prabhakaran, had been killed. The head of the Sri Lankan army, Lt Gen Sarath Fonseka, said the military had defeated the rebels and "liberated the entire country". The BBC noted that this claim cannot be verified as reporters are barred from the war zone.[383]

259. Aid agencies have expressed concern about an acute humanitarian emergency in northern Sri Lanka as large number of civilians have fled the fighting, while others have remained trapped in the so-called safe zone which has been subject to heavy bombardment. Both sides in the conflict have been accused of human rights abuses, including the recruitment and deployment of child soldiers. There have been allegations, which the authorities deny, that the armed forces have used cluster munitions. The LTTE have been accused of using civilians as human shields on a massive scale.

381 Ev 107–08, para 65

382 *Ibid*., para 66

383 http://news.bbc.co.uk/1/hi/world/south_asia, 18 May 2009

260. Some observers worry that the growing triumphalism of the government is being accompanied by increased intolerance towards independent critics. On 8 January, the editor of the Sunday Leader newspaper, Lasantha Wickramatunga, was shot dead in Colombo. Prior to his death, he wrote an open letter in which he stated that, if he was assassinated, he expected that it would be by elements from within the state.

261. During the earlier fighting, the Foreign Secretary called for a ceasefire. This call was greeted with hostility by supporters of the Sri Lankan government. On 17 May a large crowd demonstrated outside the British High Commission in Colombo and burnt an effigy of Mr Miliband.

262. In its report, the FCO noted that "allegations of extra-judicial killings, abductions, disappearances and violence and intimidation against the media continue. There has been little progress in the investigation of those incidents. The prevalent culture of impunity is one of the main obstacles to peace in Sri Lanka."[384] However, Sri Lanka is not one of the "countries of concern" singled out for special attention in the FCO's report.

263. On 14 May the International Committee of the Red Cross announced that thousands of people remained trapped in a small area along the coast within the conflict zone:

> As fighting goes on unabated, civilians are forced to seek protection in hand-dug bunkers, making it even more difficult to fetch scarce drinking water and food. "Our staff are witnessing an unimaginable humanitarian catastrophe," said the ICRC's director of operations, Pierre Krähenbühl, from the ICRC's headquarters in Geneva today. "Despite high-level assurances, the lack of security on the ground means that our sea operations continue to be stalled, and this is unacceptable," added Mr Krähenbühl. "No humanitarian organization can help them in the current circumstances. People are left to their own devices."[385]

264. The following day Rt Hon Douglas Alexander, the Secretary of State for International Development, commented that he was "utterly appalled" that the ICRC is unable to evacuate war wounded to safety or provide aid to the 50,000 civilians trapped in the conflict zone.[386]

265. On 18 May, the Foreign Secretary along with other EU Foreign Ministers issued a statement stating that they were "appalled by the loss of innocent civilian lives as a result of the conflict" and called on the Government of Sri Lanka and the LTTE to take "all necessary steps to prevent further loss of life".[387]

266. As noted earlier in this Report, on 27 May the UN Human Rights Council passed a resolution praising the Sri Lankan government in its military campaign against Tamil Tiger insurgents, and describing the conflict as a domestic matter that did not warrant outside interference. The motion, proposed by the Sri Lankan government, was supported

384 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 35

385 http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/sri-lanka-news-140509

386 http://www.dfid.gov.uk/Media-Room/News-Stories/2009

387 http://www.fco.gov.uk/en/newsroom/newsfiles1/005-sri-lanka/

by 29 countries including China, India, Egypt and Cuba. It was opposed by 12 countries including the UK.[388]

267. However, Navi Pillay, the UN High Commissioner for Human Rights, has called for an international war crimes inquiry, saying she believed that both sides might be guilty of war crimes. The UN Secretary-General has been reported to be privately supportive of this approach:

> Ban Ki-moon, at a closed-door briefing for Security Council members [on 5 June], called for a credible inquiry to be undertaken with international backing and full support from Sri Lanka's government. He declined to elaborate on exactly how the inquiry should be done, but he urged an examination of what he said were serious allegations of violations of international humanitarian laws, according to diplomats and U.N. officials who attended.[389]

268. On 10 June Tom Porteous of Human Rights Watch told us that "it is very difficult to get a very accurate picture of what is going on", but that "terrible loss of life and destruction" had taken place. He added:

> Sri Lanka should be included as a country of concern, perhaps in next year's report. The human rights situation is about not just the behaviour of the Sri Lankan Government forces and the Tamil Tigers in the zone of conflict in the north, but the overall situation in the country. Critics of the Government—whether they are in the north or the south—tend to get into trouble. They are targeted in one way or another, and that is a source of real concern.[390]

269. Mr Miliband told us on 16 June that the reason why Sri Lanka was not listed as a "country of concern" in the FCO's report was the timing of writing the report: "obviously at the height of the fighting in March and April there would have been very serious concern".[391] He subsequently informed us that it will definitely feature as a country of concern in next year's report.[392]

270. Mr Miliband stated that the test for Sri Lanka was whether it could live up to the commitments that President Rajapakse had given immediately after the cessation of hostilities: "to find a way of giving an inclusive political role to all the communities in Sri Lanka". He also noted that there is a massive problem of internally displaced persons (IDPs), with 270,000 IDPs needing to be resettled; and a huge task of demining to be carried out.[393]

271. On 14 July the Government supplied Parliament with its latest assessment of the humanitarian situation in Sri Lanka. It concluded that the situation was stabilising but that there was still a population of almost 284,000 IDPs held in camps. Conditions in the camps

388 See paras 145–46 and 152 above.

389 *Associated Press*, 6 June 2009, "UN chief urges war crimes probe in Sri Lanka"

390 Q 79

391 Q 183

392 Q 184

393 Q 183

were continuing to improve, but the Government remained concerned about high levels of malnutrition, particularly among children, overcrowding and inadequate sanitation facilities. The Government also expressed concern about the lack of freedom of movement of internally displaced people (IDPs).[394]

272. On 19 July the Prime Minister, giving evidence to the Liaison Committee, said that:

> I have talked to the President of Sri Lanka on a number of occasions. I have been very concerned about the humanitarian problems that have arisen from the numbers of internally displaced people. We think the number is about 280,000. […] There are high levels of malnutrition, overcrowding and inadequate water and sanitation facilities […] We are concerned about the lack of freedom of movement of the people in the camps, the restrictions that are put on activities. [395]

273. Asked whether it was time that the Sri Lankan Government recognised the rights of the Tamil people to an element of self-determination, the Prime Minister replied:

> This is, if I may say, exactly the position that I put to the President, that to have an end of military conflict does not mean that the problem has gone away. It has got to be dealt with politically and it has got to be dealt with by discussion and negotiation and some form of conciliation. That is why we are anxious that Des Browne, who is our envoy to this area, has the chance to talk to all the different groups and that is why we are putting as much pressure on the President as possible that this has got to be a seen as a step towards and a mean by which a political solution can be found.[396]

274. **We conclude that the FCO's decision to include Sri Lanka as a "country of concern" in next year's human rights report is amply justified by recent events in that country, and is to be welcomed. We recommend that, notwithstanding the regrettable vote in the UN Human Rights Council on 27 May, the Government should press for the setting up of an international war crimes inquiry, to investigate allegations of atrocities carried out by both sides in the Sri Lankan civil war. We further recommend that the Government uses such leverage as it has at its disposal to encourage the Sri Lankan government to tackle what the FCO refers to as "the prevalent culture of impunity".**

Sudan

275. The FCO's report sets out developments in the human rights situation in Sudan in the years since the Comprehensive Peace Agreement (CPA) of 2005 brought to an end the civil war between North and South Sudan. It finds that the record continues to be poor, with a widespread culture of impunity. The FCO draws attention to issues of concern including the death penalty; women's rights; torture; Hudud punishments (amputation, flogging and stoning); freedom of the media; and harassment and arrest of activists and political figures. In the western region of Darfur in particular there are systematic violations of human

394 HC Deb, 14 July 2009, cols 12-13WS

395 Uncorrected transcript of oral evidence given by the Prime Minister to the Liaison Committee, 16 July 2009, HC 257-ii, Q 305

396 *Ibid*., Q 306

rights, and lack of respect for international humanitarian law by government, militias and rebel groups.[397]

276. The FCO notes some signs of progress. The ceasefire in Southern Sudan following the 2005 agreement has been largely observed. The joint UN-African Union Peacekeeping Force for Darfur (UNAMID) has been deployed. In June 2008 the UN and African Union jointly appointed a single chief mediator for the Darfur political process.

277. However, the FCO comments that "rights enshrined in the agreement and constitution have had little impact on the ground. For instance, a National Human Rights Commission, which should have been established under the CPA, has still not been set up. UNAMID is still suffering from shortfalls in funding and equipment, preventing its full deployment. The UK has offered £4 million in support for training and equipping African troop-contributing countries for UNAMID.

278. In paragraph 162 above we noted that the International Criminal Court has been blocked in its attempts to bring individuals to trial for alleged human rights violations in Darfur. The Sudanese government has refused to respect arrest warrants issued in 2007 for the Sudanese minister Ahmad Muhammad Harun and the Janjaweed militia leader Ali Kushayb, and the warrant issued in March 2009 in respect of the Sudanese President, Omar al-Bashir, accused of genocide, war crimes and crimes against humanity.

279. Human Rights Watch criticises the FCO's report for saying nothing about the campaign led by some African and Arab states to have the warrant for President al-Bashir deferred by the Security Council, under Article 16 of the Rome Statute. Human Rights Watch comments that:

> Given the nature of the crimes committed in Darfur, the clear political/military chain of command and Bashir's failure to cooperate with the ICC on previous warrants, the UK should make clear that a deferral of this warrant would be unjustified. The notion that justice can be traded for peace is a false one. The victims of abuse in Darfur have a right to justice and the world must tackle such crimes head-on if they are to hope to prevent future mass atrocities.[398]

280. On 2 July 2009 the African Union, at a meeting held in Libya, resolved to halt co-operation with the ICC over its decision to charge President al-Bashir with war crimes.[399]

281. Earlier, on 18 June, the UN Human Rights Council had voted to continue the mandate of the UN Special Rapporteur for Human Rights in Sudan, Dr Sima Samar.[400] The proposal was carried by 20 votes to 18, with 9 abstentions. Sudan opposed the proposal; the UK was in favour. It was reported that the United States, which has only just taken up a

397 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 164

398 Ev 108, para 68

399 *BBC news website*, "African Union in rift with court", 3 July 2009

400 Associated Press, "UN rights body votes to continue Sudan scrutiny", 18 June 2009, http://www.google.com/hostednews/ap

seat on the Council, "played a key behind-the-scenes role in negotiating the text ultimately adopted".[401]

282. Dr Samar's most recent report, presented to the Council before this vote, concludes that:

> Despite some positive legislative developments, the human rights situation in the Sudan remains critical, with daunting challenges in terms of securing, in particular, the rights to life and security of the person, and the effective administration of justice.[402]

Dr Samar draws attention to widespread arbitrary arrest and detention, ill-treatment in custody, use of torture, and (in Darfur) direct and indirect attacks on civilians by security forces and government-supported militia.[403] She states that "a key challenge to human rights protection continues to be the lack of political will and capacity to ensure justice and accountability for serious violations of human rights and IHL. In most incidents authorities have failed to hold perpetrators accountable."[404] There are continuing reports of "violence and sexual abuse against women and children by state, non-state, criminal groups and bandits".[405] Interlocutors in Khartoum and Darfur reported a climate of fear, and an inability to exercise freedom of speech or association for fear of reprisal.[406]

283. **We conclude that continuing widespread abuses of human rights in Sudan are a matter of great concern. We further conclude that the recent decision of the UN Human Rights Council, by a narrow majority, to continue the investigation of human rights abuses in Sudan is to be welcomed. We recommend that the British Government continues to be pro-active in offering support for the Darfur peace process and for UN peacekeeping forces. We further recommend that the Government works closely with its international partners in an effort to ensure that the writ of the International Criminal Court operates in Sudan.**

Zimbabwe

284. On 30 January 2009 the National Council of the opposition Movement for Democratic Change in Zimbabwe announced its intention to proceed with the power-sharing deal agreed on 15 September 2008 under which Robert Mugabe would remain President whilst Morgan Tsvangirai became Prime Minister. That decision followed the Extraordinary Summit of the Southern African Development Community on 26–27 January 2009, held in Pretoria, at which parties agreed a way forward. Tsvangirai was sworn in as Prime Minister on 11 February with a Cabinet formed two days later. His wife was killed in an apparent road accident in March; he himself ruled out foul play, though others have not done so.

401 *Reuters*, "U. S. takes seat at U.N. rights forum, urges unity", 19 June 2009, http://www.reuters.com

402 UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Sudan*, Sima Samar, June 2009, para 7

403 *Ibid*, paras 8, 11

404 *Ibid*., para 17

405 *Ibid*., para 48

406 *Ibid*., para 90

285. On 13 May Mr Tsvangirai launched the unity government's "100-day plan", aimed at "the implementation of key sector reforms and the initiation of essential development and rehabilitation programmes".[407] However, Mr Tsvangirai has also drawn attention to repeated violations of the power-sharing agreement by Mr Mugabe and his political allies, including a failure to implement economic and fiscal reforms required by the International Monetary Fund.[408]

286. The FCO report sets out in detail the extent of human rights abuses in Zimbabwe under the Mugabe regime,

> including torture; intimidation; arbitrary arrests and detentions; forced displacements; violence; repressive legislation; lack of freedom of expression, association and the press; and politicisation of food. We have seen a frightening deterioration of the situation in 2008, which has drawn criticism from across the international community. [409]

287. The FCO notes that the 2008 elections themselves were "characterised by intense violence, torture, abductions and murder perpetrated by agents of the state", often militia or so-called 'war veterans', but also the military and, to a lesser extent, the police. The FCO estimates that from March 2008, more than 5,000 people were victims of violence, with at least 36,000 displaced. Both rounds of elections were declared undemocratic by the international community.[410]

288. The political crisis which followed the disputed elections was accompanied by a developing humanitarian crisis. NGOs withdrew from most activities before the elections and any resumption of activities was prevented by the post-election violence. On 4 June 2008 the Zimbabwe government announced that it was suspending the field operations of most NGOs, a ban not lifted till 29 August. NGOs continue to face severe challenges.[411]

289. Life expectancy in Zimbabwe is the lowest in the world, more than 2,500 people a week are dying from AIDS-related illnesses, there have been 1,900 deaths from cholera, over five million people (nearly half the population) need food aid, essential services have largely ceased to function, over 80% of the population is unemployed, the economy is subject to hyper-inflation, and health and education provision is on the point of collapse.[412]

290. The UK gave £45 million in aid to Zimbabwe in 2008, and expects that "it will be necessary to give sustained large-scale humanitarian support from the international community for the foreseeable future". In 2008 the UK increased funding for civil-society organisations, "including those seeking to uphold human rights and democratic freedoms", to £3.5 million.[413]

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407 http://www.zimbabweprimeminister.org

408 http://www.inthenews.co.uk/news/world/international-affairs

409 Foreign and Commonwealth Office, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, p 174

410 *Ibid*., p 174

411 *Ibid*., p 175

412 *Ibid*., p 177

413 *Ibid*., p 178

291. Human Rights Watch criticises the FCO report for not focussing sharply enough on "the need for increased pressure on Zimbabwe to effectively end impunity for past human rights abuses by ZANU-PF and its allies". It notes that the report does not set benchmarks to be met by any new government in Zimbabwe before development aids can flows can resume. However, Human Rights Watch concludes that "for the time being, the UK should maintain its high levels of humanitarian aid (but avoid delivering aid directly to the government) and press for the retention of targeted EU sanctions against those individuals responsible for serious rights and governance abuses".[414]

292. On 7 June Morgan Tsvangirai began a three-week visit to Western countries seeking "re-engagement" and urging them to lift what he called "restrictive measures" against Zimbabwe now that a coalition government was making progress toward economic and democratic reform. Mr Tsvangirai told Dutch television that he had a "workable relationship" with Mr Mugabe. He was also quoted as saying that "As far as I know today, there are no political prisoners in Zimbabwe. If there is a due process of the law, it must be followed."[415]

293. Mr Miliband told us that the current position in Zimbabwe is "a tale of two halves", with the security forces still being in the grip of the ZANU-PF machine, but the economic, educational and social welfare institutions of the country being under the command of Prime Minister Tsvangirai. He stated that the British Government was pursuing a threefold policy towards Zimbabwe: first, to ensure that the cross-party power-sharing agreement is actually implemented, with appropriate benchmarks and staging posts; second, to regard the current government as a transitional one, because the international community does not recognise Mr Mugabe as the victor of the March 2008 elections; and third, "to continue to stand by the commitments to support the eventual renewal of Zimbabwe", with an internationally supported reconstruction programme, once there is a government in place in which the international community can have confidence.[416]

294. **We conclude that the human rights and humanitarian situation in Zimbabwe continues to be appalling, although the participation of the opposition in a transitional coalition government, and the recent measure of economic stabilisation, offer glimmers of hope. We further conclude that it is difficult to see how fundamental reforms in governance, the rule of law, and ending human rights abuses can be achieved as long as Robert Mugabe and his supporters are still in power and control the security apparatus. We recommend that the Government should provide immediate aid to Zimbabwe's suffering people, subject to safeguards against its falling into the hands of Mr Mugabe and his supporters, of encouraging progress towards the early holding of fair and free elections, and of making preparations for a long-term reconstruction package to be delivered when a genuinely democratic and representative government is finally in place. We further recommend that the FCO should continue to raise the gross violations of human rights in Zimbabwe at the UN Security Council.**

414 Ev 110 (paras 90-93)

415 *Zimbabwe Guardian*, 8 June 2009, "There are no political prisoners in Zimbabwe: Tsvangirai"

416 Q 184

8 Overseas Territories

295. The UK is responsible under international law for ensuring that its Overseas Territories meet their obligations arising from international human rights conventions which have been extended to them.[417] During our inquiry into Overseas Territories in 2007-08, the FCO told us that it had an objective to extend every key international human rights convention to all the inhabited Overseas Territories.[418] In our subsequent Report, published in July 2008, we considered issues of human rights in the territories.[419] We discussed in particular five issues on which we received evidence that human rights were being infringed: homosexual rights; conditions of migrant workers; rights of prisoners and illegal immigrants; rights of 'non-Belongers'; and conscription.[420] Our conclusions and recommendations are set out in the Report.

296. Since publication of that Report, the FCO has submitted to us in draft form two proposed new constitutions for Overseas Territories: for the Cayman Islands, and for St Helena, Ascension and Tristan da Cunha. Although we were given limited time to consider these drafts, we were able to identify a number of matters of concern which we raised in subsequent correspondence with the FCO. We publish that correspondence with this Report, and will summarise here its main points.

297. Both draft constitutions contained references in their preambles to the Christian religion. The preamble to the Cayman Islands draft constitution referred to that Territory as being "a God-fearing country based on traditional Christian values, tolerant of other religions and beliefs". There were also reference to "Christian values" in the main text of the draft. The preamble to the St Helena, Ascension and Tristan da Cunha draft constitution refers to those islands "wishing to continue as communities of tolerance, with respect for government and the law, Christian and family values and protection of the environment".

298. The Cayman Islands draft constitution does not explicitly mention sexual orientation as a prohibited ground for discrimination. In addition, there is an exemption for any claim of discrimination on grounds of, *inter alia*, "public morality".

299. The St Helena, Ascension and Tristan da Cunha draft constitution, by contrast, does explicitly mention sexual orientation as a prohibited ground for discrimination, and it does not contain a "public morality" qualification.

300. In correspondence with the then Parliamentary Under-Secretary responsible for the Overseas Territories, Gillian Merron MP, and with her successor in the post after the June 2009 reshuffle, Chris Bryant MP, we expressed our concern at the possible effect of these provisions. Our arguments are set out in detail in that correspondence. We are not persuaded by the Ministerial responses we received. We note that from those responses it is

417 Foreign Affairs Committee, Seventh Report of Session 2007–08, *Overseas Territories*, HC 147–I, para 246

418 *Ibid*., para 245

419 *Ibid*., paras 245-85

420 *Ibid*., para 246

clear that the references to Christian values were inserted in the drafts at the behest of the Islanders themselves, whilst the FCO in turn insisted on adding the references to "tolerance" with which they are bracketed.

301. It is also clear that it was at the behest of the Islanders that explicit reference to sexual orientation was dropped from the Cayman Islands draft constitution. The FCO argues that the list of grounds for discrimination is open-ended and thus does not exclude sexual orientation. However, the case-law on European Convention on Human Rights Article 14 is clear that sexual orientation is a "status" and that differential treatment on that basis requires particularly weighty justification.[421] In our view, the references to Christian values throughout the draft constitution, in conjunction with the public morality qualification on the non-discrimination provision, must give rise to a risk that Cayman Islands courts will not necessarily follow the Strasbourg Article 14 case-law in the apparent absence of anything in the constitution which requires them to do so.

302. **We conclude that the deliberate omission of reference to sexual orientation as a prohibited ground for discrimination in the Cayman Islands draft constitution is deplorable. The possibility cannot be ruled out that the drafting of the constitution in this regard may result in Cayman Islands courts affording to citizens of those islands less than the full protection which they are entitled to under the European Convention on Human Rights.**

303. **We recommend that in all future discussions with Overseas Territories about revisions to their constitutions, the FCO insists that no specific religion or faith community be singled out for privileged mention, and that anti-discrimination provisions make explicit mention of sexual orientation.**

421 See, for instance, paragraph 37 of the Strasbourg judgment in the case of Karner v Austria (2003).

Formal Minutes

Tuesday 21 July 2009

Members present:

Mike Gapes, in the Chair

Sir Menzies Campbell	Mr Malcolm Moss
Mr David Heathcoat-Amory	Sandra Osborne
Mr John Horam	Mr Greg Pope
Mr Eric Illsley	Mr Ken Purchase
Mr Paul Keetch	Sir John Stanley
Andrew Mackinlay	Gisela Stuart

Draft Report (Human Rights Annual Report 2008), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 78 read and agreed to.

Paragraph 79 read, amended and agreed to.

Paragraphs 80 to 270 read and agreed to.

Paragraph 271 read, amended and agreed to.

Paragraphs–(*The Chairman*)–brought up, read the first and second time, and inserted (now paragraphs 272 and 273).

Paragraphs 272 to 291 (now paragraphs 274 to 293) read and agreed to.

Paragraph 292 (now paragraph 294) read, amended and agreed to.

Paragraphs 293 to 301 (now paragraphs 295 to 303) read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 21 January, 4 March and 6 May.

[Adjourned till Wednesday 21 October at 2 pm.

Witnesses

Wednesday 10 June 2009

Tuesday 16 June 2009

List of written evidence

FOREIGN AND COMMONWEALTH OFFICE

OTHER MEMORANDA

Oral evidence

Taken before the Foreign Affairs Committee on Wednesday 10 June 2009

Members present:

Mike Gapes, in the Chair

Mr. Fabian Hamilton	Sandra Osborne
Mr. John Horam	Mr. Ken Purchase
Mr. Eric Illsley	Sir John Stanley
Andrew Mackinlay	Ms Gisela Stuart

Witnesses: **Kate Allen**, Director, Amnesty International UK, **Clive Stafford Smith OBE**, Director, Reprieve, and **Benjamin Ward**, Associate Director for Europe and Central Asia, Human Rights Watch, gave evidence.

Resolved, That the Committee should sit in private. The witnesses gave oral evidence. Asterisks denote that part of the oral evidence that has not been reported either because it is covered by the House of Commons' *sub judice* resolution, or at the request of a witness.

Q1 Chairman: I should like to welcome all three of you to this meeting of the Foreign Affairs Committee. I apologise for having to reschedule the session at short notice from a couple of weeks ago. As you know, we were concerned about the effects that the House of Commons' sub judice rule might have on our proceedings. For that reason, we deferred the sitting and decided to split the evidence session in two, the first part of which will deal with matters that may be sub judice. It will be held in private. The private session will deal with matters raised with us by Reprieve and some of the matters raised by Amnesty International[1] and Human Rights Watch. The second part of the session will be held in public later this afternoon in the normal way. It will deal with the remainder of the issues raised with us by Amnesty International and Human Rights Watch in their submissions. With regard to the private session, I must draw to your attention the fact that evidence given in private remains confidential until—and unless—the Committee takes a decision to make it public. To reveal anything that is said in a private session would therefore be a contempt of the House. A transcript will be sent to you after the session for your corrections, and that document itself will be supplied in confidence. Notwithstanding that, as we made clear in our press notice, the Committee wishes to bring as much as possible of what is said into the public domain as quickly as possible, subject only to the need not to breach the House's sub judice rule. What is said in private is not subject to that rule but, in preparing a transcript for subsequent publication, we will need to act in accord with the House's intention in agreeing the rule, which is to guard against the possibility of prejudice to future court proceedings arising from the reporting of anything that has been said in Committee. I should emphasise that we have no other interest in keeping any material confidential. There is no benefit from our point of view in being in possession of information that we are not able to make public and which we are not able to refer to in our report. We will therefore look closely at the transcript of this afternoon's private session, with a view to publishing as much of it as possible. If it is necessary to issue a redacted version, we will keep you informed. At the end of this private session, which will be at about 3.20 pm, we will ask you to withdraw. We will then deliberate in private for a short period. At 3.30 pm, we will commence the public session with Amnesty and Human Rights Watch to deal with other issues. Finally, as we have a great deal of ground to cover, I ask all my colleagues to be brief in their questions, but also hope that you can be brief in your answers because we really have a lot to do today to get through everything. Thank you very much for coming along. For the record, will each of you state who you are and say what your position is in the relevant organisations?

Kate Allen: My name is Kate Allen and I am the Director of Amnesty International in the UK.

Chairman: You have appeared before our Committee many times.

Benjamin Ward: My name is Benjamin Ward. I am the Associate Director for the Europe and Central Asian Division of Human Rights Watch.

Clive Stafford Smith: I am Clive Stafford Smith, the Director of Reprieve. Let me reiterate that I am desperately sorry for being late. I hate to be late for things, but it is a bit of a nightmare out there.

Q2 Chairman: It took me two and a half hours to get in from Ilford this morning, so don't worry. What is your assessment of the changes brought about by the election of President Obama and the new US approach, particularly with regard to extraordinary rendition?

Kate Allen: There are many things to welcome from the approach taken by the new Administration in the US. On issues of rendition we have seen an explicit revocation of the Executive Order of 20 July 2007 authorising the continuation of the CIA's programme of secret detention and interrogation,

[1] Ev 67, 71

but we have not seen the end of all rendition. We still see the ability to use rendition in transitory detention, so although there have been some progressive moves, we have not seen the complete end of rendition and its use in temporary and short-term measures. We at Amnesty, and I am sure my colleagues who are here, will continue to campaign on those aspects.

Benjamin Ward: I would echo that. It is perhaps important to be aware that the phenomenon of the irregular transfer of suspects began in the United States under the Administration of President Clinton. Those cases involved the transfer of people to face prosecution, so called renditions to justice. That is an area of concern that relates to the new Administration as well. More broadly, under the approach of the new Administration, there has clearly been a strong condemnation of torture and cruel treatment. Obviously, there are a number of other areas, such as the military commissions and proposals for administrative detention, and other factors that are a cause of concern to us.

Clive Stafford Smith: First, on President Obama—I voted for the guy. I think that he is an exceptional person, but on the other hand, there is an awful lot that he is not doing. He is one person who has a lot of poisoned chalices to deal with. Let us be clear: rendition is still going on and it will continue to go on. The business of closing CIA prisons is chimerical because the vast majority were not CIA prisons and they still exist. For example, the two people rendered by the British to Afghanistan are still being held in secret detention, and we don't know what their names are. President Obama is no more likely to make that public than President Bush was. An awful lot of work remains to be done, and a lot of the prisons that we have dealt with—that in Djibouti, for example, and I am sure that we will talk a little about Diego Garcia—still exist. They are not CIA prisons but are very active. We delude ourselves if we think that Obama's first few pronouncements have solved the problem.

Kate Allen: I think that the UK Government have been consistently slow to articulate their position on some of the abuses of human rights by the American Administration. It would be very good if pressure was brought to bear for them to articulate their position on transitory detention, which we have mentioned, on the issues that Clive has raised, and on some of the disquiet that we still have about the content of US Army field manuals, and some of the permitted techniques that remain there. It would be interesting and useful to hear the UK Government say what they think about those issues, given that background of being consistently reticent on such matters.

Q3 Mr. Illsley: The Committee has had a bit of an argument with successive Foreign Secretaries over rendition, because when we asked questions in our meetings we were given assurances that Britain did not do it, yet they were later retracted on the Floor of the House of Commons when the Foreign Office actually found details of when we had been complicit in rendition. My question to you is, do you believe that the Americans who have admitted to rendition were doing this regardless of what the UK thought, do you think they were doing it with UK complicity or do you think they were doing it without the UK Government knowing?

Kate Allen: I think that is what should be the issue of some further investigation. But I think that at a minimum what we see is a complete lack of grip by the British Government in terms of who is passing through British territory. We see a lack of control. We have seen false information given to Parliament on this issue, and we see a rather passive response by the UK Government in asking the American Administration, but not being able to look at their own records, being very minimalist in the questions that they are asking and the definitions of rendition that they are using. So for us at Amnesty International, the answer to your question lies in having a thorough investigation into these issues. The investigation should find out not only what was happening at Diego Garcia and what the controls are in terms of other parts of the world—other airports. The issue is not just the transmission of people; we at Amnesty have serious concerns about the issue of planes on the rendition circuit that may have used British airports. We are not suggesting that they had people on board, but we are suggesting that there may well have been planes that were part of the rendition circuit on their way to or on their way back from, and these issues absolutely deserve further investigation.

Benjamin Ward: To echo that, we feel very strongly that there needs to be a full judicial investigation looking at UK policy, not simply looking at individual cases but looking at the full ambit of UK policy in relation to intelligence co-operation with third countries, complicity in torture and renditions. I also think that the election of the new President in Washington and the statements that he made soon after coming into office, particularly in relation to torture, provided an opportunity for the UK Government to point to Washington and say, "Look, now there is an opportunity to really draw a line under what has been happening in the past five or six years," and to put in place some really effective measures to deal with it. We have had little bits and pieces. We have had the announcement of the making public of the rules for MI5 and MI6 agents, although they have not yet come out. We have had the decision to refer some of the allegations of abuse to the police. But what we have not had is any kind of systematic effort to look at the legacy of the abuses that we have seen, or a very clear signal from the UK Government that they want to change the approach that they have taken, and that they see this change of Government as an opportunity to do so.

Clive Stafford Smith: In direct answer to your question, though, I think it is very important to stress that there is zero probability that the British officials did not know about rendition and were not complicit in it. *** The question is who knew and what they knew. A bit of ostrich work is going on here—a lot of people didn't want to know some things. The real question here—the real question for various folk—is, how high up did this knowledge go?

One thing that I should stress, from my perspective personally, ***, is that we are not interested in persecution; we are interested in making sure that this does not happen in the future. I think that that is important to focus on.

Chairman: We shall come on to *** in detail in some later questions. I would prefer to clear up the general questions at the moment.

Q4 Sir John Stanley: Mr. Stafford Smith, in your opening remarks you referred to two so-far unnamed individuals who had been rendered to Afghanistan. Can you tell us the nationality of the two individuals and why, for the American Administration, Afghanistan was the place of choice to render the two individuals to?

Clive Stafford Smith: Actually, I am rather hoping that you will be able to help me on this. I think it was the Secretary of State for Defence who admitted that Britain had been involved in two renditions in which the British had turned people over—to the Americans—who were rendered to Afghanistan. They are still there. We understand that they are Pakistani nationals, but we do not know their names. When you distil it down, it is this: the British Government have admitted that we were involved in something that is illegal under British law. Indeed, if we were able to represent these people for free, as we would be happy to do, we would ***—get British Government assistance to reunite these two chaps with the rule of law. It is inconceivable to me, quite frankly, that the British Government can say publicly, "We admit that we committed two criminal acts, but we are not going to tell you who the victims of those acts are." We cannot represent these people, we cannot help them, unless we know what their names are. I very much hope that you folk will help us identify these folk. I should add that while the Government said that there were two people who were rendered from British custody, there are more than that. We have already identified other people. If you read the letter from the Minister, where he says what he says, he is very careful to say that he is only talking about people who are absolutely in solitary British custody. He is not dealing with British soldiers who are working arm-in-arm with the Americans. We have already encountered, located and interviewed an individual who was in British custody for a while in Iraq and subsequently rendered to a secret prison; they worked out that he was no one and set him free, and he is now in Yemen. We have interviewed this guy. There are others too. I think that it is very important that the Committee follow up on these issues if you can.

Q5 Sir John Stanley: But where did these two Pakistanis start from? Did they get rendered to Afghanistan for ease of proximity? Was it a language factor? Was it because that was the place where the Americans had what they regard as the appropriate facilities?

Clive Stafford Smith: What the Minister says in his letter is that the Americans represented that they rendered these guys to Afghanistan because they didn't have the language facility in Iraq.

Sir John Stanley: In what?

Clive Stafford Smith: They did not have the language facility for interrogating them in Iraq. It is slightly hard to believe that the Americans had no Arabic-speaking people in Iraq. That is something that is worth exploring.

Q6 Sandra Osborne: May I ask you some follow-up questions about the allegations of UK involvement in rendition? Would you differentiate between rendition and extraordinary rendition?

Clive Stafford Smith: I wish someone could tell me what the difference is. As a lawyer, the legal term is kidnapping. Rendition is one of these euphemisms that we have seen far too many of in this whole process. Honestly, no, I have no idea if there is a difference. This is something that has gradually evolved over the past few years. It is not actually a useful term at all. I think that we should just get back to the rule of law—if you want to move someone involuntarily from one country to another, you use legal procedures.

Kate Allen: But we should be clear that the British Government do make a distinction. They talk about extraordinary rendition, by which they mean torture happens, then they talk about rendition, which is, exactly as Clive says, that moving of people around the world—disappearing them—but not necessarily involving torture. But it is illegal to deal with people in that way. There is a UN convention on enforced disappearances on which Amnesty has been campaigning for some time. We would be pleased if the British Government would sign it. It is one of the few signatures, in terms of Europe, that is not on that convention. The British Government suggest to countries such as Sri Lanka and Pakistan that they might like to sign up to the convention. It would be interesting if this Committee would ask the Foreign Secretary what discussions he has had with the US Administration about this convention and whether any of those discussions are getting in the way of the British Government signing up to the UN convention on enforced disappearances.

Q7 Sandra Osborne: In terms of the cases of the further allegations, along with the two that the Government have owned up to, what do you think should happen about that? What is your view? You have already said that you know for a fact that it is happening. Can I ask the others their view and what they think should be done about it?

Benjamin Ward: What we have here is what appears to be, as Clive has suggested, at best a wilful ignorance and at worst a complicity. The only way that this can be tackled is through a full independent judicial investigation. While I think that the individual criminal investigations are very welcome and should be pursued, I fear that, as has happened in the United States around the abuses that took place at Abu Ghraib, the individual

prosecutions will be used to put forward a narrative that those abuses were the responsibility of a few bad apples and that they were in no way a result of a set of policy decisions and a set of policy choices that were made by the Government. That is why I think that a full inquiry is so important.

Kate Allen: There are now so many incidents that need investigation that there is an absolutely overwhelming need for that independent investigation. This is no longer just a few situations—we are hearing of more and more cases, and more and more issues are coming into the media. The case for that investigation is overwhelming.

Q8 Sandra Osborne: There is not very efficient record-keeping, to put it mildly, in relation to flights, for example. Do you think that some kind of an international agreement in aviation law could be made in order to improve records of what has been happening?

Benjamin Ward: We were very supportive of the initiative by the all-party parliamentary group on rendition to create a permission system for rendition flights, including for overflights, similar to that which exists already in extradition cases under the European Convention on Extradition. That proposal was put forward to the Government in 2006 and, as far as I am aware, nothing ever came of it. Obviously that would not entirely eliminate the risk of transfers, but effectively requiring a transferring state to certify, in advance, what opportunity the prisoner had had to challenge any risk of human rights abuse that they might be subject to would make it much more difficult and much less attractive to use UK territory and UK airspace for such transfers. It would be a very important and symbolic change and it is not clear to me why that was not taken up.

Q9 Sandra Osborne: Did the 2002 renditions at Diego Garcia breach the agreement that the US and the UK had about the use of the island?

Clive Stafford Smith: I feel very confident that they did—those, and some other things that I think we will probably discuss in more detail in a little while. There is no doubt that it violated that agreement, but it violated a lot of other things. British law applies in Diego Garcia, notwithstanding what some other people have said. It has very interesting aspects. In fact, the law provides for a Diego Garcia supreme court that is meant to apply British law, of which there is no such thing. Perhaps one of you would like to be the supreme court justice. It is not there at the moment, and we need to appoint one. The whole process has been one to skirt the law, and we will later get to the fact that it has not been just two people who flew through Diego Garcia, but that people have been held in ships off Diego Garcia, which I shall be glad to talk about if you would like me to do so.

Q10 Sandra Osborne: That has, I believe, been denied by the Government.

Clive Stafford Smith: Yes, but they denied some 54 times requests for information about people who have been flown through Diego Garcia.[2] Sometimes they don't know, honestly, but that is almost as worrying as people denying things that they know are true, isn't it?

Q11 Sandra Osborne: Finally, do you believe that you have identified one of the individuals who was rendered in 2002? How hard is your evidence? Have you raised it with the Government? If so, what sort of response have you had?

Clive Stafford Smith: We have had zero response from the Government. Our evidence is, I think, pretty much indisputable. His name is Mr. Madni. We had identified the planes that have flown through Diego Garcia, and those plane logs have been tremendously useful because we get them before we talk to the prisoners. We don't tell the prisoners that we have the plane logs, so you can corroborate or disprove what the prisoners are telling you, based on some very concrete evidence. We had the details of the plane flight that matched the public reports about Mr. Madni's rendition from Indonesia. Now we have talked to him. We have tracked him down. He is in Pakistan. He is now free. In every way, he matches what the Government said and he says that he was taken to Diego Garcia. I don't know how much more one wants. Under those circumstances, there are two questions that we need to ask. First, when the British Government finally, belatedly, admitted that it had happened, they said that two people had gone through Diego Garcia. I immediately wrote to Mr. Miliband asking him please to tell us who they are so that we can help to represent them because clearly again, we are talking about complicity and the British Government are under a legal obligation to help us to help them be reunited with their legal rights. The British Government refused to do that. I found out later who it was, but we found that out actually after Mr. Madni had been freed from Guantanamo Bay. They would never admit it, but we can identify the other person as Shaikh Ibn Al-Libi, although we are by no means certain. I am sure that some of you are familiar with his case, but the reason why it is so important is that Shaikh Ibn Al-Libi was rendered by the United States, we believe through Diego Garcia, to Egypt where he was tortured. Under torture, he said that al-Qaeda was in league with Saddam Hussein on weapons of mass destruction. What he said under torture was quoted by George Bush and, to his eternal shame, by Colin Powell at the UN, as one of the legs of the case for war in Iraq. Even by that time, the CIA was saying how Libya had been very unreliable, which is not surprising. We now know that the torture evidence was false. We are 100,000 lives on from that false evidence. The reason why it is so important for this to come out into the public view is not because it will do any good for Mr. Al-Libi. He died two weeks ago in Libya. What is so important is that we learn from history, and we

[2] *Note by witness:* We have documented 54 PQs and other requests about Diego Garcia between January 8, 2003 and October 11, 2007.

cannot learn from history if we don't know what that history is. Again, we are not asking here for anyone to be prosecuted, let alone persecuted. We just want the truth out, so that next time someone wants to start arguing in a state of panic for torture, we have a strong case to tell them that it is not a good idea.

Q12 Sir John Stanley: I am just following your answer in this group of questions. Is it not the case that there is an important distinction to be made between rendition and extraordinary rendition? Is it not the case that under US legislation, as passed by Congress, powers of rendition exist—legal powers passed by Congress?

Kate Allen: I will defer to Clive on the legalities in the US, but to be clear about extraordinary rendition or rendition, people are being moved outside of the due process of law—outside of any methods of extradition. We, at Amnesty, have absolute clarity that rendition is illegal, as is extraordinary rendition. Just because you do not torture people does not mean that snatching them off the streets in one country, putting them on your plane and taking them to another country without any due process somehow becomes legal. That is why we talk about the UN convention on enforced disappearances, and we wish to see the UK sign up to it.

Q13 Sir John Stanley: On that point, on the basis that rendition has its origin in US legislation, are you saying to the Committee that that piece of US legislation is in breach of international law?

Kate Allen: Perhaps I could ask Clive to answer that.

Clive Stafford Smith: I am not familiar with any US legislation that makes it legal. I will tell you what the distinction is. In the case that came before the US Supreme Court, a drug dealer had been kidnapped out of Mexico. It was a real kidnapping: some private people went down there, snatched him and brought him to America, where he faced trial. The US Supreme Court held that under those circumstances, where he was "rendered to justice", he cannot claim that he could not be prosecuted because he was illegally seized, even though the act itself was illegal. It is like when you have an illegal search and you don't suppress the evidence even though the search was illegal. You have a second course of action, which is you can sue the people who kidnapped you, if you wanted. That is the distinction. I don't think there is any argument that rendition per se is legal under anyone's law that I know of—except perhaps Kazakhstan; I don't know. Maybe it thinks that it is legal.

Benjamin Ward: I think that that is absolutely right. In a way, the argument about rendition to justice is a bit of a red herring. It is put forward as an example where, because in some instances it produces outcomes that may be deemed acceptable, it means that one should not take an unequivocal position against rendition as a whole. One should not fall into that trap. It is, as my colleagues have said, kidnapping or abduction—whatever the outcome may be.

Clive Stafford Smith: May I make a brief point on that? The argument that you need to do that is just legally wrong. If you think over history, about the problems that we have had using legal systems to bring people to justice, a far more difficult situation than our current one was the Colombian one. Colombian cartels were killing justices if they voted to extradite people. That was really tough, yet we did not render people from there. Today, it is actually not that difficult, in most countries, to take a suspect—an al-Qaeda suspect or whoever it may be—and legally extradite them. It just isn't that hard.

Benjamin Ward: Perhaps another point to make is that many of the crimes that the people are accused of can be prosecuted in the country in which they are present. It is not necessary for them to be transferred to the US for prosecution there.

Q14 Ms Stuart: I want to move on to torture, but before I do, I have heard all three of you, so far, calling for an independent judicial inquiry into Government policy. It may be worth reminding ourselves that, in a sense, we are a judicial inquiry into Government policy. When I look at your press releases, Mr. Stafford Smith, in one you described new evidence of the UK complicity, and in another one, you said that you will reveal the identity of ghost prisoners illegally rendered to torture. If you have that evidence, it is incumbent on you to provide it. Unless we have evidence rather than your assertions of certainty, we cannot do our job. This is a Committee that knows the limits of our powers of inquiry, because in the David Kelly case we ended up realising that we could only go so far in our inquiries when the judiciary came in. Can I make a plea for that? Rather than assertion, if you give us evidence, we can pursue it. That is one of the reasons why we have private sessions.

Clive Stafford Smith: I haven't actually commented on inquiries. I am absolutely in favour of you folk calling it an inquiry. We have submitted the evidence on Mr. Madni ***, and we will submit the evidence on Mustafa Setmarian Nasar, who we can show was held in Diego Garcia. I think that it is great—you can expose the facts to the world, not necessarily to get anyone in any trouble, but just to ensure that people know about it.

Kate Allen: When we raise these issues we are told that the Intelligence and Security Committee is getting all this information and is making inquiries. From the perspective of Amnesty International, the Intelligence and Security Committee is appointed by the Prime Minister, reports to the Prime Minister, and the Prime Minister decides what the rest of us see. That is not an investigation that Amnesty International could have confidence in. I am not casting aspersions on the Committee.

Andrew Mackinlay: Do.

Kate Allen: As I said earlier, there is more than enough evidence in terms of some of the issues that we have yet to come to, such as dual nationals in Pakistan, *** and other issues, and there are more than enough cases to warrant an independent inquiry. Such an inquiry should be able to call on evidence, and decisions about what evidence is

confidential and what is not, should be made not by Government officials but by an independent judge. We could then get to the bottom of these issues for the reasons that all of us on this side of the table have been talking about. We must ensure that we understand what happened and why it happened, and that systems are put in place to ensure that it can never happen again. What has been taking place is a real blot on this country.

Q15 Ms Stuart: Let us focus on torture. The Foreign and Commonwealth Office tells us that it does not participate in, solicit, encourage or condone the use of torture. Mr. Stafford Smith, you say that that claim is simply not true. What is your reason for saying that?
Clive Stafford Smith: I am not sure that I would say that the claim is not true. People in the Foreign Office would say that they are totally opposed to torture, and I think they would mean it. The question is about whether they go along with it, either by sticking their head in the sand or by actively knowing that it is happening and participating in it. ***. We have submitted most of the evidence, although something has come up recently and we will submit some more to you. ***. ***. We must ensure that the British Government are clear about their policy to everyone, be they FCO officials or intelligence officials. When someone learns that torture is happening, they have got to stop it. It doesn't matter what the protocols with the Americans are; it doesn't matter whether we might offend ***. We must stop torture and that is what we want to make clear. We will submit everything that you have not already got on that. Again, I am not asking you to harass Mr. Miliband, but we want to make it clear what the policy is now, ***.

Q16 Ms Stuart: You would have to change the assumption that omission is not the commission of an offence.
Clive Stafford Smith: Yes.

Q17 Ms Stuart: The Government also say that when they find evidence of torture, they do their utmost—in cases such as those of Pakistan and Egypt, where allegations of wrongdoing are made, they are taken seriously and investigated appropriately.
Benjamin Ward: I am afraid that in relation to Pakistan, our research does not bear out those assurances. The UK relies on the Inter-Services Intelligence agency in Pakistan, which is well known for its use of torture in its counter-terrorism operations. Our research indicates that British Government agents put questions to detainees in ISI custody and visited detainees, who had obviously been tortured, without halting co-operation in those cases. We made that evidence available to the Joint Committee on Human Rights, and we also included a link to it in our submission to this Committee. It is simply not credible that UK Government officials visiting detainees in ISI custody could be unaware of the torture and abuse that they were subject to. We take the view that asking the Pakistani security services to interrogate a detainee suspected of terrorism, without being present to ensure the person is not mistreated, or conditioning co-operation on an end to these practices, is essentially a request to use torture to obtain information.
Kate Allen: Amnesty International would agree with that. The record of the ISI in Pakistan is long. It goes back many years and it is well known. There should be an assumption that, if people are being interrogated, torture is being used.

Q18 Ms Stuart: Same for Egypt?
Benjamin Ward: We do not have specific information in relation to Egypt. The only thing I would say about Egypt is that we were very dismayed to see that there was no criticism of Egypt's record on torture in the human rights report. We wonder why that is. But we do not have any specific evidence in relation to co-operation and abuse in Egyptian custody.

Q19 Ms Stuart: The British Government are caught here between a rock and a hard place when we talk about intelligence. If we have intelligence relationships with countries that we know use torture, one option to ensure that you never use evidence that was obtained by torture is to cease the intelligence relationship with that country. They aren't going to do that, are they? But what would be the kind of things the British Government could do—you already mentioned one in relation to actually being present—to ensure that we do not implicitly encourage and condone torture?
Clive Stafford Smith: ***. So there are several things we can do. First, we can change that. The British Government's obligation is actually to comply with the convention against torture, which says that when you have evidence of torture you are legally obliged to investigate it and expose that material. That is pretty simple. The second is, in taking account of your very reasonable concerns about intelligence sharing, we have to make it clear to the people with whom we share intelligence that we are not going to suppress the evidence of torture that we come across. That is the position being taken by the Government right this second. Under section 52 of the International Criminal Court Act 2001, that is an independent criminal offence. To conspire with someone else to suppress evidence of torture is a criminal offence, and our Government cannot be in that position. There is the possibility that *** will not write in their reports, or the Americans will not write in their reports, that they waterboarded this chap, so we will not know about that. That is a possibility. But if we do learn about torture, our allies, and our slightly dubious allies in some circumstances, need to know that we are not going to go hand in hand with them in committing the crime of conspiracy to hide evidence of torture. I think that is pretty reasonable.
Kate Allen: The Intelligence and Security Committee has been given the job by the Prime Minister of reviewing the guidance that is given to intelligence operatives in these situations. We expect that that will then be made public. That is good. It seems to me that it would be interesting for

Parliament to see the original guidance. Perhaps that is something that the Foreign Affairs Committee could ask to see. What was authorised and what was the guidance to individual intelligence officers finding themselves in these situations? Not what guidance is going to be—that is great—but what the guidance was. It would be very interesting to know what guidance intelligence officials were given in those situations that we are now talking about.

Q20 Ms Stuart: May I ask you the next question, which is whether the intelligence officers on the ground are sufficiently aware of the UK Government's attitude or policy approach to torture? You clearly imply that you have seen the previous ones.
Kate Allen: No, I am not implying that at all. I don't know if anyone else has seen them. I certainly have not seen them, so it would be interesting to know what that guidance was. Also, beyond the guidance, what is the means of ensuring that that guidance is implemented and what is the scrutiny that goes with that? I think that there has been a lack of absolute rigour around these issues. There is, absolutely, a role for this Committee and Parliament to play in asserting that rigour.
Benjamin Ward: Perhaps I should also mention that at the moment there are apparent loopholes in the Criminal Justice Act 2003, as it relates to the prosecution of torture, and in the Intelligence Services Act 1994, which appear to immunise torture and other criminal acts—in the case of the Intelligence Services Act—if they are carried out with Government authorisation. The UN convention against torture contains no such exception. As Clive said, Governments are under an obligation to prosecute torture wherever and by whoever it is committed. Indeed, there is a further obligation on states to take positive measures to prevent torture anywhere in the world—that is a norm of customary international law. To take a step back, we question why the Government feel the need to assert the right to use material obtained under torture from third countries. If that is the public position of the UK, we question whether the messages that are being sent to the Governments with which the UK has intelligence relationships are sufficiently clear about the abhorrence and condemnation of torture that the Government profess.

Q21 Ms Stuart: May I ask Mr. Stafford Smith—you have not seen the guidance either?
Clive Stafford Smith: I haven't seen it, but I suspect we shall be reading about it fairly soon. I would think that you should certainly get to see it.

Q22 Chairman: I have several people wanting to come in, and I am also conscious that we need to move on to some other areas. I want a factual answer to the reference to Pakistan. Is there any information that you can give us about whether the ISI has changed its behaviour with regard to people it detains in recent years, or whether the allegations relate to four or five years ago as opposed to now?
Kate Allen: No, the ISI modus of operation has not changed.
Clive Stafford Smith: It is not just the ISI. ***. Torture is rampant among the police as well. The Foreign Office has told me that, in our conversations.

Q23 Chairman: It is just that we had Mark Malloch-Brown before us about 18 months ago, and we specifically asked questions around that area. I wanted to get your view. My other question—quickly, factually—is about the US Army field manual, the permitted techniques, which we referred to in a previous inquiry. The Americans talked a great deal about it—what was permitted and what was not. We know that there is a different definition of torture in the US from in the UK. Waterboarding was permitted, but the UK says it is a form of torture—it now says, anyway, that it is a form of torture. Is there a comparable document, to your knowledge, in this country about what interrogation techniques are permitted, as opposed to not permitted, and about what would and would not be defined as torture?
Benjamin Ward: I don't know. I assume that that is the content of this guidance that is being reviewed by the Intelligence and Security Committee at the moment, but I don't know.
Ms Stuart: We have, and it is called PACE—the Police and Criminal Evidence Act 1984.

Q24 Sir John Stanley: My question comes, entirely coincidentally, but more or less straight out of what the Chairman has just asked you. It is an issue in relation to torture that arose during our Guantanamo Bay inquiry. How satisfactory—not under national law, but under international law—is the legal definition of what constitutes terrorism? Are there any changes in that definition that you would like to see made?
Clive Stafford Smith: I think that that is a very good question. There really was not a proper definition. One of the issues that we dealt with in Guantanamo Bay was the ex post facto retroactive application of the definitions under the Military Commissions Act, which was enacted on 30 April 2003, to create the crime of terrorism as a war crime. It did not exist before then. Consequently, if we ever got in front of a serious court, none of the convictions out of Guantanamo could possibly stand up, because that would be retroactive and cannot be done. I don't think that we have a proper definition of that internationally nor do I think that we have a proper definition of conspiracy internationally, which is the basis on which almost everyone gets charged.

Q25 Sir John Stanley: So you are saying to us that, under the UN convention against torture, in so far as the matter is defined or not defined there, it is inadequate in respect of definitional purposes.
Clive Stafford Smith: I think that it is, if you want to prosecute anyone in a court of law that is going to be satisfactory.

Benjamin Ward: On a point of clarification, there is no definition of terrorism in the torture convention. The closest to a good definition that we have come across is the definition put forward by the UN Special Rapporteur on respecting human rights, while countering terrorism, Martin Scheinin. Essentially, his definition comes down to intentional attacks on civilians, causing death or serious injury. It excludes property damage. It is true that there isn't a UN-sanctioned definition. The Security Council Counter-Terrorism Committee has not been able to agree on a definition.

Q26 Mr. Purchase: We are almost certainly agreed around this table that information obtained by torture is usually pretty unreliable, so that would justify not torturing in the main. However, I wish to put a practical point to you about Britain or other countries having a duty to investigate what they feel might have been practices involving torture. Let me put it to you that a country—I shan't name one—says to Britain, "We have this information. It looks pretty good to us, and there will be a threat to you such and such a way." We immediately ask it how it has come by it, to which it responds, "Oh, we put the thumbscrews on"—or whatever. Should we use that information? Should we then, because they are interested in the relationship diplomatically and have found that out by investigation or otherwise, put it all on the table? It may well have saved lives—anybody's life.

Clive Stafford Smith: Those are very interesting questions, and I guess that there are several ways to look at the matter. In an analogy, let us suppose that someone from the Mafia came to Britain and told you exactly the same thing. Would you say to the Mafia, "Oh, carry on about your business"? I don't think we would do that. ***. you are raising very real issues that need to be taken very seriously. ***. It is absolute on a moral and legal level that we must do something to prevent it. Does that include writing an article in the *Daily Mail*? No. You begin, of course, by taking the minimum action. You have to. You tell the Americans that you are really troubled by it and ask them to put a stop to it. That may resolve the issue, and it might do so amicably, and you move on from there. But let us assume that the Americans say they are not going to stop it, and they want to go on with it. You have then really to decide whether you do have an ethical Government.

Q27 Mr. Purchase: May I interrupt you? My question really concerns circumstances in which the information proved to be absolutely accurate and you have used it in defence of your citizens. Do you then expose, further investigate or bring to light that particular practice?

Clive Stafford Smith: I think you have to. How on earth can you say no?

Benjamin Ward: There was a case in Germany several years ago. A child kidnapper was in police custody, and one of the children whom he had allegedly kidnapped was still hidden somewhere. The man was threatened with torture by a police officer. He disclosed the whereabouts of the child, who was later proved to have died by the time the police reached the scene. He was then prosecuted and convicted of torture. The circumstances in which the threat of torture was carried out were mitigation in the sentence that he received, which was a suspended sentence. The case provoked a great deal of soul-searching in Germany, but it seems to me that the approach of the German courts was entirely correct. It is a crime, and it should be dealt with as a crime. The fact that in a particular instance, one can construct an example where it might actually have a bearing on life does not mean that one should change the fundamental values on which our societies are based.

Q28 Mr. Horam: It follows from that—what you said was very interesting—that you would stop at a certain point. If the information, as Mr. Purchase said, was proved to be accurate and saved lives in some way, you would none the less stop at a certain point when it became clear that torture had been used, and that they were not stopping using torture. Is that right?

Clive Stafford Smith: When you talk to intelligence officers—I have talked to many interesting people from the CIA and the FBI on this—they say that actually you need to know that stuff, because the chances are that, if you learn, as a CIA agent, that a guy has been tortured, you are going to think that that intelligence is pretty useless anyhow. The problem is that we always conflate the demonstrable cases—where there is a ticking time bomb and it is possible to go find it, disenable it and save everyone's lives—with the subsequent prosecution of the dirty bombers. Those are two massively different things. The problem with most of this torture business is that it is not used in circumstances where you can go see if it's true. It is used in circumstances of Shaikh Al-Libi, to say that Saddam Hussein is in league with al-Qaeda, to justify something that turns out to be a terrible mistake.

Q29 Mr. Horam: That is a slightly different point though, isn't it? What Mr. Purchase is asking, and what I am asking, is, supposing this information turns out to be accurate—although we know that information obtained under torture is likely not to be accurate—would you give up that source of information because it had been obtained under torture?

Benjamin Ward: Ultimately you have to make the choice. It is the same decision that you face if you have a suspect in front of you, and they won't give you the information you want. You are faced with a choice of whether to torture them. You make a decision that is not consistent with your values. We have an example from Israel of the slippery slope and the ticking bomb, when the ticking bomb becomes a basis for policy. Israel crafted what it thought were very clear and narrow guidelines that would allow moderate psychological and physical pressure to be used on terrorist suspects if it was believed that they had information about an imminent attack. That practice was later banned by

the Israeli Supreme Court when it was found that it was being used on most Palestinian detainees. That is the Pandora's box that we open.

Clive Stafford Smith: If you start going down that slope, the problem is that you will end up having to have a mini-trial every time something about torture comes up. You will start asking yourselves all the questions such as, "Is this evidence of something that might happen in the future?" or "Is this evidence of something that has happened in the past?" and "How far has the torture gone?" It is crazy. That is what the Americans got into, unfortunately, in the panic after 9/11—the slippery slope of enhanced interrogation techniques. Ultimately, the proof of the pudding is in the eating, and it is fairly shocking that of the 240 prisoners left in Guantanamo Bay today, of those we have got in front of a real judge, we have acquitted 83% of them because the evidence that was adduced against them under torture turned out to be false.

Q30 Mr. Horam: In your view, does the use of material obtained in this way from other Governments who may use torture—would it mean that the British Government would be complicit in torture?

Clive Stafford Smith: Not if they raise complaints about it. If Britain tries to stop it, that is very important. It is a myth to say that if we stand up for our principles, somehow our entire intelligence service will collapse. That is not what happens.

Q31 Mr. Horam: Do you think that the UK's position complies with the UN convention against torture?

Clive Stafford Smith: In the current position that we are dealing with, no—no way. It doesn't even help us to identify the people who are being tortured in Bagram right now. That is terrible.

Q32 Chairman: For the record, Mr. Ward, do you agree with that?

Benjamin Ward: I do. The assertion of the right to rely on material from countries that has been obtained under torture is not consistent with the obligation under the UN convention against torture.

Kate Allen: I would add a different issue to this, which is the attempt to deport people with diplomatic assurances to countries where they may well experience torture. We have not yet seen any of those deportations, but that does not mean that the British Government have stopped their attempts to deport people to countries such as Jordan and Algeria—I do not think Libya any more. Those efforts are still under way, and we consider that the British Government are undermining the battle to end torture by seeking those diplomatic assurances.

Q33 Chairman: Some people did go voluntarily though, didn't they?

Kate Allen: I would question the nature of voluntary when you have spent several years in prison or under house arrest.

Q34 Chairman: It was Algeria, was it?

Benjamin Ward: There were several Algerians.

Kate Allen: There were several Algerians, but I really would question that definition of voluntary.

Q35 Mr. Horam: I have one further legal point. Under section 7 of the Intelligence Services Act 1994, the Foreign Secretary is able to waive the liability of SIS and GCHQ personnel for illegal acts abroad. What is your assessment of the legal framework surrounding that?

Clive Stafford Smith: That is certainly not compatible with the UK's obligations under international human rights law.

Q36 Mr. Horam: Is that the view of all three of you?

Kate Allen: Yes, I don't think we should be talking about British agents being allowed to torture, or assist in disappearances or extra-judicial executions under section 7 of that legislation.

Clive Stafford Smith: On one point, the reason that we want to have a politician involved in those decisions, and not just the SIS, is because people have to be held accountable. I do not mean in any way to smear the Intelligence and Security Committee, but the problem is that there must be some sense of public accountability, at least among a group of fellow politicians who run the gamut and are likely to criticise something if they think that it is wrong. There must be something that constrains those political decisions. ***. However, as long as you are allowed to keep those things secret, there is no political accountability, and that is a concern.

Q37 Mr. Horam: Following on from that, what improvements do you think could be made in the oversight of our intelligence services in the UK?

Kate Allen: I think that the oversight needs to have some independence. I would repeat my criticisms of the Intelligence and Security Committee in answer to that question. There needs to be openness, and information should not be declared as confidential or not, by those releasing it. We need an independent judicial aspect to this, or we will never be in the position in which people are held accountable; there will always be secrecy around these issues.

Clive Stafford Smith: I think that you need political accountability in terms of having politicians involved, but there must also be other people who have absolutely no concerns about their own situation, for example. We want independent people—I do not suggest lunatic fringe people like myself, but we need people on the Committee who are totally independent and can remind people what our morals are.[3]

Q38 Mr. Hamilton: Mr. Stafford Smith, may I return to the issue of ***

[3] *Note by witness:* I was joking in my characterisation of myself. I was merely suggesting that those who assess these things can be thoroughly Establishment and still be entirely independent.

Clive Stafford Smith: ***
Mr. Hamilton: ***
Clive Stafford Smith: ***

Q39 Mr. Hamilton: ***
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Q45 Mr. Hamilton: ***
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Mr. Hamilton: ***

Q46 Chairman: ***
Clive Stafford Smith: ***

Q47 Chairman: ***
Clive Stafford Smith: ***

Q48 Chairman: That is helpful. I will take up the question that John was going to ask, because he had to leave. Can you say something about the detainees and the transfer of prisoners in Iraq and Afghanistan? The Government have now acknowledged that they made an inaccurate estimate of the numbers of prisoners—it was overestimated—and had incomplete records with regard to the situation in Iraq. How do you assess the adequacy of the review that they carried out? Do we have the accurate information now?
Clive Stafford Smith: May I respond to that? There are two things about it. The first is the one that I alluded to before. Let us just accept the two people whom they mentioned, before we get on to whether that too is accurate. It is just unfathomable to me that our Government can say that we did indeed render people, which we all agree is not a legal act, and that we are not willing to say who those two people are so that our lawyers can help reunite them with their legal rights. We cannot say that we oppose the American process of extrajudicial detention of these people, which, according to the Government, is still ongoing in these guys' cases, and yet we are not willing to identify those people. I just don't understand that.

Q49 Chairman: And you know the names of these people?
Clive Stafford Smith: No, I don't. I want to, because if I do, we will represent them, and we will get them—
Chairman: That is the point you were referring to earlier.
Clive Stafford Smith: That is important. The second thing is whether the Government have been totally forthright. These are questions that ultimately only the Government can answer—and whether their review has been enough. The letter that the Minister wrote is very carefully written, and it is very carefully written to exclude, for example, Task Force 36, where the British were working with the Americans on the big-name people—Al-Zarqawi and people like that. The people who have been reviewed and admitted publicly are by definition the less significant people, because those who were being pursued by this task force, where the British were working hand in glove with the Americans, are specifically excluded from that letter. It is important to follow up on that, because we are responsible for those people. Taking it a step further, you will be familiar with the gag order that was applied to Mr. Griffin when he started talking about these materials. You will know that he was in Iraq only from 2005 onward—after the 2004 renditions that are discussed in the Minister's letter. To the extent that Mr. Griffin was talking about renditions that Britain was involved in that he knows about, those happened after the two that were dealt with in the Minister's letter.

Q50 Chairman: Are you sure he is not referring to things that he knew about that had happened before?
Clive Stafford Smith: We interviewed him before the gag rule was put on him, and I am not sure quite where we stand on that whole process; that is an issue that needs to be explored properly. What I can say—again as I mentioned briefly before—is that we have identified at least one other person. The facts are a bit different. He was not originally in British custody; he was turned over to the British, the British carried him around for a while and then turned him back over to the Americans, and the guy was then rendered—and that is certainly not included in the British report.

Q51 Chairman: And you know the name of that one?
Clive Stafford Smith: I know the name. I would tell you if I could remember how to spell it properly. We will give you a report on it, if you would like one. But we have interviewed that chap. He is in Yemen. I think that there is other information out there.

Q52 Chairman: Finally, I shall ask about Iraq, and then I shall bring Ken in on Afghanistan. We have also transferred prisoners in Iraq to the Iraqi authorities. How confident can we be that the assurances given about the treatment of those prisoners can be relied upon? Are we content that the UK has discharged its obligations under the European Convention on Human Rights in Iraq?

Benjamin Ward: I should say that Human Rights Watch is part of a group of non-governmental organisations that has intervened in the European Court of Human Rights—in the Al-Saadoon case, in which the court ordered the UK not to transfer the man in question to the Iraqi High Tribunal until it had had a chance to review his case. That case is extremely worrying; there was clearly jurisdiction, by virtue of the control that the UK exercised over that particular individual and other detainees in Iraq, which was accepted by the House of Lords in the Al-Jedda case. The UN Committee Against Torture has said that the Convention Against Torture applies to people in UK custody in Iraq. The question is whether there is a risk prior to transfer. There clearly have been risks in some cases, and we do not accept that the agreement of a memorandum of understanding disposes of that risk.

Kate Allen: I think that it is quite shameful to see the UK having this tendency to limit the application of its international human rights obligations in this way. That attempt to limit is appalling.

Clive Stafford Smith: I know we have overrun, but very briefly, I was very interested to read in the MOUs you had sent me—I had not read them before, quite frankly—that in the Iraq one there is no prohibition against turning people over who will face the death penalty, which there was in the Afghan one. That is clearly in violation of the European law, is it not? It seems to me that it would be a good idea to at least consider that there should be an absolute form for MOUs, used in every case, which would include at least those aspects.

Q53 Mr. Purchase: My question is to Amnesty. In your written submission you recommended that the Government should press the US to be more transparent about its detentions in Afghanistan. In so far as this response is concerned, and your specific concerns, what details should the US provide, if they were to come forward on this?

Kate Allen: For a long time, we have all had major concerns about what is happening at Bagram, at the air base there. What we would like to have is the information about who is being held, where they are being held and how long they have been held for. This continues at the moment, and we need to see it brought to an end.

Clive Stafford Smith: May I give you a brief example of that? I had an e-mail from an American captain, who was in the Waghez district of Afghanistan a while back—I met him in Guantanamo—and he was convinced that these two chaps in Bagram were innocent. He set about trying to show it and he asked us to help him. We did it all above board—we told the US military—and he was threatened with court martial for that. They are not allowing these people any legal rights, and we are doing essentially what happened over in Guantanamo, but there are many, many more prisoners in Bagram, who are far worse off than in Guantanamo.

Q54 Mr. Purchase: If you are correct, Ms Allen, there can be little confidence in your mind that detainees transferred from UK custody to Afghan authorities are not mistreated. I should like to hear whatever evidence you have, but given that it is all on the basis of a memorandum of understanding, is the MOU an appropriate basis on which to make the transfers? Should we be seeking more safeguards? Should we not even make the transfers?

Clive Stafford Smith: We can do some very positive things. I wrote to the Defence Minister about it, offering the proposal that we made to the US as well, which is that we would help to provide legal representation to those people. There is a long story behind this about the inadequacies of the Afghani legal system and, given everything we know, I do not know why we would not want—if we are to win a few hearts and minds in Afghanistan—to take some affirmative, positive steps to make things better, as opposed to always merely whining about what the Government do. I think that could be tremendously helpful.

Q55 Mr. Purchase: That leads me nicely to my final point. Following the handing over, what obligations do you think the UK retains when detainees have been transferred to authorities of another state where an MOU is in place?

Benjamin Ward: They have to make a risk assessment before the transfer. If there is a real risk, they are responsible for any treatment that the person is subject to after the transfer. They would then be obliged to take steps to remedy that, such as providing compensation and carrying out an investigation. Obviously, if a person has been tortured, you cannot untorture them.

Kate Allen: The legal obligation still rests with the UK.

Clive Stafford Smith: You cannot assess whether you have got it right if you do not find out what happened to the guys. I cannot answer this quite frankly, but I doubt very much that our Government know what happened to all the people who were turned over.

Chairman: Thank you all for coming. I remind you of what I said at the beginning. We will try to get as much into the public domain as we can, and if necessary we will be communicating with you on this matter. I now intend to ask everyone to leave. We will have a private five minutes for members of the Committee, after which I shall invite the witnesses and the public in for our next session.

Wednesday 10 June 2009

Members present:

Mike Gapes, in the Chair

Mr. Fabian Hamilton	Sandra Osborne
Mr. Eric Illsley	Mr. Ken Purchase
Andrew Mackinlay	Ms Gisela Stuart

Witnesses: **Kate Allen**, Director, Amnesty International, and **Tom Porteous**, London Director, Human Rights Watch, gave evidence.

Q56 Chairman: Ms Allen, thank you for coming back for the public session. Mr. Porteous, welcome. You are both familiar with this Committee. In fact, you have probably attended more often than most Ministers, because Ministers change but Amnesty and Human Rights Watch are always there. In the public session this afternoon, we shall deal with the wider human rights issues. I would like to begin with Iraq. You will be aware that our Committee has been looking at allegations of abuse by contract staff of KBR at the Baghdad embassy. There have been quite a lot of allegations and we have taken the matter up with the Foreign and Commonwealth Office. I would be interested in your view of this issue, and whether you think the FCO has dealt with it appropriately or adequately.

Tom Porteous: I have four points. First of all, the FCO does have a responsibility for the behaviour of its contractors within its embassy in Iraq. Secondly, this investigation was fundamentally flawed—the investigation that did take place. It was flawed because, first of all, it was carried out by the contractor itself; it should have been carried out by the UK Government; secondly, it had serious procedural shortcomings, such as a failure to interview the key personnel involved who made the allegations—in conflict with the guidance from the UK's own Equal Opportunities Commission; and thirdly, those accused had free access to the alleged victims and were therefore able to intimidate them. There were indeed allegations that this is what happened. No disciplinary measures were taken against the Kellogg, Brown and Root staff. However, the complainant and local staff who had supported the complainant's allegations were dismissed. That is another concern. The next concern is that after all this there were further allegations—of sexual harassment—involving the same Kellogg, Brown and Root staff. That is no doubt a consequence of the impunity that stemmed from this flawed investigation.

Q57 Chairman: What can be inferred from the inclusion of the decision by the FCO, in correspondence from the permanent secretary to us, that they accept that occasions may arise when it is right to take action jointly, rather than simply allowing the contractors to carry out the investigation? Do you think they have learned from the experience and are now more prepared to have FCO officials involved in any future investigation?

Tom Porteous: There needs to be a proper investigation of these incidents. That still has not happened. That should lead to sanction for those involved, if the evidence is found to be reliable and stands up in the investigation. Those staff who have been the victim of this abuse and those who have been dismissed because they supported the allegations of the complainant need to be compensated.

Chairman: We have a related issue, which is how we deal not only with people who are private contractors employed in our diplomatic posts but also how we deal with a large number of private security companies, which operate in great numbers not just in Iraq but in Afghanistan and elsewhere. From personal experience of being in Afghanistan, the guys who looked after me there and gave me personal protection did an excellent job. I survived, I am here and nothing untoward happened. I should place that on the record before I bring Mr. Mackinlay in to ask some questions on these issues.

Q58 Andrew Mackinlay: You are aware of the so-called regulatory scheme which the Government are so-called consulting them on. You can detect my cynicism and prejudices about it, but what do you say about private security companies? What prospect is there for regulation? I understand that the industry, of course, wants self-regulation and it looks as though the supine Government are going to accept that. I would like your views on what you think should be done and what framework of law should be instituted to regulate the recruitment of private security companies operating out of the UK, and also whether there is any international law which could at present be applied to them. We in Parliament should be reminded of them. My final point flows on from that, because the borderline between a private security company and private contractors is a grey area. It was put to us in relation to the matter you have just discussed with the Chairman, that this was extraterritorial, that there was no way we could exercise great investigatory powers. I want to hear your views.

Tom Porteous: In fact, Human Rights Watch has not done any research on this, so I hesitate to say anything and will hand over to Kate Allen.

Kate Allen: To pick up from the scepticism in your comments, the Government have announced their options for change following a 2002 Green Paper, so there are massive delays in making those

recommendations, which included voluntary self-regulation. However, the proposals are so weak that even signing up to the voluntary code is not a precondition to getting a Government contract. The Government completely ignored this Committee's recommendations back in 2002. From Amnesty International's perspective, the proposals are absolutely insufficient and cannot hold overseas military or security operations to account. They are extraordinarily weak. There is a lack of jurisdiction to prosecute contractors in the UK for the crimes that they commit abroad. So we certainly call upon the Government to make their proposals ones that put in place legislation that enables contractors to be held to account. Given that about 70% to 85% of private military and security companies are based in the UK and the US, and that the UK Government are, as the Chairman reminded us, a major user of these companies, especially in Iraq and Afghanistan, it is essential for the UK Government to put in place greater restrictions, rather than a voluntary code of conduct that, even then, does not have to be signed up to.

Q59 Andrew Mackinlay: Do you think that the British Government and their agents favour using private security companies because if anything goes pear-shaped—if there is an atrocity or something goes wrong—they can deny responsibility?
Kate Allen: I don't know. The situation is that there is no ability to hold people to account in the same way as with the Government's armed forces. Given how much of what is happening in some parts of the world has been contracted out to private military and security companies, it is untenable that they should not be held accountable and brought to account in the UK for actions that they are responsible for overseas.

Q60 Andrew Mackinlay: Are there international conventions on this?
Kate Allen: Not that I am aware of.

Q61 Chairman: The Government's consultation ends next week, as I understand it. Have either of you made a submission to the Government in response to it?
Kate Allen: I am not sure that we have yet, but we shall certainly make our views known.
Chairman: I think that 17 July is the closing date. It was announced in a written statement in April.
Tom Porteous: We have not. Like everyone, we are affected by the economic crisis, and our capacity is limited.

Q62 Chairman: Obviously, the Committee has taken a long-standing interest in this matter and has pressed for regulation for many years. The Government have now come up with this voluntary scheme, but they will have to introduce proposals to Parliament later in the year, based on the outcome of the consultation. So obviously we will continue to take a close interest. I want to move on to the general situation of human rights in the world. In previous years and reports, we have discussed with you the move within the UN system to a Human Rights Council. When it was first established, people said that it was too early to judge whether it was an improvement on the previous system under the commission. We were told by the FCO that we needed to give it time to settle down. What are the implications of the appalling ineffectiveness of the UN Human Rights Council with regard to the terrible human rights abuses in Sri Lanka? The council has clearly shown not only that it is unprepared to criticise a Government, but that it is prepared to explicitly endorse the position of a Government that is allegedly, and in my own view definitely, carrying out actions leading to the death and injury of thousands of civilians.
Kate Allen: Shall I pick up on the points about the Human Rights Council and leave Tom to talk about Sri Lanka? We agree with the human rights report that the Human Rights Council continues to be politicised and to struggle to fulfil its potential. That is all too evident. But there are also reasons for optimism about the Human Rights Council and we at Amnesty are supportive of the universal periodic review mechanism that is in place. We have seen some 64 states go through that review. We at Amnesty are making various proposals to the Human Rights Council about the ways in which that periodic review can be strengthened and how we can ensure that concrete, measurable actions are suggested to countries that come out of the reviews, thereby encouraging states to accept the recommendations to let the Human Rights Council know of the positions that the country is taking on those recommendations, including practical measures around how those measurable recommendations could be implemented, and timetables and other mechanisms to see some progress on those. It is interesting that, when looking at some of the responses of different countries to the universal periodic reviews, you see some moves in some places. Although Cuba, for example, has rejected many of the suggestions on freedom of information, it has said that it would consider letting human rights organisations into the country. So with the nature of these reviews—getting into really specific recommendations that can then be followed up by the Human Rights Council—it is possible that we may see some progress. But we still remain vigilant, obviously, about the Human Rights Council. We are quite disturbed by the lack of competition for places: this is sort of sewn up ahead of the actual elections, so that we do not see votes taking place. That practice could come back to bite the Human Rights Council over time and we could start to see the likes of Zimbabwe and Sudan back here. But we also welcome the USA's election to the council. That is a change in terms of engagement that will, hopefully, start to provide some real support there.
Tom Porteous: I agree with that. It is a mixed bag. Of course, the UN Human Rights Council is politicised; it always will be, for as long as it exists. The Security Council is also politicised.
Chairman: And the General Assembly.
Tom Porteous: And we don't suggest that it should be closed down as a result. The performance of the Human Rights Council this year has been

particularly dismal, particularly over Sri Lanka, as you mentioned. The resolution in May was absolutely appalling. It was an opportunity for the Human Rights Council to do what it is supposed to do, which is to protect human rights, but it completely failed and, as you noted, it actually congratulated the Sri Lankan Government on its victory over the LTTE—which is not to say that the LTTE themselves are not serious abusers of human rights. But the Human Rights Council undermined its very purpose. Apart from that, I agree with Kate's analysis. Another positive thing about the Human Rights Council is that, in spite of the fact that most of the regions presented clean slates for the election, in those regions where there was not a clean slate there was an opportunity to vote bad candidates out and to keep them off the council. That happened with Sri Lanka last year, which was extremely good, and it happened with Azerbaijan this year. However, unfortunately, Saudi Arabia, China and Cuba were all elected, albeit at the bottom of their regional slates. So the election process is positive.

Q63 Chairman: On the question of Sri Lanka, I am interested in whether the wording of the motion that was adopted sets a dangerous precedent by referring to the conflict as a "domestic matter that does not warrant outside interference". Presumably, any country in the world could then use a similar argument for action relating to what they allege to be real or alleged threats to their state from insurgents, terrorist groups, or whatever, on the basis that how they deal with that is a domestic matter and nobody should interfere.

Tom Porteous: There is increasing polarisation in the world, particularly between the west and the south, on the subject of sovereignty. As we see a redistribution of global power from the west to the east, the rise of China and the rise and influence of other states that do not have particularly good human rights records and that are keen to assert the principle of total sovereignty, we will see more of this kind of thing. Yes, it is a bad precedent, and the Human Rights Council is there precisely to look at human rights abuses which, by their very nature, occur within the context of the domestic politics of different countries around the world. Often these countries say, "Well this can't be a matter for the UN Security Council, because it is not a matter of international peace and security. Let's refer it to the Human Rights Council." It is the job of the Human Rights Council to look at these sorts of issues.

Q64 Chairman: You referred to China and the shift in power in the world. It was not just China; India and Egypt—both very big countries—were also part of that 29-12 vote on the issue. The majority represents the clear majority of the population of the world, if you add them all up. Is there not now a significant shift away from the position a few years ago, with the responsibility to protect and those kinds of issues? Are we not now moving back, with human rights being pushed back?

Tom Porteous: That is the case, and it is certainly a concern of ours. It is partly a result of global economic trends, but it is also, to be frank, the result of very bad decisions taken by western policy makers in the past eight years. The abuses that have been committed by the US and, to some extent, collaborated in by the UK over the past eight years, have led to a significant decrease in the ability of the west—particularly the US and the UK—to present themselves as champions of human rights.

Q65 Mr. Hamilton: May I move on to the Durban review process—the conference that was held in Geneva in April to look at the first Durban conference? On the first day of that conference, 21 April, President Ahmadinejad of Iran delivered a speech which our Foreign Secretary described as "offensive, inflammatory and utterly unacceptable." He said that the President's comments "describing Israel as a 'racist government' established on the 'pretext' of Jewish suffering", were deeply offensive to many, and the UK delegation left the hall, but the Foreign Secretary justified Britain's continued participation on the ground that, "The fight against racism remains a global struggle. Victims of racism deserve better than political squabbling and intolerant polemics." My question to you both is, do you think that the Government were right to continue to participate in the Durban review process? If so, does that not lend credibility to people such as Ahmadinejad, who tried to hijack that conference for their own purposes?

Tom Porteous: No. We do not take a view on the wisdom of walking out of Ahmadinejad's speech—that was a decision for the British Government. However, we were certainly very keen that the UK Government should take part in the conference. I don't need to remind you in this week, of all weeks in British politics, of the importance of combating racism in all its forms. The Durban review process, albeit flawed and difficult, is the only process at the international level that makes that effort to address the problem of racism. It is an issue that we especially cannot afford to ignore in a time of global economic recession. I do not need to give you history lessons about the 1920s and 1930s.

Q66 Mr. Hamilton: Mr. Porteous, let me interrupt you for a second. I accept everything that you say and I think that it is a very important process. I agree with you, but how would you respond to my constituents—I represent the largest Jewish community in Yorkshire—who say that British participation in a conference that denigrated the Jewish people and was clearly anti-Semitic is deeply offensive to them?

Tom Porteous: The conference did not denigrate the Jewish people. One individual—the President of Iran, whose views are well known around the world—decided, for his own political purposes, to come to that conference and deliver a speech. He was the only Head of State, as far as I am aware, who came to Geneva to attend that conference. The important thing is that states such as the UK should be there, and they were there. We urged the UK to

overcome its hesitation at the beginning of the year, and to go to Geneva and attend the review conference. It was extremely important for the UK and other like-minded states to attend, to ensure that the outcome of the conference—the document that came out of it—was internationally acceptable and did not contain any of the sorts of outrageous comments that were made in the sidelines of the conference, if I may put it like that, by people such as Mahmoud Ahmadinejad.

Q67 Mr. Hamilton: And others who claimed that Zionism was equal to racism.
Kate Allen: Just to make Amnesty's position clear, we absolutely reject and condemn what was said by the President of Iran, but we were pleased that the British Government were there to argue and face down those kinds of issues and to engage in discussions about racism and how to tackle it. It was necessary to stay at the conference and confront those issues, not ignore them. That could be one answer to your constituents: it is worth facing down that form of racism, to ensure that there are ways to move forward on the issues that Durban was talking about.

Q68 Mr. Purchase: I have a question about the Human Rights Committee. Sandra, I and others, met with the Chair earlier this year, and it was perfectly clear that she was well aware that this is an arena of national interest and international alliances. The areas I was concerned about, where Britain appears to think that it has made a difference, is the rights of gays, lesbians and other sexual minorities. Although we have obtained a form of wording, do you believe that attitudes in Islamic countries will change in the slightest while they retain those fundamentalist views, or that gay people—if I may use an umbrella term—will be less discriminated against?
Kate Allen: It is not only in Muslim countries. There are many other countries where it is very tough to be gay and be open about that. Problems of discrimination do not rest with one faith or religion; we at Amnesty we have seen that discrimination in many parts of the world. Ongoing struggles are taking place and we at Amnesty are proud to be part of them and to work with people globally to raise these issues and take up that battle. It is part of the work that we do in many countries, supporting individuals who are forcibly taking forward these matters. Recently, we at Amnesty were part of the gay pride demonstration in Riga, where there was massive abuse of people in that country who were demonstrating for their rights. At the same time, the Russian authorities banned the gay pride march and literally set the police on demonstrators in Russia. That goes to show that we are not talking about one particular part of the world and its prejudices, but about a much broader range of prejudices that need to be confronted.

Q69 Mr. Purchase: I understand absolutely that this is not just an Islamic problem. I am talking about fanatics everywhere of every persuasion—not general people who hold religious views, but the fanatics and fundamentalists—who, everywhere that they are found, are opposed to the rights of fellow human beings who are gay or lesbian.
Tom Porteous: It is not just religion. One place where we find serious discrimination is the Caribbean.
Mr. Purchase: But it is religious in the Caribbean.
Andrew Mackinlay: Go on, because this is our responsibility—the Caribbean Overseas Territories.
Tom Porteous: You are familiar with the allegations of homophobia and so on against some of the black rappers—they are not particularly inspired by religion.

Q70 Chairman: I think Mr. Purchase is opening up a generalised debate about culture and society worldwide. There are international covenants and standards, but they are not universally applied. In many countries—even in ones that have signed up—the practices are not permitted.
Mr. Purchase: It creates serious problems for fellow human beings.
Chairman: It does indeed.
Kate Allen: It is not so long ago that we in this country had section 28, which was another discriminatory provision.
Chairman: One that was repealed just under 10 years ago. We will move on to a different international issue: the International Criminal Court. Do you want to come in on that?

Q71 Ms Stuart: Yes, but before I do, may I warn you not to be politically naive about the Iranians? Whether in Geneva or two months before in Munich, it suited the Iranians' domestic political purposes to be seen to be walked out on. On the International Criminal Court, the notion that we must bring certain international crimes to trial was very much based on the example of the Nuremberg trial.
Tom Porteous: Which trial?
Ms Stuart: The Nuremberg trial. The important thing about that was that it happened on German soil. The geography was important to the cleansing process. We now have the International Criminal Court, but in certain parts of the world, particularly in Africa, it is perceived as a body that is quite alien to their frameworks and as interfering. Is that your perception? If so, what can we do about it?
Tom Porteous: There is certainly a growing pushback from the opponents of international justice against the principle of securing accountability for serious crimes of war through mechanisms such as the ICC and ad hoc tribunals, which have been held not only in Africa, but in Yugoslavia. We are concerned about the way in which international justice has been misrepresented, particularly in Africa, as a tool of western neo-imperialism. The ICC currently has four dossiers on African states: Sudan, Uganda, the Democratic Republic of Congo and the Central African Republic. Of those four, three were self-referred—that is, the African states asked the ICC to investigate and to carry out prosecutions, if that is what the investigations led to. The fourth, as you

well know, was referred by the Security Council, which is the highest UN body. If you look at the facts, you see the truth that the ICC has not, on its own initiative, gone into Africa to sort out African human rights abuses and suspected war criminals. The fact remains that Africa is the theatre of some of the worst human rights abuses carried out in armed conflicts in the world. It is in some ways not surprising that Africa has been a focus for the ICC. It is important for countries such as the UK to point out those facts when confronted with arguments about the ICC being a tool of western imperialism and so forth. Of course there are legitimate questions about whether, in some circumstances, the pursuit of justice can upset and get in the way of the pursuit of peace and stability. Such questions have emerged recently in the cases of Sudan and the Congo. Those are legitimate concerns. However, one must bear in mind that in some parts of the world, the pursuit of justice has helped to consolidate peace and security. That has happened in the Balkans, arguably, and it has happened in west Africa, where international justice was an important component of the British Government's conflict resolution programme for Sierra Leone. We now have Charles Taylor in The Hague before the Special Court for Sierra Leone. If you look at the inverse argument, it is true that when suspected war criminals go unpunished and sit with great influence in government, as is the case now in Afghanistan, it is a source of delegitimisation. It is a propaganda coup for the enemies of that Government, namely the Taliban, who, I believe, are also our enemies in Afghanistan. One should not forget the advantages of international justice, as well as the alleged risks. We have come a long way with international justice, particularly with the setting up of the International Criminal Court. We need to consolidate those gains. Overall, the trend is positive. Of course there are shortcomings—the ICC does not have the power of enforcing its arrest warrants, as we are seeing in the case of Sudan. That is unfortunate, but it is important that countries such as the UK continue to support international justice wherever possible. On the whole, they have done so. The exception, I am afraid, is the case of Rwanda. We have sought very hard to have the International Criminal Tribunal for Rwanda try suspected war criminals, not only on the side of the genocidaires—the people who carried out the 1994 genocide—but on the side of the RPA, which later became the Government. There are very serious allegations, backed up by credible evidence, that certain members of the RPA committed very serious war crimes—not on the same level as the genocide, but none the less worthy of being examined by the ICTR. I am afraid that the British Government's position is that those people should be tried in Rwanda, but in Rwanda no one can get a fair trial for those kinds of crime.

Ms Stuart: Kate Allen, do you agree with that?

Kate Allen: I do. It is worth remembering that something like 108 states have now ratified the Rome Treaty. Thirty of them are African countries, so there is real support for that treaty in that continent. The International Criminal Court was set up in 2002, so it is still a very young court that needs the kind of support that Tom was talking about, to ensure that it is able to do its work.

Q72 Ms Stuart: I think it was in 2002 that we went to US and asked John Bolton why the US had not signed up. He famously replied, "Do you seriously think I am having an American soldier tried by a Belgian?" Do you think there is a slightly more enlightened view in the Obama Administration and that they might actually sign up?

Kate Allen: It is interesting that Hillary Clinton has reportedly welcomed the arrest warrant for President al-Bashir. I am sure that those instincts about the court remain, in terms of what it is doing, there seems to be a different approach.

Tom Porteous: I thought you would ask that question, so I got in touch with our office in Washington to find out what the position is. The fact is that they do not have a policy on the ICC yet.

Ms Stuart: Thank you. That was helpful.

Q73 Mr. Purchase: I want to ask you a little about international trade, ethical standards and how Britain reacts to the extraction industries, in particular. We have just seen the long awaited justice for relatives of Ken Saro-Wiwa and others involved in that case. Do you have any concrete examples of unethical activities by UK companies overseas? Do you see it as a widespread problem?

Kate Allen: To answer in a broader sense, I think that the UK Government have no overarching strategy on business and human rights. What we have are a Government who conflate human rights with corporate social responsibility. They do not understand or support the statutory element of the need to protect human rights and the ways that that needs to be done. We also have privately owned companies based in the UK that cannot be held to account for their actions overseas. The Ken Saro-Wiwa case conclusion this week shows the difficulties involved in people being able to get justice—it has taken 14 years of struggle to get an out of court settlement. We simply do not have the means to bring those companies to account in the UK. We at Amnesty have proposed the creation of a UK commission on business, human rights and the environment, which would have the ability to operate as a broader hub of networks of actors working in the UK and abroad. The commission would look at good practice and play a co-ordinating, capacity-building role, but it would also be able to deal with complaints against UK parent companies, address those issues and ensure that they were remedied. We would like the British Government to take much more of a leadership role, because we feel that they do not do so at present. They seem to be much more of a mind of voluntary initiatives, rather than anything with more teeth. On the opening part of your question, we think that the UK Export Credits Guarantee Department, in its initiatives, does not show respect for protecting human rights in the context of business activity. It reports to the Department for Business, Innovation and Skills and does not operate projects itself, but it

has facilitated projects that have resulted in great concern for us about the protection of human rights. A particular example in relation to host government agreements centres on a pipeline through Azerbaijan, Georgia and Turkey. A consortium led by BP negotiated to protect itself from any changes in either national or international law during the lifetime of that pipeline, which was expected to be 40 years. We would like the ECGD to behave differently.

Q74 Mr. Purchase: May I run you down the well worn path—particularly well worn at a time of economic downturn—where the idea that a Government, particularly a Labour Government, would impose new obligations on companies is seen as yet another burdensome problem? We hear that regularly in relation to the arms trade, but in this specific matter, how would a Government and ECGD officials answer that charge, which is bound to be made if we went down your proposed route? It seems very sensible to impose quality checks and to monitor, but how would we answer the charge that it would be anti-competitive for British business because no one else is doing it?

Kate Allen: By raising those issues an international level and trying to get a common playing field. For example, the route that the Government took on arms—UK legislation, European guidelines and now an international arms trade treaty—shows that there are ways of taking up issues that internationalise them. I would argue very strongly against the fact that, in the global economic downturn, human rights—not only in relation to business, but in many ways—should be put to one side as a luxury that cannot be afforded. Amnesty's recently launched annual report strongly urges world leaders, particularly G20 leaders, which is a group that our Prime Minister has played a role within, to put human rights at the centre of their decisions. Any attempt to deal with economic issues that does not also consider and protect human rights issues could lead to even greater repression in the world, to the greater detriment of human rights. The World Bank has already told us that 150 million more people entered poverty last year. We have seen the impact of that in terms of riots in various parts of the world over food prices and other issues. If we do not put human rights at the centre of some of our considerations, we will see more and more of that.

Q75 Sandra Osborne: In last year's human rights response to the Government, we asked them to ensure that the key issues of women's rights, children's rights and the promotion of democracy were given greater prominence. In this year's report, they have devoted separate sections to each of these and appended examples of bilateral work that they have carried out. How would you assess the recent record of the Government in relation to these issues?

Kate Allen: Shall I start off on women's rights, and then perhaps Tom can pick up on children's rights? On women's rights, the Committee asked last year that women's rights be given greater prominence in the report. I think that what we see in the Government's report is much clearer reporting on the situation of women, and I think that the Committee should be congratulated on getting that response from the Government. I think what we still need to see in terms of the issue of women's rights is greater strategic thinking in the way that the Foreign Office adopts policy and practice. What I would like to see there is about the way in which the United Kingdom Government can contribute to and support the implementation of two very important UN resolutions. We have resolution 1325 on women, peace and security, and resolution 1820 on sexual violence in conflict zones. I think that the UK Government could play a really vital role internationally in seeing those two resolutions have some real muscle attached to them. Resolution 1325, as I said, is about post-conflict situations. Quite clearly, the UK Government, both in terms of Iraq and Afghanistan, has a central role that it could play about the way in which women are at the centre of the decisions that are made in the situation of post-conflict there, and I know that the Government have been working on action plans around that particular resolution. Resolution 1820 is a more recent resolution. It is one that talks about sexual violence. We have seen, for example, that in Sierra Leone, a third of women faced sexual violence during that conflict, and the Government there have not addressed those issues or the aftermath of those issues in terms of the services that women need. So we would like to see the British Government put real diplomatic and political muscle behind those two resolutions. They should be developed in consultation with women, not just in the traditional ways in which the Government works in these areas but through independent women's voices. I think that the Committee could have a real impact if it championed these issues in its discussions with the Foreign Secretary and could have a real impact in seeing even further progress in next year's report when it tackles women's issues.

Tom Porteous: On women's rights and children's rights, the UK does a pretty good job. I would just highlight one area where we are concerned about not just the UK's but the European Union's role, and that is the issue of unaccompanied migrant children and unaccompanied child asylum seekers. In 2008, over 1,000 unaccompanied children entered Greece. Many of them were coming from Iraq, fleeing from the mayhem there. These kids end up in Greece, on the streets, in a daily battle for survival, looking for food and money, often living on the streets, facing daily abuse from the Greek police. Their aim is to get further into the European Union, where maybe they will be treated a little better, but under the Dublin II regulation, the first country where an unaccompanied child makes its application for asylum is in charge of that application. Because of that, any other European country that picks that person up, even a child, can send them back to the original country, in this case Greece. This is the fault of the European Union. The European Union should address this problem, particularly with relation to children. The European Commission should take legal action against Greece for its

treatment of unaccompanied minors who are seeking asylum in that country, because it is absolutely appalling and unacceptable that this kind of thing is going on in the European Union. I think the European Union bears common responsibility—obviously Greece is responsible for the behaviour of its security forces when they abuse children, but the European Union's policies are also to blame. It is not just Greece, by the way, it is also other southern European countries. On the issue of the promotion of democracy, I think there are a couple of really important questions that come out here. One is related to the question of countries emerging from conflict—countries like Afghanistan, Iraq, Sudan and so on. A question that is often asked in foreign policy circles, especially in relation to human rights, is how much democracy can a country that is emerging from such a conflict actually afford. Is not it sometimes better to install some sort of strong figure who can create stability? The second question about democracy that is often asked in this respect, especially with regard to the Middle East, is what do we do if we want to promote democracies in countries where it is likely that the victors of any elections are going to be Islamists? Often, for good measure, it is added that those very Islamists are going to be no respecters of democracy, and no respecters of human rights, either. I think there is obviously a lot that can be said about these two very crucial questions of foreign policy, but I shall just confine myself to a couple of things. First of all, I think the UK probably sets too much store by the actual process of elections in countries like Congo, Iraq or Afghanistan. Elections are obviously a sine qua non of democracy—you cannot have a genuine democracy without them. But unless democracy is underpinned by the rule of law and respect for human rights you are going to run into trouble—problems with regard to peace and security. That is why we have seen in a place like Congo, you have had elections and that has not created peace and stability. Too often I think that policy makers see elections as a barometer of progress in getting countries out of the chaos of conflict, and they pay too little attention to the human rights that need to underpin those democracies if we are to avoid tipping those countries back into conflict. On the issue of democracy in the Middle East I think we need to accept very clearly that the UK and its allies face two very clear alternatives. Either we support the emergence of genuine democracy—and, yes, that may well mean the emergence of Islamist parties, because they are the most popular and dynamic forces in those societies, and we have seen the emergence of an Islamist party to power in Turkey, for example, and the sky has not fallen on people's heads—or we continue to support autocratic regimes in places like Egypt, Libya and Saudi Arabia, which are highly repressive, where torture is widely practised, and where there is a lot of corruption. This latter path has been pursued for the last several decades, and what are the results? I believe we can see the results that we are reaping in the middle east at the moment, in the form of radicalisation, extremism and so forth. I quote—it is a short quote but an important one—from a book by the former Middle East editor of the *Financial Times*, someone who knows what he is talking about: David Gardner. He says in his book, which has just been published last month, "Unless the middle east can find a way out of this pit of autocracy, their people will be condemned to lead bleak lives of despair, humiliation and rage for a generation, adding fuel to a roaring fire in what is already the most combustible region in the world."

Q76 Sandra Osborne: I think some of these issues would probably come up under countries of concern, but I wanted to ask you about Afghanistan. You discussed post-conflict situations, and, indeed, the same things apply in conflict situations. There has been substantial progress in Afghanistan—for example, in progressing access to education for girls—but recently the President brought in a religious law that was a deeply retrograde step in relation to women's rights. We had heard from various quarters that the priority for the involvement of the international community in Afghanistan should be anti-terrorism and the safety of citizens of the UK and elsewhere, that somehow women's rights were second order or third order in terms of priorities and in some cases could be expendable and that given the history and culture of Afghanistan, there was some sort of trade-off to be made in relation to women's rights. Do you feel there is a danger, particularly in post-conflict situations in the future, that people having gone into countries and raised the expectations and hopes of women, these could be dashed because the international community has other priorities?

Kate Allen: I do not think there is a danger—it is happening. If you look at the situation in Afghanistan—you have talked about it in terms of compromising on women's rights to reach out to conservative forces that President Karzai wants to have alliances with—quite clearly women's rights are not being given any real regard. That is shocking. That is where UN resolution 1325 in a systematic approach to the role of women in post-conflict societies could be something of importance for the future. But in Afghanistan at the moment, all those promises were made to women and it was not just about being able to go to school. It was much more than that and they are not being met. Women are impacted by those security issues. Women are suffering in exactly the same way as men in relation to all those issues. It is a betrayal. Women in Afghanistan were told that women's rights would be at the centre of what happened in post-conflict Afghanistan, and there is a President now who is willing to trade women's rights to say no to their husbands, to be medically examined and to leave their homes without their husbands. These are issues on which the UK Government have a major role in Afghanistan. We should be hearing more. There should be more being done to work with President Karzai's Government: these are not acceptable trade-offs to be being made.

Sandra Osborne: Our Prime Minister did condemn the new law, but I agree with you generally.

Chairman: We are producing a big report on Afghanistan and Pakistan in the next few weeks and we will no doubt go into those issues. I want now to shift the focus to some specific countries of concern.

Q77 Mr. Hamilton: May I start by looking at Zimbabwe? On 30 January this year, as you will remember, the national council of the opposition Movement for Democrat Change—the MDC—in Zimbabwe announced its intention to proceed with the power-sharing deal that was agreed in September 2008. I think we are all aware that life expectancy in Zimbabwe is the lowest in the world. More than 2,500 people a week are dying from AIDS-related illnesses, and there have been 1,900 deaths from cholera. More than 5 million people, which is nearly half the population, now need food aid, and essential services have largely ceased to function. Human Rights Watch criticised the FCO human rights report for not focusing sharply enough on "the need for increased pressure on Zimbabwe". Mr. Tsvangirai, who is now the Prime Minister and is the MDC's leader, told Dutch television recently that he had a working relationship with Mr. Mugabe and said, "As far as I know today, there are no political prisoners in Zimbabwe." I want to ask both of you whether you think there has been any recent progress in tackling the appalling humanitarian situation in Zimbabwe.

Kate Allen: It is early days since that agreement to share power. You have very accurately summarised the situation in that country. In terms of no political prisoners, I would simply point out that the MDC itself talks about at least seven of its activists who have disappeared and remain unaccounted for. So there is an enormous legacy there. There is undoubtedly a real political imperative on the leaders of the country at the moment to make the alliance work. I think that what we need to see from the UK is pressure maintained. Donors must continue to ensure that their humanitarian aid reaches the people for whom it is intended, and that it is at good levels. There is a real risk of a complete failure of the health and education sectors, and that could play into the hands of some of the hardliners in that country. So there are still roles that the UK Government can play, but, as you have outlined, it is an appalling humanitarian situation.

Q78 Mr. Hamilton: Is there really any serious prospect of re-establishing human rights in Zimbabwe as long as President Mugabe is there?

Tom Porteous: There is no prospect of having a proper solution to this massive humanitarian crisis until the human rights-related political problems are addressed. The power sharing agreement is certainly a step forward, but the situation remains extremely precarious. Let us be clear: Mugabe is definitely a problem, but it is not just Mugabe. It is also a number of his cronies in ZANU-PF who are desperate to hold on to their privileges and are prepared to use whatever means to cling to power. They are probably afraid of the sort of punishment that they would receive once there has been a full transition to a new political dispensation. So it is not just Mugabe. Human rights problems remain extremely serious. Just last month, 15 opposition members and human rights activists were rearrested after having been released on bail. There is clearly an effort on the part of ZANU-PF to destabilise the transitional Government and undermine the little power that the MDC has in it. Let us not forget that the MDC does not control the key ministries. ZANU-PF still controls the army, the key police units, the penal system and so forth. The army remains completely under ZANU-PF's control, and there are continuing invasions by militias supported by ZANU-PF of commercial farms, leading to serious displacement. That is one of the main causes of the humanitarian crisis, and, of course, repressive legislation remains on the statute book. What is very important from the point of view of the UK Government, the EU and other states that are concerned about the future of Zimbabwe is that they should attach very strict conditions to the resumption of full Government-to-Government aid. It is very important that the humanitarian aid should be going into Zimbabwe through the [non governmental] agencies, avoiding any agency that is controlled by ZANU-PF. It should be going in through NGOs and so forth on the ground. Some of that is actually happening, although, as Kate mentioned, there are real concerns about the sewerage system collapsing, which has led to the terrible cholera outbreak. A clear message needs to be sent that there will be no resumption of Government-to-Government aid until there has been an irreversible change in the human rights situation in that country. I am quite confident that we will get there.

Q79 Chairman: I am conscious of the time, and the fact that there are lots of countries in the world where there are serious human rights abuses.

Andrew Mackinlay: Colombia.

Chairman: We will get to that—just let me finish. We do not have time now to ask probing questions about the countries listed in the Government's human rights report, but we have had written submissions from both of you which will be taken into account in our report. In the time that is left, there are a few issues that I would like to raise with you. We have already mentioned Sri Lanka. Do you have any assessment of the scale of the humanitarian crisis in Sri Lanka at this time, given that the Sri Lankan Government have, following the defeat of the Tamil Tigers, not yet allowed international observers or representatives in to large parts of the country? The British Government referred to a "culture of impunity" towards human rights abuses that have been going on in Sri Lanka for some time. Is our Government doing enough and should Sri Lanka have been included in their list of countries of major human rights concern? There is a section in the report about Sri Lanka, but it is not listed in that section of countries of major concern. Should we have major concerns about what is happening in Sri Lanka? I am talking about not just the way in which the Tamil Tigers use human shields or fire at civilians

but the way in which the Sri Lankan Government seem to have carried out a pretty brutal attack on a number of areas populated by civilians.

Tom Porteous: Sri Lanka should be included as a country of concern, perhaps in next year's report. The human rights situation is about not just the behaviour of the Sri Lankan Government forces and the Tamil Tigers in the zone of conflict in the north, but the overall situation in the country. Critics of the Government—whether they are in the north or the south—tend to get into trouble. They are targeted in one way or another, and that is a source of real concern. The real problem is the humanitarian crisis in the north that has come about as a result of the conflict. We are pleased that the conflict is over because it has caused such terrible loss of life and destruction. As you mentioned, it is very difficult to get a very accurate picture of what is going on because the Sri Lankan Government have consistently denied access to journalists and other independent observers, including human rights observers. However, the UN is there on the ground. Quite a bit of information has got out. Some people have managed to get out information. We know that about 300,000 Sri Lankan Tamils have been displaced by the recent fighting. We also know that they have mostly been screened and processed into what the Sri Lankan Government call "welfare villages" but which are, in fact, long-term internment camps. Given the history of enforced disappearances in Sri Lanka, we are very concerned about the signals that we are getting that Tamil civilians who are suspected of having links with the Tamil Tigers may be "being disappeared" in one form or another.

Q80 Chairman: Can you clarify? You refer to camps. Are those camps where people are being moved to and not allowed to leave?

Tom Porteous: That is right. They are surrounded by barbed wire. Freedom of movement is extremely restricted. Access to the camps for UN and other agencies is also restricted, although the UN is allowed to operate in some of them. The internment camps are a source of real concern. The international actors—including the UK—who are concerned about the situation in Sri Lanka should be putting pressure on the Sri Lankan Government. There is also an opportunity here, with the end of the war, for the Sri Lankan Government, supported by their international partners, to consolidate peace and stability in the country by addressing the route cause of the conflict, which is the historical and continuing discrimination against the Tamil minority.

Q81 Chairman: I know that the UN Secretary General, John Holmes, and Navi Pillay, the High Commissioner for Human Rights, have made statements about the situation, as have our Government. When the UN Human Rights Council then rejects any criticism of—in fact endorses—the position of the Sri Lankan Government, is it not rather difficult to see how the international community is going to do anything effective here?

Tom Porteous: We had this discussion at the beginning. You are right, there is a real problem about the leverage of countries such as the UK, other European Union member states and even the US. That is why we were particularly disappointed by the rather weak statements that the Secretary-General made during his trip to Sri Lanka because with the political authority that his office bestows, we felt that he could have come out more strongly than he did on the concerns that we and many others have on the human rights situation in Sri Lanka.

Kate Allen: The public figure that the UN estimate is 6,500 civilians dead. But *The Times* recently reported on a confidential UN figure suggesting more than 20,000 were killed. Amnesty has called on the UN to release the figures, because it is absolutely essential that we understand what the civilian casualties have been. Just to add to Human Rights Watch, the UN working group on disappearances is investigating 5,516 cases of enforced disappearances in Sri Lanka. Sri Lanka is also one of the most dangerous countries in the world to be a journalist. There is such repression of information and people who speak out are targeted. Despite the Human Rights Council's failings, I think that it is absolutely essential that we get an understanding of the figures—clear figures about the casualties—and that the British Government do what they can to take forward these issues.

Tom Porteous: There undoubtedly needs to be an international investigation, but as you said, the obstacles to that are formidable.

Q82 Chairman: Clearly, it is an issue we will come back to in our report. What can the UK Government and other countries do to support Daw Aung San Suu Kyi and the democracy movement in Burma?

Tom Porteous: Again, this is another of those countries where leverage of the UK is rather limited. We, Amnesty and the UK Government are all extremely concerned about the situation, particularly in the run-up to the so-called elections, which the Burmese authorities are holding as a result of their sham political reform process. We have called on Burma's neighbours to put pressure on Burma's military rulers to free Aung San Suu Kyi immediately, but there is a problem, which is that the neighbours of Burma have been more reluctant to criticise. They have got quite considerable economic interests in Burma. Those obviously play a role.

Q83 Chairman: You mean principally China and India?

Tom Porteous: China, India and Thailand. That undercuts any international leverage that might be exerted through the Security Council and so on. The UK has played an exemplary role in its policy towards Burma, but I am afraid it just does not have the leverage to have much impact, although I would say that the UK ambassador has been extremely outspoken in giving interviews and so forth, and that has been quite useful.

Q84 Chairman: May I ask you about Pakistan? We were in Pakistan a few weeks ago. How is the current crisis—the recent events in Pakistan—impacting on human rights, particularly on women?

Kate Allen: It is impacting massively. There is a massive displacement crisis taking place in the North West Frontier provinces and the Federally Administered Tribal Areas. We have seen armed groups, many of them explicitly pro-Taliban, committing appalling human rights atrocities. We have seen the Pakistan Government vacillate between responding to insurgents by indiscriminate and often disproportionate military action and, on the other hand, simply vacating and leaving power vacuums to be filled. We know that women in particular are suffering. Women always suffer in these situations. We know that the Pakistan Government, much as we described in Afghanistan, have from time to time been tempted to sign away women's rights in the attempt to negotiate peace deals with insurgent groups, and we see exactly that same tendency that we talked about a little while ago in Afghanistan. There is a real role for the British Government to ensure that they do what they can in terms of women's rights during this particular time because they are massively under threat.

Tom Porteous: May I urge you, when you have your session with the Foreign Secretary, to emphasise that the bad war fighting, by which I mean fighting that involves violations of international humanitarian law, will not help resolve this conflict and will make it more entrenched and more difficult? Our immediate concerns include the fact that the Pakistani military needs to avoid using curfews, which are leading to a lot of the humanitarian suffering that we are seeing at the moment, as well as to a public backlash against the Government. Also, our people who are there on the ground at the moment are worried about the tendency of the army to declare a particular area a conflict area and then give the residents only two or three hours, in some cases, to clear out before firing into the area. This is also playing very badly with the population. In the fog of war, it may be that people will not realise what is going on, but eventually, because Pakistan has rather a free media at the moment, this stuff is going to end up on television and it is going to play into the hands of the Taliban. It is important that the UK should be making those points to the Pakistan Government and particularly to the Pakistan military, because those are the ones who are actually doing it. We are also concerned about signals that we are getting that disappearances are beginning to rise.

Q85 Mr. Illsley: Last year, in its report, the Committee was quite critical of Saudi Arabia. I think it described the human rights situation there as one of the worst in the world. The Government, in their response, disagreed and said that they have seen signs of gradual progress in Saudi Arabia. But I think you were critical of that, especially, in Human Rights Watch and said that the Government were concentrating too much on the idea of the legal system in Saudi Arabia and sharia law and so on. What is your current assessment of that? Do you agree with the Government that there are signs of progress or do you think that that view is misplaced and that more needs to be done by our Government to try to persuade Saudi Arabia to improve?

Tom Porteous: There is a little progress. One sign of progress is that Human Rights Watch is actually admitted to Saudi Arabia on official visits, which is no mean thing, considering the mentality that Saudi Arabia had towards human rights organisations in the past. But there are still really serious problems. The rights of women are systematically and legally discriminated against, as are those of minorities, including foreign workers. There are also unfair trials, arbitrary detention, severe curtailment of freedom of expression and association and all the problems that you are familiar with. The UK hides behind the argument that Saudi Arabia needs to progress slowly at the pace of the most conservative elements in society, namely the mullahs. We disagree with that, because many of the systematic violations of human rights that you see in Saudi Arabia are also violations of Islamic law, as we have pointed out in our reports, as well as of international laws. Many of the violations of political rights, which are justified both by the Saudi authorities and their international allies as being part of Saudi Arabia's tradition, and so forth, are about maintaining power rather than about tradition. The UK Government need to take that on board and push for a rather faster pace of change.

Mr. Illsley: Not ready for democracy, either.

Tom Porteous: Failure to do that will breed radicalism and extremism in the middle east, because Saudi Arabia has played its role in that in the past.

Q86 Mr. Purchase: The business community in Saudi Arabia is quite progressive and would very much want to move at a faster pace, but it recognises that there is a hugely conservative majority in the ruling factions of Saudi. Despite wishing to make real and serious progress, the business community finds that caution is a necessary condition. Do you dispute that?

Tom Porteous: I would say two things. First, the pace of reform in other Gulf countries that have the same traditions has been much faster: Kuwait is a good example. Secondly, no one knows what the majority thinks because there has never been a proper election in Saudi Arabia.

Mr. Purchase: I said that it was among the ruling classes—the ruling faction.

Kate Allen: May I add one small point on women in Saudi Arabia? We honestly found the section on women in the Foreign Office's report difficult reading. It was apologist in tone, and seemed to imply exactly that—that men and women in Saudi Arabia were pretty happy with the institutionalised nature of the discrimination that takes place against women. It talked about the ability of richer women to reclaim their rights by leaving Saudi Arabia, which does not really feel like progress in terms of women's rights. We at Amnesty continue to document women being treated as second-rate citizens, subordinate to men under family law, denied equal opportunities, not allowed to drive.

Mr. Purchase: All of this, Kate, all of these.
Kate Allen: And the latest case, this year, of an eight-year-old being offered to a 60-year-old man in marriage—only this year. This is still happening and this is still how women's rights are being treated. We do not think that the Foreign Office's report treats that with the degree of seriousness that it should.

Q87 Chairman: We have just two other countries to touch on quickly. Briefly, we are doing an inquiry on Israel and the Occupied Palestinian Territories—I don't want to go into that whole issue but, simply, do you find how the international community and our Government have responded to the allegations of human rights violations during the recent conflict satisfactory? I note that the Human Rights Council's wording only related to an allegations inquiry about what happened in the Occupied Palestinian Territories, but did not talk about anything such as, for example, firing rockets against civilians from Gaza. Similarly, the Human Rights Council, although it set up an inquiry on Israel, did not do so on Sri Lanka, as we have commented. Is there not a problem—to which you referred earlier—with the politicisation of international human rights inquiries? Having said that, do you have any view on how the UN inquiry under Richard Goldstone at the moment is being conducted, and on the position that the British Government are taking?
Kate Allen: The main problem that we have with the inquiry being led by Richard Goldstone is the failure of the Israeli authorities to co-operate with it. We have seen an Israeli investigation on Gaza, which was neither independent nor impartial and talked about a very small number of mistakes.
Chairman: That is the Israel Defence Forces' investigation.
Kate Allen: Exactly. It simply did not recognise the scale of what happened: 300 Palestinian children dead, and hundreds of other civilians. We are really disappointed with the UK Government's failure to make a public statement of support for the Goldstone mission and to put pressure on the Israeli Government to co-operate. We hope that that inquiry could have that kind of support. Also, as Amnesty, we have asked for there to be those inquiries into the abuses committed by the Palestinian majority and the de facto Hamas Administration. We, as Amnesty International, have been in Gaza—we were in Gaza before the ceasefire was called. Our missions into Gaza have found hundreds of white phosphorus-impregnated felt wedges in residential areas, still burning in many cases. There is, absolutely, evidence of war crimes. An independent investigation is essential. It is deplorable that Richard Goldstone's inquiry is not meeting with the co-operation of the Israeli Government.
Tom Porteous: May I come in on that? Just quickly, because I think it is important. Human Rights Watch criticised the initial Human Rights Council resolution setting up a fact-finding mission for Gaza, because it was so one-sided. We have been pushing from the beginning for a full UN Security Council-mandated commission of inquiry—set up either by the UN Security Council, or by the Secretary-General and supported by the Security Council. That, we think, is the way to go in the long run. However, I would say that since then there has been a lot of activity at the Human Rights Council and it is clear that the fact-finding mission that Justice Goldstone is now leading—I believe they have just completed a trip to Gaza—is going to be comprehensive. That is to say they are not just looking at Israeli violations of the laws of war, but also looking at Palestinian violations. Therefore, that needs to be supported by the international community, including by the UK, and its recommendations need to be taken extremely seriously. Like Amnesty we have extremely serious, credible evidence of serious violations of the laws of war on both sides, and I will also just quickly add that the board of inquiry which the UN set up to look at attacks at its own UN installations in Gaza—a very limited mandate—
Chairman: That was by Ian Martin, the former Secretary-General of Amnesty.
Tom Porteous: Yes. That came out with a very strong recommendation for a broader, international, independent inquiry along the lines that Amnesty and Human Rights Watch have been calling for. That should be followed. It is very disappointing that the Secretary-General again, with regard to his own report, did not come out supporting that particular recommendation.
Chairman: Thank you very much. That is helpful and will be useful in our other report that we are working on.

Q88 Sandra Osborne: Can I ask you about Colombia? I have just recently returned. I was there at the invitation of Justice for Colombia and heard testimony from families of people who had been murdered by the army, dressed in the clothes of guerrillas, and had been accused of being guerrillas. The Government do not tolerate legitimate opposition, they stigmatise Opposition politicians and arbitrarily launch investigations into them, where they are also accused of being guerrillas. They murder trade unionists and human rights defenders, and accuse civil rights lawyers of being guerrillas as well. There are large numbers of political prisoners, which the UK Government do not appear to recognise, and there are also millions of displaced people, who live in squalor. Can I ask you for your assessment of the UK Government's position, which is that Colombia is now much safer than previously?
Tom Porteous: The key issue here is the UK military assistance to Colombia. There is no doubt that Colombia is by far the most dangerous place in Latin America at the moment. I would not want to make a comparison about whether it is more dangerous now than it was a year ago. It is very, very dangerous, particularly for journalists, trade unionists and human rights defenders. The problem is that we really have no idea how much UK aid is going to Colombia. We don't know what kind of aid it is; we don't know which military units it is going to; we don't know what the impact of that aid is in terms of human rights; because the whole thing is totally

lacking in accountability and transparency. We do know, as you have eloquently pointed out, that the situation in Colombia is extremely serious, that the human rights situation is extremely bad and that the military themselves are involved in extra-judicial killings and various different kinds of human rights abuses; there are, as well, pro-Government militias, which are in some ways related to the military, and, of course, the anti-Government rebels, who are also involved in serious human rights abuses. I would not want to underestimate that for one minute. At the same time, the courts in Colombia have made some progress towards achieving some sort of accountability for these human rights abuses, but the current Administration in Colombia have actually sabotaged some of that progress that has been made by the courts. I think that the UK Government need to take a much more clear-eyed look at the human rights situation in Colombia, and particularly at the relationship between human rights abuses and the Colombian Government forces. They need to seriously reconsider, or at least make more transparent, their military aid to Colombia. There all sorts of interests that the UK has in Colombia. They have commercial interests and a very important interest in addressing the narco-trafficking problem. It seems to us that the main reason why the British Government are providing this military aid to Colombia is that they are simply following the dictates of the strategic alliance with Washington. Colombia has been a good ally of the United States, particularly under the Bush Administration. But here is the interesting thing: since the Democrats gained control of the US Congress a couple of years ago, US military aid to Colombia has become much more transparent: we know where it's going. The Democrats have managed to hold up some of that aid. In the UK, it is still an accountability-free zone. We would like to see much more transparency over UK military aid to Colombia. That applies to some other parts of the world. In particular, counter-terrorism aid to some parts of Africa and the Middle East is done under a semi-secret MOD counter-terrorism programme called Operation Monogram, which we uncovered had been providing counter-terrorism training to a unit of the Kenyan army that was subsequently involved in serious human rights abuses in Mount Elgon in a little-known conflict that had nothing to do with terrorism in west Kenya. The whole issue of UK military aid to countries where serious human rights abuses are occurring should be given much more prominence. I hope that you will push the Foreign Office on that.

Kate Allen: I agree with that point about military aid to Colombia. May I give you some facts? In the 12 months ending in June 2008, 1,500 civilians were killed in the conflict, compared with 1,350 in the previous 12 months and more than 180 people were the victims of enforced disappearances, compared with 120 in the previous year. We do not think that Colombia has become safer, but that some of the most intense parts of the conflict have moved to more remote areas of the country. To add to the comments about the way in which people are targeted, President Uribe has made statements undermining the legitimacy of human rights work and stigmatising human rights defenders, whom he has accused of being guerrilla sympathisers. In that environment, that is an invitation to kill. Colombia remains a very violent place.

Q89 Andrew Mackinlay: Quite apart from the urban killings, and even those in the countryside that have the fingerprints of the state forces, indigenous people who clearly cannot articulate their minds are also suffering. Is it not bordering on genocide? In parts of Colombia, they are being cleared. Is it out of sight, out of mind? My other question is, when you raise these matters with the British Government, what do your interlocutors say, whoever they are? Do they take you seriously and respond? That is a separate question to the one about the indigenous people, who make up small nations in Colombia.

Kate Allen: I don't have information on that, but I will try to get back to you.

Tom Porteous: We have had several meetings with the Foreign Office on Colombia, including at a more political level. It listens sympathetically and that's it.

Q90 Andrew Mackinlay: Isn't there an issue with land mines in Colombia, which we haven't touched upon?

Tom Porteous: I would have to get back to you on that.

Chairman: I think we have exhausted ourselves and you. Thank you both once again for coming before us and giving such a wide-ranging view of the challenges of human rights worldwide. We are pleased and will definitely follow up on some of these areas in writing. Kate Allen has had a particularly long grilling today and we are very grateful.

Tuesday 16 June 2009

Members present:

Mike Gapes, in the Chair

Mr. Eric Illsley
Mr. Paul Keetch
Mr. Greg Pope
Mr. Ken Purchase
Sir John Stanley

Witnesses: **Rt Hon. David Miliband MP,** Secretary of State, and **Simon Manley**, Director of Defence and Strategic Threats, Foreign and Commonwealth Office, gave evidence. **Susan Hyland**, Head of Human Rights, Democracy and Governance Group, FCO, was in attendance.

Q91 Chairman: Foreign Secretary, welcome to this session of our inquiry on the Foreign and Commonwealth Office's annual human rights report. We have two sessions with you this week: one today on human rights, and one tomorrow on Europe. We appreciate you giving up so much time this week for our Committee. We received your letter that set out the overall approach of the Government. We are grateful for that. We shall probably refer to it and no doubt you will do so too in your answers to our questions. May I begin by making a brief statement to make it clear to the press and the public that there are some restrictions on our questioning, which arise from the House's sub judice rule? This rule prevents discussion in parliamentary proceedings of cases that are active before the courts. The aim of the rule is to safeguard the right to a fair trial. It is also important that Parliament and the courts give mutual recognition to their respective roles and do not interfere in each other's affairs. We have taken advice from the House authorities on individual cases that are currently active, and it is particularly important that nothing should be said in this hearing, either by members of the Committee or by witnesses, that might be deemed prejudicial in any forthcoming court proceedings. I will intervene, if necessary, to ensure that the sub judice rule is not broken. I am sure we will find that that still leaves us plenty of scope for questions that are in order in today's hearing, on those issues and related matters. On the basis of that statement, Foreign Secretary, could you introduce your colleagues to us?
David Miliband: On my right is Simon Manley, the director of defence and strategic threats, and on my left is Susan Hyland, the director of our human rights, democracy and governance group.

Q92 Chairman: Thank you very much; both of them are known to us. Can I ask you to begin by answering a general question? How does the election of President Obama change the context of the human rights debate and provide us with an opportunity to adopt a new approach, to draw a line under what happened in the recent past, and to develop a new framework for fulfilling our responsibilities for the human rights of British citizens and others overseas?
David Miliband: The election of President Obama and his subsequent commitments change American policy in quite fundamental ways, and that obviously has an impact around the world. He has set a new framework, to use your phrase, for American policy, and at the moment at least three important reviews are under way that will deliver judgment on the future of American policy. From our point of view, it is important that our twin commitments—to safeguarding, on the one hand, the rights of British citizens, and on the other, their security—have a clear framework. There are four international treaties or conventions to which we are party—the Universal Declaration on Human Rights, the Geneva Conventions and the International Covenant on Civil and Political Rights, as well as the Convention against Torture—which are relevant, while in our own domestic law we now have the European Convention on Human Rights. Our legal framework is clear; so is our ethical framework, which is shared across the political parties of the House of Commons. There is a shared commitment to have no truck with torture or with mistreatment that is cruel, inhuman or degrading. As you say, I wrote to the Committee yesterday, because it is important to welcome your report as an opportunity for more informed public debate about the challenges and dilemmas that we all face, and about how we meet them together. Perhaps I might pick out a couple of points that, too often, are not said but need to be. First, we have a more comprehensive intelligence capability than almost any other country in the world. It is staffed by people of enormous dedication and bravery, and with patriotism and high ethics. In all my dealings with SIS, GCHQ and the Security Service, I have been struck by the professionalism, in the broadest sense of the word, that those people represent. They hold themselves to high standards, of which the country would be proud. Secondly, it is worth reiterating that there is no equivocation about the Government's position on torture. We abhor torture; we will not co-operate or collude with it; and, in line with our international commitments, we are honour-bound not just to avoid wrongdoing ourselves but to try to reduce, and if possible eliminate, the use of cruel or inhuman treatment or torture around the world. Thirdly, it is also important to be honest that we cannot defend ourselves and the rights of British citizens in isolation. We have to do that with other countries, some of whom have a different legal framework from us and some of whom have a different set of standards. Our role, as Ministers, agency heads and officials, is to make sure, first, that we do not collude in torture or inhuman

mistreatment and, secondly, that we try to reduce the risk of mistreatment in other countries. Finally, it is important to emphasise that there is a comprehensive accountability framework for the work done in this respect. The first responsibility is obviously for Ministers to set the right policy and ethical framework, but also for agency heads as they lead their organisations. There is clear guidance for officials, which the ISC is now reviewing in respect of intelligence agencies; there is also guidance for Foreign Office officials. At the other end of the spectrum there is the civil and criminal law, and it is a strength of our system that any citizen can take legal action. As you mentioned, there are a number of cases before the courts, and that means that there are limits on what we can discuss publicly, but it is a strength of our system that that route exists. In between the responsibility of Ministers on the one hand and the law on the other, is parliamentary accountability, part of which is represented by inquiries such as yours, and part of which is represented by the Intelligence and Security Committee, which is a creation of Parliament. I hope that your inquiry can help us to ensure that all parts of the accountability framework are working properly. Certainly in the answers that we give today, we will try to be as helpful as possible in explaining how we go about our business.

Q93 Chairman: Thank you, Foreign Secretary. You have touched on a number of issues that we will come on to, with specific questions about definitions of torture and the practices of other countries. Just to place it on the record, the Intelligence and Security Committee is appointed by the Prime Minister, not by Parliament. There is a very important point here about parliamentary accountability. We, as a Committee, for several years have been pressing for a different system, so that there can be true public parliamentary accountability, not from an appointed Committee but from one chosen by Members of the House of Commons. I think that the Government have a different view on that, but I want to place on the record that that remains our position.
David Miliband: I completely appreciate and respect that. The only point that I was making was that the ISC as it exists today is a creation of Parliament. It was created in 1994. However, I totally respect that you want to reform it.

Q94 Chairman: It was appointed by the Prime Minister, not by Parliament. Can I ask you to answer some specific questions that follow on from the statement you made to the House at the beginning of 2008 concerning the two cases of rendition through Diego Garcia in 2002? Why are the Government reluctant to release additional information into the public domain, with the full details of those two cases?
David Miliband: What sort of information were you thinking of?

Q95 Chairman: I am thinking of the details of the individuals, the basis on which they were rendered and where they were rendered to.
David Miliband: We have no confirmation of their names, and that is why we have not put them into the public domain.

Q96 Chairman: Thank you; that is helpful. How would you respond to the allegations that the two cases we are referring to do not represent the full extent of the use of Diego Garcia as part of what has been called a rendition circuit?
David Miliband: I have had assurances from the highest levels of US Government—the former Secretary of State Condoleezza Rice—and at official level we have had confirmation too that thorough searches of American records produced the evidence of the two cases that you referred to. The American Government then came to us promptly with that new evidence. We have subsequently sent them details of allegations in respect of the use of Diego Garcia and they have responded, as I have reported to Parliament, with no further cases. I have had assurances, as I say, at the highest level that there are no cases beyond those two, and also that if there was any desire on the part of the United States to use Diego Garcia for so-called extraordinary rendition, or for any kind of rendition, the British Government would be consulted.

Q97 Chairman: Are you satisfied that the US Government have given full and proactive co-operation to us on these matters?
David Miliband: It was certainly proactive on the part of the US to notify us in the first place of this new evidence that arose in February 2008. That did not emerge because I had been in touch with them about a particular case—they came to us. They were clearly proactive in that instance. I think that they have subsequently looked hard at their own systems, but they have been clear with me, in a way that I have then reported in full to Parliament, about the limits of their use of Diego Garcia. In those two cases there was no consultation with the British Government. They recognise that. We believe that to be essential, and they now recognise it to be essential as well.

Q98 Chairman: You received assurances from the former US Secretary of State, Condoleezza Rice. We previously had assurances on information which subsequently proved not to be the case. How confident can we be that these assurances are the full story?
David Miliband: We can be confident that our closest intelligence and foreign policy ally seeks to honour its trust with us in all respects. The degree of intelligence co-operation that exists between the US and the UK is of a unique standard and standing. It is based on mutual trust. It is not only one-way traffic. The US Government understand the importance of transparency and full openness with us. When the Secretary of State of the United States gives you her word, you take it very seriously.

Q99 Chairman: You reiterated that the US undertook the rendition flights of 2002 without informing the UK Government. Was that a breach of the agreement between the UK and the US about the use of Diego Garcia?
David Miliband: In our view there should be consultation. I think there was consultation about a previous case—there were a couple of cases in the 1990s. That is certainly the procedure that now exists.

Q100 Chairman: You said "in our view". Do the US Administration have a different view of the basis on which they are using Diego Garcia?
David Miliband: No, because the US Administration have said that they will consult us if they ever want to use it. So they obviously share that view.

Q101 Chairman: Would you say there is a case for renegotiating the current agreement, either now or when the lease expires in 2016?
David Miliband: Why would we want to do that?
Chairman: If things have happened that are not in line with what we wished.
David Miliband: If the American Administration were now saying that they did not need to consult us, that would be a prima facie case for reviewing the arrangements. I am sure in 2016 we will want to look at whether they are adequate for the times; there is no limitation on that. In respect of the use of Diego Garcia for rendition there is an absolutely clear position from the British Government and the American Government about the appropriate way to act. In that respect, there is no lack of clarity.
Chairman: I will bring my colleagues in. First, John Stanley.

Q102 Sir John Stanley: Foreign Secretary, can you give the Committee an assurance that no individuals subject to rendition by the United States have been held on vessels in Diego Garcia waters?
David Miliband: Yes, we have said that in Parliament, in written form, and in oral form as well, I think. We have assurances from the US that there have been no people rendited on boats or ships in Diego Garcia territorial waters.

Q103 Sir John Stanley: You inserted the word "territorial". I do not know whether you have been to Diego Garcia, Foreign Secretary. I have.
David Miliband: I remember from a previous occasion that you have been to Diego Garcia.

Q104 Sir John Stanley: Diego Garcia is made up of a considerable number of islands. It would be wholly possible for a vessel to be held just outside territorial waters and victualled from the very large American base in Diego Garcia. Did you insert the word "territorial" in that answer deliberately?
David Miliband: I chose my words appropriately. I was not seeking to answer your point before you made it. But to answer the point: we have no information, either of vessels inside territorial waters being used for rendition or of supplies from Diego Garcia going to ships outside the territorial waters.

Q105 Sir John Stanley: You say you have no information. Can I ask you, Foreign Secretary, under the agreements that the British Government have with the Americans on the use of Diego Garcia, would the British Government's prior consent be required for the use of Diego Garcia as a victualling point for vessels held outside territorial waters, on which people subject to rendition might be held?
David Miliband: I think that is a legal question on which I would want to have the text of the agreement in front of me before I answered. I am very happy to answer it clearly, but it is a legal question, and I would need to be sure that I was answering it absolutely accurately.[1]

Q106 Sir John Stanley: I understand. This is a substantive policy question, and we would be very grateful for a written answer on the question of whether the British Government's prior consent would be required for vessels held outside Diego Garcia's territorial waters to be victualled at the American base on Diego Garcia.
David Miliband: Okay.

Q107 Mr. Keetch: Moving on from Diego Garcia, isn't a problem emerging with our closest ally? You will find no one on this Committee more pro-American than me. However, the US, under the previous Administration, rendered people through Diego Garcia without telling us. Just a couple of weeks ago, the present Administration, for which I campaigned, and which you support, released people from Guantanamo Bay to Bermuda—another Overseas Territory—without telling us. I have asked in the past about the use by US aircraft of the British base at Akrotiri on Cyprus. US aircraft are used extensively on Ascension. How would the United States feel if RAF planes, some with roundels on, but others with no recognition markings, were going in and out of Andrews Air Force Base or US facilities in Guam or Puerto Rico, for example? I am sure that they would require us to provide details about what was on the planes and what they were being used for. I would like a simple assurance from you that the US Air Force—or, indeed, any air force with which we are friendly—cannot use facilities on British overseas territories unless they do so under the same regulations by which we use theirs. In other words, can you assure me that, if the US air force is using Diego Garcia, and the RAF is using bases in America, we can use its bases in the same way as they can use ours? We need a joint agreement on that. It seems to me that effectively the US uses our bases without any regard to the fact that they are using British territory.
David Miliband: I do not agree with your last point. You said that Americans use our bases without any regard for our interests. I do not accept that. We have written and published agreements, so the rules on sharing Diego Garcia are there for you to see. It is used as a shared resource. They use it under the terms of the agreement. In two cases it was found that they did not do so, and since then, as you will

[1] Ev 50.

know from various reports, the record keeping and other procedures have been updated. Each year we hold political-military talks about such issues to ensure refreshment of practices and to ensure that things are done correctly. I agree that agreements with the United States, and those with any other country, need to be honoured. That is the right way of doing things. We have entered into that agreement—or our predecessors did, and we have chosen not to change it—for good reasons. It is in the interests of the United Kingdom, and whether something is in the interests of the United Kingdom should be the test. The test for what we are doing on Diego Garcia is whether it is in our interest, and not whether it is the same as our landing rights at Washington Dulles airport. I think that is the right test.

Q108 Chairman: You referred to record keeping, but is it not a fact that a parliamentary answer last November stated that records since 2001 had all been destroyed?
David Miliband: There is certainly a lot of evidence about the need to improve record keeping. This was something that Jack Straw took up very strongly in 2004-05, including before this Committee. There has obviously been a very difficult shift from the paper age to the computer age in respect of record keeping and filing. All Government Departments and public bodies are having to upgrade for that.

Q109 Chairman: Will you be releasing details of when, why and by whom the records relating to Diego Garcia since 2001 were destroyed?
David Miliband: I have never been asked that before and there is no proposal to do it. The record keeping systems that have to be improved are partly a matter of what happens on the base and partly a matter of what happens back in London. In respect of all detainee issues, there is now a central point in the Foreign Office for arranging that, and I think that is the right way forward.

Q110 Chairman: But in terms of the records for the period around 2002, which we are questioning about, you do not have any records. It is only on the basis of what the Americans told you, which led to your statement last year, that this information has come out at all.
David Miliband: Absolutely. Just to be clear, the information came out because the Americans found it; they found it and they told us. We said, very clearly, that our understanding of the agreement in respect of Diego Garcia was that there had to be agreement. They subsequently said, "We give you absolute assurance that, in all future cases, there will be; we will see that agreement." So there is no mystery about that. All flight records are now held by the British representative.

Q111 Chairman: Since when?
David Miliband: Since 2008, when the Americans told us about the two flights in 2002.

Q112 Mr. Pope: This question is on a different area. When British agents co-operate with agents of another friendly country—Pakistan in this instance—over particular detainees held in Pakistan, are there any instances in which our agents have been aware that those detainees in Pakistan have been subject to torture? If they were aware, did they make Ministers aware?
David Miliband: There are eight cases, I think, where allegations of mistreatment have been made. I prefer to use the word "mistreatment". Two of them involved British nationals and we were made aware of them. Does that answer your—

Q113 Mr. Pope: What I am really trying to get at is whether there is a gap between the knowledge held by British agents about not just British detainees, but other detainees on whom we are co-operating, and what Ministers know—whether there has been an instance in which agents have been aware of mistreatment, or torture, and have not made Ministers aware.
David Miliband: This was addressed pretty head-on in the two ISC reports. Sorry to mention the ISC, but it was detailed with some care. Because of the sub judice points that the Chairman referred to, obviously I do not really want to rehearse them, but on the public record are the arrangements that used to exist and the arrangements that now exist in respect of the SIS and other officers. There is also the point about Foreign Office consular guidance, to which I referred earlier.

Q114 Mr. Pope: Looking forward, are you now confident that there are clear guidelines so that British agents co-operating with, for example, Pakistan or Egypt, will not in future co-operate on cases where somebody is subjected to mistreatment or torture?
David Miliband: There is now very clear guidance. The ISC went through the period between before 2004, when guidance was informal, to the period since 2004 when the guidance is now comprehensive, including comprehensive legal advice to all officials. It is important to say that under the convention on torture—I think it is article 11—we are duty bound to keep our guidance under review, which we do, and we update it. Since 2004, that guidance has been updated, because we take seriously our responsibilities on that. It is also important to say that the other side of the equation is what do the authorities of other countries know about our attitudes? I think that at both political level and official level, there is very clear—or certainly clearer—understanding than there might have been in the past about the position of Britain. Certainly, there is no question that if ever there was a request for a British agent to do something which involved co-operating with torture, a Minister would ever agree to it. Of course, all the activities of British agents, or British officials, are subject to an approval process that involves Ministers.

Q115 Mr. Pope: I can see this is a difficult area, when we have agents working with countries such as—

David Miliband: Officials—I think that is better than agents, if I may say so.

Mr. Pope: Okay, officials. Working with officials with Pakistan's ISI—

David Miliband: Agents are a different kettle of fish, I think.

Mr. Pope: Okay, I am happy to say officials. But how do we maintain the intelligence relationship and keep it intact at what is, frankly, a crucial period when it is important that we have good intelligence relations with Pakistan's intelligence services, while at the same time ensuring that our officials, or indeed agents, are not unwittingly complicit in mistreatment or torture?

David Miliband: That is a really important point that shows the benefits of this sort of session. The one-word answer is clarity. You have just written that down—thank you very much. I managed to get there before you. Clarity is very important—clarity about our own domestic and international legal commitments, clarity about the attitude that we take, and clarity about our view of what is right. Clarity doesn't mean that there don't have to be judgments. As I wrote in my letter: "Some other countries have different legal obligations—and different standards—to our own in the way they detain people and treat those they have detained. That cannot stop us from working with them"—as you said, Greg—"where we can, in order to protect this country's national security, but it does mean we have to work hard to ensure we do not cooperate or collude in torture, and to seek to reduce and eradicate it." I then go through some individual cases and end by stating that "operations have been blocked on the grounds that the risk of mistreatment is too high. Equally, it is not always possible to eradicate the risk of mistreatment. A judgement needs to be made." I think that is the clearest way of explaining the issue. In that context, risk is obviously measured on the basis of what we know, what the record is, what the history of different relationships is, as well as the commitments that different countries make to us. We should be clear that knowledge of our legal obligations and standards means that countries may make commitments to us about the way they will treat detainees that they would not necessarily make to others.

Q116 Mr. Keetch: Let me try to help you bring some more clarity to the situation, Foreign Secretary. On the guidance that is given to intelligence officers and service personnel, the Prime Minister has said that we will publish new guidance once it has been consolidated and reviewed. Do the Government then also undertake to publish what the guidance has been? In other words, will they publish the historical guidance that might have been given at the time we were looking into these cases?

David Miliband: No, we won't, not least because of the legal cases that are under way.

Q117 Mr. Keetch: At the conclusion of those legal cases, might it be appropriate for the Government to publish the historical guidance?

David Miliband: The guidance has already been subject to scrutiny by the Intelligence and Security Commission, which is represented by the dreaded three letters, ISC, that you do not like to mention. I want to refer to the ISC for a moment. As all of you have already shown in your questions, we have to square a circle between secrecy and accountability. All of you totally understand the need for secrecy, and you want to ensure accountability. I too want to ensure accountability, because effective checks and balances are the way in which we ensure that systems are as robust as possible. I am sorry that Menzies Campbell is not here, because he is a member of the ISC. The way it is set up squares the circle between accountability and secrecy. I know that it is difficult to keep saying that nothing we publish must give succour to our enemies—that is obviously true. Equally, we must ensure that everything we do is subject to an appropriate check and balance. As I have said, legal cases are ongoing at the moment, so it would not be the right thing to do. Parliament has set up an accountability process, and until Parliament changes it, we should be very wary of changing it ourselves.

Q118 Mr. Keetch: Presumably, the guidance that the Government have said they are going to publish will not provide succour to our enemies. If we are not prepared to publish the guidance that we used to have, one might draw the conclusion that that might provide succour to our enemies.

David Miliband: No, I don't accept that. What I said was that we will not publish it now because there are legal cases ongoing. By implication, you accepted that that was not an unreasonable answer. There is then a bridge quite a long way further down the road that might have to be crossed. I also pointed to the existing accountability system.

Q119 Mr. Keetch: Okay. May I move on to a couple of other things? In terms of any interview by an official from an overseas security service or agency, do British or dual nationals always receive consular advice from British officials, if British officials are aware that they are to be interviewed by security officials from other agencies?

David Miliband: We always try to seek consular access. Let us deal with British nationals first, because things are slightly different in the case of dual nationals. In respect of British nationals, where there are risks of mistreatment, we certainly seek to provide consular access—it is the first thing we seek to do—but that does not mean that we are always granted that access, as you know. In respect of dual nationals, there is a rather more complicated situation, which partly explains how I answered Greg Pope's question earlier in respect of the at least eight cases. There was a rather more complex pattern there about risk or allegations of mistreatment and what that triggers. In the future, we will establish the same standard for dual nationals as for mono nationals.

Q120 Mr. Keetch: Let me be clear. If I was an official working for the British intelligence services, and I was aware that a British national was about to be interviewed by a foreign intelligence service, in either that country or a third country, do I recognise that it is my duty to inform the British embassy and advise the individual that they have the right to consular advice before the interview?
David Miliband: I am trying to imagine the situation. If a British official is in another country, there are very clear mechanisms for the different parts of the British Government to be connected together—that is what I would like to say. I don't know if you want to add to that, Simon.
Simon Manley: I think that is fine.

Q121 Mr. Keetch: My final question is on the practice of waterboarding. President Obama now accepts that their definition of waterboarding is torture. Are we satisfied now that as far as we are aware, the US is no longer involved in what we would define as waterboarding?
David Miliband: One of President Obama's reviews is addressing interrogation practices, and it is due to report in six weeks' time.
Simon Manley: On 22 July.
David Miliband: On 22 July. From the President's speech at the CIA in March, his position is pretty clear. When the issue arose last year, I was asked whether we considered waterboarding to fall foul of the torture convention. I think people were surprised when I said, "Yes, I think it fell foul of that," but we have always been clear about that.

Q122 Mr. Illsley: First of all, on the point you made about the accountability of the Intelligence and Security Committee, given the long-standing interaction between that Committee and ourselves, I must repeat the point that the ISC is accountable only to the Prime Minister. Moving on, you mentioned the question of the US definition of waterboarding. There is a clear difference—you mentioned this in your letter—between what the UK regards as torture and what other countries regard as torture, particularly the Americans, in terms of waterboarding and so on. We have talked about other countries detaining British nationals and others. If we know that those countries could perhaps be employing techniques that we regard as unlawful or torture, is there any case for any British official to be present at all? Isn't the fact that British officials are present at all during the interrogations tantamount to us condoning that treatment, whether they are there when it takes place or not?
David Miliband: No, for the following reason. If a British official is present while mistreatment is taking place, there are very clear rules about what he or she should do to report it and pull up whoever is doing it—that is absolutely clear. Those rules have been reviewed publicly and they have developed. As I said earlier, the guidance was informal before 2004; after 2004, it was more formal. A country might have particular rules for the way it treats suspects when it is working with us, which are different from those that it employs when it is dealing, for the sake of argument, with its own internal security issue.

Q123 Mr. Illsley: That is exactly the point I make. If we know that a country employs those techniques, and they say, "Okay, we're not going to employ them, we have an agreement with the UK. Anybody else's nationals, we'll kick hell out of them, but if they're British, we'll leave them alone," should we really have our officials present in dealings with that country when they are interrogating, whether the mistreatment takes place or not?
David Miliband: They would not be there in the case of foreign nationals.

Q124 Mr. Illsley: British nationals?
David Miliband: If British nationals are being interrogated according to the appropriate legal standards that we hold, then for us to say, we will have nothing to do with that country because of what they are alleged to do in other domains, would be a very big thing to do.

Q125 Mr. Illsley: Then we are condoning a double standard, aren't we?
David Miliband: No.

Q126 Mr. Illsley: Yes, we are. We are saying, "We have an agreement that you don't do it to ours, but you can do what the hell you like to anybody else's."
David Miliband: If that was the end of the story, you might have more grounds, but remember, we have responsibilities in respect of any liaison that we do. We also have responsibility, which I mentioned in the letter, to make clear our determination that other countries should improve their standards. We have commitments under international law and conventions to seek to reduce the amount of mistreatment that happens elsewhere, and that is what we seek to do politically, officially and at all levels. So I don't think that that is right. I don't understand that.
Simon Manley: When we interview, or get involved in the business of interviewing those who are being detained, we do so because we genuinely believe that the information that may be gleaned is important in helping to protect British national security.

Q127 Chairman: In that context, there have been allegations that officials have interviewed people who are detained after they have been mistreated, and that questions that had previously been asked by others, under what would be regarded as torture, are then repeated later, in a different context, by British officials, so that they are not present during the torture, but they are present later. How would you respond to that?
David Miliband: Mr. Chairman, I really have to say, those are allegations—underlined, allegations—that have been made in respect of cases that are in front of the courts. I really think it is important to say that very, very clearly.

Q128 Chairman: I accept the point, but I place on record that I think that is where Mr Illsley's questions were leading.
David Miliband: But allegations can get kicked around and can become common sense and, for obvious reasons, people cannot defend themselves. They need to be able to defend themselves in court in an unprejudiced way.

Q129 Mr. Purchase: Let me take you back just a few minutes, when you were asked whether you would publish historical guidance, to which you replied, succinctly, "No." Just to help me here, you also referred to ongoing trials and people being charged and therefore you could not publish historical instruction in regard to these matters. If people are being interrogated, surely they are allowed to be in the very, very best position they can be in to defend themselves? Will they not have access to this historical guidance? If so, will it not come out? If that is so, why can we not know what it is?
David Miliband: Surely, it is a founding principle of our legal system that that is a matter for the defence counsel. The defence counsel in any of these cases can call for whatever papers they want.
Mr. Purchase: Exactly.
David Miliband: But the defence counsel having the papers is not the same as putting them on the internet.

Q130 Mr. Purchase: I accept that there are material differences in those two, but ultimately, it is out in the public arena.
David Miliband: No, that is not actually right, Ken.
Mr. Purchase: I just see the way we are dealing with some of these things as problematic.
David Miliband: I understand what you are saying, but in all candour, that is not right. In legal cases, all sorts of secret material is used, either to prosecute or to defend, but it is not published in the public domain. That is what the recent argument has been all about.

Q131 Mr. Purchase: You are clearly going to stick with a one-word answer—"No." It seems to me that, in this instance, where the defence lawyers call for whatever papers they require—far be it from me, and I would never do so, to ask for matters which might compromise the safety of citizens in the state to be published—this information or modus operandi at that stage ought to be known, because it helps us to judge the efficacy and the ethical value of our policies at that time. Without it we are handicapped.
David Miliband: As I said earlier, before 2004, the guidance was informal. Since 2004, it has been formal and has had a comprehensive legal basis. The Prime Minister has decided—and I support this—that we should now publish it. Given the civil cases—and in many cases they are civil cases—that are currently being taken by a number of individuals, that is a pretty clear reason why we are not in a position to publish that material. It really would not be the right thing to do.
Chairman: I think we have had the answer. No doubt we as a Committee will want to look at the whole transcript of what was said when we come to produce our report.

Q132 Mr. Pope: Could I ask about a more general area—the use of intelligence from overseas that has been garnered possibly through the use of torture? I know that you like the ISC, so I will quote the ISC report.
David Miliband: Not as much as I like you.
Mr. Pope: The ISC report on rendition says that when intelligence information is shared, "The location, circumstances or treatment of a detainee (or even the fact that the source is a detainee) would . . . not usually be shared." In their evidence to the ISC, the Security Service said that high-value intelligence had been garnered in such a way. Should the British Government dismiss evidence when we have a fear that it may have been obtained using torture from another power? If we do not, is that not tantamount to creating a market for such intelligence?
David Miliband: The first thing that I have to say, and I hope this is helpful, is that it is very important not to use the words "intelligence" and "evidence" interchangeably—I think that this has muddied the debate. Intelligence that is derived from torture is inadmissible as evidence in a British court—there is absolutely no shadow of a doubt about that.

Q133 Mr. Pope: To be fair, I was not talking about bringing a case to court. I am talking about garnering intelligence that our security services have obtained from a foreign security service where we know or suspect that it has been obtained using torture or mistreatment, and it is of great value to us. In fact, the Security Service said in their evidence to the ISC that some of this "has led to the frustration of terrorist attacks in the UK or against UK interests." I am not talking about bringing a court case; I am talking about the ethics of using this kind of information garnered in this way—we know or suspect that that is how it has been garnered—to frustrate a terrorist attack. Is that ethical or not? I realise that these are difficult ethical areas, but I think it is a fair question to ask.
David Miliband: It is a very fair and important question to ask. The first part of it is that we would never procure intelligence or procure evidence through torture We would never say to another intelligence agency, "Please get us information about X," and abandon our legal and ethical commitments in respect of how they find that. that. Secondly, I think that you are quoting from the 2005 ISC report on the handling of detainees by UK intelligence personnel in Afghanistan, Guantanamo Bay and Iraq.
Mr. Pope: Yes.
David Miliband: There is an important part where Jack Straw was giving evidence to the Committee. He said that you never get an intelligence officer who says, "Here is the intelligence, and by the way, we conducted this under torture." He said, "One of the things that is done with intelligence that comes from

liaison partners, obviously an assessment is made about its provenance. Because it does not follow that if it is extracted under torture, it is automatically untrue. But there is a much higher probability of it being embellished." He went on, and I think he expressed it quite well: "There is a real area of moral hazard which is that if you do get a bit of information which seems to be completely credible, which may have been extracted through unacceptable practices, do you ignore it?" That is exactly the question that you are approaching. The assessment therefore comes in terms of whether or not there is a threat to life. In successive FCO human rights reports, we have referred to the significance of a threat to life, and therefore being part of a balanced judgment about whether or not a piece of intelligence can be used if one has concerns about its provenance. That does not mean, however, that it could ever be used as evidence in court.

Q134 Mr. Pope: I am interested by the ethical difference between "procure" and "use", but I take your point. These are difficult areas. If we—the UK Government—use this kind of information, not in a court of law but in a practical way, do you think that that would be a breach of our obligations under the UN convention against torture, or the Human Rights Act?
David Miliband: We always seek to act within our legal commitments. I am not a lawyer and I am nervous about giving a legal answer.[2]

Q135 Mr. Pope: I am not a lawyer either, but I am nervous that if we do not "procure", but do "use" information obtained from another nation, which we have reason to believe has been obtained using mistreatment or torture, that will be a breach of our international obligations. I am not an international lawyer, but I see that there are causes for concern.
David Miliband: I would say in return that we are known as a country for the way in which we zealously pursue our commitments, which includes campaigning for changes in the practices of other countries. That is an important part of the balance sheet.

Q136 Chairman: Under international law, do we not have an obligation to act positively and to report instances of suspected torture?
David Miliband: Report to whom?

Q137 Chairman: Well, generally, in terms of the UN convention against torture or the Human Rights Act. Do we not have an obligation to draw attention to instances where we know or suspect that torture has been used?
David Miliband: I query the word, "report". If you asked whether we have a responsibility to act, I would say that yes, we do have a responsibility to act. We have to act by exposing what is happening, confronting those who are doing it, and seeking to have it changed. I am not sure what you mean by "report".

[2] Ev 50.

Chairman: I mean "announce" or "speak out".
David Miliband: One of the points that I hope we will come on to is the FCO human rights report, which documents where we find out our information on countries that are doing things that violate standards or legal norms. Then we report them—that is why I asked the question about who we report them to.
Simon Manley: We have also responded to that point in our reply to the Joint Committee on Human Rights, which asked us a similar question.
Chairman: No doubt you could follow that up in writing if necessary.

Q138 Mr. Purchase: Let us move away from the philosophy seminar and the shadow boxing to the practical reality. Should information be received—albeit through torture, which we understand is unreliable, and albeit that we may want to do something about it later—that suggested that some danger was imminent to the British people, can you reassure us, and the British people in particular, that you would act on it?
David Miliband: Yes.
Mr. Purchase: Thank you.

Q139 Mr. Keetch: Let me ask you two other questions to which you can give the same one word answer, "Yes", should you wish.
David Miliband: I have used my quota I think.

Q140 Mr. Keetch: The Intelligence Services Act 1994, section 7, authorises you to waive the liability of SIS or GCHQ personnel for any illegal acts that they may have committed abroad in certain circumstances. Would the FCO be prepared to publish details of such instances where that has been done on a historic basis, obviously taking out certain bits for practical operational reasons?
David Miliband: Would you just say that again?
Mr. Keetch: Where you authorise service personnel from the Secret Intelligence Service or GCHQ to commit acts abroad that are illegal, under section 7 of the Intelligence Services Act would you be prepared historically to make details of that public?
David Miliband: No.

Q141 Mr. Keetch: The second question is on the Investigatory Powers Tribunal—the IPT—which I understand is the body that can investigate alleged misconduct of the security services. What it cannot do is investigate third-party allegations. If a third party comes along and says that something went wrong, the IPT does not have the power at the moment to investigate that. Should it not be given the power to investigate that? Could it be given the power?
David Miliband: I think that I am right in saying that it has taken up 660-plus cases in recent years—I do not have the exact figures. It has a very specific purpose, which is to take up individual complaints. I do not think that it should become an alternative. It is better done as it is. The law exists as one means of redress, the IPT exists as another means of address—you represent yourself in the IPT. I think that that is the right way of doing it.

Mr. Keetch: Thank you.

Q142 Chairman: I understand that the Government are reluctant to agree to a full judicial inquiry into the issues of extraordinary rendition and the allegations of complicity in torture. Why is that?
David Miliband: Because the constitutional arrangements that we have are designed to preserve secrecy. There have been calls for a public inquiry. Everything that we have been talking about today and the constraints that exist on our work—by definition, intelligence work is secret—are not susceptible to public inquiry. If you want to have intelligence agencies that defend the country and defend the people of the country, then you have to establish mechanisms that hold them accountable that preserve their ability to act secretly. I think that that is very important.
Chairman: We shall move on to some issues relating to prisoners.

Q143 Mr. Purchase: Foreign Secretary, thinking about the transfer of prisoners from British to other hands—in Iraq and Afghanistan—and bearing in mind the memorandums of understanding that we had in particular places and that there have been allegations that such memorandums of understanding have not exactly been properly and fully adhered to, I wonder whether you find it acceptable that the transfer from Iraq to Afghanistan of two detainees, handed over to the US in 2004, was not questioned at the time, especially since Ministers and Ministry of Defence officials were informed. Does the fact that the US identified the cases after a due diligence search suggest that UK record keeping, which you referred to earlier in another context, has been somewhat deficient?
David Miliband: Just so I am clear, this is the case that the former Defence Secretary reported to the House of Commons last October or November; and this is the case of two members of the Lashkar-e-Taiba organisation who were in Iraq and captured by UK personnel acting under American command?
Mr. Purchase: Exactly.
David Miliband: To be absolutely clear, there was no suggestion at the time that those two people were going to be taken to Afghanistan.[3]

Q144 Mr. Purchase: Of course there was no question at the time. That's the point, isn't it?
David Miliband: Perhaps not everyone who is here or who is watching has got this: there was no suggestion at the time that British personnel knew, or had been told, that these two members of the Lashkar-e-Taiba organisation in Iraq were going to be taken to Afghanistan. Secondly, I do not think that there was a record-keeping issue. When the former Defence Secretary made his statement to the House of Commons, he made it clear that the transfer to Afghanistan should have been questioned at the time. It was not a matter of the record keeping not being appropriate, but that the future course of those two people should have been questioned at the time. There was no question of British personnel collaborating or colluding in rendition to Afghanistan.

Q145 Mr. Purchase: What does that tell us about the efficacy of the MOUs?
David Miliband: It was not an MOU issue, Ken. The MOUs govern British-Iraqi relations, for example, or British-Afghan relations. They are not about what happens to two people who were perfectly properly within American custody, even though they were taken by our people acting under American command. I do not think that it is an MOU issue.[4]

Q146 Mr. Purchase: Okay. Could you now give us an assessment of the legality of the transfer of those men from Iraq to Afghanistan and the reasons for that transfer.
David Miliband: The legality?
Mr. Purchase: Yes.
David Miliband: No, I cannot give you that. I can go back and find if we have got anything on it—do you want to answer that?
Simon Manley: Just in terms of why we understand in retrospect that they were transferred to Afghanistan, the Americans told us that they were transferred because they did not have sufficiently trained interviewers in Iraq to interview those two individuals.

Q147 Mr. Purchase: That was why?
Simon Manley: That was why they were taken to Afghanistan. Obviously most of the people that they had interviewing in Iraq tended to be Arabists, not those who could speak to people coming from Pakistan.

Q148 Mr. Purchase: I ask this in a naive and innocent way: is that, at your level, an acceptable explanation?
Simon Manley: Well—
Mr. Purchase: It is my naivety, not yours. I am asking in a naive way if that is an acceptable explanation.
Simon Manley: As the Defence Secretary said, in retrospect we should have questioned the transfer at the time, but that was the reason—in American eyes—why they transferred those individuals to Afghanistan.
David Miliband: I think that it is worth saying that the legality question you asked, which I do not want to pretend to give a fully formed legal answer to, is part governed by the fact that Iraq was under a chapter 7 mandate at the time and the law of armed conflict was in issue at the time in Iraq. I think that there would be a large number of unique legal issues at stake. That is what makes a difference. Iraq and Afghanistan have been and are governed by international legal commitments that are different from some of the other cases mentioned.

[3] Ev 50.

[4] *Note by witness:* There was an MOU in place between the UK and the US that covered this time period. We do not consider the transfer of these two individuals to have any implications for the efficacy of this or other MOUs.

Mr. Keetch: We know that.

Q149 Mr. Purchase: Is it possible to provide some details about these men's identities and give assurances about their treatment since the transfer? Are you certain that those were the only cases of extraordinary rendition of detainees captured by US forces or with UK involvement that took place out of Afghanistan or Iraq?
David Miliband: The first thing to say is that "extraordinary rendition" has a particular meaning that is in contrast to so-called "rendition to justice", so I would not want to get drawn into this coming into the "extraordinary rendition" category. The former Defence Secretary gave all the information that we had at the time of the statement to Parliament; I am not aware of any further information having come to light since then.[5]

Q150 Sir John Stanley: I have a slightly wider point on Iraq and Afghanistan. Foreign Secretary, I want to raise some wider human rights issues in relation to Iraq and Afghanistan. As far as Iraq is concerned, I think that you would agree that, appalling as the Saddam Hussein regime in Iraq was from a human rights standpoint, there have been some very serious downsides to our invasion, or at least following our invasion. I put three issues in particular to you. First, there are the many Iraqis, some estimate hundreds of thousands, who are now dead as a result of violence following our invasion of the country. Secondly, there are the 2.5 million Iraqis who have been turned into refugees in other countries. Thirdly, there is the gradual erosion of the human rights of women in that country, notwithstanding the provisions in the constitution to which you have referred previously when appearing before the Committee. The question I put to you is this: are the British Government, in particular, now so powerless and so without leverage with the Iraqi Government that, should the rights of women in Iraq continue to be eroded, particularly outside the Kurdish areas, and notwithstanding what is stated in the constitution, the British Government will in fact be powerless to do anything about it?
David Miliband: Iraq is obviously a sovereign country, and I think that "powerless" is a very strong word to use, as that is a country with which we have extensive political, diplomatic, economic and cultural ties and whose constituent communities also have quite important links to this country. I do not think that we are powerless, but we are not the colonial power in Iraq, and we are not the governors. We would have to work with the Iraqi Government for them to secure improvements in the adherence of all their institutions to the constitution to which you referred.

[5] *Note by witness:* We are unable to provide further information on this matter other than that given by my Rt. Hon. Friend the former Secretary of State for Defence, in his statement of 26 February 2009.

Q151 Sir John Stanley: Has that worked with the Iraqi Government, because we know that Iraq is increasing veering towards a theocratic state under the Shi'a influence, which will spell very, very bad news for women there?
David Miliband: I am keen to have a longer conversation about that, because a range of allegations are made against the Prime Minister of Iraq, but actually he has talked about how he wants to have mixed lists at the next elections there, which are due in January—not just a Shi'a list, but mixed lists. One has to be careful about this, not least because the debate within Shi'aism, between an Iraqi centre of Shi'aism and an Iranian centre of Shi'aism, is itself a huge debate with quite large consequences for the future of the Middle East more generally. I do not believe that it is veering towards being a theocratic state, not least because of the very high level of decentralisation that exists, which is not least to protect the Kurds, but I think that there are very difficult forces that need to be contained within Iraq. I was there a few months ago and would be very happy to have a longer conversation about that, but I think that our best bet is to seek to defend the Iraqi constitution in our own interactions with the Iraqi authorities. I think that that is the right thing to do.[6]

Q152 Sir John Stanley: One hopes that the Iraqi constitution will not prove to be flimsy and somewhat threadbare as far as women are concerned. Moving on to Afghanistan, the Committee was there in April, by chance at the same time the Prime Minister of this country was there. You will not be surprised to know that a major subject of our attention and discussions in Kabul was the Shi'a family law, for the sheer appalling nature of it, as far as women are concerned. I just want to quote, not from some source that might be thought emotive, but from your own Department's briefing to the members of the British delegation to the NATO Parliamentary Assembly's recent plenary meeting in Oslo. This is your Department's description of some key articles of the Shi'a family law, which President Karzai has now signed: "Article 132: Legalises the rape of a wife by her husband . . . Article 133: Subjects a women's right to work, education, access to health care and to other services to her husband's authority/permission . . . Article 161: Legalises divorce proceedings with the simple requirement that two male witnesses must be present . . . Article 177: Denies a woman the right to leave her home without her husband's permission." These are utterly appalling degradations of women. This is a law that has now been signed by President Karzai and we were told that he signed it to secure the Shi'a minority vote in the forthcoming presidential election in Afghanistan. In other words, this is legislation that is simply serving an electoral interest. As was reported, when the Prime Minister was in Kabul he secured a promise from President Karzai that the legislation would be reviewed. I put it to you, Foreign Secretary, that a review promise is

[6] Ev 51.

utterly inadequate when set against the appalling nature of this legislation. Will you tell the Committee that the Government will do everything they can, not merely to have this legislation reviewed, but to make it absolutely certain that the articles against women's rights do not come into force?
David Miliband: Sir John, I will yield to no one in our shared commitment to defend women's rights in Afghanistan. I believe that the articles that you have read out were a description of the original law. Is that correct?
Sir John Stanley: What I read out were the descriptions of the articles contained in your Department's briefing—
David Miliband: On the original draft of the Shi'a family law. Is that correct?
Sir John Stanley: I cannot see the word "original" here. The briefing was in May and I therefore assume it must be accurate—that is, I assume that it must be your own Department's accurate description of the Shi'a family law, as signed by President Karzai—
David Miliband: That is where I differ from you.
Sir John Stanley: Excuse me, as I was saying, it was signed by President Karzai prior to our visit in April.
David Miliband: My understanding, or rather my recollection, is that those descriptions are descriptions of the original Shi'a family law. What I know is that our Prime Minister did not secure a commitment to a review from President Karzai—on 27 April, President Karzai announced that the law would be changed, to bring it into line not just with the Afghan constitution, which as you know guarantees equal rights for women, but with international treaties to which Afghanistan is a party. So there is a clear, public commitment from the President of Afghanistan not to implement the original Shi'a family law. Now, if there has been anything that has been missed in a Foreign Office briefing to you, I will get to the bottom of it. However, my understanding is that what you have read out are the original provisions and that on 27 April President Karzai did not announce a review—instead, he announced that the law would be changed. So we just need to get to the bottom of that issue. However, we are of shared view about the rights and wrongs.

Q153 Sir John Stanley: Foreign Secretary, we need a further full written memorandum from you, because all I can say is that what I read out was your own Department's briefing in May.
David Miliband: On the original Shi'a family law.
Sir John Stanley: There is no reference to the word "original" here.
David Miliband: What does it say then?
Sir John Stanley: It does say, "The law, as drafted, contravenes human rights provisions of the Afghanistan constitution."
David Miliband: Well, there you go. It was "the law, as drafted," which President Karzai has now promised to change.

Q154 Sir John Stanley: The point that I am making is that, when we were in Kabul, it was that law that had been signed by President Karzai, and we have certainly not had any briefing that these provisions have been altered. So, can you provide us with a very detailed statement as to how those articles and others that were referred to in this briefing have now been—I hope—repealed in their entirety?
David Miliband: Yes of course I can provide you with a briefing. However, I do want it to be on the record that President Karzai announced on 27 April that the law would be changed to adhere to the Afghan constitution and to the international treaties and conventions to which Afghanistan is a party.

Q155 Sir John Stanley: You are using the future all the time—"would be". The issue is what is going to be the amended legislation and whether President Karzai has got the consent of the Afghan Parliament for the amended legislation to go through. You will be aware—at least I hope you are aware—that those very brave women, and indeed the men who supported them, who took to the streets in Kabul in protest against these provisions were made the subject of the most vile verbal and, in some cases, physical abuse by those who wished the original law to be adhered to, as signed by President Karzai.
David Miliband: As signed, but not signed into law. Just to be absolutely clear, the implication of your question is that somehow this law is enforced.
Sir John Stanley: No, I have not said that.
David Miliband: We are agreed it is not enforced.
Sir John Stanley: It was as signed.
David Miliband: But never enforced.
Sir John Stanley: Correct.
David Miliband: We are on the same page, then. This law, with the characteristics that you described, has never been enforced and the President of Afghanistan has said that it will be changed so that it comes into conformity with the Afghan constitution and international commitments.
Sir John Stanley: Signed and agreed by Parliament.
David Miliband: And therefore come into force?
Sir John Stanley: No.
David Miliband: Eventually come into force?

Q156 Sir John Stanley: Apparently, as was explained to us, that is not how it works. It was agreed by Parliament and signed by President Karzai but was not actually put in force, and there has not been what we would call in our terms a commencement order in respect of the original legislation.
David Miliband: One reason it did not come into force is the degree of revulsion both inside Afghanistan and outside. It was a major feature of the international debate that President Obama got involved in, our Prime Minister got involved in, lots of people got involved in.

Q157 Chairman: Foreign Secretary, just to place it on the record, I understand that this has been put in a cupboard or a drawer and locked away. Is there not a danger that once he is re-elected, President Karzai might then get it out of the cupboard and carry on?
David Miliband: We cannot have it both ways. We cannot just say that we want Afghanistan to choose its own leader. He is going to decide what he wants to do, but he has to act within the Afghan

constitution. Part of our role is to be absolutely clear about the basis on which we are engaged in Afghanistan, which is to defend the Afghan constitution.

Q158 Chairman: And to defend women's rights.
David Miliband: To guarantee equal rights for women, which are enshrined in the Afghan constitution.

Q159 Sir John Stanley: On a further aspect of women's rights, Foreign Secretary, you will be aware of the extreme danger that those who fight for women's rights face in Afghanistan. I am sure it will have been reported to you—I think it was in March or February—that one of the leading women's rights campaigners in Afghanistan was murdered in cold blood as she came out of her home in Kandahar. We saw a few individuals who are leading the campaign for women's rights in Afghanistan. Their most particular concern is that if there should be "reconciliation talks" talking to the Taliban, women who want to fight for women's rights should be round the table, and there should not be a back-door deal between men only in which women and women's rights are sold down the river. Can you give the Committee an assurance that you will do all you can as far as the British Government are concerned to make certain that those who are with immense bravery putting their life at risk daily, fighting for women's rights in Afghanistan, will be round that table if there is going to be any "talking to the Taliban"?
David Miliband: We will certainly do everything we can to support precisely the sort of people that you describe. I have met some of them as well and your description of them is totally well founded. It is truly humbling to see the risks taken and the bravery of those people, some of whom are in elected office and many of whom are in civil society. Part of our job is to argue for them at a political level but also to try to support them in their communities. I think that your commitment is well made and very much recognised, and certainly at the heart of what we think we are doing in Afghanistan.

Q160 Sir John Stanley: You will try to ensure that they are round the table?
David Miliband: The reconciliation talks are obviously to be taken forward by Afghans rather than by us, but the basis on which we have talked about supporting reconciliation is to come into line with the Afghan constitution, which speaks directly to the point that we have just been discussing.

Q161 Mr. Purchase: Staying in Afghanistan, but returning to MOUs, the 2006 memorandum of understanding with the Afghan Government commits the UK Government to transferring detainees to the Afghan Government at the earliest opportunity. However, giving evidence to this Committee, the organisation REDRESS suggested, in the light of evidence on torture in Afghanistan, that "MOU . . . cannot provide an effective safeguard against torture and other ill-treatment, and other serious human rights violations." Given that that was evidence presented to us in our Afghan inquiry, and fairly convincingly at the time, what assurance have our Government sought and received from the USA about the treatment of prisoners at Bagram Air Base and other sites in Afghanistan—particularly where detainees were captured by UK forces working with the US, and where the subsequent arrest, or detention, has been by the US forces?
David Miliband: You are raising two issues. One is the MOU with the Afghan authorities and the second is a separate issue, concerning US treatment. Obviously, the MOU is important from what it says on the paper, but there is also the question of how the accountability is preserved. For me, one important indicator is the access of independent groups to detention centres, and elsewhere. I take very seriously the reports that I get from the International Committee of the Red Cross, the Red Crescent, and the Afghan Independent Human Rights Commission. They have access to Afghan detainees, as well as there being access for our officials, although with the best will in the world our officials cannot be everywhere. But those independent, third party corroborations are important. In respect of Bagram, there is also an ICRC investigation and ICRC access there, as well as American assurances in respect of the humane treatment of people there. Those are some of the ways in which we try to make sure that the spirit of the MOU is lived up to, notwithstanding the extremely difficult conditions under which people are operating.

Q162 Mr. Purchase: Thank you for that frank reply. However, we clearly cannot be confident that people transferred will not be mistreated. In those circumstances, are there any mechanisms by which we can enforce the commitments that are contained in the MOU? Indeed, does the MOU remain an appropriate basis on which to make these transfers?
David Miliband: The MOU is right, but it is also important to say that our officials and the Royal Military Police all visit detainees transferred into Afghan custody to try to ensure that standards are maintained. That is the right thing to do. We have an ongoing relationship. It is not like an MOU that is plastered on a wall, or put on to a shelf—we seek to honour it in all our engagements with the Afghan authorities. Equally, as you know from your trips to Afghanistan, it is a country without the state machine and traditions that we have. If there was any suggestion of mistreatment, our people would take that extremely seriously.

Q163 Mr. Purchase: May I press you a little further there? We are being pretty frank about the efficacy of these arrangements. Have our Government made a systematic assessment of whether the detainees that have been transferred have been treated in accordance? Can we refer to instances where they perhaps have not, and what have you done about it?

David Miliband: If you mean by systematic—
Mr. Purchase: Case by case.
David Miliband: If you mean by systematic an ongoing, detailed, in person investigation, then that has been going on. To put that in perspective, it is useful to have some numbers. As of last week, 544 people had been detained, 295 had been transferred to the Afghan authorities and 259 had been released.[7] That gives you some idea of the scale that we are talking about. That is why, when I talk about British embassy officials from Kabul, or the Royal Military Police investigating it, given the scale of that detention, it is reasonable to talk about an ongoing, in person, careful review of the situation.

Q164 Chairman: May I switch focus to Guantanamo Bay now, briefly? You were aware, Foreign Secretary, that our Committee actually called on the international community to assist the US in closing Guantanamo, but we did not do so in the context of the US sending people to territories of foreign countries without the Government of the territory knowing that the people were arriving, or with the Government being told as the people were being put on the plane. Can you update us on the position of the Uighurs who have been allowed by the Premier of Bermuda, who does not have responsibility for foreign affairs or security matters, to settle in Bermuda? What is the British Government's position on whether former Guantanamo inmates could or should be taken in by Overseas Territories, with or without the agreement or knowledge of the British Government? And what are the security implications?
David Miliband: There are three questions there. First, obviously any transfer to a British territory should be discussed with the British Government. In this case, the Bermudan authorities did not do that.

Q165 Chairman: Nor did the US.
David Miliband: No, but the US liaised with the Bermudans. The Bermudans know, or should know, what the entrustment is with respect to the UK. It did not happen in this case. Secondly, I think that the UK has done its bit in respect of Guantanamo. We were one of the first countries to say that our citizens or former residents should be brought back here. Fourteen have now come back. One is still in Guantanamo Bay. Thirdly, we are waiting for the US security assessment of these people, because they obviously know them better than anyone else.

Q166 Chairman: Will these individuals be allowed to stay in Bermuda, or will they be allowed to travel to other parts of British territory?
David Miliband: At the moment they are not allowed to travel anywhere, so it is not a question of whether they will be allowed to stay in Bermuda; they cannot leave Bermuda at the moment. They have no travel documents.

[7] *Note by witness:* 549 UK captured detainees of which 257 have been released, 283 transferred to the Afghans, 8 died, and 1 is receiving medical treatment (as of 16 June 2009).

Q167 Chairman: Presumably, if their security assessment is that they are, as the United States has said, no threat, but the US itself is not prepared—because of Congress not agreeing—to have them living in New York City or Denver, Colorado, or Florida, they will be in Bermuda, and then, presumably, at some point, be allowed to travel. Is that correct?
David Miliband: Not necessarily; it depends. As I said, they have no travel documents to travel with at the moment, so their status is still unclear. We are obviously in touch with the American authorities. I have spoken to Secretary Clinton about it.

Q168 Chairman: What did you say to her?
David Miliband: I gave her my explanation of what I believed were the—

Q169 Chairman: Was this a frank conversation?
David Miliband: It is always a friendly conversation with Hillary Clinton. We are in no doubt about what should have happened in this case, and it did not. It obviously happened last Thursday and we are on the case at the moment.

Q170 Chairman: Could we send them back to the US?
David Miliband: If the Americans agreed to take them. We did not agree to take them, no. But they are in Bermuda at the moment—not here.
Chairman: I think that we shall be continuing questioning on this matter over coming weeks, because it does raise very important issues about British territory and British sovereignty. No doubt we will pursue it.

Q171 Sir John Stanley: I was not clear, Foreign Secretary: do you believe that the decision on this is one that should have lain with the Governor and the Foreign Office, or do you think it was a decision that could properly be taken by the Bermudan Government?
David Miliband: No, the deed of entrustment is absolutely clear that it should not have been decided by the Bermudan authorities on their own. The Bermudans said this was an immigration case, and immigration is their province; but actually, anything to do with agreements with foreign countries requires the engagement of the United Kingdom.
Chairman: We have to move on, unfortunately.
Mr. Keetch: May I just say that I have to leave for a meeting at his point?

Q172 Mr. Illsley: I want to ask a couple of questions about oversight of contractors, particularly in relation to what happened at the British embassy in Baghdad, with the defence contractor KBR. You probably recall that allegations of serious misconduct were levelled against the staff of KBR. Those allegations were investigated by KBR themselves and the whole matter was apparently dealt with. There were then further allegations,

which led to the inclusion of FCO staff as part of a subsequent investigation. I would like to ask about the inclusion of FCO officials in the team investigating the most recent allegation; is that an admission that KBR or similar contractors cannot be trusted to investigate allegations of misconduct properly?

David Miliband: I don't think so, no. In the 2007 case, the Metropolitan Police did some interviewing. In the 2009 case—and given the seriousness of it, there was a second case—FCO officials were involved. We use contractors for catering, cleaning, security and a whole range of functions around the world. We have contracts with them which uphold our own employment practices and best standards, as well as what we expect them to deliver as contractors of the UK Government. We expect them to hold to those standards. There are various disciplinary—and other—procedures available if they do not. The FCO involvement in the 2009 case reflected that case.

Q173 Mr. Illsley: Does the involvement of FCO officials in the 2009 case not cast some doubt over the 2007 investigation and question its appropriateness? Why is the Foreign Office determined not to reopen that investigation after the 2009 allegations? Does it suggest that KBR's own investigation was inadequate?

David Miliband: The Permanent Secretary[8] has written to the Committee a number of times in quite a lot of detail. The Metropolitan Police interviewed some individuals involved in the 2007 case, either on the night or the day after it blew up. The Metropolitan Police had a role; they took evidence and that was appropriate. Peter Ricketts, the Permanent Secretary, has been through the case in voluminous detail. The second case involved a different set of allegations. The other thing to add is that in 2008, a senior embassy team in Baghdad reviewed the 2007 case and concluded it had been dealt with in the right way.

Q174 Mr. Illsley: Are you intending to redraft future contracts to include conditions that make sure this doesn't happen again?

David Miliband: I haven't seen an allegation—

Q175 Mr. Illsley: Or are you going to include FCO officials in any future allegations immediately from the outset in any investigation?

David Miliband: There is a local issue there, to make sure that all staff—including locally employed staff—are aware of our dignity at work policy and other practices. We have a dense procurement relationship with a whole range of organisations and I do not think the problem has been in the contract—or the allegation of a problem has not been in the contract. However, we have a responsibility to make sure it is properly understood.

[8] *Note by witness:* The Permanent Under Secretary and the Foreign Secretary have written to the Committee a number of times in some detail.

Mr. Illsley: Okay. Let us talk about private military security companies. You may recall that as long ago as 1999, this Committee did a report on the employment of private military companies as contractors. That followed our inquiries in relation to an incident connected with Sierra Leone, which involved a private military company. Since then, the matter has rested, but the Government have now decided to look into this. Why has it taken the Government so long to make a decision to investigate the role of private military companies?

David Miliband: It is a difficult issue. What you are talking about is people operating outside our jurisdiction. The concern people have is that if wrongdoing happens outside our jurisdiction, we should be able to punish it. However, the fact that it is outside our jurisdiction means that we cannot in any conventional way. I think I am right in saying that South Africa has introduced a law but has no prosecutions under it because of this problem. By definition, international security companies are international. It is a tough nut to crack. We have ended up with commitments in respect of British purchasing and contracting, an international code of conduct and a serious self-regulatory mechanism. Does that mean that everything has been concluded? We have said we want to see in three years' time how the new system has worked, and how our contracting power has been used. It has taken time because it is in essence a simple but also a very difficult issue because it is about wrongdoing far away.

Q176 Mr. Illsley: You have mentioned that South Africa has legislation. The United States has legislation. The Swiss have a licensing regime. We have self-regulation. This is a cross-departmental issue as the MOD has an involvement. Did the FCO have a particular view on which route to take in terms of legislation or a code of conduct or whatever? Did the FCO have any specific—

David Miliband: It was not an institutional house view. There was a discussion inside Government. The experience of this South African legislation is that, every year that goes by, it makes one more concerned that passing a law won't do the trick. If we can, along with the other main countries that use private military security companies, establish a set of international benchmarks for good practice that would be a quicker way of making progress.

Mr. Illsley: I was going to ask whether there is any likelihood that we could reach agreement internationally or across Europe on that issue. As well as answering that, perhaps you might comment on what sanctions might be available if this is just going to be a voluntary code of conduct, other than naming and shaming the companies themselves.

David Miliband: The best sanction is that companies would no longer get contracts from either ourselves, the Americans, the Chinese or the Russians. We are trying to build on the Swiss initiative that you mentioned. We have been working with not just the private military security companies themselves but human rights and other organisations, including Amnesty International, to try to ensure that this

code is as robust as possible. It is critical that all the main countries adhere to it. It is not just about getting companies to sign up; it is not just self-regulation. It is about us as purchasers and contractors, as people who procure these services, doing so only with those companies that sign up.
Mr. Illsley: We will probably return to it in a couple of years' time.

Q177 Sir John Stanley: The legal issue you refer to does not mean that employees of private security companies cannot be prosecuted under the national law of the countries in which they are doing their work, unless they have diplomatic immunity. Can you assure the Committee that none of the employees of these private security companies, even if they are doing work for the Foreign Office, have diplomatic immunity conferred upon them?
David Miliband: You mean under the Vienna Convention and so on? I will find out and write to the Committee. I don't know the answer to that. I am happy to write to the Committee.[9]

Q178 Chairman: In the time that is left, can we go on to some more general issues? The UN Human Rights Council is now three years old and there are increasing concerns about its effectiveness. In the light of the statement it made on 27 May and voted by 29 votes to 12, which included ourselves, that the conflict in Sri Lanka was "a domestic matter that doesn't warrant outside interference", do you think that the Human Rights Council is doing the job it was set up to do—to deal with human rights abuses and civilian deaths as a result of that conflict?
David Miliband: In part. The Committee has discussed the Human Rights Council before and you have challenged or questioned the value of engagement with it. There are deep divisions between those who hold fast to a view that what goes on within a country is its own business and does not belong on the international agenda and those who believe that it does. The slightly odd thing about the special session on Sri Lanka is that the discussion in the UN Security Council, which was an informal discussion, revolved around the same issue: whether or not the position of civilians in Sri Lanka was an internal matter or whether it was a concern for regional stability. There were arguments that it better belonged in the Human Rights Council. As you pointed out, it got turfed out of the Human Rights Council on precisely the same grounds. There have been comments from the UN High Commissioner for Human Rights, Mrs. Pillay, denouncing—or objecting to the way in which this was thrown out. Sitting where we do, we should be careful—if you are in a glass house, do not throw stones. The UN Human Rights Council is not a perfect organisation, but neither are we. It is a forum that needs the engagement of countries such as the UK, which is why we stood for it again. It is welcome that the Americans are getting involved with it. Things like the universal periodic review, which we have been through, have been worth while. I would defend the fact that we co-sponsored the special session on Sri Lanka—that was the right thing to do—but obviously it was a disappointing result.

Q179 Chairman: But there is a worrying situation, when there are some of the major countries in the world—China, India, Egypt—among the 29, and there seems to be a shift away from the optimistic agenda of the responsibility to protect, and the approach that was taken a few years ago. It is now clearly reflected that the majority of members of the Human Rights Council and therefore, presumably, the majority of members of the General Assembly are of that view. Because of Russia and others in the Security Council, you are unable to get the Security Council to act either: welcome statement from Ban Ki-moon, welcome statement from Mrs. Pillay, welcome statement from John Holmes—nevertheless, when it comes down to it, the UN is not prepared to act on human rights issues, which it says are domestic matters that do not warrant intervention.
David Miliband: The UN is not prepared to act on some human rights issues, that is right. You raise an important and generic point.

Q180 Chairman: What about this review conference that took place in Geneva—the so-called Durban review? Will you answer the critics who said that the British Government's presence there—some other Governments withdrew—added credibility to those who sought to hijack it for their own ends? Not least among them was President—or perhaps it is late President, I don't know, but President at the time—Ahmadinejad, with his disgraceful remarks about the holocaust.
David Miliband: To have left the conference, or to have not participated, would indeed have been to allow Ahmadinejad to hijack it. If we get into a situation where his participation means that we have not to participate, then we will not be in the General Assembly either. So the answer is clear. We set two red lines. First, the text that emerged should brook no doubt about the unique nature of the holocaust, anti-Semitism and a range of other issues. Indeed, the text that came out, with Iran isolated for part of the negotiations, did meet that red line. Secondly, we were not prepared to be part of a circus, and what happened in Durban in 2001 was a bit of a circus. In Geneva, there was one very bad, insulting and repulsive speech, but there was actually concerted effort by the vast majority of countries to behave in an appropriate way. That justified our participation. Ahmadinejad's attempt to steal the show by driving everyone else out of the hall failed. All he did was expose his own isolation, including within the Islamic world, because one of the most significant things that happened at the conference was that important Islamic countries did not side with Iran, they went with the majority of the rest of the world.

Q181 Mr. Pope: Are we going backwards on the International Criminal Court? It is two years since the arrest warrants were issued for President Omar al-Bashir of Sudan, the Sudanese Ministers and

[9] Ev 51.

leaders of the Janjaweed militia. Those warrants have not been acted on, they have just been ignored. At the same time, three of the five permanent members of the Security Council are not state parties to the Rome statute. Do you think the process has, arguably, not just stalled but is going backwards or, alternatively—I know you have these conversations with Hillary Clinton, which you would be pleased to tell us about—are there encouraging signs coming from the new US Administration on the ICC?

David Miliband: It is a really important area. The implementation of the Rome statute is clearly not going forward in the way that we would like. There have been some notable successes. As you say, the Sudanese issue is one where the court has been rebuffed by the Government of Sudan, which we deplore. You may be implying that if we don't start going forward with the ICC, effectively, we are going backwards, which is an interesting way of putting it. That is quite a good and challenging way of putting it. I think that the new US Administration is distinctly more multilateralist although I don't think that the ICC is at the top of their list of multilateral re-engagement. What is important is that we recognise that the ICC is now 10 years old. It has established itself and it faces some very important test cases. The Bashir case is an important test case, and Haroon, who is the previous indictee, has been made governor of one of the states of Sudan.

Mr. Pope: Thank you.

David Miliband: It is worth saying that Sudan is a very difficult test case for anything. I use the phrase "test case", but it is a country with huge challenges. There is not just the Darfur issue, but the whole comprehensive peace agreement. It is a very tricky case to end up deciding the future of the ICC. We have to be careful there.

Q182 Chairman: I am conscious that there are still a number of countries that we want to touch on, and in the time we have left I should like to highlight the human rights report in which your Department talks about major countries of concern. Why was Sri Lanka not listed as a country of concern in the report?

David Miliband: Probably because of the timing of the work on the report. Obviously at the height of the fighting in March and April there would have been very serious concern. The issue for Sri Lanka now is whether it can live up to the commitments that the President of Sri Lanka made in his speech the day after the end of the civil war—to find a way of giving an inclusive political role to all the communities in Sri Lanka. That is the test, or challenge. There is also a massive IDP issue. There are 270,000 IDPs who need to be resettled. There are villages with land mines, so massive de-mining has to take place. There are also real concerns about the position of IDPs and their treatment in the camps.

Chairman: We will no doubt continue with that issue over the coming weeks.

Q183 Sir John Stanley: May we turn to Zimbabwe?

David Miliband: I am sorry, Sir John, but I have just been given a very helpful point. Sri Lanka will feature as a country of concern next year.

Chairman: Another success for our Committee. We had a discussion about Syria a few years ago. We are pleased that you responded so quickly.

Sir John Stanley: Foreign Secretary, Morgan Tsvangirai's entry into the Mugabe Government does not appear to have produced any material improvement in the human rights situation in Zimbabwe. Indeed, as we have all seen widely reported, the Mugabe police state, which it can pretty well be called, appears to be preparing a new round of possibly targeted assassinations against those who are supporting constitutional change and the restoration of democracy in that country. Do you believe that the British Government are effectively—again I use the words deliberately and rightly—wholly powerless in this continuing appalling human rights situation?

David Miliband: No, I don't actually. It's a tale of two halves in Zimbabwe at the moment. You are absolutely right about the security forces still being in the grip of the ZANU-PF machine, but the economic, educational and social welfare institutions of the country are not in their grip but under the command instead of Prime Minister Morgan Tsvangirai. I will be spending Saturday morning with Prime Minister Tsvangirai, who is coming here, then meeting him officially next Monday. It seems to me that Britain, with its strong humanitarian commitment in Zimbabwe—£60 million-odd a year being spent there—and its links, has an important role to play. Equally, it is very important that we remember that it is an independent country and has a Government of its own. Talking to Finance Minister Biti,[10] who was here three weeks ago, and with Prime Minister Tsvangirai at the weekend, we will be making it very clear, first, that we want to make sure that the cross-party agreement that was the basis for the two parties to enter the Government is actually implemented, and that there are benchmarks and staging posts for its implementation, because it says some important things. However, we know from Mugabe's history that he says all sorts of things and then does the opposite, or does not do them. We have to support and hold that Government to the implementation of their commitments. Secondly, it is a transitional Government, established to pave the way for elections, because our clear view is that Mugabe did not win the elections of March 2008, and that is the view of the international community more generally. Thirdly, it is important to continue to stand by the commitments to support the eventual renewal of Zimbabwe. The economic situation has been brought remarkably under control and the economy's dollarisation has helped a lot, but eventually Zimbabwe will need a reconstruction programme, which will need a Government in whom the international community have confidence.

[10] *Note by witness:* The meeting between the Foreign Secretary and Finance Minister Biti took place on 30 April.

Q184 Sir John Stanley: Is it still the British Government's policy that significant financial assistance and humanitarian aid to Zimbabwe has to be conditional upon Mugabe accepting basic human rights?

David Miliband: It is important not to confuse humanitarian aid and reconstruction. The test for humanitarian aid is whether it will help people in dire need, and throughout the worst of the Mugabe years we have continued to deliver aid to desperately poor people in Zimbabwe. There is always the danger, or the allegation, that by ameliorating their terrible situation one is somehow making it better for the regime; I have taken the view, as has Douglas Alexander, that it is absolutely right to continue to spend £50 million to £60 million a year there. Reconstruction is a different issue. The money must not go into the pockets of Mugabe's cronies; it must be used for the purposes intended, and Zimbabwe needs to embrace its democratic and human rights commitments.

Q185 Mr. Purchase: Can I go on to Pakistan? There is such a focus on how the recent crisis in the north-western area seems to have impacted particularly seriously on human rights, especially the way in which women have been the subject of problems there. Is there anything we can do to help to alleviate that situation in north-west Pakistan, amongst all the other difficulties? In particular, there is the behaviour of the army in clearing areas at very short notice, meaning that women and their families have had considerable difficulties and have not been able to live anything like a decent existence. I know the imperative is doing work with the Taliban, clearing this and doing that, but at the same time the simple basics of human existence have been badly affected.

David Miliband: You are absolutely right to call attention to that. There are 2.5 to 2.8 million IDPs from the Swat valley, in a rather unusual situation where 75 or 80% of them are lodging with relatives or friends, rather than in camps. That creates a different set of strains from the simple burden of dangers for people in camps. Last week, I met the British NGOs who are active in Pakistan, including Oxfam and Islamic Relief, and there are three distinct challenges. First, there are the IDPs in the camps, where proper aid needs to be delivered. The Americans have delivered a lot of money, we have delivered some and the European Union is delivering. Secondly, there are the IDPs staying with friends or relatives in villages. To make an obvious point; the schools in those villages have not been built for the number of kids who are now in them, and food and other supplies are a massive issue.

Mr. Purchase: The television pictures are really horrendous.

David Miliband: The third issue is what is happening in the Swat valley and the arrangements that are being put in place for policing and security to allow people to return, because unless you can establish some confidence in the security, then they are not going to go back. Equally, let us not kid ourselves: 1,000 civilians and 300 army personnel have been killed by Pakistan Taliban this year alone, so it is the devil and the deep blue sea really.

Q186 Mr. Purchase: And can we do anything?

David Miliband: We make our contribution politically and economically. Pakistan is implementing its IMF loan, rightly. It has significant humanitarian aid from us. There is now a group called the Friends of Democratic Pakistan, which brings together the Americans and us, and also the Chinese, the UAE and others. Pakistan is now at the centre not just of our concerns, but American concerns, significant Saudi and UAE concerns, Chinese concerns—

Q187 Mr. Purchase: I am not going into the instability and the problem there—it is just a question of the simple humanitarian concerns.

David Miliband: We can do a lot and we do. Remember, Pakistan is receiving £660 million of DFID assistance over the next three years, so it is, I think, our largest aid donee.

Q188 Sir John Stanley: We have a significant Pakistani population in Britain. We also have a sizeable number, in relation to the totality, of parental child abductions from this country into Pakistan. Pakistan is not a signatory to the 1980 Hague convention on child abduction, but we have, at governmental level, successfully negotiated the judicial protocol with the Pakistan judiciary to try to achieve the results that would occur under the Hague convention—the return of the child to its country of normal residence. In our discussions with the consular staff in our high commission in Islamabad—who are doing really outstanding work in this area—they expressed to us their very real difficulty in getting widespread acceptance of the judicial protocol in Pakistan. Can you assure the Committee that the British Government will do all they possibly can to support our consular staff in Islamabad and try to get greater understanding, support and subscription for the terms of the judicial protocol in Pakistan?

David Miliband: Yes, but in addition may I thank you for what you have said about the efforts of the consular staff? One of the things we have been trying to do over the last few years is boost the prestige and recognition of the outstanding work that consular staff do around the world in some very difficult and dangerous places. They do not often hear Members of Parliament express appreciation for what they do and I am very pleased to hear you say it. I think that the people in Islamabad are good examples of increasingly effective practice around the world, which, to return to what we were talking about at the beginning, expresses the best of British values: sensitive to the situation "in country", but also very clear about the rights of British citizens. We certainly take our consular work very seriously. I think our relatively new head of consular services was in Islamabad and other parts of south Asia last week, or the week before. I saw a note in the box over the weekend about the work that he had been doing and

seeing there. I think your commendation is very well merited and I assure you that we will continue to give that work priority.

Q189 Sir John Stanley: May I turn to Israel and the Occupied Palestinian Territories, which the Committee visited in March? I was part of the group within the Committee. We divided into three separate groups for part of the visit to Gaza. We saw the enormous scale of the destruction that had taken place there: the burning out of an entire hospital; the widespread destruction of entire orchards and food-growing capacity; and a whole, huge industrial estate laid absolutely flat—flattened. Now the UN Goldstone inquiry has made it clear that it will look both at Palestinian—that is, Hamas—human rights violations as well as Israeli violations of human rights. Why do the British Government not support the Goldstone inquiry?
David Miliband: We do. We were concerned when it was only on one side, but as you say, I think that it is now looking at both sides. The difficulty, as you know, relates to our earlier conversation about the Human Rights Council. The problem that underpins this is that the Human Rights Council is seen as a politicised body and its inquiry, notwithstanding the huge distinction of Judge Goldstone, is perceived, though not by us, to be prejudiced. I think that Judge Goldstone is someone of enormous distinction and fair-mindedness. We are not opposed to the inquiry. I think that the politicised nature of the Human Rights Council, which was exposed in the Sri Lankan case, makes it very difficult for the HRC to carry the confidence of the Government of Israel on this issue.

Q190 Sir John Stanley: It is one thing to say that the British Government are not opposed to the Goldstone enquiry, but the question I am putting to you, which is founded on the basis of evidence that the Committee has received from other parties, is whether, now that the Goldstone inquiry is clearly going to look, dispassionately I trust, at both sides, the British Government will give the inquiry their full support and co-operation.
David Miliband: With respect, Sir John, I did say yes, at the beginning of my last answer, in respect of your question. We are perfectly happy to support the inquiry, but it cannot do its business unless it gets co-operation from Hamas and the Government of Israel. We can support it until we are blue in the face, but until it can investigate the allegations it will be struggling. There is no doubt about our position. It is a perfectly legitimate inquiry and Judge Goldstone is an extremely distinguished person, but at every stage we say that all allegations of these kinds need to be credibly investigated. There is a UN inquiry and there are Israeli inquiries, but there is now the Goldstone inquiry. There is also a crushing need that exists in Gaza—I am very pleased that you went to Gaza. One of the things that we were talking about yesterday in the General Affairs Council of the European Union was precisely the issue of access and barriers to the delivery of materials and other aid to Gaza. That is a huge issue for the Palestinian Authority, which is short of money because some of the Arab donors have not paid up. It is a very complicated picture.

Q191 Sir John Stanley: I am glad to hear what I understand is your clear assurance of full support for and co-operation with the Goldstone inquiry.
David Miliband: With respect, the point is whether we urge others to co-operate with it. The inquiry does not particularly need our co-operation; it needs the co-operation of people who are on the ground.
Chairman: Foreign Secretary, we have had a very long session. We have one final question.

Q192 Mr. Pope: I have a brief, specific question about Colombia. Since the Democrats took control of Congress a couple of years ago, American military aid to Colombia has been a lot more transparent than British military aid is. Would you consider that issue, and the issue of the transparency of British military aid to Colombia?
David Miliband: Can I come back on that now? I think this is important. First, I do not accept this concept of military aid. That is a very loaded way of putting it, because when you talk about military aid, what you think of are bombs, bullets and soldiers. We have supported—there is transparency about this—two specific things: de-mining and human rights training, so that the Colombian army, for the first time ever, has a set of human rights commitments that it is meant to adhere to—I say "meant to" adhere to—partly as a result of the engagement that we have had. It has never had that before. We have now completed that work. We have finished our human rights engagement with the army and we are going to make sure that our demining work is part of a multilateral process. So, regarding that allegation of "military aid" in those two areas, I would argue that we have been transparent about it. It has been finished, and the money is now being put into tackling impunity, which is a huge issue. There is a separate issue, which is counter-narcotics. I think that the counter-narcotics issue raises a different set of questions, which we should talk about perhaps on another occasion. It is really important that people donot get the wrong idea about what has gone on. Gillian Merron, the Minister in the Department, was in Colombia last month, and I put out a written ministerial statement about how our funding was being refocused.

Q193 Chairman: We have had evidence from Human Rights Watch and others about this area, and your officials will no doubt be looking at what they have said—
David Miliband: Yes, but no evidence of anything that we have done being linked to human rights abuses.
Chairman: If there is any—
Mr. Pope: Sorry, the aim of my question was not to suggest—
David Miliband: But that is where it has been taken now.

Q194 Mr. Pope: But it is fair to point out that some of the evidence that the Committee has received from Human Rights Watch and Justice for Colombia has raised concerns about the human rights situation in Colombia and the fact that there is this relationship with the UK. That is a fair point.

David Miliband: It is wholly legitimate to say that there are massive human rights issues in Colombia, but it is not legitimate to say that British engagement is party to human rights abuses in Colombia.

Chairman: We could have continued and talked about the other 16 countries of concern, but we are not going to.

David Miliband: You spent much longer on this country, which you were concerned about. You spent three quarters of the time on our country.

Chairman: Foreign Secretary, as you know, this was a rather unique session, because we wanted to have the questions about rendition and other matters. I am very grateful to you, and to Mr. Manley and Miss Hyland for coming along today. It has been a very valuable and wide-ranging session. Thank you very much.

Written evidence

[* Asterisks denote that part of the written evidence that has not been reported because it is covered by the House of Commons' *sub judice* resolution.]**

Memorandum submitted by the Foreign and Commonwealth Office

"THE RESPONSIBILITIES OF THE FCO FOR SECURING THE HUMAN RIGHTS OF BRITISH CITIZENS AND OTHERS OVERSEAS"

Terms of Reference

1.1 The Terms of Reference given by the Select Committee on Foreign Affairs (FAC) for the inquiry are as follows:

> "The responsibilities of the FCO for securing the human rights of British citizens and others overseas, including:
>
> — The case of Binyam Mohamed
>
> — Allegations of UK complicity in torture
>
> — Extraordinary rendition (including the possible role of Diego Garcia)
>
> — Transfer of prisoners in Iraq and Afghanistan
>
> — Allegations of abuse at the British Embassy in Iraq
>
> — The oversight of contractors, including private security companies, employed by the FCO and UK Posts overseas"

The Case of Binyam Mohamed

(a) *Guantanamo Bay*

2.1 The UK has long held that the indefinite detention of detainees is unacceptable and that the Guantanamo Bay detention facility should be closed. We welcome President Obama's executive order to close Guantanamo Bay within one year and stand ready to work closely with the US in ensuring that both potential security and human rights concerns posed by the release of the detainees are appropriately addressed.

2.2 The UK has already made a significant contribution to reducing the number of detainees in Guantanamo Bay by taking back nine UK nationals and five former legal residents, and we have requested the release and return of one further individual. We have shared these experiences with our European partners as they think about what steps they might take and we continue to encourage them to follow our lead in taking back detainees. There are no plans to settle any more detainees in the UK.

2.3 Over the past year much attention has focused on the case of Binyam Mohamed, who was legally resident in the UK prior to his detention, and whose release and return we requested in August 2007. Following extensive discussions with the US throughout 2008 and in early 2009, Mr Mohamed was released from Guantanamo Bay and returned to the UK on 23 February 2009. During the course of these discussions we also made clear repeatedly our concern about Mr Mohamed's medical condition and welfare at Guantanamo Bay, and carried out two welfare visits in June 2008 and February 2009.

(b) *Judicial Review*

2.4 Discussions with the US authorities on Binyam Mohamed also focused on ensuring that material potentially relevant to his defence in any trial in the US was provided to his legal team by the US authorities. This follows judicial review proceedings brought against the UK government by Mr Mohamed's lawyers in order to obtain this information. In preparing for the judicial review, government departments discovered a limited amount of information which we determined was potentially relevant and could support his defence. The Government took the view that Mr Mohamed's lawyers should have access to this information. However, public disclosure by the UK of US material would breach the trust and confidentiality at the heart of our intelligence relationship with the US and other intelligence partners. We therefore made strenuous efforts to assist Mr Mohamed's lawyers in obtaining this information through the US legal system. We welcomed the decision of the US to disclose documents that were the subject of the court proceedings here to Mr Mohamed's US lawyers. The charges against Mr Mohamed at Guantanamo Bay under the Military Commissions Act were dropped without prejudice in October 2008.

2.5 There have been calls for further public disclosure of these documents. We have been clear in private and in public that we do not object to the release of the US material by the US. But it must be for the US to decide whether to disclose their own intelligence. The court proceedings are ongoing.

(c) *Allegations of Mistreatment*

2.6 We have taken Mr Mohamed's allegations of mistreatment during his detention seriously and raised them with the US in February 2008, in talks focused on his release and return. Following this we wrote to the US State Department on 1 May 2008 to ask that the allegations be examined thoroughly. Following the US response that the allegations were "not credible", we again wrote to the State Department asking to be kept informed of any developments.

2.7 There have been calls for a judicial inquiry into allegations of UK complicity in Mr Mohamed's mistreatment; there are already three investigations underway. Firstly, the question of possible criminal wrongdoing was referred by the Home Secretary to the Attorney General for her consideration, as an independent Minister of justice, who has since invited the police to investigate further. Secondly, as outlined in section 3 below, the Prime Minister made a Statement to Parliament on 18 March 2009 outlining work to be done in response to allegations about the involvement of UK personnel in alleged mistreatment of individuals in detention overseas. This included asking the Intelligence and Security Committee (ISC) to consider any new developments and relevant information, since their 2005 Report on Detention and their 2007 Report on Rendition. Finally the UK Courts will also be examining all relevant issues in detail as a result of the civil damages claims brought against the Government by a number of the individuals, including Mr Mohamed, who have returned from Guantanamo Bay.

Allegations of UK Complicity in Torture

3.1 The UK has been clear in its opposition to torture. The Government's policy is not to participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment for any purpose. Given this position we have taken very seriously a number of allegations which have been made in recent months about the involvement of UK personnel in alleged mistreatment of individuals in detention overseas.

3.2 On 18 March 2009, the Prime Minister made a Written Ministerial Statement to Parliament addressing these allegations. He made clear the outstanding work that our security and intelligence services and armed forces undertake to make Britain more secure, and laid out work to be done to address the allegations that have been made.

3.3 This work will include publishing the guidance given to intelligence officers and service personnel about the standards that we apply during the detention and interviewing of detainees overseas, once this guidance has been consolidated and reviewed by the Intelligence and Security Committee. Sir Peter Gibson, who is a former Lord Justice of Appeal and current Intelligence Services Commissioner, will be invited to monitor compliance with the guidance and report to the Prime Minister annually.

3.4 In addition, the Intelligence and Security Committee have been invited to consider any new developments and relevant information, since their 2005 Report on Detention and their 2007 Report on Rendition, building on the follow-up work that they have already undertaken.

3.5 These measures are in addition to mechanisms already in place to ensure accountability, provide oversight and to appropriately address any cases of alleged mistreatment that come to our attention.

3.6 The Government has made a clear commitment that wherever allegations of wrongdoing are made, they are taken seriously and investigated appropriately.

3.7 Policy and operational oversight of the work of the intelligence and security Agencies is essential. The ISC has a statutory responsibility to provide scrutiny of the policy, administration and expenditure of the intelligence and security agencies. It has addressed issues of detention and mistreatment in past reports and, as mentioned above, has been asked by the Prime Minister to build on its existing work by considering more recent developments and new information. The Intelligence Services Commissioner and the Intercept of Communications Commissioner provide oversight of the operations of the Agencies. The Commissioners are able to visit the Agencies to discuss any case they wish to examine in more detail. They must, by law, be given access to whatever documents and information they need and at the end of each reporting year they submit reports to the Prime Minister. These reports are subsequently laid before Parliament and published.

3.8 The Investigatory Powers Tribunal, established in October 2000, can investigate complaints by individuals about the Agencies' conduct towards them or about interception of their communications. Anyone, regardless of nationality, can complain if they believe that their communications or human rights have been violated or abused by any of the Agencies.

Extraordinary Rendition (including the Possible Role of Diego Garcia)

4.1 The FCO's Human Rights Report outlined the UK's position on "extraordinary rendition" to torture, and reported on action taken by the Government following the receipt of new information from the US in February 2008 that two rendition flights had passed through Diego Garcia in 2002. There have been no new developments on this issue since the publication of the report.

Transfer of Prisoners in Iraq and Afghanistan

a) *Iraq*

5.1 The last two Iraqi nationals held in UK military detention, Mr al-Saadoon and Mr Mufdhi (EOD2), were transferred to the Iraqi authorities on 31 December 2008. They had been detained on behalf of the Iraqi authorities for their alleged involvement in the killing of two UK service personnel. UNSCR 1790, which expired on 31 December, had previously provided the legal basis for this detention. The transfer came in response to several requests from the Iraqi authorities and was carried out following the rejection by the UK courts of judicial review proceedings brought on behalf of both individuals. Assurances were received from the Iraqi Government that the two detainees would be treated humanely in Iraqi custody, in accordance with Iraq's legal obligations, and this has subsequently been reconfirmed by the Deputy Minister of Justice. Verbal assurances were also given that they would not receive the death penalty, should they be found guilty, although the death penalty is not in itself deemed illegal under international law.

5.2 The UK took its power to intern in Iraq seriously and only used it when absolutely necessary. The International Committee for the Red Cross (ICRC) and the Iraqi Ministry of Human Rights (MoHR) have had regular and open access to our detention facility and to our internees. Wherever possible, we ensured that those detained had their cases heard in the Iraqi courts. The US holds around 15,000 detainees, down from a peak of 27,000. The security agreement with the GOI will see these either tried by the Iraqi system or released.

b) *Afghanistan*

5.3 In Afghanistan, the UK military operate as part of NATO's International Security Assistance Force, whose mandate is set out in UN Security Council Resolutions 1386 (2001) and 1510 (2003) and was most recently renewed in UNSCR 1833 (2008). ISAF is authorised to use "all necessary measures to fulfil its mandate", which is to assist the Government of Afghanistan in the maintenance of security in Afghanistan.

5.4 Individuals detained by UK forces and deemed to be a security threat are detained under ISAF Rules of Engagement, only for such period as is reasonably necessary to transfer them to the Afghan authorities for prosecution, if appropriate. British forces release those who are deemed not to be a security threat after initial questioning. Detainees who are not released are transferred into Afghan custody at the earliest opportunity where such facilities exist. ISAF's aim is to hand over any detainee within 96 hours.

5.5 The UK commenced detention operations in Helmand Province in early 2006. Arrangements set out in a Memorandum of Understanding with the Government of Afghanistan provide assurances that detainees transferred into Afghan custody will be treated in accordance with Afghanistan's international human rights obligations. These include prohibiting torture and cruel, inhuman and degrading treatment and punishment, protection against torture and using only such force as is reasonable to guard against escape. The MOU also provides that detainees will not be transferred into a third country or to a third country without UK agreement and will not face the death penalty. This MOU, and a subsequent exchange of letters,[1] provide full access to the transferred detainees for UK officials and a number of other bodies including the International Committee of the Red Cross and Red Crescent, the Afghan Independent Human Rights Commission and relevant human rights institutions within the UN system.

5.6 The UK transfers detainees to the National Directorate of Security (NDS), which is the Afghan domestic and foreign intelligence service. It has a wide range of responsibilities including detaining, investigating and prosecuting individuals who have committed security offences. In addition to the assurances contained in the MoU, the Royal Military Police conduct regular visits to the NDS facilities to monitor the standards of those facilities and to check on the welfare of the transferred detainees. Prior to the commencement of detention operations in early 2006, UK forces had only detained a total of seven individuals. 538 people have been detained as of 28 April 2009. 282 have been transferred to the Afghan authorities and 256 have been released.

5.7 The FCO, through the Stabilisation Aid Fund (SAF), has provided capacity building support to the NDS. This includes a programme of training to the NDS by a team from HM Prison Service geared to delivering the UN Minimum Rules on the Treatment of Prisoners.

Review of Detention Records in Iraq and Afghanistan

6.1 In February 2008, allegations were made that persons captured by UK forces in Iraq were transferred to US detention facilities and were mistreated and removed unlawfully from Iraq. In response, the then Secretary of State for Defence launched a review of records of detention in Iraq and Afghanistan.

6.2 This review was completed in early 2009 and the Secretary of State for Defence made an oral Statement to Parliament on 26 February setting out the findings. As a result of this review, the Parliamentary record has been corrected in a number of instances where it was discovered that inaccurate statistics had been provided.

[1] Multi-lateral Exchange of Letters with the Afghan Authorities dated 6 Sept 2007

6.3 During the final stages of the review of records of detention, information was discovered about one case relating to a security operation conducted in Iraq in February 2004. This period saw an increased level of insurgent activity as the transfer to Iraqi sovereignty drew closer. During the operation, two individuals were captured by UK forces in the Baghdad area. They were transferred to US detention, in accordance with normal practice, and subsequently moved by the US to a detention facility in Afghanistan.

6.4 Following consultations with US authorities, it was confirmed that these individuals remain in custody in Afghanistan. They were members of Lashkar-e-Taiba, a proscribed organisation with links to al-Qaeda. The US Government has informed us that those individuals were moved to Afghanistan because of a lack of relevant linguists to interrogate them effectively in Iraq. The US has categorised them as unlawful enemy combatants and continues to review their status on a regular basis. We have been assured that the detainees are held in a humane, safe and secure environment that meets international standards that are consistent with cultural and religious norms. The International Committee of the Red Cross has had regular access to the detainees.

6.5 A due diligence search by US officials of the list of all those individuals captured by UK forces and transferred to US detention facilities in Iraq has confirmed that this was the only case in which individuals were subsequently transferred outside Iraq.

6.6 In his Statement, the Secretary of State for Defence made clear that, in retrospect, the transfer to Afghanistan of these two individuals should have been questioned at the time. We have discussed the issues surrounding this case with the US Government. They have reassured us about their treatment but confirmed that, as the individuals continue to represent significant security concerns, it is neither possible nor desirable to transfer them to either their country of detention or their country of origin.

Allegations of Abuse at the British Embassy at Iraq

7.1 We expect our contractors to maintain high standards of professionalism. We do not tolerate misconduct in any form.

7.2 The 2009 allegations of abuse at the Baghdad Embassy were reported to London by senior management at the Embassy within an hour of them coming to light. A joint investigation into them by the FCO and the contractor KBR was launched immediately.

7.3 The investigation is now complete. It was detailed, thorough and found no evidence of sexual abuse, harassment or misconduct. It did however find evidence of gross misconduct by certain locally employed KBR Iraqi staff, and failings in management standards. We are working closely with KBR to address these issues.

7.4 We can confirm that five KBR Iraqi staff were dismissed for gross misconduct and an expatriate KBR manager was removed from the FCO contract.

7.5 We already have robust processes for holding contractors to an acceptable standard of behaviour, including compliance with UK anti-discrimination legislation, and for monitoring their performance and compliance. But we have learned and implemented many lessons from our dealings with contractors in Iraq and Afghanistan over the years.

7.6 It is not practical for the FCO to get involved in every single case. We continue to believe that allegations made against contract staff should primarily be a matter for the contractors to deal with. But as the fact that we launched a joint investigation into the latest allegations shows, there will be times when we judge it right to take a joint approach.

7.7 We do not intend to reopen investigations into the 2007 allegations about sexual abuse and harassment by and against KBR staff. The conduct and outcome of KBR's investigation into those allegations was reviewed by a new Embassy senior management team in 2008. FCO senior officials accepted the Embassy's recommendation that there were no grounds for reopening the issue.

The Oversight of Contractors, including Private Security Companies, Employed by the FCO and UK Posts Overseas

8.1 The oversight of contractors, including private security companies, contracted (not employed) by the FCO and UK posts as with all contractor services, is currently undertaken during the tendering process for our contracts, throughout the contract's lifetime and on completion of that contract with a specific contractor.

8.2 The Government ensures that all contracts are subject to a rigorous selection process so that we obtain best value for money. Any company engaged by HMG needs to pass through a stringent and transparent procurement process in line with Public Procurement Guidelines and best practice.

8.3 All Private Military Security Companies (PMSC) contracts are subject to ongoing performance monitoring and contract management by the FCO and other government departments concerned, both in country on-the-ground and from the UK, in respect of all aspects of the delivery and operation of these contracts. FCO monitors performance by a mixture of Key Performance Indicators, regular visits by the Overseas Security Advisors to FCO Posts who review and report on the PMSCs' performance, regular review meetings in London with PMSCs, and monitoring expenditure against a fully profiled budget.

8.4 In addition, the FCO reviews requirements on completion of the contract and prior to re-tendering in order to highlight any improvements that could be made as a result of experience or lessons learned.

8.5 The Foreign Secretary announced the Government's launch of a public consultation on its preferred option of promoting high standards of Private Military and Security Companies on 24 April. Our preferred option is a composite package of industry self-regulation, international cooperation, and our leverage as a key buyer to drive up standards globally.

13 May 2009

Letter to the Second Clerk of the Committee from the Head, Parliamentary Relations Team, Foreign and Commonwealth Office

Thank you for your letter of 17 December to Martin Scales on behalf of the Foreign Affairs Committee asking for further information on a number of points raised in our response to their report on the Foreign and Commonwealth Office's 2007 annual report on human rights.

1. *In response to Recommendation 3 made by the Committee, the Government set out its priorities for strengthening of the Human Rights Council. The Committee would be grateful for an update on the progress made towards this aim.*

We continue to support the Human Rights Council, with the aim of ensuring it becomes a progressive, active body willing to look into human rights abuses whenever and wherever they occur.

Our re-election to the Council in 2008 ensures we remain influential on this important body. We continue to support country-specific action within the Human Rights Council and will oppose any attempts by other members to block the Council's ability to focus on problem countries. With EU members we initiated a special session on the Democratic Republic of Congo in November. Additionally we actively defend the independence of the Office of the High Commissioner for Human Rights and Navanethem Pillay, the new High Commissioner. The OHCHR adds considerable depth and breadth to the UN's work on Human Rights, with its lead responsibility for implementing the UN's Human Rights programme, and for supporting the work of the Special Rapporteurs and Independent Experts appointed by the Human Rights Council.

We have substantially increased liaison with UK human rights NGOs, having increased formal contact from a single annual meeting to now meeting with them before and after every session of the Human Rights Council—resulting in at least six meetings per year. This is not only a useful opportunity for NGOs to lobby us, but also for us to benefit from their considerable expertise and knowledge and to work together in pursuit of shared goals. We work actively to ensure the success of the UN's new Universal Periodic Review process. The UK was one of the countries examined in the first session of the Review. We are sharing our experience and lessons learned with other countries coming up for review through bilateral and regional meetings. At these meetings, we take the opportunity to encourage countries to approach the Universal Periodic Review in an open, constructive manner—accepting sensible recommendations arising from the review and acting on them, rather than take a defensive stance. We continue to encourage NGO participation in each country's Review process, including offering funding for human rights NGOs from within the country under review to allow them to engage more deeply with the process. We have provided substantial financial and practical support to the Commonwealth Secretariat in helping Commonwealth countries take a constructive approach to the Universal Periodic Review.

We have also made a commitment to give the Human Rights Council, a mid-term update on our progress in implementing recommendations that we accepted from our own Universal Periodic Review and have encouraged other countries to do the same.

2. *In response to Recommendation 11 made by the Committee on the subject of the interrogation of UK nationals in Pakistan, the Government failed to comment on "whether intelligence or evidence gained by the Pakistani authorities in its interrogation of any of these men led in whole, or in part, to further investigations or charges in the UK". The Committee would be grateful for information on this matter.*

We are unable to provide details of individual cases. As stated in our earlier response, it is also our long-standing policy not to comment on intelligence-related issues and this includes details of any collaborations with foreign intelligence services. However, all intelligence received from foreign sources is carefully evaluated, particularly where it is clear it has been obtained from individuals in detention. Evidence obtained as a result of any acts of torture would not be admissible in criminal or civil proceedings in the UK.

3. *In response to Recommendation 13 made by the Committee, the Government discussed its position in relation to Guantánamo Bay. Given the imminent change of US President, the Committee would be grateful to receive an update on the progress made in relation to the status of Guantánamo Bay and its British Residents, as well as an assessment of likely future progress in this area.*

We welcome President Obama's signing of an executive order to close Guantánamo bay detention facility within one year, and further orders on detainee treatment and detainee disposition. These early moves demonstrate real commitment to address the challenges of violent extremism in a manner consistent with our common values and the rule of law. We recognise that there are numerous practical challenges to realising this goal and will continue to discuss with the US Government how best we can work with them, and our European partners, to see the closure of the Guantánamo Bay detention facility.

We continue to press for the release of Mr Mohamed from Guantánamo Bay and return to the UK and remain in active discussion with the US. We are no longer in active negotiations for the return of Shaker Aamer to the UK although we continue to discuss his case and welfare with the US authorities. Our request for his release and return to the UK remains open should the US position change.

4. *In response to Recommendation 14 made by the Committee, the Government indicated that there is still no Ministerial agreement about a mechanism for regulating private security firms. The Committee would be grateful for an update on the progress made on this issue.*

We hope to announce our way forward on this issue in the early part of this year.

5. *In response to Recommendation 26 made by the Committee in relation to Russia's human rights record, the Government indicated that it would be pursuing this issue via the six-monthly EU-Russia Human Rights consultation (October 2008) and annual bilateral human rights dialogue each autumn. Given that both will now have taken place, the Committee would be grateful for an update on the progress made in these discussions.*

The EU held a human rights dialogue with Russia in October 2008. The UK held bilateral human rights discussions with Russia on 16 January 2009. In the course of these talks, a number of different issues were raised, including equality and minorities, with a focus in the bilateral talks on problems of racist crime, NGOs and restrictions on civil society, freedom of expression, human rights in the context of counter-terrorism, engagement with international human rights institutions, penal reform and the rule of law. Both the UK and the EU expressed concern about individual cases, and asked for follow-up information on them. Our approach was shaped after consultation with NGOs both in the UK and in Russia. In our bilateral talks we also raised Russia's human rights obligations in South Ossetia and Abkhazia, and continuing concern over the lack of Russian co-operation in the Litvinenko case. The UK is actively looking to secure Russian engagement on a number of human rights issues so as to continue the dialogue on a practical level.

6. *In response to Recommendation 29 made by the Committee, that the Government should provide diplomatic assistance to NGOs in their efforts to gain access into Sudan, the Government described its efforts in this regard. The Committee would be grateful for an update on this matter.*

We continue to press for full humanitarian access for NGOs through our shared seat on the High Level Committee, which oversees the implementation of the Joint Communiqué on the facilitation of humanitarian activities in Darfur. The Committee played a successful part in persuading the Government of Sudan to agree in November 2008 to extend the Darfur Moratorium on Restrictions for another year until 31 January 2010.

We took the opportunity provided by the visit to Sudan in November 2008 of the UN's Emergency Relief Coordinator, Sir John Holmes, to press the Government of Sudan to abide by the terms and spirit of the Joint Communiqué, raising concerns about the situation in South Darfur, where the approach of authorities to NGOs has been particularly heavy handed. We are also supporting NGO requests to receive multiple entry visas for all staff and for the removal of internal travel permits.

In the context of a possible announcement by International Criminal Court (ICC) to seek an arrest warrant for the Sudanese President, we are reminding the Government of Sudan of their responsibility to ensure the safety of humanitarian workers and to sustain humanitarian operations whatever the outcome. We follow up with the Government on all these issues regularly.

5 February 2009

Letter to the Chairman from the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office

BINYAM MOHAMED AND OTHER TOPICS: REQUEST TO GIVE ORAL EVIDENCE

Thank you for your letter of 13 February 2009 and your invitation to give evidence to the Foreign Affairs Committee on the case of Binyam Mohamed and a number of other issues.

I would be happy to give evidence to you and your colleagues in the context of your consideration of the FCO's Annual Human Rights Report 2008. As you know, this evidence session would normally be taken by one of my ministerial team, but in view of the significance of the issues to be covered we have agreed that I will attend this year. This session will provide an opportunity to discuss the issues you identify as well as others arising from the Report. I do not consider that a separate session will be necessary.

You will be aware that there will be limits to the information I will be able to put into the public domain. This is particularly the case with regard to those issues touching on the work of the intelligence and security agencies. To put it simply, I will not be able to answer questions that enter into operational detail. The Intelligence and Security Committee (ISC) remains the appropriate body to provide Parliamentary scrutiny of issues in relation to those bodies.

Accordingly, to avoid my being unable to answer some of your Committee's questions, I suggest that my officials hold a preparatory discussion with your Committee's secretariat to ensure that we have an agreed understanding as to the areas I will be able to cover in the session. If you agree that this would be helpful, I will ask my officials to organise a suitable date.

I look forward to attending your meeting and answering your questions.

Rt Hon David Miliband MP

26 February 2009

Letter to the Secretary of State for Foreign and Commonwealth Affairs from the Chairman

At its most recent meeting the Foreign Affairs Committee discussed recent developments in the case of Binyam Mohamed.

My colleagues and I decided to invite you to give oral evidence to the Committee on this matter, and on a number of other topics on which the Committee has received evidence from the FCO, and which relate, like the Binyam Mohamed case, to the responsibilities of the FCO for securing the human rights of British citizens and others overseas.

The specific topics are as follows:

— The case of Binyam Mohamed.

— Allegations of UK complicity in torture in Pakistan.

— Rendition.

— Transfer of prisoners in Iraq and Afghanistan.

— Allegations of abuse at the British Embassy in Iraq.

— The oversight of overseas contractors employed by UK Posts.

We would envisage dealing with these matters in a single evidence session. This would form part of the Committee's annual Human Rights inquiry, but would be separate from and in addition to our usual session with the Minister of State to discuss the human rights records of other governments.

I would be grateful if you could confirm that you are willing to accede to this proposal. If so, our two offices will liaise to arrange a suitable date.

I am copying this letter to Andrew Dismore as Chairman of the Joint Committee on Human Rights and James Arbuthnot as Chairman of the Defence Committee.

I look forward to your response.

Rt Hon David Miliband MP

13 February 2009

Letter to the Chairman of the Committee from the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office

I am looking forward to my appearance before the Committee on Tuesday. It's an important opportunity, not only to discuss the work of the FCO in promoting and defending human rights, as set out in our Annual Report, but also to consider the particular issues around counter-terrorism, which your own inquiry is seeking to address. I understand why the Committee does not want me to take up time with an initial presentation of the Government's position on Tuesday. This letter therefore sets out for you and the public some key points of our approach.

I welcome greater public debate about how we exercise two of the most fundamental responsibilities of Government—to defend the rights upon which our freedom ultimately depends and to protect the security and safety of our citizens. As the National Security Strategy makes clear, we see these as mutually reinforcing. But that does not mean there are not difficult judgements and hard choices, and it is better for these to be understood.

Some things cannot be discussed publicly: for example, cases that are sub judice, and operational matters in respect of our intelligence and security agencies. But in recent months there has been a good deal of debate and public interest in our position on the detention and treatment of terrorism suspects. In part this has been prompted by the Judicial Review into the case of Binyam Mohamed as well as by developments in the US and elsewhere. If this can be channelled into an informed discussion of the right approach to difficult judgements, then the country will benefit.

The starting point is that the threat that we face is real and ongoing. British citizens going about their daily lives in this country, and abroad, have been subject to murderous attacks in recent years. So the stakes in counter terrorism work are high.

Fortunately, this country has a more comprehensive intelligence capability than almost any other country in the world. It is an essential part of our ability to defend our interests and secure our safety. It is vital that we maintain and, where possible, enhance the operational effectiveness of our Agencies. They are a unique—and much prized—national asset. And their staff perform a vital role in defending our country's national security.

The Government has been absolutely clear that the UK stands firmly against torture and cruel, inhuman and degrading treatment or punishment. There is strong cross-party support for this. It is a fundamental principle guiding our approach and that of those who work to protect us. That is not just a question of our obligations under domestic and international law—including under the Human Rights Act and the UN Convention Against Torture. It is also a question of our values as a nation.

It is for this reason that this Government, and the Foreign Office in particular, have over the last twelve years sought to take a lead on international efforts to eradicate torture, including through support to international mechanisms against torture, and capacity building work overseas to foster a law enforcement environment in which torture is simply not considered an option.

This is also the approach and ethos set out in our counter-terrorism strategy, CONTEST. As that strategy makes clear, our work to reduce the threat of terrorism is based on a set of core principles and values including respect for human rights and the rule of law. The Government has been absolutely clear that the UK abhors torture and that is an inviolable principle underpinning our approach.

When detainees are in our custody, we can be sure of how they are treated, and ensure we meet our obligations and standards. When they are not, we cannot have the same degree of assurance. Yet we cannot act in isolation in order to protect British citizens. UK terror networks nearly always have overseas links which must be investigated if attacks in the UK are to be stopped. We therefore need to work in cooperation with partners all over the world. Some other countries have different legal obligations—and different standards—to our own in the way they detain people and treat those they have detained. That cannot stop us from working with them, where we can, in order to protect this country's national security, but it does mean we have to work hard to ensure we do not cooperate or collude in torture, and to seek to reduce and eradicate it.

In enabling the detention of individuals who pose a threat to our national security, in passing questions to them, or participating in interviews of them, we must seek to minimise the risk that the individual in question is mistreated by the detaining authority. Enormous effort, within the Agencies and Armed Forces, goes into carefully assessing the risks in each case. Ministers consider carefully each case that is put to them. As the ISC has reported, operations have been blocked on the grounds that the risk of mistreatment is too high. Equally, it is not always possible to eradicate the risk of mistreatment. A judgement needs to be made.

Our guidance to Agency staff (which will be reviewed by the Intelligence and Security Committee, and is in the process of being consolidated) makes clear the careful and considered way we go about making the choices that we face. That guidance reflects the best thinking and advice that we are able to provide to those who act in the name of the United Kingdom. Through this guidance, the Agencies, and the Government more generally, set parameters for the conduct of their officers. The guidance is designed to ensure that anyone following it is acting within the law. In accordance with our obligations under the Convention

Against Torture we keep it under review. The steps outlined by the Prime Minister on 18 March 2009, including on publication of this guidance, are part of the process of setting out for the British public the choices we face and the careful, considered way we all go about making them.

Accountability is a vital part of our system. But by definition the work of the Agencies requires a different set of checks and balances than the work of any other part of government. The first responsibility is for Ministers and Agency Heads to uphold our law and our values. The law is available to provide recourse to those who feel their rights have been abused. As you know, 12 civil claims are currently in the court system, including the Binyam Mohammed case. It is right too that the Intelligence and Security Committee should have an important role. The Committee is a creation of Parliament, not the Executive, with the avowed purpose of squaring the circle between secrecy and accountability. The Committee—and the Intelligence and Interception Commissioners—are an invaluable part of our constitutional checks and balances. As the High Court recently said, the ISC "is a very significant means of democratic accountability". These bodies have the access to the sensitive intelligence material they need to discharge their duties fully and effectively. But to ensure operational effectiveness is also properly protected, the individuals involved are notified under the Official Secrets Act and their official reports are published with appropriate redactions, though each and every redaction is explained and debated in detail with the reports' authors before publication.

Together with the Investigatory Powers Tribunal, which investigates complaints by individuals about the Agencies' conduct towards them, these bodies provide comprehensive oversight of the Agencies. That is their role. However, I also want to emphasize that, although there are good reasons for the limits on what we can say in public on some of these issues, I welcome your Committee's interest in them. You play an essential role in scrutinizing Government and stimulating public debate.

I look forward to discussing these issues with you and other members of the Committee.

Rt Hon David Miliband MP

15 June 2009

Further submission from the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office

Thank you for your letter of 17 June following up on a number of issues that we discussed during my evidence session on 16 June. I am of course happy to provide further information on these issues and to address the additional questions highlighted in your letter which we did not have time to cover.

FURTHER INFORMATION ON ISSUES RAISED IN THE EVIDENCE SESSION

1. *Whether the prior consent of the British Government would be required for the US base on Diego Garcia to be used to victual ships outside the Island's territorial waters?* (Q105)

The territorial waters of Diego Garcia extend to three nautical miles. Replenishment at Sea (RAS) requires a stable transfer system between the two vessels concerned. This would usually be provided by an auxiliary vessel. No such vessels are currently berthed in Diego Garcia and consequently all vessels have to come into port to be replenished. It is highly unlikely therefore that re-victualing outside the port would occur. Under the UK/US Exchange of Notes which govern the use of the British Indian Ocean Territory for Defence purposes,the US undertakes to inform the UK of intended movements of its ships in BIOT territorial waters in "normal circumstances".

2. *What is the Government's assessment of the UK's obligations under domestic and international law, particularly the UN Convention Against Torture and the Human Rights Act, to take action in response to instances of suspected torture and prevent torture being carried out by other states?* (Q134)

To clarify my answer given during the evidence session, the UN Convention Against Torture and the European Convention on Human Rights, which is incorporated directly into UK law by the Human Rights Act, do not impose a positive obligation to report on or seek to prevent acts of torture carried out by other states abroad. The UK is, however, very clearly committed to the prevention of torture. Our embassy staff are also instructed to report concerns over mistreatment in other countries. We take any such reports very seriously and consider carefully what steps we can and should take to address such issues. If UK citizens commit or participate in acts of torture overseas they will be subject to prosecution in the UK. We also use a combination of project work and diplomatic activity to build other states' capacity and awareness of human rights, and encourage ratification and implementation of the Optional Protocol to the Convention Against Torture, including the establishment of national preventive mechanisms.

3. *What is the Government's considered view of the legality of the transfer from Iraq to Afghanistan of two detainees handed over to the US in 2004?* (Q143)

The Government's view is that the transfer of these two detainees should not have taken place. The US believes they had legal authority to make this transfer. Pursuant to President Obama's Executive Orders of 22 January 2009, however, the United States is currently reviewing its policy in this area. We welcome this review and look forward to its outcome. In the particular case in question, we have sought and received assurances about the welfare of the individuals concerned and have put into place safeguards and guarantees to prevent repetition.

During our discussion, Ken Purchase asked whether we are able to provide additional information on the identities of the two individuals transferred by the United States from Iraq to Afghanistan in 2004. We are unable to provide further information on this matter beyond that given by my Right Hon. Friend the former-Secretary of State for Defence in his statement of 26 February 2009.

I would also like to take the opportunity to explain the state of work that is being undertaken in pursuit of the Prime Minister's commitment to compile and publish our guidance to Agency and service personnel. As I outlined in my letter of 15 June, the Cabinet Office are in the process of consolidating the guidance and it will then be reviewed by the ISC. We have already provided the ISC with all of the potentially relevant original material to facilitate their work. Once they have reviewed the consolidated guidance we aim to publish as soon as is practicable.

4. *Whether staff of any private military security company working for the FCO have diplomatic immunity conferred upon them?* (Q177)

Some individuals contracted to the FCO in Iraq and Afghanistan to undertake private security contracts for the protection of our diplomatic missions do have certain immunities, including in particular immunity from criminal jurisdiction, under the Vienna Convention on Diplomatic Relations.

5. *"The Shia family law"* (Q151)

We, along with other international partners, made our concerns about the Shia Personal Status Law clear to the Afghan government at a senior level. The Prime Minister raised the issue with President Karzai. We welcomed President Karzai's announcement on 27 April that the law would be changed to bring it in line with the Afghan Constitution, which guarantees equal rights for women, and the international treaties to which Afghanistan is a party.

On 20 June 2009, the Minister of Justice met with female representatives of the Afghan Parliament and civil society and told them that his Ministry has now amended the Law. The amendments were made following written recommendations by Afghan civil society (the Afghan Women's Network), Katib University and moderate Ulema (religious scholars).

We understand the amendments made by the Ministry of Justice have added around sixty articles and removed around ten from the Law. Language was also added to clarify the meaning of certain articles. We understand that the Afghan Women's Network view the amended draft as broadly acceptable, and contentious articles, including the provision appearing to legalise rape, had been removed. The Law is also being reviewed by the Supreme Court.

President Karzai has indicated that the Law will next be sent back to the Afghan Parliament for approval (in time for the new session of Parliament, beginning 20 July 2009).

The Law continues to cause controversy on both sides. The outcome is still uncertain, therefore we, along with our international partners and Afghan civil society, will continue to follow the passage of the Law closely. We will lobby the Afghan Government whenever appropriate, to help ensure the final Law respects women's rights and does not undo progress made since 2001.

Information on Issues Not Raised in the Evidence Session

1. *The Government's position on the UN Convention on enforced disappearances, particularly whether and when the UK intends to sign the Convention and if it is actively persuading other states to do the same.*

The UK played a supportive role throughout the drafting process of the Convention against Enforced Disappearance and we welcome the fact that it was adopted by consensus at both the UN Human Rights Council and the UN General Assembly in 2006. Together with EU partners, we have been supportive of attempts to encourage other states to consider participation in the Convention.

The Government is currently examining the potential impact of the Convention on the law of the United Kingdom. In particular, lawyers are analysing the extent to which common law provisions may need to be replicated in statute law, and the introduction of one or more specific criminal offences. If the Government decides to ratify the Convention, these changes to the law would require primary legislation, which would be introduced when Parliamentary time allowed. Decisions would also need to be taken in due course on whether the United Kingdom required any reservations or declarations upon ratification. The complexity of these issues under consideration does not permit a deadline to be set at this time for completion of this analysis.

2. *Though the legal argument is now settled in the Government's favour, do you accept the moral argument for allowing the Chagossian people to return in some way to their homeland? What prospect is there for this in the future? Do you agree with Jack Straw's view, expressed in an interview on Radio 4 on 12 May 2009, that my Committee should have been consulted on the Orders in Council made in 2004?*

As I said in my statement on the House of Lords judgment on 22nd October 2008, the Government regrets the way the resettlement of the Chagossians was carried out in the 1960s and 1970s and at the hardship that followed for some of them. We do not seek to justify those actions and do not seek to excuse the conduct of an earlier generation. But the Courts have previously ruled that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation; and British citizenship was granted to a large number of Chagossians under the British Overseas Territories Act 2002. The appeal to the House of Lords was not about what happened in the 1960s and 1970s. It was about decisions taken in the international context of 2004. This required us to take into account issues of defence security of the archipelago and the fact that an independent study had come down heavily against the feasibility of lasting resettlement of the outer islands of BIOT. The Courts have also previously ruled that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation; and British citizenship was granted to a large number of Chagossians under the British Overseas Territories Act 2002.

As my predecessor Jack Straw wrote to your predecessor Donald Anderson in 2004, we will certainly try to send draft Orders in Council relating to Overseas Territories' Constitutions to your Committee at least 28 sitting days before they are made but that may not always be possible. In this case, he pointed to the need to preserve complete confidentiality to avoid the risk of any attempt to circumvent the Orders before they came into force.

3. *Can assurances between the UK and Iraq about the treatment of prisoners be relied upon? Are you satisfied that in Iraq, the UK has discharged its obligations under the European Convention on Human Rights and upheld the authority of the European Court of Human Rights, given that the Government ignored an interim measure request not to transfer two prisoners to the Iraqi authorities in December 2008?*

The Foreign and Commonwealth Office obtained verbal assurances from President of the Iraqi High Tribunal, President Aref, that a death sentence would be commuted, as well as written assurances from Deputy Justice Minister Posho that the two detainees will be treated humanely whilst in Iraqi detention. We are satisfied that the Government of Iraq is aware of its earlier assurances and have no reason to believe that they are not being adhered to.

On the transfer of two detainees to the Iraqi authorities in December 2008, the Government considers that it has not breached its obligations under the European Convention on Human Rights. Proceedings in Strasbourg are ongoing.

The Guardian, 18 June

You also ask about an article in The Guardian on 18 June. The article contains no new information. It refers to material that was made public in 2005 and was published in the ISC's Report on Detainees in that year. Paragraph 47 of that Report makes clear that the quotations used by The Guardian are taken from instructions sent to Agency staff in Afghanistan in January 2002. Those instructions were as follows:

> "With regard to the status of the prisoners, under the various Geneva Conventions and protocols, all prisoners, however they are described, are entitled to the same levels of protection. You have commented on their treatment. It appears from your description that they may not be being treated in accordance with the appropriate standards. Given that they are not within our custody or control, the law does not require you to intervene to prevent this. That said, HMG's stated commitment to human rights makes it important that the Americans understand that we cannot be party to such ill treatment nor can we be seen to condone it. In no case should they be coerced during or in conjunction with an SIS interview of them. If circumstances allow, you should consider drawing this to the attention of a suitably senior US official locally.
>
> It is important that you do not engage in any activity yourself that involves inhumane or degrading treatment of prisoners. As a representative of a UK public authority, you are obliged to act in accordance with the Human Rights Act 2000 which prohibits torture, or inhumane or degrading treatment. Also as a Crown Servant, you are bound by Section 31 of the Criminal Justice Act 1948, which makes acts carried out overseas in the course of your official duties subject to UK criminal law. In other words, your actions incur criminal liability in the same way as if you were carrying out those acts in the UK."

You also ask about the compatibility of this statement with the UK's obligations. As you will understand, this question may form part of the consideration of an ongoing police investigation. Questions relating to this need to await the conclusions of that investigation.

July 2009

Memorandum submitted by the Foreign and Commonwealth Office

SWAZILAND: HUMAN RIGHTS AND CONSTITUTIONAL SITUATION

1. The Foreign Affairs Committee requested a memorandum setting out the UK Government's view of the current human rights and constitutional situation in Swaziland. As requested, this memorandum also reflects the views of Paul Boateng, High Commissioner to South Africa and Non-Resident High Commissioner to Swaziland.

Overall Assessment

2. The UK Government seeks to maintain a good bilateral relationship with the Government of Swaziland. The High Commissioner and his staff are frequent visitors and the High Commissioner has taken care to foster the relationship by maintaining the UK's profile following the closure, much criticised in Swaziland itself, of our resident Mission. This enables the UK Government regularly to engage with the Government of Swaziland on the UK's concerns about the human rights and constitutional situation in Swaziland. These concerns include: restrictions on political parties, trade union rights, freedom of expression, freedom of association, the right to campaign as a member of a political party and gender equality. There are however some positive signs: the trouble-free 2008 elections and high turnout. But developments since the election—eg implementation of the Suppression of Terrorism Act and further marginalisation of the reformers, accompanied by the resurgence of the traditionalist/authoritarian elements around the Monarch are cause for concern. The reform agenda in Swaziland has received a major setback with resultant risks to the stability of the nation.

3. The increasing impact of the HIV/Aids pandemic in Swaziland remains a source of growing concern and is itself capable of constituting a threat to human rights, particularly those of vulnerable children, those infected with the virus and the elderly who are left as carers. DfID has no bilateral programme with Swaziland, but Swaziland is one of the beneficiaries of DfID's Southern Africa regional programme.

2008 Parliamentary Election

4. The parliamentary elections of 19 September 2008 were the first to be held under the 2005 Constitution. The Election and Boundaries Commission of Swaziland declared the election free and fair, while the reactions of international observers, which included the Southern African Development Community (SADC), Commonwealth, African Union and Pan-African Parliament, were mixed. The Committee has seen the Commonwealth Expert Team's report which concluded that the election met acceptable international standards in part, but that due to a number of factors—including the country's constitutional and legal framework—the Expert Team could not conclude that the entire process was credible. SADC representatives recommended improvements to the secrecy of the vote, better voter education and the use of transparent ballot boxes.

5. The British High Commission in Pretoria sent an unofficial observer who witnessed no serious infringements of regulations regarding electoral process.

6. The British High Commissioner expressed the view to the Government of Swaziland and the Swazi media that an election process which banned political parties could not be regarded as free and fair and did not conform to SADC's own Principles and Guidelines Governing Democratic Elections.

7. Nevertheless, the UK Government believes that the fact the elections were trouble-free is a positive development. And the turnout of 57% (199,934 votes cast from 350,865 registered voters) in spite of unfavourable weather, reflects the enthusiasm Swazis have for the electoral process on the one hand, and for their traditional institutions—demonstrating the value Swazis place on the role of the Monarch, the royal family, local chiefs and traditional leaders—on the other.

8. A bomb exploded the day after the election. It is believed that the bomb detonated prematurely, killing two members of the Swaziland Solidarity Network (SSN) who were transporting it, and injuring a third who was subsequently arrested. Following the election and the bomb incident, the King appointed Sibusiso Dlamini as Prime Minister. Dlamini is not an elected MP and had previously been Prime Minister from 1996 to 2003. His appointment signalled a hard line approach from the Government and most reformers have since been further marginalised.

Suppression of Terrorism Act

9. In May 2008, the Swazi Parliament passed the Suppression of Terrorism Act. This came into force in November 2008 and the High Commission in Pretoria has been following the application of the Act. We were particularly concerned by the use of the Act to ban four organisations in November: the People's United Democratic Movement (PUDEMO), Swaziland Youth Congress (SWAYOCO), Swaziland Solidarity Network (SSN) and the Swazi Liberation Army, now deemed to be terrorist organisations.

10. In addition, the President of PUDEMO, Mario Masuku, was charged with making statements in support of a terrorist organisation (SSN). The Deputy High Commissioner was refused access to visit Masuku in prison. He subsequently met Masuku following a remand appearance at the High Court. During

subsequent meetings with the Prime Minister and Foreign Minister, the High Commissioner robustly defended the Deputy High Commissioner's actions as being consistent with normal diplomatic activity and our right to establish the facts.

11. Amnesty International has just published a report entitled Suppression of Terrorism Act Undermines Human Rights in Swaziland (on 8 January). The UK Government will consider this report.

The 2005 Constitution

12. The 2005 Constitution introduced a Bill of Rights, which included freedom of association. However, it does not allow parliamentary candidates to stand for election as members of political parties and maintains the executive role of the monarch. We hope that Swaziland will continue to develop and modernise its political and economic systems. But the further marginalisation of and restrictions on reformers since the September 2008 election give rise to continued concern.

Swaziland's Political System

13. Although Swaziland has universal adult suffrage and a bicameral parliament, it remains an absolute monarchy. Under the 2005 Constitution, the House of Assembly has 75 members, of whom 60 are elected from tinkhundla constituencies (local authorities grouping together chieftaincies). The Senate has 30 members, 20 appointed by the King and 10 chosen by the House of Assembly. The Prime Minister, appointed by the King, is not necessarily an elected member of the House of Assembly.

14. In reality, it is inconceivable that any legislation of which the King disapproved could pass into law. The House of Assembly must pass it first and then there must be a Senate majority too—and, and as noted above, two-thirds of the Senators are appointed by the King. And even after that the King must still grant royal assent.

UK Government Activity in Swaziland

15. The Non-Resident Deputy High Commissioner travels to Swaziland at least once a quarter and has frank discussions with the Government there. He also meets representatives of opposition groups, civil society, unions, churches and other members of the diplomatic community.

16. The High Commissioner also regularly travels to Swaziland, both to build the UK's profile and to counter the commonly held belief that the closure of our resident Mission reflects an abandonment of our interest. He supports personally, along with the Mission, a range of civil society organisations' projects in the fields of education and rural water. He attended the 40-40 celebrations (marking the King's 40th birthday and the 40th anniversary of Swaziland's independence from the UK) and used the opportunity to raise the UK Government's concerns in conjunction with other regional leaders also in attendance. He visited again in November and reiterated to both the Prime Minister and the Foreign Minister the UK Government's concerns about the pace of reform and the absence of an unequivocal right to form political parties and contest elections. Whilst restating our condemnation of all terrorist activity, he also warned Ministers that the response needed to be both proportionate and consistent with internationally accepted human rights norms.

International Action

17. The international community continues to work closely with Swaziland on its political and human rights situation. Last year the European Union (EU) allocated €130 million for development projects in Swaziland over the next eight years. EU aid is contingent upon the implementation of a governance reform programme which will limit waste and mismanagement. The EU maintains a political dialogue with Swaziland, which takes place bi-annually, most recently on 11 December 2008.

18. Swaziland's United Nations' Universal Periodic Review of its human rights record is due in December 2011.

January 2009

Email to the Clerk of the Committee from the Clerk of the Joint Committee on Human Rights

JCHR was sent the email, below, last month, and I have responded in the following terms:

Thank you for you email to the Joint Committee on Human Rights of 23 September, concerning institutions in Bulgaria for mentally ill and disabled children. The Joint Committee's remit relates to human rights in the UK, so the Committee is unable to take any action in relation to your allegations. International human rights issues fall within the remit of the Foreign Affairs Committee; the European Scrutiny Committee also has an interest in relation to the implementation of relevant EU law in Bulgaria. I have forwarded your email to the Clerks of those Committees.

9 October 2008

Email to the Joint Committee on Human Rights from Harriet Asher

BULGARIA'S CHILD INSTITUTIONS—I AM WORKING AS A VOLUNTEER

To whom it may concern,

I have been in Bulgaria as a volunteer for the past nine weeks working in an institution for mentally and disabled children which is worse in comparison to the institution in Mogilino made famous by Katie Blewets documentary based on the lost children of Bulgaria.

The institution I am based in is 70km from Sofia and homes 59 children all varying in age and disability. I have never in my life seen such poor conditions and the every day scenes of abuse and neglect are absolutely shocking. This is happening all over the country. The institution I am working in is known to be one of the worst in Europe and almost nothing is being done to help these children and adults.

The children spend most of the day locked in the day room, or as I like to call it the rocking room. They literally rock back and forward all day with no stimulation whatsoever from anyone. They are filthy, they are washed on average once a week and literally live and behave like a pack of dogs. They even eat their own feaces. They have absolutely no dignity and most of the children are wondering around without pants or shoes or are topless.

There diets consist of porridge like meals of bread mixed with water and a small amount of mince and they are discouraged from drinking water as this means they are more likely to urinate.

The abuse in the homes is non stop, mostly between the children themselves. Staff morale could not be lower. The staff that there are on the equivalent of minimum wage (60 pounds sterling a month), and hate their job. They should be looking after no more eight children each, however due to the shortages of staff are often looking after a room of 16–30 children. I have seen this and it is an impossible task.

Nearly every child has a chest infection and cold, even in the 35 degree heat and they are all bruised and scarred all over there bodies from self abuse and abuse from the other children and even the staff in the homes.

There are two children in the home who are on the verge of death and are skeletal and covered in flies in a boiling hot room which is visited once day by a staff member with a bottle or a liquid meal of some sort. They are just waiting for them to pass away.

One of the most shocking aspects of the institution is that not every child is mentally or physically disabled. They are children, who are like any others, however, have been mixed in a system that will eventually see them end up like the children and adults surrounding them. They are weak and terrified and simply begin to adopt the behavior of those around them in order to survive.

I understand that you cannot change the mentality of a country; however, you can change infrastructures and help to put models in place that could be followed by the government and child protection offices. Certain models have been put in place in Romania that are working, are supported by the government and are having positive results. There is absolutely no reason why these plans cannot be implemented in Bulgaria and I urge you to help put pressure on the Bulgarian government to address the shocking child and adult institutions within its country and try to introduce or develop social models that can benefit the children for eventual integration within society (in some cases). Bulgaria is part of the EU and therefore has to follow guidelines—these guidelines are not being followed and I think we all have a social responsibility as human beings to try and help in any way possible with this situation.

Lastly, I am a 26 year old British citizen and I am one of very few British volunteers working permanently in this country and the only one working in the vast area of Bulgaria I am based in. I ask you as a to support me in my appeal and fight with me for the rights of these children.

With kindest regards and thanks in advance.

23 September 2008

Note to the Committee from the Foreign and Commonwealth Office

BULGARIA: CARE SERVICES FOR CHILDREN

Bulgaria has a high number of institutionalised children. According to a recent UNICEF report, there are currently 145 institutions for children deprived of parental care, containing nearly 9,000 children. Of these, there are around 1,800 children with disabilities, placed in 27 institutions. The reasons for this include inadequate co-ordination between government departments, lingering social prejudice against disabled and Roma (who form the majority of the population of the institutions), and the under-development of community-based services.

In September 2007, the BBC screened a documentary about Bulgarian childcare institutions "*Bulgaria's Abandoned Children"*. The documentary focused on a home in Mogilino, in Northern Bulgaria, and featured shocking images of neglect. The screening led to considerable UK public and parliamentary interest, which continues a year on.

Following the broadcast of the documentary, in November 2007 the Bulgarian government announced that the rules for adoption and for the retention of rights by parents who abandon their children to state care would be reviewed. They also announced that €10 million would be made available from the Operational Programme for Human Resources to develop alternative care arrangements.

In February 2008, the Ministry for Labour and Social Policy (MLSP) announced that 6,655,000 Leva (about £2.7 million) had been allocated for the programme: "Child Protection through Transition from Institutional Care to Alternative Care in a Family Environment." The programme has set a number of targets to be reached by the end of the year, including:

— 150 children placed with foster families.

— 3,500 children placed with immediate and extended family members.

— 2,000 cases examined by the Child Protection Department.

— 800 social workers trained.

— Care homes staff to receive a back-dated pay rise of 20 per cent, and another 10% in August.

Deputy Minister of Labour and Social Policy Yasen Yanev will provide an update to the EU Deputy Heads of Mission about this on 16 December 2008.

On a related issue, in summer 2008 the Council of Europe's Social Rights Committee declared that Bulgaria had breached the right of disabled children in institutions by not allowing them access to education. The Ministry of Labour and Social Policy has set up a task force to address this but, to date, has not published any recommendations.

At time of writing, the situation on the ground is varied. On the one hand, a number of NGOs (both Bulgarian and international) have worked successfully with Municipalities to improve conditions. Positive examples include the building of a Transit Home for children with learning difficulties in Iskra, the closure of the Nadejda Home for Children Deprived of Parental Care in Stara Zagora, and the Karin Dom Centre for Rehabilitation and Social Integration of Children with Special Needs in Varna. On the other, there remain institutions where allegations of neglect and abuse continue.

Mogilino, the institution featured in the documentary, has received significant assistance from a UNICEF-backed project. A number of children have been moved out of the institution and two small group homes are being constructed for the others; both scheduled for completion in April 2009. An expert team of child workers and care givers provide support to the staff and children who remain, and a recent UNICEF report states that there has been a great improvement in the children's physical condition, emotional and cognitive development.

Action by HMG

The British Embassy conducted projects focused on children's rights in the run-up to Bulgaria's EU accession. For example, DFID ran a number of capacity-building projects with orphanages, and in 2005–06 the Embassy ran a project that aimed to improve access to mainstream education for marginalised children in a Bulgarian region.

HMG's position is that the Bulgarian Government is aware of the need to make improvements to the provision of social care in state institutions and is working to achieve this, but that more needs to be done on a strategic level if a systematic solution is to be found.

Following the documentary, the Ambassador spoke to a number of senior Bulgarian politicians, including the Prime Minister and the Minister for Labour and Social Policy, about the need to work closely with NGOs to develop a sustainable co-ordinated programme of de-institutionalisation.

The Embassy remains in close contact with key NGOs and organisations, including Absolute Return for Kids (ARK), UNICEF, and the Cedar Foundation. On 16 December 2008 the Deputy Head of Mission will attend the planned briefing by Deputy Minister Yasen Yanev on progress made on this issue in 2008.

17 November 2008

Letter to the Chairman from the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office

Thank you for your letter of 22 January about the current situation in Sri Lanka.

We very much share the Committee's concerns over the humanitarian crisis in the conflict area in northern Sri Lanka. The Prime Minister made clear in Parliament on 14 January that he wanted to see a ceasefire. In my statements of 29 and 31 January I called for a humanitarian ceasefire and repeated this call when I spoke by telephone to President Rajapakse of Sri Lanka on 30 January. In the topical debate on Sri Lanka in Parliament on 5 February Bill Rammell again called for a humanitarian ceasefire.

The continuing loss of civilian lives, including through attacks on the medical facilities in the conflict area, the suicide bombing that killed 29 civilians who had left the conflict area on 9 February, and the killing of Tamils who have apparently been trying to leave the conflict area, is a source of great distress for all of us who want to see a peaceful future for Sri Lanka.

Over 30,000 people have now been able to leave the conflict area. But credible reports indicate that a substantial number of people remain caught in the shrinking area where fighting continues. They must all be considered at risk. Others have been wounded and are in desperate need of medical treatment.

Humanitarian corridors must now be set up and respected by both sides so that civilians have the opportunity to move away from the conflict area and adequate humanitarian assistance can be safely delivered. Wounded civilians must receive the treatment they so urgently need. The UK continues to urge all parties to abide by their obligations under international humanitarian law.

We have also been urging the Sri Lankan Government to launch a sustained drive to make progress on reaching a political solution to the conflict that fully addresses the concerns of all communities in Sri Lanka—Sinhalese, Tamils and Muslims. Whilst we recognise the Government's need to root out terrorism we have always been clear that there can be no military solution to the conflict. Sustainable peace in Sri Lanka can only come about through a fully inclusive political process.

You will have seen that the Prime Minister appointed Des Browne as his Special Envoy for Sri Lanka on 12 February. To date the Sri Lankan Government has rejected the appointment of an envoy.[2] This is disappointing news, but we continue to discuss the matter with the Sri Lankan Government and are hopeful that Des Browne will soon be in a position to play a full role. Our intention is that he will focus his efforts on the immediate humanitarian situation and on encouraging the Sri Lankan Government to launch a sustained drive to reach a lasting political settlement to the conflict.

You also mentioned human rights in your letter. We continue to be concerned about the use of child soldiers by paramilitary groups and the reports of abductions, disappearances and extra-judicial killings of civilians. Over the past 6 weeks media freedom has been under particular threat. A senior editor, Lasantha Wickrematunge, was murdered in Colombo in broad daylight, another was assaulted, and the broadcasting centre of an independent TV station was destroyed by a well armed gang. No one has yet been charged with any of these terrible crimes. Over recent months, many prominent figures in the media and civil society have left Sri Lanka in fear for their lives.

Prosecutions for such attacks are rare, feeding a culture of impunity. The Sri Lankan Government has a direct responsibility to tackle all human rights violations. Only by ensuring that full and thorough investigations into such violations are followed by successful prosecutions of those responsible will the Government strengthen the rule of law and tackle this corrosive culture of impunity. Alongside other international partners, we are urging the Government to take clear-cut and rigorous action to bring the perpetrators of human rights violations to justice.

19 February 2009

Letter to the Secretary of State for Foreign and Commonwealth Affairs from the Chairman

SRI LANKA

At its meeting yesterday the Foreign Affairs Committee discussed recent developments in Sri Lanka. My colleagues and I are very concerned about reports of loss of life, human rights abuses and a growing humanitarian crisis as the Sri Lankan government attempts to defeat militarily the Liberation Tigers of Tamil Eelam (LTTE).

We have noted the contents of the Written Ministerial Statement which you issued yesterday. We note in particular that HM Government has not called for a ceasefire between the Sri Lankan government forces and the LTTE. This approach contrasts markedly with the position taken by HMG in relation to the recent conflict in Gaza. The Committee would be grateful if you could clarify why this is the case.

22 January 2009

Letter to the Chairman from the Minister of State, Foreign & Commonwealth Office

A RESETTLEMENT PACKAGE FOR VULNERABLE BRITISH PEOPLE IN ZIMBABWE

I am writing to inform you about a planned resettlement package that the Government is offering to vulnerable British people in Zimbabwe.

You will know about the economic and humanitarian difficulties people in Zimbabwe face. Since the presidential elections in June last year the British Embassy has seen an increase in enquiries from the British community about the type of assistance the British Government can offer. Our officials in Harare report that some British people are experiencing severe difficulties accessing food and medical care.

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[2] Despite phone conversations with me and meetings with the HC in which the President said he would work with the Envoy.

Although the UK Government are keen to give the power-sharing accord every chance of succeeding we are aware that the difficulties experienced by older and vulnerable British people in Zimbabwe is unlikely to improve in the short term.

Due to the severe economic, social and health care problems in Zimbabwe, the Government has decided to offer support to eligible British people to return to the UK. This offer is for British citizens and British nationals who have the right of abode in the UK and will be open to people aged 70 and over and to those below this age who are vulnerable due to health and social care needs that mean that they are not able to look after themselves. The spouses or partners and any dependents of eligible applicants will be able to accompany them and will be considered on a case by case basis.

The Prime Minister has asked John Healey, Minister for Local Government in the Department for Communities and Local Government, to lead this cross-government initiative. I am working closely with him and other colleagues in the Department for Work and Pensions, Department of Health and Home Office.

According to our estimate there are around 3,000 people in Zimbabwe who may be eligible for the programme. Our Embassy in Harare advises that approximately 750 people may decide to take up this offer to relocate to the UK, over an 18 month period. The cost of this programme will be met by the Government.

Our Embassy has started to contact people who have expressed an interest in moving to the UK to let them know what assistance is available if they are eligible and decide to resettle in the UK. Alongside this we are continuing to provide humanitarian aid to Zimbabwe. Our Embassy will continue to provide a full range of consular support to those British people who remain in Zimbabwe. Our Travel Advice is also kept under constant review.

The Department for Communities and Local Government are putting in place reception arrangements and provision for appropriate accommodation and support.

I will keep you informed of any significant progress.

Rt Hon Lord Malloch-Brown

18 February 2009

Letter to the Secretary of State for Foreign and Commonwealth Affairs from the Chairman of the Committee

Bahá'í Community in Iran

The Foreign Affairs Committee has considered recent reports in the Iranian media that seven imprisoned members of the Bahá'í faith have been charged with offences that could carry the death penalty. These include "espionage for Israel, insulting religious sanctities and propaganda against the Islamic Republic".

My colleagues and I are very concerned about the possible fate of these individuals. Representatives of the Bahá'í community in the UK have told us that the charges are denied categorically and that they are part of a systematic long-term campaign of persecution of Bahá'ís in Iran.

We would be grateful if HM Government could do everything in its power to make representations to the Iranian government that these seven individuals should be treated in accordance with international norms of human rights.

27 February 2009

Letter to the Chairman of the Committee from the Secretary of State for Foreign and Commonwealth Affairs, Foreign and Commonwealth Office

Thank you for your letter of 27 February, regarding the seven imprisoned Bahá'í's in Iran.

We share your concern about the recent reports that seven leading members of the Iranian Bahá'í community, detained since the first half of last year, have been charged with "spying for Israel", "insulting religious sanctities" and "propaganda against the Islamic Republic"—charges which could carry the death penalty. We are concerned about the conditions under which they are being detained and by reports that they have been systematically refused access to their lawyer. We understand that the seven individuals are due to face trial in the coming weeks, although the date has yet to be announced.

We have called repeatedly for the Iranian government to release the seven Bahá'ís. Now that they have been formally charged we are concerned that they may not receive a fair trial, having been held for so long without due process. On 6 March 2009 Bill Rammell met representatives of the National Spiritual Association of the Bahá'ís of the UK, and assured them that we would continue to monitor the case closely, and would push the Iranians to allow independent observers to be present when they do go to trial. Bill

Rammell also issued a statement on 16 February 2009, which was supported by an EU statement on 17 February, expressing our concern and calling for the Iranian government to reconsider the charges brought against these individuals, and at the very least to ensure that any trial is fair. Previously, the EU Presidency, with strong UK support, issued a public declaration on 26 September 2008 which reiterated the EU's concern about the deterioration in freedom of religion and belief in Iran and the growing pressure on religious minorities. The declaration stated that the EU was "deeply disturbed by the arrests since April of Iranian converts to Christianity and members of the Bahá'í community", and called for the "immediate and unconditional release and the cessation of all forms of violence and discrimination against them". The EU also raised the situation of Iranian Bahá'ís on 6 October 2008, in the context of a human rights démarche to the Iranian authorities.

We also take action through the UN. In December 2008 a resolution on Iran's human rights situation co-sponsored by all EU countries was adopted by the UN General Assembly for the sixth consecutive year. The resolution expressed deep concern at "serious human rights violations in the Islamic Republic of Iran" and specifically highlighted the plight of the Bahá'í community. This resolution sends a strong unified message of international concern to the Iranian authorities.

Officials in the FCO's Iran Co-ordination Group have a good working relationship with the National Spiritual Assembly of the Bahá'ís of the UK, who provide us with useful information on the situation of the Bahá'í community in Iran. I can assure you that we remain committed to raising our concerns about the treatment of the seven detained Bahá'ís, both bilaterally and through the EU, and will monitor their situation closely.

The human rights situation in general in Iran is extremely worrying. We will continue to urge the Iranian government to take its international human rights obligations seriously, and to uphold the fundamental rights of its citizens, including the right to freedom of religion and belief as described in Article 18 of the International Covenant on Civil and Political Rights—to which Iran is a state party.

Rt Hon David Miliband

11 March 2009

Letter to the Secretary of State for Foreign and Commonwealth Affairs from the Chairman of the Committee

ALLEGED COMPLICITY IN TORTURE BY MI5 AND MI6 AGENTS

At its meeting on 1 April the Committee considered an article published in *The Daily Telegraph* on 28 March, of which I attach a copy.[3] The article describes that having reviewed files, senior officials in both MI5 and MI6 have identified 15 cases in which British intelligence officers may have been complicit in torture or mistreatment of terror suspects by US personnel. The article also states that these cases may involve British Nationals.

We would be grateful for your response to this article. In particular, we would be grateful if you could let us know when FCO officials first became aware of these cases and when this information was first passed to Ministers.

2 April 2009

Letter to the Chairman of the Committee from the Secretary of State for Foreign and Commonwealth Affairs

ALLEGED COMPLICITY IN TORTURE BY THE SECURITY SERVICE AND SIS

Thank you for your letter of 2 April regarding an article published in the *Daily Telegraph* on 28 March.

Let me first state clearly that the Government takes all allegations of mistreatment very seriously, and investigates them as appropriate. If any cases of potential criminal wrongdoing come to light, the Government will refer them to the Attorney General to consider whether there is a basis for inviting the police to conduct a criminal investigation. In addition, individuals who believe their human rights have been infringed as a result of actions carried out by or on behalf of any of the intelligence Agencies can of course take their cases to the Investigatory Powers Tribunal.

You ask when FCO officials and Ministers first became aware of the cases discussed in the *Daily Telegraph* article of 28 March. Much of the information outlined in the article is contained in the Intelligence and Security Committee's (ISC) 2005 report into the handling of detainees by UK intelligence personnel in Afghanistan, Guantanamo Bay and Iraq. As outlined in his Statement to the House of Commons of 18

[3] Not published.

March 2009, the Prime Minister has asked the ISC to consider any new developments and relevant information since this report and their 2007 Report on Rendition. Beyond the information contained in the 2005 report, it is not clear from the article to which specific cases it may be referring.

More generally, it would inappropriate to enter into speculation or commentary on the work of the Attorney General or the police.

I look forward to appearing before your Committee next month.

19 April 2009

Letter to the Secretary of State for Foreign and Commonwealth Affairs from the Chairman of the Committee

The enclosed Bloomberg article[4] has been brought to the Committee's attention concerning the investment fund ChosunFund Pte. Ltd., which seeks to invest in projects in the Democratic People's Republic of Korea in the mining and energy sectors (http://www.chosunfund.com/pages/chosun/about.aspx). We understand that the Executive Chairman of the fund is a British businessman, Colin McAskill, although the fund appears to be incorporated in Singapore or Hong Kong. It has been put to us that the ability of the North Korean regime to tap international private investment through vehicles such as the ChosunFund is one reason for its continued defiance of the international community on nuclear issues and human rights.

I would be grateful if you could let me know whether the FCO is aware of the ChosunFund and whether the information in the Bloomberg article is correct. I would also like to know the Government's current policy regarding private investment into North Korea, in light of its overall objectives in relation to that country, and whether the Government has any plans to take further action against the DPRK regime's ability to access international private finance. In April, the UN Security Council decided to designate North Korean entities to be subject to sanctions under UNSCR 1718. Especially given that one of the designated entities is the Korea Mining Development Trading Corporation, will the Security Council's decision make any difference to the situation or to the ChosunFund?

If it would be more sensible to wait to reply until after the possible passage of the Security Council resolution on the DPRK which is currently under discussion, please feel free to do so.

Thank you in advance.

2 June 2009

Letter to the Chairman from the Secretary of State for Foreign and Commonwealth Affairs

Thank you for your letter of 2 June regarding investment in the Democratic People's Republic of Korea (DPRK) and ChosunFund Pte. Ltd.

The Hong Kong-incorporated ChosunFund is not known to UK Trade and Investment (UKTI). In terms of our policy approach, the Government neither promotes nor prevents private investment in the DPRK, provided that it does not contravene international sanctions or support North Korea's WMD programmes. As the Committee suggested in its report on Japan and Korea last year, economic reform is an important factor in improving DPRK's relations with the West and reducing its reliance on exports of weapons and nuclear goods. This is why the Government does not prevent private trade with and investment in DPRK and UKTI has no objection in principle to companies trading with the DPRK, provided that they operate within the law. Nevertheless, UKTI does not offer support for trade with or investment in the DPRK and, in the current political climate, we are not to actively promoting such links.

The Prime Minister and I have expressed our condemnation of DPRK's recent nuclear test in the strongest terms. The UK worked hard with UN Security Council partners to secure a robust response. I have welcomed the new UN Security Council Resolution (UNSCR) 1874, adopted on 12 June, which tightens sanctions on investment in DPRK. It calls upon Member States to prevent the provision of financial services or the transfer of financial assets or resources that could contribute to DPRK's WMD programs, by freezing assets associated with such programs and enhancing monitoring to prevent such transactions. It calls for a ban on the provision of new grants, financial assistance or concessional loans to DPRK except for humanitarian and development purposes, and calls on states to exercise enhanced vigilance with a view to reducing current commitments. It also calls on Member States not to provide public financial support for trade with DPRK where such support could contribute to DPRK's WMD programmes.

When these measures are fully implemented, companies like ChosunFund are likely to be unable to (i) provide financial services which could benefit WMD programmes (ii) enter into new commitments for grants, financial assistance or loans at concessional rates to DPRK, or (iii) obtain any support from public

[4] Not printed.

funds for trade with DPRK which could benefit WMD programmes. The effectiveness of these measures will depend on appropriate action being taken by the Member States which have jurisdiction over ChosunFund. The UK is committed to act to implement such measures to the extent that it has jurisdiction over such companies.

We do not know if the ChosunFund is working with Korea Mining Development Trading Corporation (KOMID) but, if so, it would be prevented from making funds available to KOMID, which is now subject to an international assets freeze under UNSCR 1718, as part of the measures introduced in response to DPRK's 5 April satellite launch. The Government is working with international partners to ensure that the new sanctions are implemented as quickly and effectively as possible.

David Miliband

22 June 2009

Letter to the Chairman from Nigel Warner, Chairperson, ALEGRI

GIBRALTAR—CONTINUING DISCRIMINATION IN THE CRIMINAL LAW AGAINST GAY MEN

I am writing to request that you ask the Foreign Secretary in the above hearing when the UK will fulfil its obligations under international human rights law to ensure the repeal of criminal laws that discriminate against gay men in Gibraltar.

— These laws discriminate with regard to the male age of consent, the definition of "in private", and in the terminology and structure of the criminal code.

— It is respectively 12 and 9 years since the equivalent age of consent and "in private" legislation for the UK was found to be in violation of the European Convention on Human Rights.

The attached background note gives more details.

The continued existence of these discriminatory laws has been raised repeatedly with the UK government over the years, in correspondence with the FCO, in Parliamentary Questions in the House of Commons, by the Council of Europe Committee of Ministers, and in the European Parliament.

We understand that the UK authorities have responded by raising the matter with the Gibraltar government. Despite this there has been no public commitment of any sort by the Gibraltar authorities to repeal the legislation. It is clear that until the UK exerts real pressure, the Gibraltar authorities will continue to resist making necessary changes.

We would therefore be very grateful if you could press the Foreign Secretary during the hearing as to when the UK will finally take the actions needed to comply with its obligations and bring about the repeal of the legislation in question.

9 April 2009

BRIEFING ON CRIMINAL LAWS WHICH DISCRIMINATE AGAINST GAY MEN IN GIBRALTAR

HOW THE LAW DISCRIMINATES

— Section 116 A (1) of the Gibraltar Criminal Offences Act 1960, as amended in 1993, stipulates an age of consent for sexual relationships between males of 18. This compares with 16 for heterosexual relationships.

— Section 116 A (2) of this Act includes discriminatory privacy provisions:

"An act which would otherwise be treated for the purposes of this section as being done in private, shall not be so treated if done—when more than two persons take part or are present; or in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise"

— The whole basis for the treatment of sexual relationships between men in the Gibraltar Criminal Offences Act 1960 is discriminatory. Sexual acts between men are treated prima facie as criminal (in Sections 115 and 116 of the Act), and only permitted in the exceptional circumstances set out in Section 116 A. In addition, the acts themselves are described in negative and prejudicial terms.

THE UK'S OBLIGATION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Jurisdiction

The Government of the United Kingdom has declared that the Convention applies in respect of Gibraltar.

Jurisprudence

In *Sutherland v United Kingdom*, adopted on 1 July 1997, the European Commission of Human Rights found that the United Kingdom's discriminatory age of consent for gay men violated Article 14, combined with Article 8 of the European Convention on Human Rights. The substance of this ruling has subsequently been confirmed by the Court in *L and V v Austria and SL v Austria* (9 January 2003), and, specifically in respect of the United Kingdom, in *BB v United Kingdom* (10 February 2004).

In *ADT v UK* (31 July 2000) the Court found that the UK's law on privacy, which imposed discriminatory provisions on gay men, violated Article 8 of the Convention.

[* Asterisks denote that part of the written evidence that has not been reported because it is covered by the House of Commons' *sub judice* resolution.]**

Letter to the Chairman from the Chairman, All Party Parliamentary Group on Extraordinary Rendition

I am writing about extraordinary rendition and related issues in my capacity as Chairman of the All Party Parliamentary Group on Extraordinary Rendition.

I welcome the Foreign Affairs Committee's Human Rights Inquiry. Your Committee's work has already been extremely valuable in holding the Government to account on this issue in the past.

THE ALL PARTY PARLIAMENTARY GROUP ON EXTRAORDINARY RENDITION

1. The APPG has two main objectives: to get to the truth on rendition and British involvement in it, and to ensure that the framework in place to prevent British involvement in rendition is sufficiently rigorous. We need to get to the truth to bring closure to this issue and to enable us to restore trust and regain the moral high ground in the struggle against dangerous extremism. The framework in place to prevent British involvement in extraordinary rendition has failed. A more robust framework of law and practice is required to give the public confidence that the UK cannot be involved in extraordinary rendition in the future. The APPG will shortly be publishing proposals to this end.

2. Since the All Party Parliamentary Group on Extraordinary Rendition was created in December 2005, I have made a number of specific allegations: that the UK was involved in the rendition of British residents, that Diego Garcia was used for renditions, and that our Armed Forces may have been dragged into rendition. Each of these was categorically denied. All of them have turned out to be true. I am pleased that you have decided specifically to address these issues. The Government is now asking us to rely on another set of assurances, and it is the credibility of those that your investigation can most fruitfully address.

3. In preparing this submission I have taken the headings used by your Committee in the announcement of its inquiry: the case of ***, allegations of UK complicity in torture, extraordinary rendition (including the possible role of Diego Garcia), and the transfer of prisoners in Iraq and Afghanistan.

— *Is the United States withholding information about the two rendition flights through Diego Garcia from the UK Government?*

— *Will the Foreign Secretary now ask the US Administration for comprehensive information on all rendition "circuit flights" through UK airspace?*

— *Are the arrangements currently in place to ensure the proper treatment of people transferred into the custody of US, Afghan, or Iraqi authorities, adequate?*

— *Has there ever been a formal or informal policy that UK Forces would capture individuals but not officially detain or arrest them? If so, what is the purpose of this policy?*

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— *What investigations have been carried out to determine the veracity of allegations of British involvement in the mistreatment of British nationals detained abroad, including in Ethiopia and Pakistan?*

— *What are the Foreign Secretary's objections to a judge-led inquiry into rendition, given that Lord Carlile, the Government's independent reviewer of terrorism legislation, the Opposition parties, and most experts in the field believe that it is necessary?*

Extraordinary Rendition (including the possible role of Diego Garcia)

4. It is now over a year since the discovery of the two rendition flights through Diego Garcia. The action taken by the UK Government following this disclosure has been inadequate. It has failed properly to investigate these flights and further allegations of Diego Garcia's involvement in renditions. Such allegations include that detainees may have been held and interrogated on Diego Garcia, and that ships holding detainees were located near to Diego Garcia and may have been serviced from the island.[5]

5. It has also failed to follow your Committee's recommendations on rendition "circuit flights", that is, flights through the UK on the way to or from carrying out a rendition. On 1 October 2008 I wrote to your Committee about Diego Garcia, enclosing a note on the legal framework applicable to its use in the US rendition programme. I wrote again about Diego Garcia on 17 December 2008 and 29 January 2009. These letters are attached as Annex I.[6]

6. Last year the Foreign Secretary sent a list of flights to the US for specific assurances that they were not involved in renditions. This list did not include flights through UK airspace that did not land at UK airports and the Foreign Secretary failed to ask the US to confirm whether any of the flights on the list were "rendition circuit" flights. He appeared not to know whether the US had cross-checked the list of flights with their own records before providing renewed assurances on this issue.[7] This gives the impression of going through the motions rather than a genuine attempt to get to the truth on rendition flights through UK territory. It would be straightforward for the Government to seek assurances that none of the flights on the list it submitted to the US were on the way to, or from, rendition operations at the time of their transit through UK airspace.

7. Criminal offences may have been committed in the course of the two known rendition operations through Diego Garcia. Parliamentary Answers to me have revealed that information on these flights has not been passed to the police by the Government, although possible criminal wrongdoing has apparently been considered: *"We have considered the possibility that criminal offences may have been committed in relation to the two rendition flights through Diego Garcia. We have very limited specific information about these flights and, despite enquiry, have not been able to establish further details that would be essential for purposes of further investigation".*[8] The implication is that the US is withholding information about these flights from the UK Government. I have attached the relevant Parliamentary Questions as Annex II.[9]

8. It is important to determine whether agreements, including the "Exchanges of Notes" in 1966 and 1976, were breached by the US in the course of these two flights. The note I sent to your Committee on 1 October 2008 is relevant in this regard. It seems clear that the US believes the flights in themselves were not in breach of any agreements with the UK. If the agreements in place were not breached, then they appear inadequate for the purpose of preventing British involvement in extraordinary renditions. If they were breached, then this would be a serious matter. Questions that arise from this information and from my earlier letters to your Committee include:

- *Who were the detainees rendered through Diego Garcia; where were they held and interrogated; how were they interrogated; where were they transferred to and from?*
- *What "enquiries" has the UK Government made to establish further details in relation to the Diego Garcia flights? Why, despite these enquiries, does the Government have "very limited specific information about these flights"*?
- *Is the United States withholding information about the two rendition flights through Diego Garcia from the UK Government?*
- *Were the rendition flights through Diego Garcia a breach of the Exchanges of Notes, or other Agreements, with the US? If so, what are the implications of such a breach? If not, are the Agreements in place sufficiently rigorous to prevent rendition flights from happening in the future?*
- *Whether the Government will now take the simple step of asking the US about rendition "circuit flights" through the UK.*

Transfer of Prisoners in Iraq and Afghanistan

9. As you know, I have long been concerned that the arrangements in place to ensure the proper treatment of detainees captured by UK Forces, and subsequently handed over to US, Iraqi, or Afghan forces, may be inadequate. I first asked a Parliamentary Question on this issue in 2004 and wrote to your Committee about this on 27 October 2008. I have also raised these concerns with the Defence Committee and the Defence Secretary on numerous occasions. The responses that I received from the Government did not reassure me. On 31 January 2008 the Government described the understanding in place with US, Iraqi and Afghan forces on this issue in the following terms: *"Whenever we have passed an individual from UK jurisdiction into the*

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[5] See, for example, Adam Zagorin, "Source: British Territory Used for US Terror Interrogation", *Time Magazine*, 31 July 2008, http://www.time.com/time/world/article/0,8599,1828469,00.html; BBC 2, *Newsnight*, 31 July 2008, http://news.bbc.co.uk/1/hi/programmes/newsnight/7536477.stm.

[6] Not printed.

[7] Letter from Rt Hon David Miliband MP to Andrew Tyrie MP, 24 February 2009.

[8] Bill Rammell MP, Written Answer to Andrew Tyrie MP, "Diego Garcia: Rendition", 26 February 2009.

[9] Not printed.

jurisdiction of the Iraqi, Afghan or US authorities, we have had in place an understanding that they would not transfer that individual to a third country without first seeking our consent or at least informing us of their intention".[10] Merely being informed of the intention to render a detainee from one jurisdiction to another would, in my view, be insufficient.

10. In February 2008 Ben Griffin confirmed my concerns. A former member of UK Special Forces, he alleged that people captured by UK Forces in Iraq and handed over to US forces had subsequently been tortured, or rendered to detention facilities including Guantanamo Bay, Bagram Theatre Internment Facility and Abu Ghraib Prison.[11] He alleged that a UK policy was in place which attempted to avoid legal obligations towards those the UK detained: *"As UK soldiers within this Task Force a policy that we would detain individuals but not arrest them was continually enforced. Since it was commonly assumed by my colleagues that anyone we detained would subsequently be tortured this policy of detention and not arrest was regarded as a clumsy legal tool used to distance British soldiers from the whole process."*

11. On 26 February 2009 the Defence Secretary was forced to confirm in an Oral Statement that two individuals captured by UK Forces and transferred to US detention had been subsequently rendered to Afghanistan. Your Committee's intervention on this issue was doubtless a key factor in this information coming to light. However, this Statement raises more questions than it answers. It casts further doubt on the adequacy of the detainee transfer arrangements in place. It also highlights the need for a full investigation into the allegations made by Ben Griffin. I hope your Committee will consider recommending such an investigation in its Report.

12. The Defence Secretary's Statement specifically excluded operations that go to the heart of the Ben Griffin allegations: *"In areas outside Multi-national division South East, UK forces have undertaken operations to capture individuals who were subsequently detained by the US. These individuals do not feature in the data I set out above, and I do not intend to provide further details on these detentions today."* Australian documents recently made public under its Freedom of Information Act cast further light on Australia's acknowledged policy of capturing individuals in Iraq without officially detaining them, and handing them over to US forces. By ensuring that US servicemen were always present when Australian Forces captured individuals, Australia did not "detain" a single individual in Iraq, and so legal obligations that attach to the "Detaining Power" under the UK/US/Australian Memorandum of Understanding were never invoked.

13. The Statement sets out that: *"In retrospect, it is clear to me that the transfer to Afghanistan of these two individuals should have been questioned at the time."* It makes clear that officials were aware of the renditions in 2004. The Statement appears to rely on a detention review, a limited amount of which was disclosed to the APPG following a Freedom of Information Act (FOIA) request last year. Here is an extract from the review: *"The picture is a positive one. The UK has met its obligations by a combination of assurances, operational judgement, and record keeping. The Department will always be open to baseless speculation that we have been complicit in rendition or ill treatment. To end all speculation would require us to prove a negative. We can say, however, that we have no evidence of unlawful rendition and we have looked".* This conclusion appears inaccurate in the light of the Secretary of State's Statement. The accuracy of the review as a whole, on which the Secretary of State appears to rely, is questionable.

14. Following his Statement the Defence Secretary wrote to me on this issue. He confirmed that every substantive letter I received from the Ministry of Defence last year on this issue was inaccurate. His letter to me illustrates the difficulty for those of us who want to have confidence in the latest assurances from the UK Government on rendition. Your Committee may wish to consider:

- *Whether the procedures currently in place are sufficient to ensure the proper treatment of transferred detainees and to prevent British involvement in such renditions in the future.*
- *Whether a policy of capture without arrest or detention exists or existed, and if so, what its purpose is or was.*
- *Why were the two renditions not questioned at the time? At precisely what point were officials aware of the renditions in 2004?*
- *Whether the Defence Secretary's reliance on US assurances on the treatment of the two rendered detainees is appropriate, given your Committee's previous conclusion that US assurances on torture cannot be relied upon.*
- *Whether the UK has taken any measures to establish the treatment of the two rendered detainees, independent of US assurances on this issue.*
- *What did the Secretary of State mean when he stated that "a significant number of people were held on behalf of other coalition forces"* and what is the legal status of such people?
- *Why was a "due diligence search by US officials"* required to discover the two renditions in question? Does the UK maintain adequate records on detainees captured and transferred to non-UK forces?

[10] Letter from Rt Hon Des Browne MP to Andrew Tyrie MP, 31 January 2008.
[11] Statement by Mr Ben Griffin, 25 February 2008, http://www.stopwar.org.uk/index.php?option=com_content&task=view&id=533&Itemid=27

15. I have made a number of Freedom of Information requests on this issue, for information relating to the understandings between UK, Iraqi, Afghanistan, and US authorities on detainee handovers; a list of all individuals who have been detained by UK Forces in Iraq or Afghanistan; all information relating to the policy described by Ben Griffin; and all information contained in the "review of detention practices in Iraq and Afghanistan", referred to above. The MOD withheld the vast majority of this information and I have complained about this refusal to disclose to the Information Commissioner. Your Committee may wish to request similar information from the Defence Secretary, or ask him to come before your Committee to provide evidence.

THE CASE OF BINYAM MOHAMED

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ALLEGATIONS OF UK COMPLICITY IN TORTURE

20. Allegations have been made that British officials have been involved in the mistreatment of British nationals detained in Pakistan and elsewhere. I have asked a number of Parliamentary Questions on this issue. I remain concerned that the Foreign Office is unable to establish the precise number of British nationals detained abroad on suspicion of terrorist offences, particularly in relation to dual-nationals.[12] I am also concerned that British non-consular officials have in at least one case had access to a British detainee where consular officials have not. Credible allegations of British involvement in mistreatment require investigation. I set out some of these concerns in more detail in my letter to you of 17 December 2008.

21. A BBC report in October 2008 claimed that British officials had questioned people who had been unlawfully rendered to Ethiopia. The report alleged that those rendered did not have access to a lawyer and that some were mistreated while in Ethiopian detention.[13] Reports of a large number of renditions to Ethiopia in 2007 are widespread.[14] The Government has confirmed to me that British officials met *"a number"* of individuals in Ethiopia in 2007, but that they were *"not aware that their detention was unlawful"* and that *"none of these particular detainees complained of any physical mistreatment"*. It is unclear what steps were taken to determine whether or not the detention of these individuals was lawful or whether or not the detainees had been mistreated. The Government failed to tell me whether the detainees had access to a lawyer or had been rendered from Kenya or Somalia. ***

22. ***. Some of these cases were considered in the ISC's 2007 Report into Rendition but it is now clear that the ISC was not provided with all the relevant information in the course of its enquiries. Your Committee may wish to ask the Foreign Secretary:

— *What investigations have been carried out to determine the veracity of allegations of British involvement in the mistreatment of British nationals detained abroad on suspicion of terrorist offences?*

— *What guidance is in place to govern the involvement of UK officials in the interview of British nationals or residents detained abroad? What guidance is in place to govern the involvement of UK officials in the interview of detainees held in countries suspected of mistreating their detainees?*

— *What steps were taken by UK officials to discover whether or not the detainees they met in Ethiopia were maltreated, whether they had been rendered from Kenya or Somalia, and whether or not they access to a lawyer, at the time?*

— *What investigations have been carried out to ensure that information provided in relation to UK involvement in the rendition and detention of other British nationals and residents, is accurate?*

— ***

FURTHER POINTS FOR YOUR INQUIRY

23. The Foreign Office's Annual Report on Human Rights 2008. The Foreign Office Human Rights Annual Report 2008 briefly addresses Guantanamo Bay, rendition, Diego Garcia and Binyam Mohamed.[15] The Foreign Office lists Diego Garcia as a *"Highlight from our counter-terrorism and counter-proliferation work in 2008."* As you know, the rendition flights through Diego Garcia came to light following a records

[12] In response to a Written Question asking how many British nationals had been detained on suspicion of terrorist offences in Bangladesh, Syria and Egypt since 2000, Foreign Office Minister Bill Rammell MP wrote in a letter dated 10 December 2008, enclosed, that *"it is not possible to provide a definitive answer to your question"*.

[13] BBC Today Programme, 14 October 2008, available at http://news.bbc.co.uk/today/hi/today/newsid_7668000/7668683.stm.

[14] See, for example, *"Why Am I Still Here?" The Horn of Africa Renditions and the Fate of Those Still Missing*, Human Rights Watch, October 2008.

[15] Foreign and Commonwealth Office, "Annual Report on Human Rights 2008", March 2009, 16–17.

check by US authorities, not as a result of efforts by the Foreign Office. On the contrary, the Foreign Office had persistently refused to investigate allegations made by me and others that Diego Garcia had been used for renditions. Follow-up action on this issue, including the sending of a list of flights to the US, and Government action on rendition more generally, has been inadequate. These inadequacies are set out in more detail in the section on Diego Garcia. I am also concerned that the Report continues to rely on US assurances on rendition, which have proven to be inaccurate in the past. Freedom of Information Act responses to me have revealed that inaccurate assurances were provided on at least eight separate occasions by the US in relation to Diego Garcia alone.

— *What led the Foreign Office to cite the rendition flights through Diego Garcia as a "Highlight" of its work, details of which emerged not because of any efforts by them, but despite persistent refusal to investigate allegations that they had taken place?*

24. A Judge-led Inquiry. I note that the Prime Minister has asked the ISC to consider new developments and relevant information since the publication of its reports on Detention and Rendition. However, I now believe that given the breadth of confirmed UK involvement in rendition, the UK Government's reticence in responding to credible allegations of further involvement and to the recommendations of your Committee, and the ISC's limited mandate, a judge-led inquiry is needed to get to the truth on rendition. Lord Carlile, the Government's independent reviewer of terrorism legislation, the Opposition parties and most experts in the field have come to the conclusion that a judicial inquiry is necessary. I very much hope that your Committee will make this recommendation in its Report.

— *What are the Foreign Secretary's objections to a judge-led inquiry into rendition, given that Lord Carlile, the Government's independent reviewer of terrorism legislation, the Opposition parties and most experts in the field believe that it is necessary?*

25. Lack of Moral Leadership by the UK. The Bush Administration led the UK into facilitating extraordinary rendition.[16] The Obama Administration is now leading the UK Government in its withdrawal.[17] At least three benefits can flow from leading rather than following the change of policy on this:

i. Greater scope for influencing the direction of US policy in this area. Despite the reforms of the Obama Administration aspects of US policy on this issue remain to be decided.

ii. It is morally right to do so.

iii. By signalling repugnance of past policy the UK can demonstrate a determination to distance itself from past mistakes and promote the rebuilding of trust with communities, both at home and abroad, which might have tolerated or assisted terrorism. Leadership makes us more secure.

— *Although condemning torture, both the Blair and the Brown Governments have persistently stopped short of condemning extraordinary rendition.*[18] *Does the Foreign Secretary think that the time has come to condemn the past practice of extraordinary rendition by the US? Does he think sufficient safeguards are in place to give the public confidence that Britain will not find itself again complicit in the practice?*

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[16] The fact of complicity is now rarely challenged, only its extent. The former is corroborated by the High Court in its judgment of 21 August 2008, in which it found that the UK had *"facilitated"* the incommunicado interrogation of *** and that its involvement *"was far beyond that of a bystander or witness to the alleged wrongdoing"*.

[17] On 22 January 2009 President Obama issued Executive Orders on Detention Policy, Interrogations, and Guantanamo Bay. These Executive Orders made many important changes, including: that Guantanamo Bay Detention Centre would be closed as soon as possible, and no later than one year from the date of the Order; that there would be an immediate review of all Guantanamo detentions; that Common Article 3 of the Geneva Conventions would apply to all Guantanamo detainees; that a Special Task Force on Detainee Disposition would be established to conduct a comprehensive review of the lawful options available to the Federal Government with respect to the apprehension, detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations; that Common Article 3 would apply to anyone captured during an armed conflict when held in US custody or by US personnel anywhere; that US interrogation techniques would be limited to the Army Field Manual; that no interpretations of the law governing interrogations from 11 Sept 2001 to 20 Jan 2009 could be relied upon; that the CIA must close any detention facilities that it currently operates and shall not operate any such detention facility in the future (this does not include facilities used only to hold people on a short-term, transitory basis); and that a Special Task Force on Interrogation and Transfer Policies would be established to evaluate whether the interrogation practices and techniques in the Army Field Manual provide an appropriate means of acquiring the intelligence necessary to protect the US, and to evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody or control.

[18] See, for example, the following exchange on 25 July 2007:
Mr Andrew Tyrie: The Prime Minister has announced that he is publishing the Intelligence and Security Committee report on extraordinary rendition today. I regret that he decided not to make a full statement on that important subject too. Did the US authorities ignore vigorous protest from our security authorities about the rendition of Bisher al-Rawi and Jamil al-Banna, and will the Prime Minister take this opportunity unequivocally to condemn the policy of extraordinary rendition—that is, the practice whereby many people have been kidnapped by US authorities and taken to places where they may be tortured?
The Prime Minister: Where people are at risk of being tortured, we have been very clear about our objections to such a policy, but I think that the hon. Gentleman should read the report. There will be other chances for us to debate the details of it, and I am not going to condemn the US authorities in the way that he suggests.

I would be happy to provide further information on the issues set out in this submission, or to give oral evidence to your Committee if it would be helpful. I am placing a copy of this submission in the public domain.

Andrew Tyrie MP

3 May 2009

Submission from Amnesty International UK

SUMMARY

— It may seem obvious that diplomatic relations vary according to the state and issue. However, as well as hindering improvements in human rights internationally, this can risk damaging the UK's authority and standing as a human rights champion. There is a need for greater consistency in the application of and respect for human rights in the UK's foreign policy. This is particularly true in relations with strategic or trade partners as well as in counter-terrorism policies.

— The UK has a role to play in improving the transparency of detention practices. Far too many detainees continue to be held for long periods of time without charge or fair trial. There is also important work to be done improving the human rights protection of women and girls in conflict situations, including tackling the climate of impunity within conflict zones.

— In other conflicts and post-conflict situations, there is a need for justice system reform and efforts to end impunity. All human rights abuses must be subject to thorough independent and impartial investigation; those responsible for such abuses must be brought to justice. To cite one specific example, a culture of impunity prevails throughout the Occupied Palestinian Territories (whether it is abuse committed by Israeli settlers, Palestinian armed groups, or the Israeli Defence Force). This abuse is rarely investigated and the perpetrators are rarely prosecuted. The Government should use its influence to encourage all parties to meet international obligations and standards in this regard, ensuring that laws are upheld and respected.

— The UK continues to play a leading role in efforts to end use of the death penalty; this is pressing in several post-conflict situations as well as long-term state abusers.

— The UK has considerable global reach, in part because of its range of bilateral and multilateral relationships. It is essential that the Government continue its positive work in support of international institutions and mechanisms. It is now necessary to work more creatively to build and strengthen multilateral alliances to address concerns about the weakness of this international infrastructure. The UK's work implementing UNSCR 1325 and 1820 on women, peace and security and in pursuit of a robust and comprehensive Arms Trade Treaty are critical.

— There is a need to improve protections in the area of overseas business practices; voluntary initiatives offer insufficient human rights protection. The Government should recognise its duty to hold companies to account for their impacts abroad and establish more robust standards.

INTRODUCTION

1. The FCO Annual Report (the Report) is an important document that offers an opportunity to hold the Government to account for its international work on human rights. Much of this work is commendable; in many areas the UK works hard to uphold and promote international human rights law and standards. However, there are areas in which the UK falls short of the vision set out by the Foreign Secretary in his foreword to the Report. In large part this relates to the way the UK works with allies such as Saudi Arabia, Pakistan or China, where strategic interests appear to trump human rights concerns.

2. The Government might argue that these are difficult areas and that diplomatic relationships require quiet as well as public diplomacy. However, Amnesty International (AI) believes that consistent and steadfast promotion of human rights should be fundamental to the UK's role in the world. Only a short-term approach could consider there to be tension between human rights and the UK's national interest.

3. In this submission, AI has focussed on a small number of themes and countries. We have made a separate submission on counter-terrorism issues. Our annual report contains more detailed country information. AI also made a recent joint submission to the Committee on Arms Export Controls outlining concerns in this area.

Arms Trade Treaty

4. The need for a global Arms Trade Treaty (ATT) remains acute. Alongside its international partners, the UK continues to play a lead role promoting the ATT. However, AI is concerned that a small minority of sceptical states may influence the outcome of current ATT discussions and weaken the eventual treaty.

5. An ATT will only save lives and protect human rights if it is truly comprehensive, robust and effectively implemented. The eventual treaty must enshrine the core principles of international human rights, humanitarian law and sustainable development if it is to be effective at saving lives. It must also cover all aspects of international arms transfers, including import, export, transit, transhipment, overseas production and arms brokering activities.

6. AI is concerned about discussions limiting the ATT's scope to the seven categories on major conventional weaponry from the UN Register of Conventional Arms (UNRCA), plus small arms and light weapons, often referred to as "7 + 1". This would exclude many categories of weapons and police and internal security equipment that are used in the commission of human rights violations, including ammunition and explosives, many types of military vehicles, vessels and aircraft, and many categories of ordnance including short-range missiles and bombs. It would also exclude components and parts, which are central to international supply chains that dominate the increasingly global nature of the production of conventional weapons. The Government appeared to endorse such a narrow scope in its statement to the recent Open Ended Working Group in March 2009, although it did make explicit reference to the need to regulate the components for 7 + 1.

7. The Government and its ATT allies should make an explicit public commitment to establish by 2011 an ATT founded on core principles of international human rights, humanitarian law and sustainable development and covering all aspects of international arms transfers, including import, export, leasing, gifts and aid, transit, transhipment, overseas production and arms brokering activities. The Government should respond to the change in the US administration by increasing its engagement on the ATT with the US at the political level and through contacts among officials, and by encouraging the UK defence industry to engage its US counterparts. The Wassenaar Arrangement military list should be used as the basis for the equipment covered by an ATT; it is comprehensive, multilateral, enjoys the support of a majority of arms exporting states, and is an agreed international standard for the classification of conventional weapons.

Human Rights, Development and Poverty Reduction

8. The UK is proud of its record on poverty alleviation. However, while the Government has long had an avowed rights-based approach to development, we believe that it has paid insufficient attention in policy and practice to the role of international human rights law in ensuring accountability and enabling empowerment in this field or to the impact of "Financing for Development" on poverty alleviation. AI urges the Government to redouble its efforts and bring rights more to the forefront of its poverty alleviation work.

9. Likewise, while AI commends the Government for its focus on the Millennium Development Goals, the MDGs set lower targets for development than are required by international law, only partially reflect the economic, social and cultural rights that states are obliged to address and are silent on the issue of discrimination. The Government should ensure that international standards on poverty alleviation are met and that the most vulnerable groups in society are the focus of their efforts.

10. It is vital that international institutions and legal standards that affect development are strengthened. The Report rightly remarks on progress in this area through the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Government should support the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; this would be a powerful signal of the UK's commitment to the role of human rights in poverty alleviation worldwide.

Business and Human Rights

11. The UK's obligations abroad extend to holding privately owned-companies based in the UK accountable for the impact that their activities have on human rights outside the UK. This reflects comments by several UN Treaty Monitoring Bodies as well as reports by the UN Special Representative covering business and human rights.

12. The initiatives referenced in the Report as pertaining to ethical business practice overseas (Voluntary Principles on Security and Human Rights, OECD Guidelines and Extractive Industries Transparency Initiative) relate only to commitments that companies agree to enter into voluntarily. These measures do not offer sufficient protection for human rights on the ground.

13. The Government should recognise its duty to hold companies to account for their impacts abroad and establish more robust standards. As a minimum, companies should be required to undertake human rights impact assessments of their activities. In the longer term, a specialised Commission to investigate complaints against UK companies relating to abuse in other countries is required.

Conflict and International Institutions

14. International institutions and mechanisms continue to struggle to respond robustly to conflict. This reflects a lack of political will, and in some cases problems with membership structures and funding pressures.

15. The UK took swift action at the UNSC on the resolution for a ceasefire in Gaza, but international action to tackle the crisis in Sri Lanka has stalled due to the Chinese and Russian positions. The UNSC resolutions that were eventually passed on Darfur have yet to be fully implemented, and there remain too few peacekeepers on the ground. In this context, AI welcomes the ICC's issue of an arrest warrant for President Bashir in March 2009 for war crimes and crimes against humanity in Darfur. It is critical that the Government continue to take a firm stand in its support for the ICC's work in this area.

16. The Human Rights Council (HRC) struggled to reach agreement on tackling the 2008 crisis in Eastern DRC and despite a UNSC decision to send 3,000 extra troops to the region, they have yet to arrive. The Council process of Universal Periodic Review (UPR, whereby all 192 UN Member States are reviewed in 2008–11) offers new opportunities to assess country situations. AI welcomes the USA's decision to consider standing for election to the Council.

17. The UK continues to support multilateralism and a range of funding and programmes that contribute to conflict prevention. However, AI is concerned that funding for the Global Conflict Prevention Pools will be reduced as a result of increased spending on peacekeeping. Rather than cutting the Global Conflict Prevention Pools, the Government should consider increasing funding directed at the root causes of conflict.

18. The UK consistently speaks of its desire to strengthen multilateralism in order to tackle global challenges. However, further effort is required to achieve international consensus and build and strengthen the alliances required.

Women, Peace and Security

19. AI welcomes, as noted in the report, the fact that the UK was one of the first countries to draw up a national action plan to implement UNSC Resolution 1325 (2000) on women, peace and security. We also welcome UNSC Resolution 1820 (2008); the UK has played a leading role in pushing the UNSC to recognise that stopping sexual violence in conflict zones is important to achieving international peace and security. These Resolutions aim to ensure women's equal participation in conflict prevention, conflict resolution and post-conflict peace building, and to increase the human rights protection of women and girls in conflict situations.

20. Modest progress continues to be made in mainstreaming gender considerations in peace-keeping initiatives, but impunity remains rife in conflict zones. Most acts of violence against women are never investigated, and perpetrators commit their crimes safe in the knowledge that they will never face arrest, prosecution or punishment. AI calls for women's full participation in decisions affecting their lives, including processes relating to conflict prevention, conflict resolution and peace-building. AI urges the Government to implement international law and commitments that protect and promote women's and girls' human rights. This includes implementation of landmark UNSC Resolution 1325 on women, peace and security, as well as Resolution 1820 on sexual violence in conflict-affected situations. We urge the Government to implement the UN Secretary General's recommendation that a dedicated mechanism be established to monitor violence against women within the framework of Resolution 1325.

Israel and the Occupied Territories

21. The Report comprehensively summarises a range of human rights concerns that AI has highlighted in its work. We welcome the Report's commitment to press hard for full respect of human rights in dialogue with the Israeli and Palestinian authorities. However, there is little evidence that the Government's current approach is achieving tangible improvements. The Government should consistently call for action by both the Israeli and Palestinian authorities to ensure that all human rights abuses are subject to thorough independent and impartial investigations, and that those responsible for such abuses are brought to justice. A culture of impunity prevails throughout the Occupied Palestinian Territories, whether it is abuse committed by Israeli settlers, Palestinian armed groups, or the Israeli Defence Force. This abuse is rarely investigated and the perpetrators are rarely prosecuted. The Government should use its influence to encourage all parties to meet international obligations and standards in this regard, ensuring that laws are upheld and respected.

22. The Report's section on the recent Gaza conflict highlights the UK's grave concern about allegations of war crimes. However, UK calls for the Israeli authorities to investigate allegations of crimes committed by its forces are inadequate. Time and time again, the Israeli authorities have shown themselves unable or unwilling to carry out such investigations in an independent and impartial manner. It is critical that the Government and the international community support and urge all sides to cooperate with the UN Human Rights Council investigation and ensure that the perpetrators of human rights abuses are brought to justice in fair trials.

Strategic Allies: Pakistan and Saudi Arabia

23. The Report identifies many of the serious human rights concerns in Pakistan. Armed groups continue to commit serious human rights abuses, including direct attacks on civilians, indiscriminate attacks, abduction and torture. The Pakistani Government's response has vacillated between often indiscriminate and disproportionate military and police operations and accommodation of tribal armed groups and the Pakistani Taleban.

24. Enforced disappearance and torture are widespread. In November 2008, a Senate Committee reportedly acknowledged that intelligence agencies maintain "countless hidden torture cells". The police hold detainees for long periods of time without bringing them before a magistrate, as required by law; in December 2008, hundreds were imprisoned under preventive detention legislation. The Government should urge its Pakistani counterpart to refrain from disproportionate and indiscriminate military operations and to improve the accountability of the intelligence agencies.

25. Women and girls suffer human rights violations at the hands of the state and, in the absence of appropriate government action, in the community, including "honour" killings, forced marriage, rape and domestic violence.

26. The Government has done important work to promote an independent judiciary in Pakistan; AI urges the Government to provide technical expertise to advise on rules regarding the appointment and removal of judges and procedural guarantees for the independence of the judiciary.

27. The Report is overly optimistic about the degree of change in Saudi Arabia and underplays the seriousness of human rights concerns there.

28. Improvements in women's rights are limited and mainly apply to women with significant financial resources; women continue to encounter severe restrictions to their freedoms. By suggesting that most Saudis are content with institutionalised restrictions on women's freedoms, the Report risks undermining human rights principles.

29. Despite a fall in the number of people executed in 2008, the death penalty remains a serious concern. Trials are often secret and unfair. A large proportion of those executed are foreign nationals, many of whom have no access to a defence lawyer and no understanding of Arabic trial proceedings. Children are routinely sentenced to death.

30. Thousands remain detained without trial and are denied basic rights; these include terrorism suspects.

31. As part of the Two Kingdoms dialogue, the Government should work to develop meaningful benchmarks for human rights improvements. The Government should also make more use of the EU Human Rights Experts Group to encourage the Saudi authorities to introduce genuine human rights changes. In particular, new legislation should conform to international human rights standards and reforms to the criminal justice system must challenge the prevailing culture of secrecy.

Regional Powers: China and Russia

32. The human rights situation in China has seen little improvement. China's hosting of the Olympics brought heightened repression throughout the country as the authorities tightened control over human rights activists, religious practitioners, ethnic minorities, lawyers and journalists. Hundreds of people remain in detention or unaccounted for after the protests and unrest in Tibet. The Chinese authorities have launched sweeping crackdowns on the Uighur population in the Xinjiang Uighur Autonomous Region. Tight control continues to be exercised over the flow of information, with many websites blocked, and journalists and internet users harassed and imprisoned.

33. Before the Prime Minister's last visit, the Government published its framework for engagement with China with a strong focus on addressing China's emergence as a global economic and political force. AI believes that these two facets weigh far more heavily on UK policy than the third pillar of the framework which covers, among other things, human rights.

34. The Government remains firmly wedded to a policy of engagement and co-operation in its promotion of human rights with China. However, there is little evidence that this approach is achieving tangible results. The Government also remains muted in its public criticism of China's human rights record.

35. The Government has consistently refused to set benchmarks or timescales for its bilateral human rights dialogue with China. However, commitments made by China during the Universal Periodic Review process and in its newly published human rights action plan include some concrete targets for 2010. The Government should incorporate the delivery of these commitments into the objectives of its dialogue with China. In particular, it should maintain the pressure for a timetable for China's ratification of the International Covenant on Civil and Political Rights.

36. The North Caucasus remain an unstable region where there are serious concerns over torture, enforced disappearance and unlawful killings. The Government should actively support calls made, during the HRC's review of Russia, for the UN Working Group on enforced disappearances and the Special Rapporteurs on torture and on extra-judicial, summary or arbitrary executions, to have access to Ingushetia and the North Caucasus.

37. The law to combat extremism and legislation on libel and slander are being used to stifle dissent and silence journalists and activists. The Government should press the Russian authorities for a thorough investigation of the recent murders of journalist Anastasia Baburova and human rights lawyer Stanislav Markelov.

Conflict Zones: Iraq and Afghanistan

38. Despite a marked reduction in violence in Iraq, civilians continue to be killed or injured by armed groups as well as the MNF and Iraqi government forces. The MNF and Iraqi authorities hold thousands of detainees, most without charge or trial—some for up to five years. The Iraqi authorities hold some detainees incommunicado in secret detention facilities. Iraqi forces continue to commit gross human rights violations. Prison guards and security forces are reported to commit torture; detainees held by Interior Ministry officials are particularly at risk.

39. There is extensive use of the death penalty. Most death sentences follow flawed criminal procedures, with reports that "confessions" are obtained under torture or other duress. Trials of former officials have been marred by political interference.

40. Violence against women remains serious, with women threatened and attacked for not complying with strict codes of behaviour, including dress codes. The Iraqi authorities continue to fail to provide adequate protection against violence. Several million Iraqis remain displaced, both internally and abroad.

41. The Kurdistan region is less affected by the conflict, but there are reports of security force abuse and violence against women.

42. The Government should urgently press its Iraqi counterpart to establish a moratorium on executions. The Government should further press the US and Iraqi authorities to charge and bring to trial detainees, or release them.

43. The security situation in the south and east of Afghanistan is poor, with increasing civilian casualties from insurgent attacks and operations by Afghan and international forces. International forces must reduce civilian casualties and embrace accountability. The Government should:

- develop and implement a consistent, clear and credible mechanism for receiving complaints and investigating claims of civilian casualties or injuries resulting from its military operations; and
- create a unified, or at least coherent and consistent, system of assisting civilians.

The Government should work with its NATO allies to ensure that victims of violations of international humanitarian law receive adequate redress, including compensation.

44. More than 600 detainees are held at Bagram and other US military facilities outside the protection of international human rights law and domestic law. NATO and US forces continue to hand over detainees to Afghanistan's intelligence service, which perpetrates human rights violations including torture. Arbitrary arrest and detention by the police, other security agencies and private militias working with Afghan and international security forces, are widespread. The Government should press its Afghan counterpart and other international allies to seek mechanisms to ensure fair trials for those in detention, including the option of mixed tribunals to try those apprehended in counter-insurgency operations. While there is a risk that they will face torture or other ill-treatment, UK forces should not hand over detainees to the sole control of the Afghan authorities.

45. The Afghan Government is often corrupt and/or ineffective. An electoral vetting process is required to keep out corrupt and abusive candidates ahead of the 2009–10 elections. The Government should urge its Afghan counterpart to vet electoral candidates facing credible allegations of serious human rights abuse and links to armed groups; the Government should provide practical support in this respect.

46. AI welcomes the Government's efforts to improve gender equality, but rates of domestic violence remain high, with little if any recourse to legal protection. The Report fails to mention the high numbers of forced and under-age marriage. Women who have sought to flee abusive marriages have been prosecuted for offences such as "home escape" or "moral" crimes. The Government should support and protect women human rights defenders by offering temporary shelter to those at risk or contributing to local initiatives, including shelters. The Government should continue to fulfil its commitments under UNSCR 1325 through practical projects that promote understanding of women's roles in conflict prevention and resolution and peacebuilding.

47. To help address the failings of the judicial sector, the Government should provide funding and resources to strengthen the reform of the criminal justice system, including comprehensive training of the judiciary and police in order to implement international law and standards which promote and protect the rights of women.

24 April 2009

Further submission from Amnesty International UK

THE FCO'S RESPONSIBILITIES FOR SECURING THE HUMAN RIGHTS OF BRITISH CITIZENS AND OTHERS OVERSEAS

Summary

— ***There needs to be a full, effective, independent and impartial investigation into UK involvement in rendition, secret detention and enforced disappearance.

— Urgent work is required to close Guantánamo Bay. It is critical that in seeking to close Guantánamo, detainees are not transferred to other detention centres of concern. The Government should change its position on Ahmed Belbacha given his links with the UK and the risk of torture or other ill-treatment associated with returning him to his native Algeria. The Government should also press the USA for the urgent return of Shaker Aamer, who's health is believed to be seriously at risk.

— The Government should broaden its understanding of rendition to include flights believed to have been on the way to or from a rendition (the rendition circuit) and not just those with detainees on board. There is also an urgent need to obtain details of what happened to the two men now known to have been rendered through Diego Garcia. The Government should also press the USA to make a full disclosure of its rendition and secret detention programme and hold to account those involved in these practices.

— It is extraordinary that the Government, which has been a strong advocate of the elimination of torture, should now be undermining this work by seeking to circumvent the principle of non-refoulement through its policy of deportations with diplomatic assurance. The Government should reaffirm its commitment to the absolute obligation under international law not to return any person to a country where they face a real risk of torture or ill-treatment.

— The Government should give urgent attention to signing and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance. This Convention could provide important protection from rendition and secret detention and signing, and in due course ratifying it would send an important signal of the Government's position.

INTRODUCTION

1. This submission will look at broad issues relating to terrorism and counter terrorism, including the relevant sections of the FCO's Annual Report on Human Rights 2008 (the Report). It will also consider the FCO's responsibilities for securing the human rights of British citizens and others overseas. Amnesty International (AI) will make an additional short submission to the inquiry on issues relating to FCO's Human Rights Annual Report.

2. The presence of counter-terrorism among the FCO's policy goals reflects the seriousness of the threat from terrorism and the obligation on all states to act to protect their citizens. AI unequivocally condemns deliberate attacks on civilians and other human rights abuses by armed groups. Attacks by armed groups which are indiscriminate or which deliberately target civilians are grave human rights abuses and can also be crimes under international law.

3. AI calls on all armed groups and individuals to stop using violence against civilians and calls on their leaders to denounce human rights abuses including torture and other ill-treatment, hostage taking, indiscriminate attacks, or direct attacks on civilians. It also calls for prompt impartial investigations of such abuses and for the perpetrators to be brought to justice in accordance with international standards.

4. This last point is crucial. AI has documented the grave human rights abuses committed by groups, however in recent years it has also documented a wide range of abuses relating to state counter-terrorism policies. Unless governments across the world respond to the threat of international terrorism in a manner that is fully grounded in respect for universal human rights and the rule of law, they risk undermining the values they seek to protect and defend as well as the counter-terrorism policies they seek to implement.

Binyam Mohamed and the Need for a Broad Investigation

5. ***

6. It is crucial that where sufficient admissible evidence of individual criminal wrongdoing is uncovered, such investigations should be capable of leading to individual criminal prosecutions. Therefore, AI welcomes the investigation by the Metropolitan Police into possible criminal wrongdoing in relation to the case of Binyam Mohamed.

7. However, such police investigation is unlikely to ensure sufficient scrutiny. Its mandate will not extend to broad policy issues or serious human rights violations except where they relate directly to individual criminal wrongdoing. Moreover, the findings may not be made public and such an investigation will not be capable of ensuring that victims are given the full and effective reparation to which they are entitled under international human rights law.

8. AI has similar concerns about the steps set out by the Prime Minister on 18 March 2009, which include an investigation by the Intelligence and Security Committee (ISC). AI believes that these measures fall far short of the properly independent investigation which is needed into what is now a large number of allegations of UK complicity in torture. AI has particular concerns about reliance on the ISC to investigate this area as it lacks meaningful independence given that it is appointed by and reports to the Prime Minister.

9. There now needs to be a full, effective, independent and impartial investigation into UK involvement in rendition, secret detention and enforced disappearance.

10. The investigation must have the powers required to be effective in terms of evidence and testimony. Given the nature of the material likely to be considered by such an investigation, it is inevitable that claims will be made that information either cannot be disclosed to the investigation or cannot be made public. Decisions about access to material should be made independently (for example by a member of the judiciary). The Government should ensure that:

- All hearings are public except where specific evidence or submissions cannot be dealt with in open hearings.
- The scope, methods and findings of any investigation be made public.
- No claim of confidentiality on grounds of national security, state secrecy, diplomatic relations, or witness protection, is used to justify failure to disclose information or evidence of serious human rights violations.

11. Finally, AI considers that any inquiry established under the Inquiries Act 2005 would be incapable of satisfying these principles and ensuring a genuinely independent and effective investigation. This is because the Act allows a Government minister to restrict public attendance at inquiry hearings and prevent the public disclosure of evidence if the minister considers it in the public interest.

Guantánamo Bay

12. The Report notes that the "UK has long considered that the circumstances in which detainees are currently held indefinitely at Guantánamo Bay are unacceptable and that the detention facility should be closed." The Report also sets out the steps it has taken on behalf of UK nationals and residents including Binyam Mohamed.

13. The Government was extremely slow to make sufficiently strong and public criticism of Guantánamo. Moreover, it was only after prolonged and concerted pressure from organisations such as AI that the Government decided to act on behalf of former residents; it had previously refused to do so in the absence of any strict legal requirement to take action.

14. The Government now appears to be taking a more pragmatic approach, encouraging its European partners to assist the USA by agreeing to accept former detainees. The Government also continues to talk to the US authorities about Shaker Aamer, the last remaining legal UK resident detained at Guantánamo (his wife and children are British citizens). However, there appears to be little progress in this case. AI is concerned at reports that Shaker Aamer's health may be seriously at risk.

15. AI is also concerned at the Government's continued refusal to consider acting on behalf of Ahmed Belbacha, who also lived in the UK, but was excluded from the UK's request for release because it believes he was present in the UK illegally. Mr Belbacha would face a serious risk of torture or other ill-treatment if returned to his native Algeria. In the interests of assisting the USA to close Guantánamo, and given his links with the UK, it would seem to make sense for the Government to allow Mr Belbacha to return.

16. It is now more than seven years since the first detainees were transferred to Guantánamo. There is a need for increased urgency in efforts to find a solution to closing the camp. The Government should push hard for the return to the UK of Shaker Aamer and Ahmed Belbacha, and work with its allies to help resettle detainees who are not going to be charged and tried and who cannot return to their country of origin. It is critical that in seeking to close Guantánamo, detainees are not transferred to other detention centres of concern or returned to home countries where they might face a risk of human rights abuses.

Rendition and Diego Garcia

17. The Report sets out the Government's understanding of the terms "rendition" and "extraordinary rendition". There is a danger of confusion over terminology in this area. AI uses the term "rendition" to refer to a variety of practices involving transfers of individuals from one country to another, without any judicial or administrative process such as extradition. This includes transferring detainees into the custody of other states, assuming custody of individuals from foreign authorities and abducting suspects on foreign soil. AI considers rendition to be illegal because it bypasses any judicial or administrative process. Additionally, rendition usually involves multiple human rights violations, including abduction, arbitrary arrest and detention and unlawful transfer without due process of law. All of the victims of rendition AI has interviewed have alleged they were subjected to torture or other ill-treatment.

18. The Report sets out the Government's position that it would expect the USA to expressly request permission to use its territory or airspace for rendition. However, relying on US requests and assurances is clearly ineffective. As the Report notes, contrary to previous denials, the USA is now known to have used Diego Garcia to render two individuals. Moreover, more than one year on, details about the two men have not been released. On 26 February 2009, Foreign Office Minister Bill Rammell stated: "We have very limited specific information about these flights and, despite enquiry, have not been able to establish further details that would be essential for purposes of further investigation".[19] AI considers this deeply worrying.

19. The Report sets out the FCO's efforts to discover if there might have been other cases of rendition through UK territory. A list of flights was compiled and sent to the US authorities, which later stated that there had been no other instances of rendition. However, AI is far from reassured. Diplomatic enquiries by the FCO do not amount to a sufficiently robust attempt to investigate these cases; simple reassurances are inadequate. Moreover, AI was disappointed that the FCO's list did not include flights on the "rendition circuit" (flights believed to have been on the way to or from a rendition), and only included flights with detainees on board.

20. The broad investigation into UK involvement in rendition, secret detention and enforced disappearance should include flights believed to have been on the way to or from a rendition (the rendition circuit) and not just those with detainees on board. The Government should urgently seek more details about the two detainees rendered through Diego Garcia. The Government should also press the USA to make a full disclosure of its rendition and secret detention programme and hold to account those involved in these practices.

Prisoner Transfer in Iraq and Afghanistan

Iraq

21. The Report notes the cases of Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi, who were transferred from UK custody to Iraqi custody at the end of 2008. This transfer went ahead despite what the High Court in London described as "substantial grounds . . . for believing there to be a real risk of [the two men] being condemned to the death penalty and executed", and despite interim measures issued by the European Court of Human Rights (ECtHR) requesting the UK to delay the transfer until it was able to consider whether it was compatible with the UK's obligations under the European Convention on Human Rights.

22. In the coming months the ECtHR will consider a number of cases, including the two mentioned above. These cases centre on the extent to which individuals who claim to have suffered human rights violations at the hands of UK armed forces in Iraq should be entitled to the protection given by the ECHR, and to seek a remedy through the UK courts.

23. In July 2008, the UN Human Rights Committee expressed its concern at the approach taken by the UK to the question of the applicability of its international human rights obligations to the actions of its armed forces in Iraq, saying: "The Committee is disturbed about the [UK]'s statement that its obligations under the [International Covenant on Civil and Political Rights, ICCPR] can only apply to persons who are taken into custody by the armed forces and held in British-run military detention facilities outside the United Kingdom in exceptional circumstances", and calling on the UK instead to "state clearly that the [ICCPR] applies to all individuals who are subject to its jurisdiction or control". The UN Committee against Torture has expressed similar concerns relating to the UK's acceptance of the applicability of the Convention against Torture.

Afghanistan

24. There is a pressing need for greater transparency with regard to US detentions in Afghanistan, in particular in relation to the detention centre at Bagram Airbase. The UK has a particular responsibility in this regard given what is known about the transfer of detainees held by the UK in Iraq to US custody. These detainees were then transferred to Afghanistan, where they remain in custody, as outlined by the Secretary of State for Defence in February 2009.

[19] http://tinyurl.com/bu38ka

25. On the basis of the limited public information about these two cases, it appears that the detainees would have been "protected persons" under the Fourth Geneva Convention and that the USA would have violated this provision when it transferred them to Afghanistan. Unlawful deportation or transfer or unlawful confinement, as well as torture and other inhuman treatment, in violation of the Geneva Conventions, are war crimes.

26. The Government should take urgent steps to press the US authorities to be more transparent about its detentions in Afghanistan. The Government should also press the USA to publish details of whether the two men transferred from UK to US custody in Iraq, then transferred to Afghanistan, were held in secret detention by the USA at any time; whether they were subjected to interrogation techniques or detention conditions that violated the prohibition of torture or other ill-treatment; and, if so, whether anyone has been held accountable.

Deportation: Undermining the Absolute Prohibition against Torture

27. The Report states that "[i]nternational action against torture has been a priority for the UK since the launch of our anti-torture initiative in 1998." AI recognises that the UK does much good work in this area. However, the organisation is concerned that this is being undermined by the Government's continued determination to deport terrorism suspects, in conjunction with various diplomatic assurances, to countries where they face a real risk of torture and other ill-treatment. These diplomatic assurances are not only unenforceable and inherently unreliable; they also undermine the absolute prohibition against torture.

28. The Report states that "our work on deportations with assurances is having a positive effect on the overall human rights situation in the countries concerned, allowing us to engage with these governments on human rights issues". AI rejects this statement and considers that the equivocal position towards torture inherent in this policy risks causing real and lasting damage to international efforts to combat torture.

29. Moreover, the effectiveness of binding multilateral treaties such as the Optional Protocol to the Convention against Torture (OPCAT) is fundamentally undermined when states such as the UK seek and rely on non-binding bilateral agreements, outside the multilateral framework aimed at preventing torture and other ill-treatment.

30. Diplomatic assurances are only sought from countries where there is a recognised risk of torture and ill-treatment. These are, by definition, countries with a record of failing to respect their binding obligations under international law to prevent torture and other ill-treatment. There can be no grounds for confidence that unenforceable bilateral diplomatic understandings will be respected where binding multilateral treaty obligations have been repeatedly flouted. At the same time, neither the UK nor the receiving state has any incentive to acknowledge that torture or ill-treatment has occurred.

31. Finally, the idea that monitoring mechanisms bolster the effectiveness of diplomatic assurances is misguided. The safeguards that assurances provide fall below those in international law; they lack an enforcement mechanism and do not provide a remedy in case of a breach. Indeed, diplomatic assurances have proven to be ineffective, for example in the Swedish-Egyptian case.

32. AI, along with many other organisations with experience monitoring human rights violations worldwide, consider that ad hoc systems of post-return monitoring of individuals are ineffective. Such schemes omit crucial institutional, legal, and political elements. Reporting torture or ill-treatment is also problematic in situations where individuals rather than groups are monitored, as these individuals will be clearly identifiable as the source of any complaint. It is for this reason that OPCAT provides for system-wide monitoring; visits to large numbers of detainees in sufficiently private conditions help protect detainees against reprisals and reassure detainees that they can safely provide information.

33. It is extraordinary that the Government, which has been a strong advocate of the elimination of torture throughout the world, should now be undermining this work by seeking to circumvent the principle of non-refoulement. The Government should reaffirm its commitment to the absolute obligation under international law not to return any person to a country where they face a real risk of torture or ill-treatment.

International Convention on the Protection of All Persons from Enforced Disappearance

34. The Report notes the problem of disappearances in a number of sections and in relation to a number of countries, including Sri Lanka and Pakistan. Indeed, in the section on Pakistan, the Report states that through its EU partners the UK is encouraging Pakistan to sign, ratify and implement the International Convention for the Protection of all Persons from Enforced Disappearances.

35. This Convention could provide important protection in the area of rendition and secret detention. The Convention recognises enforced disappearance as a violation of human rights and prohibits it; puts an obligation on states to make enforced disappearance a crime in national law, bring offenders to justice and investigate reports of enforced disappearance; and provides for reparations for victims and families. The Convention could help to avoid any future repetition of involvement in rendition and secret detention and would be an important signal of the Government's commitment in this area.

36. Despite initial support, the Government has been slow to turn its attention to the International Convention for the Protection of All Persons from Enforced Disappearance and is now among the last states in Western Europe to sign it. The Government should give urgent attention to signing and setting a timeline for ratifying the Convention.

Conclusion: The Need for "Joined-up Foreign Policy"

37. At times it is hard to avoid the conclusion that the UK takes a less critical approach to states that are strategically important. It is critical that human rights values are fully integrated and consistently respected in all aspects of the UK's foreign policy, and not just given rhetorical support. If the UK fails to live up to the human rights standards it advocates, it risks opening itself to charges of hypocrisy, playing into the hands of repressive states and provoking resentment around the world.

38. There is a need for human rights law and standards to be more fully and consistently integrated within the UK counter-terrorism strategy CONTEST. The UK's counter-terrorism policies must be firmly anchored in the rule of law based on justice and due process, and its foreign policy consistent in its respect for and promotion of human rights. This is right in terms of the values the UK aspires to represent, and is also essential to any successful counter-terrorism strategy.

39. What the UK says and does is watched closely in today's globalised and interdependent world. Consistent application of human rights values and standards, and adherence to the rule of law are essential in any successful challenge to the environment in which radicalisation and extremism flourish.

24 April 2009

Further submission from Amnesty International UK

UK BRIEFING ON SITUATION OF INDIGENOUS PEOPLES IN COLOMBIA

The United Nations Declaration on the Rights of Indigenous Peoples

In May 2009, the Colombian Government decided to endorse the *United Nations Declaration on the Rights of Indigenous Peoples*. This endorsement dispels any confusion arising out of Colombia's "abstention" vote at the time of the Declaration's adoption on 13 September 2007.

Drafted over 20 years ago with significant input from both Indigenous Peoples and states, the *Declaration* provides a clear, authoritative statement of the human rights of Indigenous Peoples. These human rights include the right to culture, identity and traditional lands. The *Declaration* also reaffirms Indigenous Peoples are to enjoy all of their human rights without discrimination. In this regard, Amnesty International welcomes the Colombian government's commitment to "the concepts of equality, respect for diversity and non-discrimination that constitute the foundation of the [Declaration]".

Amnesty International has repeatedly expressed its serious and ongoing concern about the vulnerable status of Indigenous communities in Colombia, mainly as a consequence of the country's long-running internal armed conflict. Indigenous Peoples and their leaders continue to be killed and threatened by all the parties to the conflict, including the security forces, paramilitaries and guerrilla groups.

In particular, Indigenous Peoples are disproportionately at risk of forced displacement because such communities are often located in areas of intense military conflict, most of which are rich in biodiversity, minerals and oil. All parties to the conflict are failing to respect the right of Indigenous Peoples not to be dragged into the conflict. A lack of secure title to their ancestral lands, as well as discrimination and marginalisation, has only served to exacerbate the precarious situation in which Indigenous Peoples in Colombia find themselves. These actions threaten the way of life and the very survival of these communities, some of which are on the verge of extinction.

Killing of Indigenous Peoples

In February 2009, Amnesty International condemned the killing of 27 Awá People in the department of Nariño, in the south of the country, and expressed serious concern at reports that members of the Awá in the department had subsequently begun to flee their homes.

According to the National Indigenous Organisation of Colombia (ONIC), on 11 February the Revolutionary Armed Forces of Colombia (FARC) guerrilla group killed 10 Awá in the department. This followed the killing of 17 Awá on 4 February, also in Nariño, and also reportedly carried out by the FARC. There were also reports that an unknown number of Awá have been abducted.

If verified, these killings represent yet another tragic example of the numerous serious violations of international humanitarian law and human rights abuses committed against indigenous communities by all the parties to Colombia's long-running armed conflict, including guerrilla groups, paramilitaries and the security forces. The deliberate killing of civilians is a war crime.

Amnesty International called on the Colombian authorities to initiate an immediate and thorough investigation into the killings, and to bring those responsible to justice, as well as guarantee the safety of the humanitarian commission which is seeking to travel to the area to verify the facts. The organisation also called on the guerrillas to prohibit the deliberate killing of civilians and to free all Awá and other civilians they hold captive.

All the warring parties must respect the right to life of Indigenous Peoples, as well as that of other civilian communities, and ensure that they are not dragged into the conflict.

Aìda Quilcué

Indigenous leader Aída Quilcué, who has been receiving protection ordered by the Inter-American Court of Human Rights since her husband was killed by soldiers in December 2008, is still in grave danger. Her 12-year-old daughter was threatened at gunpoint outside her house on 11 May this year. She, her daughter and other members of the organization she leads, the *Consejo Regional Indígenia del Cauca* (CRIC), Cauca regional Council, are in grave danger.

Aída Quilcué's daughter was standing outside her house, in the hamlet of Clarete, municipality of Popayán, in the south-western department of Cauca, when she saw a car slowly approaching her. The car, with four men inside wearing civilian clothes, stopped in front of her. The man in the passenger seat pointed a gun at her; the driver told him to put the gun away because people were looking. Aída Quilcué's daughter ran into the house to tell members of the Indigenous Guard, who were keeping watch on her, what happened. The Indigenous Guard are a non-violent, organised group of Indigenous volunteers in charge of organising the protection of Indigenous communities from armed actors. The car then slowly moved off and stopped 30 metres away: the men inside looked back at the house, and then the car sped away. Amnesty International calls on the Colombia authorities to order full and impartial investigations into this threat against the life of Aída Quilcué's daughter, publish the results and bring those responsible to justice.

Aída Quilcué's husband, Edwin Legarda, was fatally wounded when soldiers fired at the vehicle he was travelling in to collect her from the city of Popayán. He later died in hospital: 17 bullet holes were found in the car. Aída Quilcué had been returning from Geneva, after attending the Human Rights Council's (HRC) Universal Periodic Review session in Colombia. At the HRC she had publicly raised concerns about the human rights violations against Indigenous Peoples, including killings by the Colombian security forces. In Colombia, she had also played a prominent role in recent demonstrations by Indigenous Peoples in support of land rights and in protest at human rights violations.

In April 2009 seven soldiers, including two junior officers, were arrested by judicial police investigating the killing of Edwin Legarda. Although their detention is welcome, Amnesty International calls for a thorough and independent criminal investigation to identify and prosecute all those responsible, as well as to uncover the real motives behind the killing.

Afro-Indigenous Communities in the Curvadó and Jiguamiandó Humanitarian Zones

Amnesty International is extremely concerned by the scale of devastation in the Curvadó and Jiguamiandó River Basins in the north-west of Colombia cause by internal armed conflict. Here, Afro-descendant communities have set up Humanitarian zones in an effort to protect their members from attack and to send out a message to the warring parties that their rights as civilians must be respected.

The collective land rights of Indigenous People and Afro-descendant communities are enshrined in Colombia's 1991 constitution. Some Afro-descendant communities have initiated and sustained campaigns to stop large-scale developments which threaten to expel them from land which they own collectively or have worked for generations.

The security forces and paramilitaries have attacked such communities, repeatedly labelling them as "subversive". Guerrilla groups have also threatened and killed community members, accusing them of siding with their enemies. Whole communities have often been isolated and trapped (*confinamiento*), unable to access food or medicine because of the fighting. People have also been confined to their communities because of landmines planted around them or because restrictions placed on the transportation of foodstuffs and medicines by the warring parties, who often argue that such goods are destined for their enemies.

In October 2008, Walberto Hoyos Rivas, a leader of the Curvadó River Basin Community, was shot dead by two members of paramilitary group the Black Eagles (Águilas Negras). For the people of Curvadó and Jiguamiandó, the conflict remains a constant and very real threat to their survival as the killings of their leaders and the expropriation of their land continue.

Members of the Inter-Church Justice and Peace Commission (Comisión Intereclesial de Justicia y Paz) who work with the Afro-descendant community in the Curvadó/Jiguamiandó area have also been threatened by paramilitary groups, often with the support or acquiescence of the security forces. The Commission, which campaigns on behalf of communities whose members have been killed, tortured or displaced, has also been targeted for attack by guerrilla groups.

The Inter-American Court of Human Rights of the Organisation of American States has repeatedly called on the Colombian authorities to take appropriate measures to guarantee the safety of members of Afro-descendant communities of Curvadó and Jiguamiandó. However, the Colombian authorities have failed to take effective action to implement the Court's requests.

18 June 2009

Letter to the Clerk from Baháí Community of the UK

Thank you for a useful meeting with Mr Gapes on Tuesday. Mr Leith will be writing formally to the Chairman to express our thanks.

At the conclusion of the meeting you asked me to transmit to you a list of those Bahá'í known to be currently imprisoned or detained in Iran on grounds of their faith. Since then I have been in touch with our international offices and they are sending me the most accurate and up-to-date information they have. The situation in Iran is currently very fluid. Many Bahá'í are detained for a short term, then released. Sometimes they are re-arrested and imprisoned. It has, therefore, been problematic to keep an accurate record of the number of Bahá'í who are deprived of their liberty at any one time.

There are headline 10 cases that we are particularly concerned about:

The seven members of a de facto Baháí leadership committee detained since 14 May (March in the case of Mrs Sabet):

1. Mrs Fariba Kamalabadi.
2. Mr Jamallodin Khanjani.
3. Mr Afif Naemi.
4. Mr Saeid Rezaie.
5. Mr Behrouz Tavakkoli.
6. Mr Vahid Tizfahm.
7. Mrs Mahvash Sabet.

The three younger Bahá'í imprisoned in Shiraz since 19 November 2007:

1. Ms Raha Sabet.
2. Mr Sasan Taqva.
3. Ms Haleh Rouhi.

When I have further information from our international offices, I will relay it to you for the committee's attention.

19 December 2008

Briefing Note from the Baháí Community of the UK on situation of Baháís in Iran

The Baháí community are believed to be the largest non-Islamic religious minority within Iran, numbering at least 300,000 people. They have faced a history of persecution since the inception of their faith 160 years ago. Persecution became systematic and a matter of state policy with the advent of the revolution of 1979. In the last few years we have witnessed an increase in state repression of the Baháís coupled with a disturbing rise in vigilante attacks on Baháís and their property and an increased trend in anti-Baháí propaganda emanating from state and private media channels that promote hatred against Baháís within the population at large.

We are gravely concerned at the continuing detention of seven Baháís who constitute a de facto leadership council, known as the Friends. Mrs Fariba Kamalabadi, Mr Jamaloddin Khanjani, Mr Afif Naeimi, Mr Saeid Rezaie, Ms Mahvash Sabet, Mr Behrouz Tavakkoli, and Mr Vahid Tizfahm have been detained since May of 2008 and are being held in Tehran's notorious Evin prison and have no access to legal counsel. We have learned that the male detainees are being incarcerated in the same cell, which is only 10 metres square, and with no beds provided.

We also remain concerned for the date of Miss Haleh Roohi, Miss Raha Sabet and Mr Sasan Taqva, three Baháís imprisoned in Shiraz. These three individuals were arrested whilst working on a humanitarian project with deprived children, and convicted on spurious charges of "indirect teaching" of the Bahái faith. They continue to serve jail sentences of four years despite the publication of a confidential report, uncovered by Human Rights Activists of Iran, that details the finding of one inspector Rustami, a legal advisor to the Supreme Leader, that completely exonerates the three Bahá'ís of any wrong-doing.

Reports of more arbitrary arrests and detentions of Baháís are reaching our offices with greater frequency. The latest confirmed cases occurred on January 14 when officials from the Ministry of Information raided the homes of 12 Baháís in Tehran. Five individuals were arrested and detained: Mr Shahrokh Taef, Ms Jinous Sobhani, Mr Didar Raoufi, Mr Aziz Samandari and Mr Payam Aghsani. Ms Sobhani worked at the Defenders of Human Rights Centre founded by nobel laureate, Shirin Ebadi, which was raided and shut down in December 2008. Over 20 other Baháís were arrested or interrogated from mid-October 2008 to early January 2009.

Patterns of violence and intimidation against Baháís by unknown actors are increasing. Baháís in Rafsanjan have received anonymous phone calls threatening them with death or the very specific threat of having acid thrown at their children. In Daryoon, the Friday Imam gave a sermon in which he announced that the burning of Bahái homes is permissible. On October 23 2008, unknown individuals used a bulldozer to cause extensive damage to the Bahái cemetery there, and in the town of Rafsanjan an ambulance driver refused to transport the body of a deceased Bahái to a cemetery on the instruction of the Deputy Minister of the Municipality. It would seem that even dead Baháís are deemed a threat to the Iranian authorities.

Baháís continue to face widespread and systematic attacks on their social and economic rights. Iranian businesses are being pressured into dismissing Bahái employees, and Baháís in private business are having their work permits cancelled and their premises sealed by the Public Places Supervision Office. Baháís face exclusion from higher education as a matter of established government policy. We are now receiving regular reports of incidents involving the harassment or intimidation targeting Bahái children and adolescents in Iranian primary and high schools.

The wide-ranging policies of persecution and intimidation against the Baháís that are occurring across Iran as a whole have been accompanied by a determined campaign of incitement to hatred against them based on religion or belief. This has included the publication of an anti-Bahái book that was announced by the Islamic Republic News Agency, official mouthpiece of the Iranian government. The ultra-Conservative, state-sanctioned newspaper, Kayhan, has run a series of 40 articles that slander and misrepresent the Bahái beliefs in a fashion that are intended to provoke animosity in the Muslim populace of Iran.

27 January 2009

Email from the Bahái Community of the UK

In the last 24 hours we have learned that seven imprisoned Baháís who are members of an informal national leadership committee are to be brought to trial before a Revolutionary Court in Iran. They face charges that could merit the death sentence, including "espionage for Israel, insulting religious sanctities and propaganda against the Islamic Republic".

The Bahái community internationally strongly asserts that the charges against these seven individuals are completely false and notes that no evidence has been produced by the Iranian authorities to substantiate the serious allegations made against the Baháís during the 8 months since they were first detained. We are gravely concerned about the conditions in which the seven detainees are being held, the denial of access to their legal counsel, Mrs Shirin Ebadi, and the harassment and intimidation of Mrs Ebadi since taking on their case.

The Bahái community of the UK has already raised its grave concerns with the Foreign and Commonwealth Office over the fate of these seven innocent Baháís. We have requested the government to formally protest to Iran that the accusations against the Baháís are entirely without foundation and that they should be released immediately.

We continue to believe that there are those within Iranian society and even the Iranian establishment who might be persuaded by international opinion that violating the human rights of innocent Iranian Bahá'ís is to the detriment of their country.

We would wish to emphasise the following points to the Foreign Affairs Committee:

- The accusations against these Baháís are denied categorically.
- The 7 Baháís in question are members of an ad hoc leadership group, known as "The Friends in Iran" that has served as a coordinating body for the 300,000 Baháís in Iran. The Iranian government has been aware of their existence for many years and has routinely had dealings with its members, albeit informally.
- The accusation of "spying" against these seven Iranian citizens is contrived, and this has been a pretext used to persecute Baháís for more than three quarters of a century.
- The international headquarters of the Bahái faith is based today within the borders of modern-day Israel purely as a result of the banishment of the Bahái faith's founder by the Persian and Ottoman Empires in the year 1868, 80 years before the state of Israel was founded.
- It took more than eight months for the government to accuse these individuals of any crime, during which time no evidence against them was brought to light.

— At no time during their incarceration have they had access to their legal counsel, Mrs Shirin Ebadi. Mrs Ebadi has been harassed, intimidated and threatened since taking on their case and has not been given access to their case file.

— The prosecution of the seven Baháís is just one more step in a 30 year long systematic campaign orchestrated by the Iranian government to eliminate the Bahái community as a viable entity in Iran, the birthplace of their faith.

— Documentary evidence is available of the Iranian government's campaign against the Baháís and has been brought to light by various UN agencies.

— It is fundamental principal of the Bahái faith that its followers strictly refrain from involvement in partisan political activity. Baháís reject violence, they are peace-loving and constructive citizens who have no interest in assuming power.

— The seven Baháís facing a revolutionary trial are innocent. The charges against them should be dropped immediately.

It would be of great value if this urgent and critical matter could be discussed at the next meeting of the Foreign Affairs Committee on 25 February, I shall of course apprise you of any further developments that may take place in the intervening period of time.

12 January 2009

Submission from the Spiritual Assembly of the Bahái'is of Redbridge

As you are Chairman of the Foreign Affairs Committee, I know that you are very much aware of the situation regarding the Bahái'is in Iran. I am also aware, through our office of External Affairs, that you have been extremely supportive in bringing this matter to the attention of people who need to know. On behalf of the Spiritual Assembly of the Bahái'is therefore, we would like to say how indebted and very grateful we are to you for your active support and the expressions of concern you have made regarding the plight of the Bahái community in Iran.

I am however compelled to write to you today as the latest news regarding the situation of the seven Baháis (know as the Friends in Iran), who have been detained in Evin prison for just over a year, is very disturbing. We have been informed that these seven Bahái'is will now apparently be accused of *mofsede-fel-Arz* which is a very serious allegation in Iran, meaning *"spreading corruption on earth"*. This allegation could result in capital punishment (death) under Iran's penal code.

Our concern is for the preservation of the innocent lives of those seven Bahá'is but we are also equally worried that this allegation, if allowed to proceed, will then provide a real and dangerous precendent for other Bahái'is already in prison in Iran as well as giving the authorities another reason and allegation with which to harass and arrest more innocent people.

This grave situation requires immediate and urgent action. It is for that reason that I am writing to ask, if it is possible for you, to kindly consider signing the early Day Motion 937 on the arrest and trial of Bahá'is in Iran, tabled by Lembit Opik on 2 March 2009. I would also be grateful if you would consider making a personal statement or gathering some of your fellow MP's together to make a joint statement condemning the persecution of the Bahái's in Iran, with particular reference to the plight of the seven.

Lastly, any personal representation on your part to the Foreign Secretary or to the Iranian Embassy in London would be much appreciated. Past experience has demonstrated the efficacy of showing a united and public front that lets the Iranian government know, in no uncertain terms, that they eyes of the world are upon them and injustice will not be tolerated.

Carol Khorsandyon

18 May 2009

Submission from Maria Bilal

On behalf of Mr Abdelkoudouss Abeidna I am writing to thank you for meeting with him and discussing the current problems Mauritania faces. He sent you an email from Mauritania last week, however there have been problems with internet within the country and so he has asked that I send this to you directly. He also has asked me to send you photos and a synopsis of events that have occurred since the coup d'etat last August.

On 6 August 2008, General Mohamed Ould Abdel Aziz led a military coup d'etat to unseat the first democratically elected President of Mauritania, Sisi Mohamed Ould Cheikh Abdellahi. The immediate cause of the coup d'etat was that the president dismissed senior army officers who were working steadily behind the scenes to destabilize the country. The President promulgated and supported democratic legislation and reform, which undercut the military's interstes, so the military struck back.

One of the spurious claims by the junta for what they refer to as their "rectification" is that the government of President Ould Cheikh Abdellahi was deadlocked and unmable to operate. A stalemate, common to democratice institutions everywhere, was used by the Mauritanian military as justification to executie a coup d'etat.

The principal consequences of this military takeover are:

- Mauritania today has a record budget deficit ie 59.5 billion ouguiyas (in 2007, the deficit was 12 billion);
- 30 billion of this deficit was accrued in the past nine months: even with a payment made by the EU for fishing rights to the order of 86 million Euros;
- Freedom of expression is quashed;
- Economic indicators are at an all-time low;
- Poverty is increasing;
- Foreign investors have lost interest in Mauritania;
- Diplomatic ties with Israel have been severed;
- Diplomatic ties are strengthening between Mauritania, Iran, Libya and Syria;
- Peaceful protests against the coup are prohibited;
- Peaceful rallies are repressed by violence—beatings, tear gas, imprisonment;
- Political prisoners are detained in Mauritanian jails;
- Torture by security forces is the preferred method of investigation and repression; and
- The public media is censored and has become an instrument of propaganda and misinformation.

The current political tensions in Mauritania must be resolved within a democratic framework in order to protect Mauritania, once and for all, from the vicious cycle of military coups that has plagued it since thee early 70's. This requires that there be full restoration of Constitutional order. Before the coup, Mauritania was engaged in a democratic experiment which could have become a prototype for African and the Muslim World.

Furthermore, the West needs a voice of reason in the Arab world. Mauritania's Islam is peaceful. The culture of Mauritania is peaceful. Intellectual dissent—when not suppressed by a military regime—is encouraged. Mauritania will likely look to religious fundamentalism for its answers: 45% of the Mauritanian population is 14 years old or younger and the average Mauritanian age is 17 years old. Democracy is the best way to protect the country from Islamic violence: democracy insures freedom of speech, freedom of assembly and equal rights under the law.

We ask the British government to help by:

- supporting targeted sanctions against the perpetrators of the coup d'etat: military and civilian individuals who are impeding the return to democratic government;
- putting pressure on the UN Security Council to execute their resolution detailing the necessary procedures to restore democracy in Mauritania;
- continuing to work with the European Union and the African Union to help anchor democratic values in Mauritania.

Attached, please find an article and photos[20] that portray how this military dictatorship has affected the women of Mauritania.

1 June 2009

Letter to Second Clerk of the Committee from Nicholas Boss

HUMAN RIGHTS ENQUIRY

The facts about Tibet's past history are: it was a free and independent nation before being unlawfully invaded by Chinese military forces in 1950; before this invasion, Tibet had its own unique culture, language, religious practice together with a government and social system. It is the desire of Tibetans to support these aspirations since they are an intrinsic part of their nation's heritage, just as much as they are in a Western Democracy.

"A MISLEADING IMPRESSION"

The British Government, despite being a signatory of the Universal Declaration of Human Rights, Article 19, ignores[21] the simple correlation between the basic rights and desires as implemented in Article 19 and those same desires expressed by the people of Tibet and its Government in exile. The British Government, instead, perpetuates the misleading impression that it is still concerned about the human rights of the Tibetan

[20] Not printed.
[21] To date, I have written five letters to the Foreign Office.

people. This approach is not logical. The British Government knows it can continue with this "Approach" and continue to mislead both the electorate and Parliament because it is under no legal obligation to ratify its commitment to the Human Rights Charter and its principles; if it is truly not the intention to mislead, then the simple correlation must be confirmed clearly, and without procrastination!!

Tibet Autonomous Region

There is no evidence to support the Chinese Government's claim that Tibet is an autonomous region: all local legislation is subject to political control by the central Government in Beijing. All local government is subject to the regional communist party, therefore, representatives of the Tibetan minority who wish to support their nation's cultural and political aspirations are prevented from doing so, indeed, those who do not conform to Chinese doctrine are subject to active discrimination and physical intimidation. The British Government by supporting the misconceived idea of an autonomous region are, again, in contravention of the UDHR Charter, Article 19.

Reversing Britain's Foreign Policy towards Tibet

In October 2008 the Foreign Secretary reversed the British Government's policy on Tibet and announced that: "We regard Tibet as a part of the People's Republic of China". The British Government refers quite often to the need for dialogue between the Dalai Lama and the Chinese Government; in addition, it also expresses politically inspired statements, the same with the Economic Union and, of course, the Chinese Government. These are not pertinent to the enquiry, human rights are. The people of Tibet must be allowed to decide about their future through exercising their democratic rights like other aggrieved nations, eg the Falkland Islanders and Kuwait, to mention a few.

6 April 2009

Submission from Campaign Against the Arms Trade

I am writing to urge the Foreign Affairs Committee to undertake a brief inquiry into the Government's proposals for *Promoting High Standards of Conduct by Private Military and Security Companies Internationally*. The Campaign Against Arms Trade will be responding to the Government's consultation, but thinks its proposals are a total dereliction of duty. Responsibility has been abdicated to a trade association.

Your Committee did excellent work on this issue in 2002 and it would assist the debate if it considered the matter again now. I understood from a telephone from the Second Clerk on 18 May that the Government's proposals were to have been considered on 20 May, even though your Human Rights inquiry has a rather narrower remit. (The PMSC are not only used by FCO and UK posts overseas.) That evidence session was, of course, cancelled.

I would suggest that you hold at least one hearing totally devoted to PMSCs and their regulation.

22 May 2009

Submission from the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries. Since it was set up in 1974, CAAT has monitored the situation regarding mercenaries and, more recently, the growth of the "Corporate Mercenary" company, which both the industry and the Government prefer to call the Private Military and Security Company (PMSC).

2. CAAT intends to respond directly to the Foreign and Commonwealth's consultation Promoting High Standards of Conduct by PMSCs, but would also urge your Committee to make its own response. Your Committee's report on the options set out in the 2002 Green Paper were a very valuable contribution to the debate on PMSCs and CAAT believes that a response on this occasion would be similarly helpful.

Abdicating Responsibility

3. It is most disappointing that, after a seven-year delay, the Government's proposal is so weak, abdicating as it does responsibility to the British Association of Private Security Companies (BAPSC). It is fine for a trade association to "promote high standards", but this is not a substitute for Government regulation, such as that outlined in paragraph 11.

4. PMSCs provide a wide range of services and CAAT agrees with the Government that many of them are not of concern. However, as the Government admits, others can have direct lethal consequences. PMSCs have undertaken tasks which, until recently, were reserved to national armed forces.

5. The proposals will give further legitimacy to what is a highly contentious private industry which is ultimately answerable only to its shareholders and owners, without introducing public controls or accountability. The lack of a legal framework could mean, as the Government itself pointed out in 2002 Green Paper, that it "might be compelled to watch while a company pursued a course that was plainly contrary to the public interest."

6. The activities of PMSCs can kill or violate human rights. The Government would default in its duty if it passed the burden for upholding human rights to business. It must itself undertake the regulation of PMSCs and not exclude options on the grounds of cost or that they impose a disproportionate burden on small businesses.

7. If licensing was introduced, the Government believes some companies would be likely to move their operations offshore. The same could be said of those trading in military equipment, but this has not prevented the Government strengthening controls on trafficking and brokering.

8. It argues that having an approved list of PMSCs might expose the Government to the risk of judicial review from a PMSC excluded from it. Presumably, however, it is not beyond the Government to set down clear conditions that a company must meet for inclusion. Additionally, at the moment, there is a risk of legal action against the Government for its failure to act to prevent human rights violations perpetrated by PMSCs.

9. The Government also believes it can regulate by means of its position as purchaser of PMSC services. This ignores the fact that overseas governments, mining companies, media organisations, aid agencies and others also have contracts with PMSCs. Under the proposals there is nothing to ensure that these also "contract only those companies that demonstrate they operate to high standards". Even within Government, those purchasing services from PMSCs might have a different perspective from those responsible for making sure that the PMSCs adhere to the standards in the code of conduct.

10. To complement its work in the UK, the Government says it will seek to extend international cooperation on the issue, especially on the standards for companies agreed in Montreux in September 2008. This is welcome, but, without effective Government regulation in the UK, not sufficient. It also sets a poor example when a major host Government for PMSCs has washed its hands of responsibility.

Immediate Steps

11. CAAT thinks the Government should immediately scrap its proposal of self-regulation by BAPSC and make an alternative proposal which includes the following features:

(a) PMSCs should be prohibited from combat and banned from providing training, strategic advice and other support for combat;

(b) all other PMSC services should be open to individual licensing requirements and open to prior parliamentary and public scrutiny. This should be complemented by an open register of PMSCs; and

(c) the PMSCs should be made responsible under UK law for any breaches of human rights or the laws of war that may be committed by their employees.

12. In addition, the quarterly reports on Strategic Export Controls should make it clear when equipment is being exported to a PMSC, with the PMSC in question being named.

June 2009

Submission from the Centre for Legal Aid Assistance and Settlement

CLAAS would like to bring to your attention the growing number of blasphemy cases against Christians in Pakistan. Within the first two months of this year at least 10 Christians have been allegedly accused of blasphemy while according to our own investigations all these people have been victimized through blasphemy law in order to settle personal grudges.

In January Hector Aleem and Basharat Masih were forcefully involved in a Blasphemy case registered against anonymous people and victims Hector Aleem and Basharat Masih, under the influence of police torture were forced to confess to the charges. Mr Hector Aleem is a director of Peace World Wide, based in Islamabad which has a consultative status with the UN. He cannot dare to commit such a crime as he is well aware of the consequences but Islamabad's police tortured Basharat Masih to name Hector Aleem. He was arrested on 22 Jan 2009 at 1:30 am from his home whilst the family was sleeping. The police have not only insulted and assaulted him, but have also humiliated his wife and daughter. Such action by police is very common in Pakistan and we are all aware of how innocent people suffer at the hands of the police. Involved Police officers must be questioned and immediate steps must be taken against their cruel and malicious behavior.

Hector Aleem has been accused of making blasphemous calls from his own telephone. The case is now being tried in the terrorist court instead of a normal court and the police have not been able to provide any evidence to prove Hector Aleem guilty, therefore he should be believed to be innocent. On 30 January a

crowd gathered outside the court where Mr Aleem's case was being heard to pressurize the court. CLAAS' lawyer has also been threatened for representing Hector. Hector's wife and four children have gone into hiding to save their lives. The government must intervene so that justice could be done with Hector Aleem and his family who are going through the traumatic time.

This month, at least four other people have been accused of blasphemy: Christians from Narowall: Shafique Anjum aged 35, Naveed Aziz aged 17 and their father Aziz Masih by local police station at Baddomehli Town for having blasphemous pamphlet, but because of the intervention of CLAAS-PK and the local moderate Muslims the charges have been dropped against all three of them as they had never committed blasphemy but were accused off, just to settle personal grudges.

Sitara a first year nursing student of Fatima Memorial Hospital of Lahore is the latest victim of blasphemy law. Her Muslim roommate Sajda has accused her of desecrating the holy Quran which she has denied. The dispute started when Sajda tore a Christian poster as a result this matter was taken to the management, to save herself, Sajda accused Sitara of tearing Quran.

If we look into the history of blasphemy cases against Christians it is easy to understand how innocent Christians have been victimized through this infamous law. The law is being used to settle personal grudges. If we look at just one example when Yousaf Masih of Sangla hill, was accused of setting fire to Quran Mahal (Quran Palace) in 2005, 1,000s of Muslims rampaged and set fire to three churches, a Christian library, a nun's hostel was attacked even some of the nuns were assaulted. The police registered a case against Yousaf Masih under section 295-C, which has mandatory death penalty, but eventually Kalu Sunar the accuser admitted that Yousaf Masih was innocent and had been falsely accused of in an act of vengeance. The case was settled out of court but no one has been charged for desecrating the Holy Bible, burning the churches, assaulting the local Christians, attacking their homes, promoting the hate through mosques and setting fire to Quaran Mahal.

The cases, where Christians are acquitted or settled outside the courts need to be looked into and the Pakistani government must take action to stop the growing trend amongst Muslims to use these laws as the easiest and quickest way to settle personal grudges against Christians. Several people have lost their lives, and many more are languishing in jails for years for the crime they have never committed. The Blasphemy law is not only controversial to freedom of religion, human rights law and international norms, but it is being used to promote religious hatred and extremism against religious minorities and provokes Muslims to take the laws into their own hands, thus taking the lives of innocent people.

We are very grateful for your support in the past but the position of Christians is rapidly deteriorating to the extent that their very existence in Pakistan is becoming untenable. I would like to be assured that you, as a strong opponent to religious extremism and bigotry will put the necessary pressure on Government of Pakistan to bring an end to the abuse of the blasphemy laws as currently being practised.

The government of Pakistan must take this matter seriously and bring about the appropriate changes with consultation of churches and Christian NGOS. The false accusers must be punished and the innocent victims and their families should be compensated.

Also I would like to request you to raise an issue with Government of Pakistan for the release of Hector Aleem. An inquiry should be made by DPO and if Hector Aleem is found innocent he should be released immediately and the plaintiff should be punished for false claim and endangering the lives of innocent people.

Thanking you in anticipation and we look for your support and cooperation, for those who are living in constant fear of their lives because of their faith and to amendments of Blasphemy law, so Christians could feel safe, protected and practice their religion without the fear of persecution.

If you need any further information please feel free to contact Claas at any time.

Senate Election being held on 4 of March 2009 where religious minorities, especially Christians completely has been denied representation instead of repeated promises of President, Asif Ali Zardari, and Prime Minster, Sayed Yousuf Raza Gilani, of Pakistan. In this extremely improper state of affairs minorities are deprived of performing their basic and just rights as equal citizens of the Islamic Republic of Pakistan. Such situation will never bring unity, peace and development and of course could not help to promote Pakistanis image as moderate and enlighten state.

27 February 2009

Submission from Christian Solidarity Worldwide: Burma

About Christian Solidarity Worldwide (CSW)

CSW is a human rights non-governmental organisation, established in the United Kingdom in 1979, which specialises in religious freedom, works on behalf of those persecuted for their Christian beliefs and promotes religious liberty for all. We exist to redress the injustice faced by those who are discriminated against or persecuted on religious grounds, to champion human rights and to stand in solidarity with the oppressed. In much of our work we address broader human rights issues that affect all people regardless of their religion, working with people of all faiths or none.

Summary

— The military junta ruling Burma is guilty of every possible violation of human rights, and ranks as one of the worst regimes in the world.

— Over 2,100 political prisoners are in prison in Burma today, subjected to severe torture.

— Nobel Peace Prize Laureate and democracy leader Daw Aung San Suu Kyi remains under house arrest, and has spent more than 13 years in detention.

— The regime is guilty of the widespread and systematic use of rape as a weapon of war, forced labour, forcible recruitment of child soldiers, forced relocation, the use of human minesweepers, extrajudicial killings and torture.

— Since 1996, over 3,300 villages in eastern Burma alone have been destroyed by the Burma Army, and at least a million people internally displaced. Civilians, including women and children, are targeted and shot at point-blank range.

— Religious persecution is widespread, particularly against Christians and Muslims. Christians in Chin State experience particularly severe religious persecution, but Christians throughout the country, including those in the Kachin, Karen and Karenni areas and in major urban centres such as Rangoon, experience serious discrimination and restrictions on their activities. Muslims, especially among the Rohingyas, are also targeted for religious discrimination and persecution.

The Foreign and Commonwealth Office Human Rights Annual Report

1. CSW welcomes the Foreign and Commonwealth Office Human Rights Annual Report 2008, and the section on Burma. In particular, CSW welcomes the reference to the plight of the Muslim Rohingya people in northern Arakan, who are denied citizenship despite having lived in that part of Burma for generations. In August 2008, CSW visited Rohingya refugees on the Bangladesh-Burma border, and documented the human rights violations they face in Burma. CSW agrees with the Foreign and Commonwealth Office Human Rights Annual Report 2008 in its description of their plight, and of the "draconian restrictions on their freedom to travel, marry, study or practise their faith".

2. CSW also welcomes the reference to the famine in Chin State. CSW would wish to highlight the religious persecution faced by Christians in Chin State, in addition to the other human rights violations they suffer, and the current humanitarian crisis.

3. While CSW is in complete agreement with the description of the situation in Burma in the Foreign and Commonwealth Office Human Rights Annual Report 2008, we note one important omission. On 14 February 2008, the General Secretary of the Karen National Union (KNU) was assassinated by agents of the military regime, in his home in Mae Sot, Thailand. We believe this is an important example of the lengths to which the military regime will go to silence its opponents, and we believe the Annual Report should have noted this tragic event.

4. CSW also believes greater recognition of the plight of the ethnic nationalities in Burma could have been expressed in the Annual Report. CSW believes that the central problem in Burma's political crisis is a constitutional one, and we would have liked to see the Foreign and Commonwealth Office acknowledge not only the suppression of democracy but also the issue of equal rights for ethnic nationalities. A genuine federal democracy is the key long-term solution to Burma's constitutional crisis, and we hope the Foreign and Commonwealth Office will work pro-actively to highlight this issue. CSW also hopes that the Foreign and Commonwealth Office will recognise the scale of the human rights and humanitarian crisis in eastern Burma, including the widespread targeting of civilians, the killing of women and children, rape, forced labour and the displacement of hundreds of thousands, as crimes against humanity.

Recommendations

5. CSW welcomes the action taken by Her Majesty's Government, and the leadership shown on Burma by the Prime Minister, the Foreign Secretary and the Secretary of State for International Development. However, CSW would like to see the Foreign and Commonwealth Office working pro-actively to achieve the following measures:

6. A universal arms embargo on the regime in Burma, by the UN Security Council;

7. The establishment of a commission of inquiry into crimes against humanity in Burma;

8. An inquiry by the UN Special Rapporteur for Freedom of Religion and Belief into violations of religious freedom in Burma;

9. Targeted financial and banking sanctions to be introduced by the European Union;

10. Increased efforts by the UN Secretary-General to secure the release of political prisoners and to engage the military regime in meaningful tripartite dialogue with the National League for Democracy and the ethnic nationalities, including making a personal visit to Burma at the earliest opportunity and initiating a visit by a high-level UN official to pave the way for such a visit.

24 April 2009

Email to the Second Clerk of the Committee from Richard Gifford, Legal Representative, Chagos Refugees Group, Clifford Chance: British Indian Ocean Territory

I recently met Mike Gapes MP and he mentioned the forthcoming meeting with David Miliband and the concern of the Committee over Human Rights in the Overseas Territories. Since we have a mutual interest in one Territory in particular, namely BIOT/Diego Garcia, I offered to brief him and the members of the FAC on the current situation of the resettlement campaign.

This includes a major resolution of the Full European Parliament on 25 March 2029, calling on the EU to facilitate the Foreign Secretary that in bypassing the FAC when he obtained the Orders in Council from the Privy Council, he "exchanged speed for legitimacy". This was described by Quentin Letts, the presenter of the radio programme as being as near as it gets to "entering a guilty plea".

To assist Mike, should he wish to minute these developments and circularise them to Members, I attach copies of the following:

1. Letter to Mike Gapes MP dated 15 May 2009;
2. Letter from Olivier Bancoult to Minister Gillian Merron dated 20 April 2009;[22]
3. Enclosures to the above:

   Minister's letter;[23]

   Letter from EU development commissioner Louis Michel to Glenys Kinnock dated 18 September 2007;[24]

   Statement of Defence official ML Howard dated 6 August 1999;[25]

   List of international institutions and their resolutions condemning the UK's Policy of Exile of Chagossians.[26]

I hope this is helpful to you and Mike.

I wonder if it is possible to attend the meeting. If so I would appreciate if you could let me know the date and time.

16 May 2009

Letter to the Chairman from Richard Gifford, Legal Representative, Chagos Refugees Group, Clifford Chance

It was a pleasure to meet you last night at the Civic Mayor-making in Redbridge, and I was grateful for your well-remembered recall of our last meeting at the FAC Inquiry into the Overseas Territories. I was most interested to hear that your Committee will shortly be questioning the Foreign Secretary on Human Rights issues in the OT's with particular reference to BIOT.

May I therefore take this opportunity to update you on developments with regard to the FCO's refusal to allow resettlement of the Islanders, despite their having been unlawfully removed by the UK, and the strong moral ease for their return which your Committee has identified.

The Chair of the APPG on BIOT, Jeremy Corbyn MP, has written to President Obama, and there have been helpful exchanges with the US Diplomatic staff at the US Embassy in London. I understand that Jeremy will brief you directly about this promising avenue.

The APPG has also invited the Foreign Secretary to meet with them to discuss the weakening case for opposing resettlement. This follows the admission by the Justice Secretary Jack Straw (whose signature is on the Orders-in-Council which were condemned by seven judges but upheld by a small majority of one in the House of Lords) during a Radio 4 programme "What is the Point of the Royal Prerogative" on 12 May. Mr Straw admitted that in failing to refer the Orders to the FAC, he had "exchanged legitimacy for speed". This was criticised by Lord McNally in the House of Lords debate on 12 May, and Baroness Royall, replying for the Government, said:

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[22] Not published.
[23] Not published.
[24] Not published.
[25] Not published.
[26] Not published.

> *"The noble Lord, Lord McNally, referred to what he called the shameful case of the Chagos Islands. As he said, my right honourable friend Jack Straw stated in a programme this morning that, with hindsight, he should have engaged in parliamentary scrutiny to debate the issue of the Chagos Islanders."*

Since the decade of litigation in our courts between the Islanders and the FCO is now at an end, it is the Policy which is now in need of justification, but is under increasing fire from all sides.

The arguments advanced for opposing resettlement were comprehensively demolished in the exchange of letters between Gillian Merron and the Chagossian Leader, Olivier Bancoult, culminating in the latter's letter of 20 April 2009. I enclose copies of this correspondence which include some significant enclosures:

1. Statement of Martin Lloyd Howard, Senior MOD Official dated 6 August 1999.[27]
2. Summary of International Bodies who have condemned FCO policy of Exiling Chagossians, dated 2001–09.
3. Note of meeting between CRG and BIOT Commissioner dated 25 March 2009.
4. Letter from Commissioner Louis Michel, EU Development Commissioner to Glenys Kinnock MEP dated 18 September 2007.

These documents demonstrate respectively the following facts:

1. The only UK Defence Expert who has pronounced on cohabitation between islanders and the US military sees no problem with resettlement on Diego Garcia itself, and, a fortiori, on any of the Outer Islands.
2. FCO treatment has been condemned by several international bodies, most recently by the EU Parliament, in Plenary Session.
3. There are three scientific studies which advocate resettlement as a viable option, and only one which believes resettlement to be *"costly and precarious"*. However, this conclusion lacks credibility and was probably merely the reflection of what officials wished to hear.
4. The ample resources of the European Development Fund will be available to finance resettlement when the population returns.

Neither the BIOT Commissioner, nor the Minister of State has attempted to provide any substantive justification for the Policy of Exile, save to use worn-out phrases such as "We cannot turn the clock back".

I do hope this material and that from Jeremy Corbyn will assist you in challenging the Foreign Secretary to change his policy and to take seriously the invitation from the European Court of Human rights to offer to Chagossians a *"Friendly Settlement"*.

I am taking the liberty of sending copies of this letter and enclosures to the PAC secretariat, in case this will facilitate dissemination to members, should you wish to do this.

I remain at your disposal for any further information.

15 May 2009

Letter to the Chairman from the Centre for Legal Aid Assistance & Settlement (CLAAS)

We are very concerned about the persecution of Christians in different parts of the Pakistan on an unprecedented level. Christians are being harassed, intimidated and threatened for their lives. Many Christians have fled the area and are migrating to Punjab and other parts of the country.

We have also come to know that Christians and other religious minorities are being asked to pay "Jizya" the Islamic tax payable by Christians and other religious minorities, which is not acceptable, as Pakistani Christians have played their role in the formation of Pakistan and were assured equal rights by the founder of Pakistan Quaid-e-Azam Mohammad Ali Jinnah.

We would like to bring to your attention the recent attacks on the Christian at Tessar town (Karachi). About 700 families are inhabitants, who settled in this allotted land after eviction from the main city areas, but unfortunately it seems that attempts are being made to evict them from here too so that their land can be acquired by Taleban.

The incident at the Tessar town took place on 22 April, 2009 when Christians started wiping off discriminatory and inflammatory chalking on walls, including Church walls, against them. The writing said "Talibans are coming, Long live Taliban and Be prepared to pay Jizya (Islamic Tax for non-Muslims) or embrace Islam".

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[27] Not printed.

The attackers used firearms, they injured several Christians, an 11 year old Irfan died whilst several residents of the area still remain in hospital. They beat Christian men, humiliated the women, set fire to their houses, and the holy Bible was desecrated. It all took place in the presence of the police but rangers were not called until later to take control of the situation.

CLAAS have already urged the leaders of Pakistan on several occasions that Christians should be exempted from Shariah law but unfortunately there has been no progress on this issue. Therefore, we would like to ask for your intervention especially now when attempts are being made to impose Shariah Law in the whole country.

It is the government's duty to safeguard the rights of the citizens and protect their lives, properties and their places of worship. Unfortunately this phenomenon of persecuting Christians in Pakistan has been continuing for several years.

Christians are living under fear for their lives and are enduring unspeakable violence which must come to an end. I believe that now is the time that the government of Pakistan should take this matter seriously to stop the ongoing persecution at the hands of extremist groups and bring new legislation to protect Pakistan's religious minorities. Moreover the rebuilding of the destroyed church and houses as well as compensation of injured and deceased Irfran's family should not be omitted.

I hope that you will use your influence and take this matter with the Pakistani government as your priority on the behalf of the Pakistani Christians.

30 April 2009

Letter to the Chairman of the Committee from Harry Cohen MP, All Party Parliamentary Group for Tibet

On behalf of the All Party Parliamentary Group for Tibet, I write to ask that your Committee give consideration to the recently announced change of Government policy toward the status of Tibet in relation to China.

We are particularly concerned that:

(1) the Government announced the concession to the Chinese, but without any progress from China either in the dialogue with Tibetan representatives or for human rights improvements;

(2) the change from "suzeraignty" to "sovereignty" for China over Tibet could also lead to the UK Government, now or over time, diluting its longstanding policy for genuine "autonomy" with the overall China context.

I enclose a copy of the 14 November 2008 letter sent to the Foreign Secretary and the letter to me sent by the Free Tibet Campaign.[28]

Please give favourable consideration to this request.

23 December 2008

Letter to the Chairman of the Committee from Jeremy Corbyn MP

FCO Annual Human Rights Report—Colombia, Land Mines

I understand that the Foreign Affairs Select Committee is currently looking at the new Foreign Office report on Human Rights and that the Committee will be, at some point in the future, publishing a response to the report.

I would like to express to you and your fellow members of the Committee my bewilderment at one line of argument that was put forward in the report in relation to landmines in Colombia.

In what appears to be some sort of justification of the Colombian Army's ongoing use of landmines, the report argues that the minefields maintained by the Colombian security forces "pose no threat to the civilian population".

This is an outrageous position for the FCO to take and an insult to those who have been killed or maimed after stepping on the landmines laid by the Colombian Army including the five children and two adults from the Nukak Maku indigenous group who, according to UNICEF, were badly wounded after straying into an Army minefield in the Colombian region of Guaviare.

[28] Not published.

I fear that the argument put forward is indicative of the Colombia section of the report more generally which appears to try to minimise criticism of the conduct of the Colombian State *vis-à-vis* the human rights crisis in Colombia. This is deeply worrying especially when so many of the reputable human rights organisations working there state that in fact the Colombian State is responsible for a majority of all of the abuses that are occurring.

I hope that the Foreign Affairs Committee will agree to call on the FCO to withdraw their absurd comment on Army minefields in Colombia and to make it clear to the Colombian regime that, in line with their responsibilities under the Ottawa Convention, they must remove all landmines planted by their security forces as quickly as possible.

Thank you for your attention to this matter.

18 May 2009

Letter to the Chairman from His Holiness the Dalai Lama

It is now more than a year since the events of 10 March 2008, when Tibetans all over Tibet spiritedly expressed their deep resentment of the PRC's rule, and the Chinese authorities used brute force to quell the unrest.

The Chinese authorities go to great lengths to assert that Tibetans in Tibet are happy. If this were true, we would have no reason to contradict them, but their statement is countered by evidence. Why else do the authorities in Tibet maintain a policy of suppression that is little different from military occupation? Recently, there has been an even harsher crackdown with the so called "strike hard" campaign. Tibet languishes under undeclared martial law and has been all but closed to the outside world.

The information we have been able to glean tells us that sadly the situation in Tibet has deteriorated to such an extent that Tibetans there live in constant fear and anxiety. They face unspeakable treatment at the hands of a ruthless regime, whose attitude and behaviour threaten the very survival of the Tibetan identity with its rich and ancient culture. The Tibetan predicament is exemplified by the arbitrary handing down of death sentences, suspended death sentences and life imprisonment to several Tibetans tried in a closed court without legal representation for their alleged role in the protests in Lhasa last year.

Under the circumstances, it would be tremendously helpful if the international community, and especially more than one billion Chinese brothers and sisters, who do not have access to free and impartial information about the real situation in Tibet, were able to form a clearer picture of what is going on there. This is why I feel it is important to insist that the Chinese authorities allow representatives of the international media, governments and other concerned organizations, as well as tourists, unfettered access to Tibet.

In the meantime the Chinese authorities continue to accuse us of being separatists. As you are aware, our Middle Way approach has been consistent for the last thirty years. To clarify and reiterate this once again, we recently presented the Chinese authorities with a written memorandum explicitly laying out our aspirations for the Tibetan people to achieve genuine autonomy.

Therefore, I appeal to you once again to do whatever you can to persuade the Chinese authorities to exercise restraint in dealing with the situation and to open Tibet up to impartial access. At the same time I am grateful for your continued support and encouragement of the process of dialogue as the proper way for us to reach a mutually beneficial solution to the issue of Tibet.

13 April 2009

Submission from Democratic Institutions for Poverty Reduction in Africa

HUMAN RIGHTS (IN AFRICA) AND ITS IMPACT ON THE UK

SUMMARY

The BNP and human rights abuse in Africa

According to Article 25 of the United Nations Universal Declaration of Human Rights (UDHR), "(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control, and (ii) motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

http://www.udhr.org/UDHR/default.htm

As you read these lines, hundreds of thousands of men, women and especially children, are perishing in Darfur, Eastern Congo, northern Uganda, Ethiopia, Somalia and Zimbabwe due to the lack of these basic human rights.

Thanks to globalisation and its impact on communication and transportation systems, the consequence of human rights in Africa is increasingly becoming a common subject of debate in British homes, streets, press and parliament.

On 4 June 2009, the BNP took the debate to a new height and gained two seats in the European Parliament. Instead of demonising the BNP, the government and politicians have to do much more to tackle human rights abuse in Africa if we are to defeat the BNP.

Introduction

— The Democratic Institutions for Poverty Reduction in Africa (DIPRA) is a novel UK based development organisation, which campaigns for the development of independent state institution as the primary vehicle for the delivery of real democracy, lasting peace and sustainable development.

— Although the UK and other donor countries have given Africa over £400 billion in development aid since independence, the continent has become poorer, hungrier and angrier as the vicious cycle of self-destruct civil wars, famine, diseases and refugee exodus testify. Therefore, the lack of development funds cannot be the main cause of poverty in Africa.

— Throughout Africa, save for the Republic of South Africa and Ghana, institutions of state, including the Constitution, the judiciary, the army, police, state security, the civil service and the electoral Commission, are designed and managed from the State House to serve the short-term interest of the big man in power.

— The 2005 amendment of Uganda's 10 year-old constitution, and death in office of Gabon's president Omar Bongo (9 June 2009); Guinea's president Lansana Conte (23 December 2005), Togo's President Gnassingbe Eyadema (5 February 2006), the Republic of Congo (Zaire) president Mobuto (7 September 1997) and the Ivory Cost president Felix Houphouet-Boigny (7 December 1993), are graphic testimonies to weak institutions of state.

— The unspeakable violence which followed the recent elections in Zimbabwe (March 2008), Kenya (December 2007), the Democratic Republic of Congo (DRC) August 2006), Uganda (February 2006) and Ethiopia (2005), have convinced us that the British government should put less emphasis on futile exercise of exporting western liberal democracy to Africa. Instead, they should do more to support the development of independent institutions of state.

— It is only the independent institutions of state that would manage and direct meagre local and foreign resources to poverty reduction efforts, plan for and implement the development of necessary social and economic infrastructure, administer the rule of law without fear or favour, protect the environment, fight corruption, and defend fundamental human rights.

Africa and the UN Universal Declaration of Human Rights (UDHR)

— Africa may be the cradle of our human race, but the UDHR, which became effective in 1949, has remained an alien concept.

— According to the preamble of the UDHR, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; and whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Specific Articles and Africa

With Zimbabwe, Darfur, Somalia, northern Uganda, Ethiopia, the Central African Republic, Chad and eastern Congo in mind, consider the relevance of these articles to Africa:

— *Article 3*. Everyone has the right to life, liberty and security of person;

— *Article 4*. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms;

— *Article 5*. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

— *Article 6*. Everyone has the right to recognition everywhere as a person before the law;

— *Article 7*. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination;

— *Article 8*. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law;

— *Article 9*. No one shall be subjected to arbitrary arrest, detention or exile;

— *Article 10*. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him;

— *Article 11*. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence;

— *Article 18*. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance;

— *Article 19*. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

— *Article 20*. (1) Everyone has the right to freedom of peaceful assembly and association;

— *Article 21*. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures;

— *Article 25*. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection; and

— *Article 26*. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

http://www.udhr.org/UDHR/default.htm

Selective Condemnation of Human Rights Abuse in Africa

Listening to the Prime Minister Mr Gordon Brown, one could be forgiven for thinking that, save for Zimbabwe under Robert Mugabe, the rest of Africa was a Garden of Eden where total peace prevailed, the streets were paved with gold, and milk and honey was oozing from the skies.

From the House of Commons to the European Union, the G8 and the United Nations, since he took office, Zimbabwe has dominated the Prime Minister's statements.

The former Minister for Africa disagrees

In his contribution to the parliamentary debate on Africa, held on 19 July 2007, the Labour Member of Parliament for Sunderland said, "I spent two happy years as Africa Minister at the Foreign Office even though there were many enormous African issues to deal with—many of them bigger than Zimbabwe in terms of scale of catastrophe and human suffering, such as events in the Congo region, Angola, Sudan and Liberia. However, Zimbabwe occupied more of my time than any other issue." (19 July 2007 : Column 507)

Uganda, the elephants in Whitehall

Three months before the February 2006 election, president Museveni of Uganda arrested his most credible opponent Dr Kizza Besigye, and charged with rape, terrorism and treason, punishable by death.

Although he was elected as a presidential candidate while in prison, and although he spent 27 of 50 campaign days either in court or reporting to the police, Dr Besigye won an impressive 37% vote share while president Museveni won 57%.

Damning reports on the elections

In their report, the Commonwealth Elections Observer Group declared "So far as the electoral process as a whole is concerned, it is clear that the environment in which the elections were held had several negative features which meant that the candidates were not competing on a level playing field: the failure to ensure a clear distinction between the ruling party and the State; the use of public resources to provide an advantage to one particular political party; the lack of balance in media coverage (especially on the part of the State-owned media); the harassment of the main opposition Presidential candidate; the creation of a climate of apprehension amongst the public and opposition party supporters, as a result of the use of the security forces; and the use of financial and material inducements"

http://www.thecommonwealth.org/document/190591/191180/176283/177357/149333/cogugandadepstate.htm

For their part, the European Union Election observer Mission declared "Despite the adoption of a multi-party system, the structures of the Movement system and its officially sanctioned organs remained intact, active and funded by the state throughout the election period, with the effect that the President and his party enjoyed substantial advantages over their opponents, which went further than the usual advantages of incumbency and the existing legal presidential privileges. Further, the President and his party the National Resistance Movement (NRM) utilised state resources in support of their campaign, including use of government cars, personnel and advertising, and received overwhelming and positive coverage on state television and radio. In addition, in a judgment on a petition brought by Dr. Besigye challenging the result of the presidential election, and seeking to nullify the election, the Supreme Court noted a number of serious irregularities in the process. In a very close decision of four votes to three, it ruled that, while not affecting the results of the presidential election in a substantial manner, there was non-compliance with electoral laws through the disenfranchisement of voters and in counting and tallying of results and that the principle of free and fair elections was compromised by bribery and intimidation or violence in some areas of the country, and the principles of equal suffrage, transparency of the vote, and secrecy of the ballot were undermined by multiple voting, and ballet box stuffing in some areas. The Supreme Court also expressed concern about the continued involvement of the security forces in the conduct of elections and the apparent partisan and partial conduct of some election officials."

Uganda, a Convicted Regime

On December 19th 2005, the International Court of Justice ordered Uganda to pay $6–10 billion in compensation for war crimes, crimes against humanity and for the illegal exploitation of the natural resources of the DRC. The size of the compensation, $6-10 billion, reflects the scale of the damages caused by Uganda to the DRC. See: Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)

http://www.icj-cij.org/docket/files/116/10521.pdf

The Commonwealth meeting in Uganda

Despite these documented abuses by Uganda of basic human rights within and across its borders, the Prime Minister, Mr Brown and Foreign Secretary, Mr David Miliband still led Her Majesty the Queen the November 2007 Commonwealth Heads of Government Meeting (CHOGM) held in Uganda and chaired by President Museveni.

"Colonialism" as deterrence against the UK

Just as the United Kingdom uses its Trident nuclear weapons system as a political weapon to "deter" any potential aggressors, so are the Africans using "colonialism" as an effective deterrence against Britain. The UK's focus on Robert Mugabe has united the African Union and given them a perfect opportunity to use the weapon.

In an interview recorded during the board meeting of the African development bank, held in Shanghai in May 2007, President Museveni of Uganda said:

> "The Western ruling groups are conceited, full of themselves, ignorant of our conditions, and they make other people's business their business. Whereas the Chinese just deal with you, you represent your country, they represent their own interests, and you do business."

For his part, the former president of Botswana, Festus Magoe said:

> "I find that the Chinese treat us as equals. The West treats us as former subjects. I prefer the attitude of the Chinese to that of the West.

http://www.danwei.org/china_and_africa/china_and_africa_the_hypocrisy.php

The UK Paying the Price for Failure in Africa

As China gives cheap loans to Africa and extracts even cheaper raw materials without asking questions about human rights, hundreds of thousands of African victims of human rights abuse will not head to China, but to the UK; thus adding more pressure on social services and race relations.

Desperate dreams

In BBC Radio 4 documentary, *Desperate Dreams* aired on 8 and 13 January 2007, it was stated that "as Europe wrestles with an influx of migrants from some of the poorest countries in the world, Every year, thousands of young people from sub-Saharan Africa set off across the desert dreaming of a better life in Europe. Jenny Cuffe travels to Africa to examine the problem at its roots and follows the personal journeys of some of those who risk all in pursuit of a dream".

http://www.bbc.co.uk/worldservice/documentaries/2008/01/080123_desperte_dreams_part_three.shtml

On 31 March 2009, the BBC reported that "More than 200 African migrants are feared dead after their boat sank off the coast of Libya, the International Organization for Migration (IOM) says. The boat carrying around 250 people is reported to have capsized 50km (30 miles) north of the Libyan coast in stormy seas and high winds. A second boat with around 350 migrants was rescued, an official from the IOM told the Associated Press news agency."

http://news.bbc.co.uk/1/hi/world/africa/7973322.stm

Conclusion

For its own self interest, the United Kingdom should recognise these facts in their formulation of Africa policy, that:

- It took over 300 years for the UK to develop the liberal democracy which we now enjoy;
- It would be unrealistic to expect Africa which is barely 50 years old to suddenly adopt and practice a perfect western liberal democracy;
- Mr Omar Bongo of Gabon is only the latest but not the last African president to die in office. Other candidates who will almost certainly die in office include Egypt's Honsi Mubarak; Libya's Colonel Quadaffi; Zimbabwe's Robert Mugabe; Uganda's Yoweri Museveni; Rwanda's Paul Kagame; the Democratic Republic of Congo's Joseph Kabila; Kenya's Mawi Kibaki or Raila Oginga; Eritrea's Isaias Afeworki; the Sudan's Omar Bashir; the Gambia's Yahya Jammeh and Congo Brazzaville's Denis Sassou-Nguesso;
- The UK should post at the centre of its Africa policy, the development of independent state institutions;
- It is only independent institutions of state that would manage and direct meagre local and foreign resources to poverty reduction efforts, plan for and implement the development of necessary social and economic infrastructure, administer the rule of law without fear or favour, protect the environment, fight corruption, and defend fundamental human rights;
- No legal or physical barrier would stop African asylum seekers from reaching the UK as long as poverty and human rights abuse prevail in the continent; and
- The more population and man-made poverty increases in Africa, the more asylum seekers will break through any barrier; and the more the BNP will grow, in direct proportion.

28 June 2009

Letter to the Chairman from A L Sharma

Friends of Malaysia meeting on 22 November 2008 at Ilford

I was present in a meeting where concerns were raised about atrocities committed by the Malaysian Government following strict Islamic laws.

As with the Jews in the past and now the Hindus are being maltreated in almost all Islamic countries around the world.

Your kind assurances to take up Malaysian Hindus' grievances in the All Party Foreign Affairs Committee, and then asking the British Government to raise them with the Malaysian Government was very much appreciated by the leaders of various Hindu organisations including the people present there at the meeting.

23 November 2008

[* Asterisks denote that part of the written evidence that has not been reported because it is covered by the House of Commons' *sub judice* resolution.]**

Submission from Peter Gill, Research Professor of Intelligence Studies, University of Salford

SUMMARY

— Questions of law and human rights are now central to intelligence governance but oversight requires that as much attention be given to the working practices of agencies as to the legal and policy framework within which they operate.

— The pressures on agencies to "deliver results" and to relax oversight are greatest when security fears and uncertainties are at their height. Therefore, the need for oversight is greater at times such as this in order to promote effectiveness and prevent abuses of human rights.

— Intelligence co-operation between nations and between state and corporate sectors has increased since 9/11 but must not become a mechanism for out-sourcing illegality.

— Evidence of UK collusion in torture demands that a comprehensive and well-resourced inquiry be conducted into how, if at all, this was authorised and the consequences thereof in order to ensure that measures are instituted to prevent any recurrence.

— The development of security and intelligence networks between state and corporate actors during the last twenty years has not been matched by appropriate oversight arrangements.

— Overseers in the state sector must foster relationships with each other, transnational bodies such as the European Parliament and Council of Europe and the wider community of researchers, journalists, NGOs.

1. *Introduction*

1.1 I hope that my research into intelligence matters over the last 25 years will be helpful to the Committee in providing some context, especially regarding intelligence and human rights, intelligence cooperation, extraordinary rendition and oversight. I have no specific knowledge of the cases and allegations into which FAC is inquiring beyond what has appeared in public via reports, court cases and the media.

1.2 Specifically, my article on intelligence and human rights has just been published in Intelligence and National Security and I have an article on the Intelligence and Security Committee and oversight forthcoming in International Affairs. A book chapter on intelligence co-operation since 9/11 with particular reference to extraordinary rendition will also shortly be published. I have made copies of these available to the Committee.

2. *Changing context for intelligence work*

2.1 Legality: In the 1970s a series of legislative and judicial developments in North America and Europe instituted a process of "legalising" intelligence that had previously been subject to executive decrees only. The European Court of Human Rights (ECtHR) decision in *Klass v FRG* (1978) provided the basis for most subsequent cases[29] and the development of the statutory framework for intelligence activities in the UK. Here the requirements for legality have been met by piecemeal legislation including the Interception of Communications Act (IOCA) 1985 (legalising metering and interception of telephone and mail communications); Security Service Act (SSA) 1989 (providing a statutory mandate for MI5 and authorising "interference with property" including burglary and theft); the Intelligence Services Act (ISA) 1994 (similarly covering MI6 and GCHQ).

2.2 But while law is a necessary condition for the proper conduct of intelligence, it is not a sufficient condition. Indeed, intelligence law exists largely to authorise intrusion on what are normally considered human rights even if it also establishes procedures to ensure that appropriate authorisation is obtained. Thus the law is empowering as well as potentially restricting on the action of state officials.

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[29] Cameron, I, *National Security and the European Convention of Human Rights*, (The Hague: Kluwer Law International, 2000) p 17.

2.3 Rights: Human rights protected under the Human Rights Act 1998 and the European Convention on Human Rights (ECHR) are in three categories: absolute, limited and qualified. The main ones affected by intelligence activities are as follows:[30]

2.4. Absolute: the right to life (Article 2) and the prohibition of torture, inhuman and/or degrading treatment/punishment (Article 3). These cannot be restricted in any circumstances, even in wartime or other public emergency, that is, they are "non-derogable". Article 2 does incorporate circumstances in which states may take life without contravening it, for example, self-defence against unlawful violence.[31]

2.5 Limited: the right to liberty and security of the person (Article 5), fair trial (Article 6) and freedom of thought (Article 9[1]). These are derogable 'in time of war or other public emergency threatening the life of the nation' (Article 15) but otherwise cannot be "balanced" against any general public interest.

2.6 Qualified: the right to privacy (Article 8), freedom to manifest religion or belief (Article 9), freedom of expression (Article 10), freedom of assembly (Article 11) and freedom from discrimination (Article 14). There is some space for "balance" in that Articles 8–11 themselves contain the conditions that may be used to limit the application of rights, for example, "as necessary in a democratic society in the interests of national security, public safety . . . ."

2.7 As with law, the incorporation of human rights into the governance of intelligence is relatively recent and much to be welcomed but there remains a real problem that these will not be automatically translated into intelligence policy and practice.

2.8 Discretion: The "rules" for the conduct of intelligence will be laid down in only the most general way by a statute; ministerial directions can provide more detail but the most detailed guidelines will be written internally to the agency. The enforcement of these rules depends on a combination of training and management but their impact can only be gauged by taking account of their relationship with discretion. Discretion takes different forms including that area of choice which is permitted explicitly by the rules, exists by way of the ambiguity inherent in rules or exists simply because of the impossibility of rules anticipating all eventualities. In inquiring into allegations of organisational abuse of law and rights, we need to understand how organisational "working practices" affect performance and the extent to which they are ethical.

2.9 Ethics. There are some complex philosophical arguments concerning the ethics or otherwise of intelligence activities that cannot be pursued here but, taking the central issues of rendition and torture, the prohibition on torture contained within article 3 of the UN Convention against Torture is final. UK support for this has been expressed on may occasions by ministers and heads of the UK agencies and the FCO Human Rights Annual Report refers proudly to the UK anti-torture initiative.[32] Yet, persistent allegations of UK agencies' collusion in torture in recent years have led to this inquiry, so it appears as though ministerial and managerial statements do not actually prevent rights' abuses. This brings us to the issue of oversight but, before examining that, it will be useful to consider how the current terrorist threat is perceived by the government and aspects of the current organisation of intelligence, especially intelligence co-operation.

3. *Current Threat*

3.1 Compared with previous terrorist threats in the UK such as that from Northern Irish paramilitaries, the current threat is presented by the government as distinctive in four respects: it is an international threat, with suspected terrorists coming from a range of African and Middle East countries, if not actually born in the UK; the threat comes from various individuals, groups and networks, sometimes overlapping to assist each other but independent of state support; they intend to cause mass casualties and often to kill themselves in the process; and those involved are driven by particularly violent and extreme beliefs.[33] At various points in recent years the profile of those posing a threat has shifted and this has all contributed to a much greater uncertainty in the agencies as to who poses a threat, where, when and how.

3.2 This has led governments to take regular initiatives in their effort to reassure the public that all is being done to protect them. This is entirely proper but may lead to an excess of legal and policy innovations without adequate evaluation of the effectiveness or otherwise of previous measures, let alone consideration of the possible outcomes (both intended and unintended) of new initiatives. So, as the precautionary principle has been imported from health and environmental policy to security matters, proper heed has not always been taken of the potential for policy to be counter-productive. If this is the case in government in general, we should accept the strong likelihood that the pressure is felt even more keenly by officers working on the front-line of counter-terrorism.

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[30] Ashworth A and Redmayne M, *The Criminal Process*, 3rd edn, (Oxford: Oxford UP, 2005) pp 36–37 and cf Starmer K *et al*, *Criminal Justice, Police Powers and Human Rights*, (London: Blackstone Press, 2001) pp 4–5.

[31] This was the Article of which the UK was found to be in violation when the ECtHR determined that the operation culminating in the shooting of three PIRA members in Gibralter in 1988 had been badly planned and implemented. *McCann and Others v UK* (1995); Cameron, *op cit* note 30, pp 260–62.

[32] FCO, *Annual Report on Human Rights 2008*, Cm 7557, March 2009, 96–97.

[33] HMG, *Report of the Official Account of the Bombings in London on 7 July 2005*, HC1087, May 2006, paras 31–37.

4. *Organisation of Intelligence*

4.1 Intelligence governance (and most of the intelligence literature) has concentrated on intelligence within the state sector. State agencies, whether as part of police, military, border guards or as intelligence agencies in their own right, remain the central focus of interest but they are not the only way in which security intelligence is organsised. "Intelligence", broadly defined, is as likely to be performed by people working in the private sector as in the public. This is due to the corporate sector's own concerns with protecting personnel and profits, their additional respinsibilities as a result of privatisation and "out-sourcing" and their crucial role in "protective security" as part of broader counter-terrorism policies.

4.2 There are a number of features to the rapid growth of intelligence networks but, for the purposes of this inquiry, most significant is the transfer of information. Efforts to increase and improve intelligence co-ordination and sharing have been much emphasised since 9/11 and these efforts have taken place within countries as well as between them. The former includes the development of "fusion" centres such as the Joint Terrorism Analysis Centre (JTAC) in the UK. But these formal arrangements for sharing intelligence do not replace the informal networks between intelligence officers on which they are often based. Informal intelligence networks, like any other social network, develop on the basis of trust between individuals and agencies nurtured by a shared perception of interests and reciprocity. Attempts to formalise these networks are based partly on an effort to make co-operation more systematic and reliable but also because the very informality that operatives value—the lack of transparency and accountability—is viewed with suspicion by their managers who fear being held responsible if something goes wrong.

4.3 Intelligence gathered for the purposes of security has the capacity for both good and bad and cooperation between agencies can have both positive and negative consequences for public safety. On the positive side, clearly, co-operation between agencies that succeeds in the timely sharing of intelligence that prevents a violent attack can leverage the effectiveness of any single agency. But the "dark side"[34] of intelligence co-operation was revealed in the extraordinary rendition policy.

5. *Extraordinary Rendition (ER)*

5.1 "Rendition" refers to the extra-judicial transfer of someone from one state to another and may take various forms, "to justice," "to detention," "military," "extraordinary". It is the last of these that concerns us, involving "extra-judicial transfer . . . for the purposes of detention and interrogation . . . where there is a real risk of torture or cruel, inhuman or degrading treatment."[35] Practice in the US pre-dated 9/11 by some years; there had been occasional "renditions to justice" for many years, mainly by police agencies close to borders but from the early 1970s drug enforcement agents developed Operation Springboard to seek the rendition of traffickers back to the US.[36] The policy was extended in the 1980s to terrorists also but, after 9/11 the CIA were given *carte blanche* to take whatever action it deemed necessary regarding individuals either suspected of involvement or of planning future attacks[37] and the policy of "extraordinary rendition" was put into place as one aspect of that response.

5.2 It is clear that the US reaction to 9/11 had a significant impact on previous intelligence sharing practices. For example, Project A-O set up within the Royal Canadian Mounted Police (RCMP) after 9/11 to investigate the prospects for any further attacks identified Maher Arar as a "person of interest" and information was passed to US agencies in contravention of RCMP policies. This included sending information which had not been screened for relevance or reliability and without the usual caveats restricting the use of the information to intelligence purposes. In this manner the RCMP's entire investigative database on three CDs was passed to the US agencies, including "a good deal of inaccurate information about Mr Arar, some of which was inflammatory and unfairly prejudicial to him."[38] As a result Arar, a Canadian citizen, was rendered by the US to Syria where he was tortured during 12 months detention.

5.3 The Intelligence and Security Committee (ISC) report into what UK agencies knew of rendition paints a picture in which the realisation that US was using ER rather than military renditions or "rendition to justice" developed slowly through 2002 and 2003.[39] The ISC report noted in the case of *** ISC concluded:

> Despite the Security Service prohibiting any action being taken as a result of its intelligence, the US nonetheless planned to render the men to Guantánamo Bay. They then ignored the subsequent protests of both the Security Service and the Government. This has serious implications for the working of the relationship between the US and UK intelligence and security agencies.[40]

[34] Talking of the Bush Administration's response to 9/11 on Meet the Press on 16 September, Dick Cheney said, "We'll have to work sort of the dark side, if you will." Jane Mayer, *The Dark Side*, New York: Doubleday, 2008, 9.
[35] ISC, *Rendition*, Cm7171, July 2007, para 7.
[36] Ethan Nadelmann, *Cops Across Borders: the internationalization of US criminal Law enforcement*, Pennsylvania: Pennsylvania State University Press, 1993, 436–57.
[37] A Presidential Finding was signed on 17 September. Mayer, *Dark Side*, 38–43.
[38] Commission of Inquiry into the Actions of Canadian Official in Relation to Maher Arar, *Analysis and Recommendations*, Ottawa: Minister of Public Works, 2006, 5.1.5, pp 22–26; quote at 24.
[39] ISC, *Rendition*, paras 52–88. Note, however, that Mayer reports the presence of the Head of MI6 at meetings at which 17 September Presidential Finding was discussed, *Dark Side*, 41.
[40] ISC, *Rendition*, 2007, 137.

5.4 There is disagreement as to the validity of any information that may be obtained from torture: in their testimony to the ISC during its earlier inquiry into the handling of detainees in Afghanistan and elsewhere, MI5 said:

> We have however received intelligence of the highest value from detainees, to whom we have not had access and whose location is unknown to us, some of which has led to the frustration of terrorist attacks in the UK or against UK interests.[41]

Evidence that has now emerged calls out for an inquiry to test this contention. The MI6 Chief told the ISC in 2006 that information relating to a potential attack on Heathrow came from the interrogation of Khalid Sheikh Mohammed,[42] who was arrested in 2003 and held at a CIA "black site" in Poland.[43] The Obama administration released four memos detailing the techniques used by CIA on 16 April 2009 and an unredacted version of one of these has since appeared, showing that KSM was waterboarded 183 times in March 2003.[44] This provides an opportunity for those with appropriate clearance to conduct a detailed study of how the information from the CIA was evaluated.

5.5 What main conclusions can be drawn from the implementation of ER? First, it did rely to some extent on traditional networks within intelligence, although there is evidence that the CIA sought to avoid dealing with their usual partners (partly because of fear of exposure through national oversight mechanisms[45] or perhaps through not wishing to embarrass old allies). There is evidence that the usual "rules" regarding intelligence sharing were placed in cold storage after 9/11 as allied agencies sought to assist the US counter terrorist policy. *** Inquiries into this to date have been hampered by the application of the "Thrid Party Rule" by which recipients of intelligence may not disclose it to a third party without the permission of the originating agency. Though there are good security reasons for this, it might be deployed in order to prevent a proper accounting for illegal behaviour.

6. *Oversight*

6.1 he whole saga of extraordinary rendition has been exposed by a variety of mechanisms, some of them governmental or inter-governmental, others in civil society including journalists, lawyers and researchers. The Committee has identified its particular interest in the oversight of private contractors employed by the FCO and posts overseas but I would suggest that oversight must be viewed more holistically. I understand that intelligence questions are properly within the remit of the ISC but I suggest that the way intelligence oversight has developed in the UK is already too compartmentalised and the development of intelligence networks (discussed above) demands that oversight be structured similarly; otherwise it is likely to fail.

6.2 If oversight is inadequately structured or resourced then it is vulnerable in key respects. ***

6.3 ***

6.4 *** Did officers in the field request guidance and authorisation from superiors? If so, at what level was this determined? Were ministers involved in any deliberations? Any such enquiry must be adequately resourced and conducted by those with clearance to examine all papers and interview those involved; anything less will vulnerable to the endemic secrecy of intelligence.

6.5 The role of private military and security contractors (PMSCs) has increased significantly in the last twenty years as states have "downsized" their own security establishments at the same time as the demand for security services to respond to a greater variety of asymmetrical conflicts has increased.[46] Their corporate structure means that they cannot be simply described as "mercenaries" and there is some potential for the development of "corporate social responsibility' through self-regulation[47] but the fact that their prime accountability is to the private interest of shareholders rather than the public interest has given rise to concerns. Like state intelligence agencies, they are also very difficult to oversee—to the secrecy of their security role is added a dimension of commercial confidentiality—and monitoring their behaviour can be very difficult.[48] The Security Industry Authority (SIA) established by the Private Security Industry Act 2001 has a remit covering just Great Britain but one route to oversight would be to require that FCO employs only contractors who are members of the Approved Contractor Scheme. Where the FCO employs firms based abroad this would not be applicable. In such cases there would need to be a requirement that all contracts with PMSCs laid down standards for performance equivalent to those established in Britain by the SIA, for example, on the vetting of personnel, and to include an acceptance by the PMSC that their activities could be monitored.

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41 ISC Cm 6469, paras 77–78, cited in *Rendition*, para 27.
42 ISC, *Rendition*, 2007, para 71.
43 Dick Marty, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second Report*, 11 June 2007, Council of Europe Parliamentary Assembly, para 127.
44 Steven Bradbury (Office of Legal Counsel, Justice Department) to John Rizzo, Senior Deputy General Counsel, CIA, *Re.: Application of US Obligations Under Article 16 of Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees*, 30 May 2005. http://s3.amazonaws.com/propublica/assets/missing_memos/28OLCmemofinalredact30May05.pdf accessed 21 April 2009.
45 Marty, *Secret detentions*, paras 75, 168.
46 Deborah Avant, The Market for Force, Cambridge: Cambridge UP, 2005, 30–38.
47 Christopher Kinsey, "Private security companies and corporate social responsibility," in Alexandra, Baker and Caparini (eds) *Private Military and Security Companies*, London: Routledge, 2008, 70–86.
48 Mervyn Frost, "Regulating anarchy: the ethics of PMCs in global civil society," in Alexandra, Baker and Caparini (eds) *Private Military and Security Companies*, 43–55 at 52–53.

6.6 This, of course, raises the issue of who is to carry out such monitoring and brings us back to one of the central points of this submission, that is, the currently unregulated growth of security networks. It is not just PMSCs that require regulation but their interchanges with state agencies. This requires some combination of rules and oversight. The rules regarding the circumstances of information transfer must be established via memoranda of understanding that will be available to the relevant oversight body and their powers and resources must be adequate to ensure that they can monitor the implementation of the MOUs but also check on any allegations of informal transfers that may breach the rules and result in possible malfeasance. This, of course, begs the very big question of where such an oversight body is to be located.

6.7 At the moment, poorly coordinated oversight of security and intelligence networks is conducted by a combination of governmental, inter-governmental (eg Council of Europe), and civil society actors. In the absence of some supranational governing authority this combination will continue but serious thought needs to be given as to how this might be improved. For example, national authorities (governmental and parliamentary) should augment what is currently a highly informal network of interested actors with some serious investigative and administrative resources that could, say, establish relevant codes of conduct and mechanisms for monitoring.

7. *Conclusion*

7.1 Questions of law and human rights are now central to intelligence governance but oversight requires that as much attention be given to the working practices of agencies as to the legal and policy framework within which they operate.

7.2 The pressures on agencies to "deliver results" and to relax oversight are greatest when security fears and uncertainties are at their height. Therefore, contrary to the oft-quoted need to "balance" security and rights, the need for oversight is actually greater at times such as this in order to promote effectiveness and prevent abuses of human rights.

7.3 Intelligence co-operation between nations and between state and corporate sectors must not become a mechanism for out-sourcing illegality.

7.4 Evidence of UK collusion in torture demands that a comprehensive and well-resourced inquiry be conducted into how, if at all, this was authorised and the consequences thereof in order to ensure that measures are instituted to prevent any recurrence.

7.5 The development of security and intelligence networks between state and corporate actors during the last 20 years has not been matched by appropriate oversight arrangements.

7.6 In order to counter tendencies towards over-reaction, overseers in the state sector must remain sceptical of what they are told in the face of the demands of security and secrecy, and foster relationships with each other, transnational bodies such as the European Parliament and Council of Europe and the wider interested community of researchers, journalists, and NGOs.

23 April 2009

Submission from Human Rights in Asia

Foreign Journalist Harassed in China

This week, a Japanese newspaper correspondent who was gathering information on Tibet from Sichuan Province in China, was repeatedly harassed by police despite a decree signed by China's Premier Wen Jiabao on October 2008 allowing foreign journalists to travel within the country or to interview Chinese citizens without government permission. Foreign journalists play a key role in preventing human rights violations in Tibet and I believe the international community should once again press China to respect the rights of journalists.

Mr Toshu Noguchi, special correspondent of Japanese quality paper the Sankei Shinbun, was staying in a hotel in Sichuan Province on the morning of 11 March when three policemen appeared with a copy of his passport. They ordered him to come to the police station without explanation and threatened to handcuff. Mr Noguchi said he wanted to go to the bathroom but it was firmly rejected and he was not even allowed to wear his coat.

In the police station, they confiscated his camera and mobile phone and checked the records. There was no interrogation and he was just ordered to sit quietly for two hours. A policeman was holding a fax message sent to Mr Noguchi from Tokyo.

On 9 March when Mr Noguchi was staying in a hotel in Tibetan autonomous area of Sichuan Province, four policemen burst into his room in the midnight and ordered him to show identification. When he checked out of the hotel next morning, seven policemen were waiting outside and did not allow him to leave. Mr Noguchi was taken to another town where officials were waiting, and finally sent back to Chengdu City.

Here is the report from Mr Noguchi in Japanese:

http://sankei.jp.msn.com/world/china/090312/chn0903122039002-n2.htm

The following is a translation system of google:

http://translate.google.com/

I am hoping that Britain could put pressure on China to enforce the decree signed by Premier Wen Jiabao.

http://www.nytimes.com/2008/10/18/world/asia/18china.html?partner=rssnyt

Ken Kato
Director

13 March 2009

Further submission from Human Rights in Asia

As you may already know, North Korea stated last week that it will restart producing plutonium in defiance of sanction imposed by the UN Security Council. http://news.bbc.co.uk/2/hi/asia-pacific/8017898.stm

North Korea is sharing nuclear and missile technology with Iran for more than a decade, and it has been reported that 15-strong delegation from Tehran were in the country advising North Koreans to prepare for a rocket launch three weeks ago. The Times says the Iranians brought a letter from President Ahmadinejad to Kim Jong-Ill stressing the importance of co-operating on space technology.

http://www.timesonline.co.uk/tol/news/world/asia/article5994905.ece

Last year, the White House said it was convinced North Korea was helping to build a nuclear plant in Syria and declared the collaboration represented "a dangerous and potentially destabilizing development for the world".

http://www.timesonline.co.uk/tol/news/world/us_and_americas/article3671892.ece

As former US Ambassador to the UN John Bolton described in the following article, North Korea is the leading country in the "Pyongyang-Damascus-Teheran nuclear axis". http://online.wsj.com/article/SB123759986806901655.html

North Korea is also one of the worst abusers of human rights in the world with an estimated 200 thousand starving political prisoners, and there are serious allegations of nine EU nationals being abducted by the North Korean intelligence service.

http://www.sukuukai.jp/narkn/

The Romanian victim appeared to be Ms Doina Bumbea, who was abducted in Rome in 1978 and died in 1997 under captivity.

http://search.japantimes.co.jp/cgi-bin/nn20070421a7.html

It is absolutely appalling under these circumstances that a North Korea investment fund launched by British businessman Mr Colin McAskill is seeking investors from Europe, which will aid the current regime and minimize the effect of UN sanctions. http://www.bloomberg.com/apps/news?pid=20601087&sid=aJ6sP0GRnSA0&refer=home

http://www.chosunfund.com/pages/chosun/about.aspx

Mr McAskill has worked with the North Korean dictator for decades and lobbied the US to lift sanctions. He does not hesitate to show off his position on website but no mention of the immeasurable harm his irresponsible behaviour would inflict on the world.

http://www.chosunfund.com/pages/chosun/team.aspx

In fact, tens of millions of pounds of investment will not only help North Korea to produce more nuclear weapons, but also sends a wrong message to the regime that the West will soon recognize them as a nuclear power like Israel.

Pyongyang has always looked for UK to circumvent sanctions, http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article1264923.ece and I strongly believe there should be legislation to prevent this kind of "social irresponsibility fund" aiding nuclear proliferation.

North Korea is selling weapons, narcotics, fake cigarettes and fake bank notes to the world and there is no reason to believe they will stop short of selling their most lucrative product. Unlike other specialty of North Korea, nuclear weapons leave no evidence behind when used by terrorists because everything evaporates under the mushroom cloud just like Hiroshima and Nagasaki 64 years ago.

http://www.mctv.ne.jp/~bigapple/

I hope you will realise the seriousness of North Korea crisis and potential threat it poses to UK.

Ken Kato
Director

28 April 2009

[* Asterisks denote that part of the written evidence that has not been reported because it is covered by the House of Commons' *sub judice* resolution.]**

Submission from Human Rights Watch

1. As in previous years Human Rights Watch welcomes the FCO's Annual Report on Human Rights for 2008. The report provides important analysis of the most serious and significant human rights crises and themes around the world and sets a useful standard against which the public can measure the British government's performance in addressing human rights abuses through the various policy instruments at its disposal.

2. The report's analysis of the human rights crises and themes it addresses is for the most part sound. In the following paragraphs Human Rights Watch highlights what it sees as some of the report's important weaknesses and omissions, and areas where the report's analysis of specific human rights problems could be matched by a stronger UK government response.

3. Use of torture material from third countries. Human Rights Watch is extremely concerned about language on use of torture material from third countries on page 15 of the report. The relevant language reads (emphasis added):

> We see our human rights and counter-terrorism agendas as generally mutually reinforcing, and aim to incorporate human rights throughout our counter-terrorism work. This is both because we believe it is the right thing to do and because respect for human rights is essential to achieving our broader goals. At the same time we need to be open in acknowledging challenges and difficult decisions in some areas.
>
> One example is the question of the use of intelligence provided to the UK by other countries. The provenance of such intelligence is often unclear—partners rarely share details of their sources. All intelligence received, whatever its source, is carefully evaluated, particularly where it is clear that it has been obtained from individuals in detention.
>
> *The use of intelligence possibly derived through torture presents a very real dilemma, given our unreserved condemnation of torture and our efforts to eradicate it. Where there is intelligence that bears on threats to life, we cannot reject it out of hand.* What is quite clear, however, is that information obtained as a result of torture would not be admissible as evidence in any criminal or civil proceedings in the UK. It does not matter whether the evidence was obtained here or abroad.

4. This language echoes that in the recently revised UK counterterrorism strategy CONTEST II, which states on page 76:

> Intelligence from the security and intelligence services of other states is vital to our own security and has repeatedly enabled us to disrupt attacks planned against the UK or UK interests. In most cases the source or sources of this intelligence will not be disclosed to the UK. If it is clear that the intelligence has come from a detainee the service providing it will rarely volunteer the circumstances in which the detainee is being held.
>
> If it is established that material has been obtained from a detainee by torture, it would not be admissible in criminal or civil legal proceedings in the UK as part of the case against an individual, regardless of where it was obtained. But as the House of Lords recognised in judgements in 2005 any intelligence which has been received may still be used to investigate and to stop terrorist attacks.

5. Human Rights Watch acknowledges that in *A and others vs. The Secretary of State for the Home Department the House of Lords concluded* that reliance on third country material obtained under torture is lawful for intelligence and policing purposes. In our view, the Law Lords misinterpreted the scope of the obligation to prevent torture under the UN Convention against Torture. They also failed to consider the consequences of their ruling for the practice of torture in third countries.

6. In light of recent allegations of the complicity of members of the UK security services in torture carried out in third countries, we question why the UK government continues to assert the right to rely on third country torture evidence for intelligence purposes.

7. No one would dispute that the UK should act where it receives intelligence of a possible threat to life. But intelligence material does not arise in a vacuum. It arises in the context of a relationship between the British security services and a foreign intelligence service. The *** case makes clear that the relationship between British security services and the security services in countries with poor records on torture, such as Pakistan, carries a risk of British complicity in that torture when the British position is that it can and should use evidence obtained by torture.

8. At a time when the conduct of the security services in relation to complicity in torture in third countries is the subject of a criminal investigation, and when the government has agreed to publish the guidance given to members of the security services in relation to the detention and interrogation of suspects overseas, it is difficult to see the assertion of the right to use this material as anything other than an attempt to leave the door open to torture material and to continued uncritical cooperation with security services in countries with poor records on torture.

9. We urge the Committee to question the Foreign Secretary on the purpose of this assertion and in particular to explain how it squares with the UK government's commitment to ensure that the security services are not complicit in torture in third countries.

10. Deporting foreign national terrorist suspects Human Rights Watch remains firmly opposed to reliance on diplomatic assurances, whether contained in memoranda of understanding or otherwise, as a means of removing national security suspects to places where they face the risk of torture. We set out our concerns in an October 2008 report *Not the Way Forward* on how the UK appears to be playing a leading role in promoting use of these assurances and attempting to persuade its European partners to support them.

11. We note that the UK government did not seek to appeal the ruling by the Court of Appeal in AS & DD upholding a lower court decision that two Libyan nationals could not be removed because of the risk of torture on return, notwithstanding the memorandum of understanding between Libya and the UK. We recommend that the Committee question the Foreign Secretary on whether the MoU between the UK and Libya is therefore moribund.

12. We intervened in the case of Othman and RB & U vs. The Secretary of State for the Home Department before the House of Lords reiterating our opposition to the use of assurances as means of returning suspects at risk of torture in Jordan and Algeria respectively on the grounds that such assurances are unreliable and that their use constitutes a dangerous loophole in the non-refoulement obligation under the UN Convention on Torture and European Convention on Human Rights.

13. We were disappointed at the decision by the Law Lords, which is the subject of a pending challenge to the European Court of Human Rights. We note in that context a series of recent decisions by the Strasbourg court rejecting diplomatic assurances on the facts, including the Grand Chamber decision in Saadi v. Italy. In light of the acknowledged risk of torture for national security suspects in Jordan and Algeria, we hope that the European Court of Human Rights will take a similar view when it considers the Othman and RB & U cases.

14. Abuse of UK nationals and residents overseas. Human Rights Watch welcomes the decision by the Attorney General to refer to the police allegations of the involvement of members of the British security services in the torture of ***. In this context we refer the Committee to the evidence provided by Human Rights Watch to the Joint Committee on Human Rights on February 2 2009 and to be found on our website: (http://www.hrw.org/en/news/2009/02/02/uk-should-investigate-role-torture-pakistan)

15. We also welcome the decision by the UK government to publish the guidance given to members of the security services in relation to the detention and interrogation of suspects overseas (subject to the caveat above about the assertion of the right to rely on torture material for intelligence and policing purposes). We support the focus of the Committee on these questions.

16. We remain of the view that the scale of the allegations requires a full independent judicial inquiry into UK complicity in torture and unlawful detention in third countries in the context of countering terrorism, including an examination of whether the policies of the UK government contributed to that abuse.

17. We also consider that the government should legislate to close the apparent loopholes in section 134 of the Criminal Justice Act 1988 and section 7 of the Intelligence Services Act 1994 which appear to immunize from prosecution British agents who commit torture (and other criminal acts in the case of the ISA) if they were to commit the acts with the authorization of the government. We note that the UN Convention against Torture, which section 134 is intended to implement, contains no such exception to the obligation to prosecute those responsible for torture. Indeed the Convention specifically prohibits reliance on orders from superiors or a public authority as a justification of torture (Article 2).

18. Promoting a low carbon high growth global economy. The FCO's Annual Report on Human Rights rightly highlights the negative impact of the global economic crisis on economic and social development in the poorer parts of the world. This concern could be more explicitly linked to human rights. There are signs that the crisis will not only have an impact on economic and social rights, particularly in poorer parts of the world but also on political and civil rights throughout the world.

19. For example the crisis is likely to exacerbate the problem of mistreatment of migrant workers by employees and middle men. It is also likely to lead to further abuse of the rights of migrants in general by states. The crisis also raises concerns about government restrictions on freedom of expression and

association in the face of economic and environmental protest, and about the capacities of donor countries like the UK to respond effectively to humanitarian and human rights crises around the world because of a severe tightening of government budgets.

20. It is regrettable that the report demonstrates a certain reluctance to criticise the human rights records of countries such as Uganda, Ethiopia, Rwanda and Nigeria which receive significant sums of UK development assistance. The provision of UK development assistance should make the UK readier, not more reluctant, to criticise the abuses of recipients.

21. Prevent and resolve conflict. In its discussion of what it calls the Middle East peace process the report fails to note, let alone comment on, the absence of any human rights or international humanitarian law component in the program of the Annapolis Conference or statements of the Quartet during the period covered. The report also does not indicate if human rights and international humanitarian law had any place at all in UK policy with regard to Israeli-Palestinian issues. The discussion cites attacks by Palestinians and fatalities among Israelis and Palestinians over the year and during the fighting in Gaza which began on 27 December, but fails to observe that many of these attacks, by Israelis and Palestinians, involved serious violations of international humanitarian law.

22. The report's coverage of the Georgia/Russia conflict rightly highlights the recommendation to allow access to independent monitors and humanitarian organisations. However, the narrative mainly concentrates on the politics of the conflict rather than on the human rights issues: for example it refers to the humanitarian crisis without referring to the human rights crisis that precipitated it and notes that displaced persons are unable to return without a discussion of why this is the case.

23. The report on the conflict in Sri Lanka between government forces and the LTTE rightly states that the prevalent culture of impunity is one of the main obstacles to peace in Sri Lanka. Since the report's publication there has been a serious escalation of fighting. There is now an urgent need for the evacuation of tens of thousands of civilians from the so called No-Fire Zone where hundreds have been killed in recent weeks. There is also a need to end the ban on independent monitors and journalists from entering the conflict area. In the longer term those providing humanitarian assistance to the many civilians displaced by the conflict need to ensure that they avoid supporting the long term internment of civilians in the government's so called "welfare villages".

24. The United Nations. Human Rights Watch remains concerned that the United Kingdom continues to adopt a hardline position with regard to the Security Council not being bound by human rights. This is of most concern in peacekeeping and other similar operations authorised by the Security Council and targeted sanctions. By illustration the Government's position in the Al-Jedda case on detention by UK forces in Iraq appears to be that a Security Council Resolution implicitly authorises indefinite detention without judicial review. On the issue of sanctions the UK adopted the most hardline position of any European state intervening in the Kadi and Al Barakaat case concerning whether the targeted sanctions regime derived from UN Security Council Resolutions violated the right to a fair hearing of individuals and companies named in the Resolutions. The UK's position was that the Security Council is not bound by any law, including jus cogens. The ECJ ruled that the EU measures did violate the applicants' right to a fair hearing, as they were not able to challenge there being named and having assets frozen. However Human Rights Watch is not aware of any UK steps to ensure that Security Council Resolutions do not lead to human rights violations, either in sanctions or in the actions of UN-authorised peacekeeping operations.

25. With regard to the Durban Review Conference in April 2009 Human Rights Watch wrote to the Foreign Secretary in early 2009 to express our concern that the United Kingdom was publicly threatening to pull out of the Conference. However we were satisfied with the constructive role the UK subsequently played in that Conference in obtaining an agreement that led to a dropping of language on defamation of religion. The UK's position was in notable contrast to several of its European and other allies who boycotted the Conference, despite having obtained the language they wished.

26. Rule of Law. While it is understandable that the report limits the number of countries it includes in the list of "major countries of concern", it is nonetheless important that it should find space elsewhere in the report to comment on countries with particularly poor human rights records. In our view there are a number of countries of real concern from a human rights perspective which get hardly any mention in the report. Egypt, Jordan, Eritrea and Libya are examples. At the least there should have been a discussion of the routine use of torture, restrictions on freedom of expression and association, repression of civil society and the narrow or non-existent space for political participation in these countries.

27. Afghanistan. Because of the strategic importance of Afghanistan and the UK's military role there, there is an inevitable danger that human rights concerns will be trumped by strategic ones. For example the report glosses over the important issue of civilian casualties of NATO and ISAF airstrikes. Despite operational improvements, significant numbers of civilians continue to be killed in such airstrikes, inflaming public opinion and undermining the government. Contrary to what is stated in the report, denials and lack of transparency have made the situation worse. In August, US forces bombed the village of Azizabad; the UN, the government, and the Afghan Independent Human Rights Commission said more than 90 civilians were killed. The US initially denied that any more than seven civilians had been killed, but weeks later raised

the figure to 33. Increasingly under joint command, the US and ISAF have now agreed to hold joint investigations with the Afghanistan government. Too often a faulty condolence-payment system has not provided timely and adequate compensation to assist civilians harmed by US and ISAF actions.

28. While UK officials and political leaders have been vocal in their rhetorical support for human rights, including women's rights, they have recently been actively promoting negotiations with opposition groups, including the Taleban, with little regard for the implications of such deals for human rights. Civil society and women activists in particular are calling for greater transparency regarding such negotiations, and the inclusion of women in any peace talks and conflict resolution. The passing of the Shia law in March 2009 by the Parliament and the President shows how easily women's rights will be traded by the Afghan government in spite of complaints from the Western backers.

29. The assessment in the FCO report of the state of the Afghan media is unduly optimistic. Human Rights Watch is soon to publish a report on this subject. The majority of Afghan journalists interviewed in the course of our research say they believe that press freedoms have been deteriorating since 2005–06. The reasons they give include not only the growth of the insurgency, and the weakening of the government, but also the growing strength of anti-democratic forces within government and parliament opposed to a critical media. Threats, intimidation and the murder of several journalists have had a chilling effect. Most journalists interviewed say they self-censor when it comes to reporting corruption, narcotics, and conflict.

30. The FCO's report is also overly positive on the media law. Although this law was passed, it has not been enacted because it is being blocked by the President and Minister of Culture. This is a direct challenge to the legitimacy of parliament and the constitution. The parliament will soon call the Minister of Culture to account for the "missing law". The British government should do the same.

31. The British government should also push for a moratorium on the use of the death penalty in Afghanistan in particular as the court system is so flawed.

32. Belarus. While the report addresses the right issues, its assessment of the government's human rights record is overly optimistic. For example the report states that all of Belarus' remaining political prisoners were released in 2008 without noting that some of those same prisoners were imprisoned again later in the same year. The report correctly notes that NGOs face expensive registration fees and excessive legal requirements. But it should also have noted that acting on behalf of an unregistered organization is considered a criminal act under Article 193.1 of the criminal code. Many of those detained following their participation in public protests were charged under this article.

33. The report says that that the "head of ideology" at the presidential administration suggested to journalists that the new media law may be amended in light of their concerns. However the report fails to mention that the law requires all media to register, including existing registered media and online media. This means that authorities have the power to deny a license to publish to any outlet they deem undesirable on re-registration.

34. Burma. The report's entry on Burma mirrors Human Rights Watch's reporting and analysis. It states correctly that the constitutional reform process "lacks all credibility". We urge the UK to continue to take this line as long as progress remains non existent. The UK should urge its EU partners to do likewise.

35. The report's comment on forced labour in Burma provides one of the best analyses by a government of the limitations of the ILO mechanism introduced to address the problem. The report's analysis of the shortcomings of humanitarian assistance in Burma is similar to that of Human Rights Watch. It is also commendable that the report mentions the problems in Chin State, on which we reported in January 2009.

36. China. The report's entry on China is generally good. The report rightly mentions that the temporary relaxation of restrictions on foreign journalists in China introduced in the run up to the 2008 Olympic Games were subsequently made permanent. However it fails to mention that journalists continue to be harassed and obstructed as usual. The report notes, again rightly, that people weren't allowed to protest at the Olympics "protest zones". However it does not mention the arrests and convictions of aspirant protesters such as Ji Sizun.

37. Colombia. The report fails to adequately discuss the fact that paramilitaries and their successors have infiltrated some of the highest levels of government. More than seventy members of the Colombian Congress—including approximately 35% of the Senate—are under investigation or have been convicted for rigging elections or collaborating with paramilitary groups. Nearly all the congresspersons under investigation are members of President Uribe's coalition. The Uribe administration has repeatedly taken steps that could undermine the investigations and keep the influence of these mafias in the political system intact. High-level government officials, including Uribe himself, have repeatedly attacked the Colombian Supreme Court, which started what are known as the "parapolitics" investigations. The Uribe administration has also blocked efforts to sanction the political parties involved and clean the political system. This problem should be an important focus of UK policy, as it will define the future of the rule of law and democracy in Colombia.

38. The report also fails to adequately discuss the frequent practice of extrajudicial executions of civilians by the Colombian Army. For years there has been mounting evidence that many units of the Colombian military have been committing killings of civilians, then passing them off as guerrillas or paramilitaries killed in combat. The Office of the Attorney General of Colombia is investigating cases involving more than

1,000 such victims. While the report mentions the high-profile case of the killings of several young men from the Soacha neighborhood in Bogota, it is crucial that both the UK and the Colombian government recognize that the problem goes far beyond that one case, and that Colombia must take action to eliminate incentives within the military that may be contributing to this practice.

39. Cuba. The report correctly points out that, in spite of some small steps, there has been no significant improvement in the state of human rights in Cuba. The report mistakenly notes that musician Gorki Aguila was arrested in August on charges of "social dangerousness" but later "released without charge." He was released and the dangerousness charge was dropped; but he was charged with public disorder, fined 600 pesos, and ordered to pay the fine in 300 weekly installments. Few "social dangerousness" cases, however, receive as much publicity as Aguila's, and nearly all result in conviction through closed summary trials. For example, on 7 April 2008, Norges Vázquez Suárez, the leader of an independent union of bicycle taxi drivers (bicitaxistas), was sentenced in a summary trial to four years for "social dangerousness". He had been arrested and charged shortly after staging a nonviolent protest.

40. DR Congo. The report inadvertently exposes the gap between the UK's stated ambitions and its actual achievements. Firstly, there is the failure of the international community (Europe and the UK included) to act decisively in the autumn of 2008 as hundreds of thousands of Congolese in North Kivu were displaced and thousands more killed or brutalised in renewed fighting involving government forces and an array of local militias. There were calls for direct European intervention to protect civilians and rein in those promoting the violence. Instead, the international community relied on a failed formula: a short-term political fix among those responsible for the crisis, notably President Kabila of DR Congo and President Kagame of Rwanda and their local proxies. This was underpinned by encouraging joint Congolese and Rwandan military action against the ethnic Hutu FDLR militia in the Kivus. One wave of military action against the FDLR in 2009 has merely resulted in extensive FDLR reprisal attacks against civilians. Hundreds have been killed. A second round of action against the FDLR is likely in the near future, with the same likely consequences.

41. These problems point to a wider failure in the international community's strategy. Firstly, it has the wrong set of priorities. The top priority should be sustained commitment to resolving the DR Congo's grassroots problems. The starting point for this should be ensuring that civilians are protected from all rapacious groups, including the Congolese army, neighbouring governments and their proxies. This is still not happening.

42. Western countries made much of the December 2008 UNSC resolution authorising the UN peacekeeping mission (MONUC) to increase its strength by 3,000. They insisted that this force would be in place quickly. Five months on and the force has not been agreed never mind deployed. And the situation on the ground in eastern Kivu has begun to deteriorate again. UN agencies have been sounding the alarm in recent weeks about increasing civilian vulnerability. (In Kosovo, the West sent in 60,000 troops and police. In DRC, a country the size of Western Europe with no infrastructure, the UN mission (MONUC) is barely 17,000 strong and spread over four different conflict zones.)

43. While MONUC has some leadership and management weaknesses, its principal failing has been a lack of resources and international political backing. The UK has taken a "sticking plaster" approach: some money here and some money there, but never enough. The UK and the EU should commit a serious contingent of troops to the UN mission, especially in those areas that MONUC needs (rapid response, logistics and Special Forces). Alternatively they could put a complementary EU force in separately.

44. The second priority should be action to arrest and charge those responsible for serious crimes. Decisive EU military intervention—buttressed by the International Criminal Court (ICC)—in the Ituri region of DRC in 2003 helped stabilise the region and restore a semblance of the rule of law. Ituri militia leaders were arrested and have gone on trial in The Hague. One indicted Ituri war criminal, Bosco Ntaganda, has become a major perpetrator of crimes in the Kivu region, and was directly implicated in a massacre of over a hundred people at Kiwanja last autumn. Yet, as part of the quick political fix in 2008, Bosco was made an officer in Kabila's army. Instead of demanding his arrest, the UK and others have turned a blind eye, sending a clear message to would-be human rights abusers in the DRC that they can avoid prosecution. This helps neither the search for lasting peace, nor justice.

45. The UK report does not mention Orientale province and the disastrous Ugandan-led (and UK-US backed) attempt to corner and eliminate the LRA rebel group in December 2008. The consequences were devastating for local civilian populations, hundreds of whom were butchered in revenge killings by the LRA. Again, civilian protection was at the bottom of the list of international priorities (MONUC was not even forewarned) and again civilians paid the price of "quick fixes" which ended up fixing nothing. The report also makes no mention of South Kivu. This part of eastern DRC has enjoyed relative stability in comparison to its northern neighbour. But there are increasing concerns that likely Congolese and Rwandan military action against FDLR groups there could spark the same kind of civilian displacement as was seen in north Kivu in 2008. Nor does the report mention Ituri province, where tensions between armed groups are increasing.

46. The UK report rightly focuses on the governance challenges facing the DRC. But it does not say enough about Kabila's increasingly authoritarian rule. The report makes much of the UK ambassador's outspokenness on human rights abuses. But he was silent when Kabila recently forced out the (independent) president of the National Assembly, Vital Kamerhe. The UK is a major aid donor to the DRC and appears to be ignoring this disturbing trend towards authoritarianism as DRC heads towards possible elections in 2011.

47. North Korea. The report states that since July 2008 co-operation between North Korea and international humanitarian organizations has improved, resulting in food aid being distributed, for the most part, to the right people. This contradicts what Human Rights Watch has learned from US government officials who are involved in food aid to North Korea. We would therefore be interested in hearing more about the improvements in co-operation and what evidence the UK has that the food aid is actually reaching the intended targets. The report also states that North Koreans are subject to arrest and detention without trial. This is generally true for those who have committed "political offences", but not necessarily for those who have committed common crimes. The report says that some 12,000 North Koreans have resettled in South Korea. The number now stands at over 15,000.

48. Iran. The pages on Iran correctly identify many of the serious human rights violations in that country, although we would recommend in the future greater attention to freedom of association issues and, in the discussion on freedom of expression, the accelerating crackdown on web journalists and bloggers. The report could have contained greater discussion of the UK's efforts toward improving human rights in Iran. The report states that the UK government "raised human rights concerns with Iranian officials on at least 40 occasions" but provides few examples. Given the UK's engagement with Iran on strategic and economic issues, it would be helpful to know at what level human rights were raised and with what results.

49. Iraq. The report rightly notes documented and well publicized allegations of cases of abuse in Iraqi prisons, and that overcrowding in detention facilities remains a major human rights problem. But the report fails to mention systemic and severe problems that plague Iraq's criminal justice system. Defendants often endure long periods of pre-trial detention without judicial review, and are not able to pursue a meaningful defence or challenge evidence against them. Abuse of detainees, typically with the aim of extracting confessions, appears to be common, tainting court proceedings.

50. The report is silent on FCO actions that have undermined the human rights of Iraqis, such as the FCO's handling of sexual abuse allegations concerning female Iraqi contractors at the British Embassy. After the FCO became aware of the allegations, it delegated the investigation to the same contracting firm involved in the misconduct. Despite a strong rebuke from the foreign affairs committee of Parliament, the FCO has refused to accept responsibility for any wrongdoing or to conduct an independent investigation. This posture seriously compromises the ability of the FCO to credibly promote respect for human rights outside of the Embassy when it cannot even protect vulnerable Iraqis working within it.

51. Of further concern was the handing over of the last detainees held by British forces to Iraqi authorities in December 2008, despite the risk of the death penalty and torture, and an interim measure request from the European Court of Human Rights to the United Kingdom not to carry out this act. We believe this is the first time the United Kingdom has ignored such a request from the ECHR which risks undermining the authority of the Strasbourg Court. This case is now proceeding rapidly to a final hearing in Strasbourg.

52. Israel and OPT. The discussion of Israel and the Occupied Palestinian Territories is comprehensive, and in several areas (eg administrative detention) improves on the 2007 report. The discussion appropriately emphasizes the humanitarian crisis in Gaza. Human Rights Watch welcomes the report's explicit concern about allegations of war crimes during Israel's military operations in Gaza, and Israel's obligation to investigate those allegations. However we regret that the report did not refer to Israel's poor record when it comes to investigating unlawful attacks by its forces, and the consequent need for an independent international investigation into serious violations of the laws of war by all parties to the conflict, Palestinian and Israeli.

53. The report correctly notes that Israel remains the occupying power in Gaza under international law, which requires Israel to "co-operate in facilitating the passage and distribution of relief consignments." However the report fails to mention that international humanitarian law further imposes on Israel a positive duty to safeguard the health and welfare of the population under occupation, and must refrain from attacking, destroying, or withholding objects that are essential to the survival of the civilian population. The report also fails to note that Israel's comprehensive blockade of Gaza, which preceded the December-January hostilities and continues today, violates international law. This is in contrast to the report's commendable citing of international humanitarian law with regard to Israeli settlements and demolitions of Palestinian homes.

54. In its discussion of abuses by Palestinian forces, the report rightly criticises the abuses of Hamas forces in Gaza, but gives little attention to violations by Palestinian Authority (PA) forces in the West Bank. This is particularly unfortunate given the important role of the UK, which the report notes, in providing support for PA police. Although most violations have been attributed to Preventive Security and the General Intelligence Service, rather than the police, it would be helpful to know what steps, if any, the UK took to raise issues of torture and arbitrary detention with Palestinian security officials.

55. Pakistan. Human Rights Watch is pleased to note that the FCO has followed our recommendation to include Pakistan as a major country of concern in the 2008 report. The entry on Pakistan is generally good. However, while the section on counter-terrorism expresses UK concern about reports of human rights abuses perpetrated by Pakistan's intelligence and police authorities, including illegal and arbitrary arrests, enforced disappearances, extra-judicial killings and torture, it conspicuously fails to mention allegations of UK complicity in any of those abuses or the fact that British citizens have also been victims of such abuse. For more details we refer the Committee to Human Rights Watch's testimony to the Joint Committee on Human Rights cited in paragraph 14 above.

56. The section on Border Areas states: "We urge that all military action and security measures are part of a comprehensive approach to tackling the threat from violent terrorism and that it occurs within the parameters of international human rights standards." However, there is no mention of the repeated drone attacks by the US that have resulted in a high numbers of civilian casualties and that Pakistan's government has repeatedly called on the US to end these attacks. Such attacks inflame public opinion and undermine the government.

57. Russia. The report covers all the main issues, but it could have been more hard-hitting in its critique of Russia's human rights record in 2008. While the report generally cites other organisations rather than the UK's own observation when criticising the government, it does not always carefully attribute evidence of positive developments. For example it welcomes "the government's action to combat racist attacks" without specifying what that action was or how effective it has been.

58. The section on media freedom and safety of journalists fails to mention how long-standing the problem of impunity for violence against journalists is and doesn't give a full sense of the magnitude of the problem. Russia is one of the most dangerous countries in the world for journalists with more than 14 outstanding unsolved murders of journalists in the last nine years.

59. The section on racism and xenophobia is rather cursory. It welcomes an empty rhetorical statement on the subject by President Medvedev in his inauguration address, but makes no mention of migrant workers as common targets for racist violence or of the rhetoric of the government and the state-controlled media that creates a permissive climate for hate crimes or anti-migrant violence.

60. On Chechnya, the report cites "steady improvements in stability and security". This is a superficial analysis that ignores the high costs in human rights terms of achieving "stability" and the methods used to achieve it. The report notes ongoing allegations of torture and pressure on the local media and NGOs to restrict their activities or any criticism of the government, as if these are somehow separate from security and stability and not part of the methods used to get there. The report fails to identify those leaders who are well known to be responsible for the repression in Chechnya. The report's coverage of Ingushetia and Daghestan is sound.

61. Notably absent from the entry on Russia is any serious discussion of economic or social rights issues, the lack of democratic accountability, corruption (including the weakened judiciary) and Russia's lack of cooperation with international institutions. The report does urge cooperation with the Universal Periodic Review process at the Human Rights Council, but does not mention lack of cooperation with UN special mechanisms (especially the special rapporteur on torture), Russia's recalcitrance at the Council of Europe or problems in implementing European Court of Human Rights judgments against Russia and Moscow's failure to ratify Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

62. Saudi Arabia. The UK continues to tread carefully around the issue of human rights in Saudi Arabia, arguing for example that "many of our concerns regard punishments proscribed by Islamic Shari'a law, *a legal system supported by most Saudis*" (emphasis added). What the report fails to mention is that the Saudi authorities allow no free discussion of what Shari'a really is and block all alternative interpretations to its own exceptionally harsh one. The report suggests that support for Shari'a equates with support for the harshest punishments. Yet many other Muslim countries which implement Shari'a manage to do so without chopping off hands and heads.

63. In reality most of the FCO's concerns about human rights in Saudi Arabia rightly have to do with the poor quality of the judicial system. This has nothing to do with Shari'a and everything to do with an abusive system of governance and lack of accountability and transparency. In fact many of the most abusive features of the Saudi justice system are contrary to Shari'a.

64. Somalia. The report describes abuses committed by insurgent fighters in Somalia as fact, and abuses by Ethiopian and TFG security forces as "reported." In reality the evidence of war crimes and other serious abuses by Ethiopian and TFG forces in Somalia from late 2006 through the end of 2008 is overwhelming and undeniable. This is not just a semantic difference. For example the report notes that the UK has "raised its concerns with the Ethiopian government regarded alleged human rights abuses by its troops in Somalia." But the UK government cannot engage effectively around these issues with either the Ethiopian government or the TFG unless it takes the position that these serious abuses have without question occurred.

65. The report states that the UK remains "one of the few major donors to the UN Development Programme led effort to develop a full justice system," an effort that includes assistance to the TFG police. The report does not note that the provision of direct assistance to TFG police forces under this programme has in the recent past been alarmingly free of human rights conditionalities. Even as TFG police forces

committed serious conflict-related abuses and violent acts of criminality against civilians in Mogadishu, the UK and other donors assisting the police forces developed no effective mechanism to insist on effective TFG responses to such incidents. The current commissioner of police, Abdi Qeybdid, is implicated in serious abuses and should be replaced as a condition of any further donor assistance to the police forces. UNDP actually pulled back from providing direct assistance to the police because of these and other problems, in spite of donor pressure to do the opposite.

66. The report notes the UK government's support in principle for a Commission of Inquiry (CoI) in Somalia, which we welcome. However that support is too equivocal and the report strongly implies that now is the wrong time to set up such a mechanism because of difficulties gathering evidence and possibly that it could generate insecurity for humanitarian agencies. These concerns are overblown. Firstly, the task of gathering evidence about the most serious crimes in Somalia is a time-consuming one, not a one-off mission to be carried out in the space of a few weeks, and it needs to begin as soon as possible. Secondly, the longer the delay in beginning to gather evidence the more that evidence will tend to degrade and disappear over time. The expressed concern that a CoI—a mechanism purely focused on gathering evidence and entirely distinct from any eventual mechanism of accountability—could exacerbate threats against humanitarian and UN agencies is not backed by evidence or commentary. Humanitarian agencies operating in the field should be left to speak for themselves on this matter. We believe a CoI should be established immediately under the UN Security Council. Thorny questions about accountability mechanisms are better left for later and will need to be resolved through Somali-led processes.

67. The report notes that the UK government expected Somaliland's presidential elections to be held in March 2009. These polls have been delayed again for a further six months. There are worrying signs that the government's commitment to holding these elections and doing so in a free and fair manner is growing more equivocal with time. In light of these recent events the UK government should articulate a plan to use what leverage it has to ensure that free and fair elections take place without further delay.

68. Sudan. The paragraph on the International Criminal Court (ICC) says the right things about impunity, but says nothing on the campaign led by some African and Arab states to have the warrant for Sudanese president al-Bashir deferred (under Article 16 of the Rome Statute, the UN Security Council can intervene and defer ICC prosecutions). Given the nature of the crimes committed in Darfur, the clear political/military chain of command and Bashir's failure to cooperate with the ICC on previous warrants, the UK should make clear that a deferral of this warrant would be unjustified. The notion that justice can be traded for peace is a false one. The victims of abuse in Darfur have a right to justice and the world must tackle such crimes head-on if they are to hope to prevent future mass atrocities.

69. Syria. The report's coverage of Syria fails to cover some important issues. For example it does not mention the violations committed by the Supreme State Security Court (SSSC), an exceptional court with almost no procedural guarantees, which in 2008 sentenced at least 75 people to long prison terms. There is also no mention of the continuing information blackout imposed by the Syrian authorities on the shootings by Military Police of rioting inmates in Sednaya prison last July.

70. While the report notes that the Foreign Secretary did raise human rights issues during the visit of the Syrian Foreign Minister to London, and during his visit to Syria, Human Rights Watch remains concerned that the UK, along with other Western states, raised such issues in a marginal fashion and often as an afterthought. Syria's emergence from its international isolation in 2008 requires the development of a clear policy of engagement on human rights issues in that country.

71. Our concern is that if Syria starts to cooperate with the UK, the EU and the US on regional political issues, external pressure for improvements on the internal political front will diminish—as it has for Libya and Egypt. This would be short-sighted because a Syria that permits a free flow of information and internal debate about national interests and priorities is a Syria more likely to act responsibly in the region.

72. Turkmenistan. The report attributes to Turkmenistan "a readiness for dialogue with the international community over Turkmenistan's fulfilment of human rights obligations." While it is true that Turkmenistan does now participate in international human rights forums, participation alone should not be mistaken for a readiness for real dialogue or as a sign of willingness to reform.

73. The report fails to mention that the Turkmen government continues to deny the very existence of human rights problems in the country. On political prisoners, the chapter highlights the release of Saparmyrat Seyidov without mentioning that the he served his full prison term. There is no mention of important political prisoners such as Annakurban Amaklychev, Sapardurdy Khajiev (affiliated with Turkmenistan Helsinki Foundation), and Mukhametkuli Aymuradov. The report fails to mention the enforced disappearance of those accused in the alleged 2002 plot against President Niazov, including former foreign minister Boris Shikhmuradov, his brother Konstantin Shikhmuradov and former ambassador to OSCE Batyr Berdyev.

74. The report hardly covers the serious problem of torture in Turkmenistan. It mentions the stifling of the emergence NGO but does no mention threats to human rights activists and independent journalists, threats that often intensify during the visits of foreign dignitaries. While the report mentions the unofficial blacklist which prevents some people from travelling abroad, it does not specify who is subject to such bans and why (eg, relatives of exiled dissidents and activists).

75. In its future work on Turkmenistan Human Rights Watch urges the UK to focus on individual cases of political prisoners, victims of enforced disappearance and individuals on the travel ban blacklist and to push for access to the country, including to places of detention, for independent human rights monitors.

76. Uzbekistan. The report rightly notes ongoing problems on a broad range of issues but it also tends to emphasise positive developments which, in the view of Human Rights Watch, is hardly justified by the facts on the ground. For example the discussion of the review of Uzbekistan by the Committee against Torture opens on a positive note, even though core finding of the Committee was overwhelmingly negative.

77. On human rights defenders the report notes the arrest and trial of Akzam Turgunov and Solijon Abdurakhmanov, but fails to mention that the US and EU have clearly called for their sentenced be reviewed. The report could have reiterated the common EU position that all imprisoned human rights defenders should be freed.

78. Regarding trials, the report acknowledges that international observers do not always get permission to attend the officially open trials. But the report should have been clearer about the secrecy and chaos that often surrounds trials in Uzbekistan and about the total lack of independence of the judiciary, the problems local human rights defenders face in accessing court hearings, or the fact that lawyers are often not notified or notified at the last minute about their clients' hearings.

79. Regarding religious freedom, the report focuses mostly on of the problems faced by non Muslims, and gives little idea of the extent and severity of the problems faced by independent Muslims: the thousands of religious prisoners who are accused of membership of "extremist" or other banned religious organizations, are convicted in unfair trials where evidence and confessions obtained under torture are widely accepted, and who are sentenced to lengthy prison sentences with no real certainty that they will ever be freed.

80. There is also no mention of complete lack of accountability for the Andijan massacre, nor of the lack of an independent judiciary. Without an independent judiciary, the much-hailed habeas corpus reform cannot be considered such a great success.

81. Vietnam. The report states that there has been progress as well as setbacks in Vietnam's respect for civil and political rights. Our research shows that there was no significant progress during 2008. The main reason why the numbers of arrests of political and religious dissidents declined in 2008 is that dozens of people were arrested, forced to cease their peaceful political activities, or fled Vietnam during government crackdowns in 2006–07. While Vietnam has made important strides in poverty reduction and economic reforms in recent years, it remains completely intolerant of peaceful dissent or any challenges to its one-party rule and it has a long way to go in ensuring the right to freedom of religion.

82. The report highlights progress in the government's legal and judicial reform programs and the National Assembly's more active role in the lawmaking process. However peaceful expressions of dissent and unsanctioned religious activities continue to be criminalized, primarily through imprecisely defined "national security" provisions in the Penal Code; and most trials fail to meet international fair trial standards.

83. The report highlights attacks on media freedom during 2008 and the UK's intervention during the year on key cases such as the arrests of journalists for exposing corruption. It neglects to mention the government's controls over the internet, including stiffened regulations on internet usage imposed during 2008.

84. The report mentions government proposals to greatly reduce the scope of the death penalty. But it fails to note that such proposals have been pending for some time now, that there is significant opposition from some Vietnamese legal experts to removing the death penalty for crimes of corruption and bribery, and that no initiatives are under consideration to remove capital punishment for national security crimes such as espionage, which has been used to charge and imprison people for peaceful expression of their right to free speech. The FCO should urge the Vietnamese government to sign the Second Optional Protocol to the UN ICCPR on the Abolition of the Death Penalty.

85. The report fails to mention Vietnam's extremely harsh and at times life-threatening prison conditions, particularly on death row, and the use of torture in detention. While detailed information about prison conditions in Vietnam is difficult to obtain, the FCO should raise questions about prison conditions and insist that the Vietnamese government provide greater access to and information about prisons.

86. The report fails to mention Vietnam's violation of international labour standards, by forbidding workers from organizing unions that are independent of the Party-controlled labour confederation and banning strikes not approved by the official confederation. The report also fails to mention the harassment, imprisonment, and placement under house arrest of independent trade union advocates, and the February 2008 appeals trial that upheld the imprisonment of three labour activists on charges of "abusing democratic freedoms".

87. On the issue of freedom of religion, the report does not note, as it did in its 2007 report, that in practice the government maintains its control over religious organizations. In addition, progress and improvements in religious freedom have been uneven and inconsistent in implementation, depending on the religion and the locality.

88. The report makes no mention of ethnic minority tensions, such as the imprisonment or house arrest of Khmer Krom Buddhist monks and ongoing land rights protests in the Mekong Delta, demonstrations by Montagnard Christians in April 2008 in the Central Highlands, and ongoing arrests and imprisonment of Montagnards for peaceful expression of religious and political beliefs.

89. The report makes no mention of abuses against women and children in Vietnam, which continues to be a source of and transit point for women and children trafficked for forced prostitution, fraudulent marriages, and forced domestic servitude to other parts of Asia. Sex workers, trafficking victims, street children, and street peddlers—officially classified by the government as "social evils"—are routinely rounded up and detained without warrants in compulsory "rehabilitation" centres, where they are subject to beatings and sexual abuse.

90. Zimbabwe. The report does not focus sharply enough on the need for increased pressure on Zimbabwe to effectively end impunity for past human rights abuses by ZANU-PF and its allies in the army, prison service and police. Serious human rights abuses continue unabated partly because perpetrators enjoy impunity for their actions and know that they have the support and protection of the state. There is an urgent need for justice sector reforms to restore rule of law. Such reforms would include scrapping all repressive legislation and replacing it with laws that comply with international human rights standards. There is also a need for independent commissions to select Zimbabwe's future judiciary. Too many of the current incumbents are tainted by association with ZANU-PF.

91. The FCO human rights report could have highlighted the role of the Mugabe regime in creating and perpetuating the humanitarian crisis through adverse economic policies and practices (notably the role of Zimbabwe's central bank) and rampant corruption particularly at the Grain Marketing Board. There is a direct link, as shown in Human Rights Watch's "A Crisis Without Limits" report, between the humanitarian crisis and the underlying political crisis.

92. The report does not set benchmarks to be met by any new government in Zimbabwe before development aid flows can resume. The FCO should announce such benchmarks including governance and rights reforms to be measured in actual behaviour as well as specific steps that authorities in Zimbabwe should take to ensure greater accountability and transparency. It is now clear that no sustainable resolution to the political situation is possible without a demonstrable commitment to genuine reforms by the Zimbabwe authorities. This must include a clear commitment to hold to account those responsible for past human rights abuses.

93. For the time being, the UK should maintain its high levels of humanitarian aid (but avoid delivering aid directly to the government) and press for the retention of targeted EU sanctions against those individuals responsible for serious rights and governance abuses.

24 April 2009

Submission from Independent Tibet Network

SUMMARY

— Independent Tibet Network is a research and campaigning organisation supporting justice, human rights and independence for the Tibetan and Uyghur peoples. It operates internationally and has a prominent internet profile through its website-www.tibettruth.com

— An important aspect of our work concerns human rights violations resulting from China's coercive population-control policies, as applying inside Tibet, East Turkestan, and China. In addition we also monitor and lobby the Foreign and Commonwealth Office on this subject.

— We remain concerned that this major human rights matter is not being extended, by the Foreign and Commonwealth Office, any serious examination, nor being given sufficient exposure in its annual human rights reports. In particular we express our disappointment that this subject is entirely absent from the 2008 Report, a step-backwards from its 2007 Human Rights Report which at least contained a short tentative paragraph on the issue.

— The Foreign and Commonwealth state that their work regarding women's human rights is guided by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) along with the Beijing Platform of Action. Yet China's coercive birth-control program is in clear violation of both these international commitments, which the FCO considers of such little importance that it selects not to include it in its Human Rights Report 2008.

— On violence against women the FCO claims that: "The UK has been one of the main supporters of the key UN General Assembly Resolution on Violence against Women. Working through the UN means that all UN member states agree international standards on violence against women and take practical measures to combat it. We were pleased that this was adopted by consensus".

— All violence that is except forced sterilisations, a subject which was recognized as constituting violence against women, by the Beijing Declaration, upon which the FCO maintains a deathly silence in its report and wider activities and publications.

— The section of its human rights report concerning women's human rights, featured a range of issues from lesbian rights, female genital mutilation, equality to forced marriage, although China's medical atrocities against women appear strangely absent.

— Despite including a range of human rights violations within its section on China, the FCO human rights report singularly failed to make reference to coercive birth-control in China. Interestingly such selectivity was not applied to the Democratic People's of Korea where the FCO Report mentions alleged abuses as including "forced abortions".

— The deliberate exclusion of what is a major human rights issue which impacts upon countless numbers of women in China, Tibet, East Turkestan and other occupied territories, one that violates a number of key international human rights instruments (to which China is signatory), cannot be reasonably justified by the FCO.

— This memorandum scrutinises the background to these concerns, provides some detail on the existence of medical atrocities resulting from China's population policies and includes accounts of coercive birth-control in Tibet, and East Turkestan. It concludes with a number of recommendations, requesting the Foreign Affairs Committee to urgently forward to the FCO for their action.

Introduction

1. Reference to "Tibet" in this memorandum refers to the historic, political and cultural regions of Tibet comprised of U-Tsang, Kham and Amdo. Parts of these territories were forcefully absorbed and renamed by Communist China into Chinese provinces, leaving a truncated region, the so-called "Tibet Autonomous Region". Mention of East Turkestan relates to the Moslem-Uyghur territory, annexed and renamed by communist China as "Xinjiang".

2. The current oppression suffered by the peoples of Tibet and East Turkestan operates through a range of human rights violations. A central, if under-exposed issue, and one which the Foreign and Commonwealth Office has disappointingly chosen not to give any exposure to in its latest Human Rights Report, is China's coercive population control programme. Despite claims to the contrary from a number of multi-lateral population agencies (United Nations Fund for Population, International Planned Parenthood Federation and Marie Stopes International) by nature, ideology and application China's birth-control programme remains inherently coercive. Inflicting upon women a spectrum of abuses including forced sterilisations:

> "From the beginning to the end, each village and town must give the highest priority to the tubal-ligation of women who have given birth to two girls, especially within those villages where these women have not yet had their tubes tied. We must demonstrate dogged determination and to the bodies of every cadre. Set the time and set the assignment. On multiple levels and using different channels, we should obtain information on spouses who are attempting to flee the county. By hook or crook, we must carry out contraceptive measures and every village must meet at least one of its target assignments."
>
> (Speech made by Tian Xiangrong 31 July 2006 Tongwei County Government (Online—As Documented in the US Congressional Executive Commission on China-Annual Report 2008.)

3. Such draconian appeals expose an official tolerance of abuses inflicted by family planning officials, which appear in China's regional family planning laws:

> ". . . Pregnancies that do not comply with the legal requirements for childbirths shall be terminated in a timely manner." (Hunan Province Population and Family Planning Regulations, Article 22.)

4. Enforcement is also afforded state approval, a fact reflected in China's Population and Family Planning Law 2002.

> "Article 41 Citizens who give birth to babies not in compliance with the provisions of Article 18 of this Law shall pay a social maintenance fee prescribed by law. Citizens who fails to pay the full amount of the said fees payable within the specified time limit shall have to pay an additional surcharge each in accordance with relevant State regulations, counting from the date each fails to pay the fees; with regard to ones who still fail to make the payment, the administrative department for family planning that makes the decision on collection of the fees shall, in accordance with law, apply to the People's Court for enforcement".
>
> "Article 43 Anyone who resists or hinders the administrative department for family planning or its staff members in their performance of their official duties in accordance with law shall be subject to criticism and be stopped by the administrative department for family planning . . .."
>
> (Population and Family Planning Law of the People's Republic of China (Order of the President No 63) September 1, 2002.)

5. It is often asserted by defenders of the Chinese population programme, and the FCO has long been a supporter, that a relaxation of such coercive measures were a part of China's 2002 national family planning law. However, as indicated by the extracts above there is no sign of moderation presented nor anything about prohibiting, punishing, or avoiding coercive practices.

6. Neither does it identify or condemn specific coercive measures used across China (and occupied territories such as Tibet and East Turkestan). Significantly though it does emphasize precise acts obstructing family planning and provision is made for their punishment.

> "China's population planning policies in both their nature and implementation constitute human rights violations according to international Standards." (US Congressional Executive Commission on China-Annual Report 2008.)

7. That coercion remains at the centre of China's population policies and practice is beyond dispute, yet the FCO in its decision not to include this issue in its Human Rights Report seems to disagree. Such a deliberate omission places the FCO at odds with the findings of the United States State Department's Country Report on China:

> "The government [China] continued its coercive birth limitation policy, in some cases resulting in forced abortion or forced sterilization" (US State Department 2008 Human Rights Report: China Published 26 February 2009.)

8. What is puzzling about the Foreign Office's exclusion of any reference to this subject, is its awareness of coercive birth-control abuses within Tibet, East Turkestan and China. Which have been reported and condemned by bodies such as; United States Congressional Committee on China, US State Department, Amnesty International, members of the United States Congress, Optimus, Foreign Affairs Committee, Human Rights Watch, Independent Tibet Network, Asia Watch and the British Medical Association.

9. Its action therefore not to give any prominence to coercive birth-control and related violations; either through its website, human rights documentation and reports, is extremely disappointing. The FCO appears indifferent to the existence of these medical atrocities, despite the findings of internationally respected human rights bodies:

> "Women face forced abortion and sterilization as part of China's enforcement of its one-child policy". (Amnesty International USA Press Statement, 20 February 2009.)

10. Nor does it appear to regard the comments of former United States Secretary of State Colin Powell as investing the issue with sufficient importance to feature in its Human Rights Report

> "China has in place a regime of severe penalties on women who have unapproved births. This regime plainly operates to coerce pregnant women to have abortions in order to avoid the penalties and therefore amounts to a "program of coercive abortion." (Comments issued in July 2004 after a US "fact-finding mission" into China to determine UNFPA's complicity with China's coercive population control programme.)

11. We would respectfully remind the Foreign Affairs Committee that Independent Tibet Network have over the years provided the FCO, Government Ministers, the Department for International Development and individual Members of Parliament with detailed information on this issue. Along with members of the research group, Optimus, we briefed, in 1993, officials of the China and Human Rights Desks. We also made available reports including *Children of Despair* and *Orders of the State* (ITN 1992 and 2000 respectively). The latter forming written evidence to the *Inquiry into Relations with China* Foreign Affairs Committee Report on China 2000) submitted also to the Foreign Affairs Committee (Ninth Report 2007-08). Further information was made available for that Parliamentary report, including testimony detailing forced sterilisations of Tibetan women, official Chinese birth control regulations as applying to Tibet and East Turkestan, and a critical examination of the role of UNFPA, IPPF and DFID and the baseless claim that their association with China's population programme has brought a moderation of coercive practices.

12. A remarkable aspect of this affair is that the Foreign and Commonwealth Office through its colleagues at the Department for International Development acknowledge that violations are occurring as a consequence of China's population activities:

> "It is of course true that abuses in family planning continue to occur in China." (DFID correspondence to Independent Tibet Network 20 December 2002.)

13. Although asserting that such abuses are condemned by Britain, the FCO has failed to make available any evidence that it has presented to China its official condemnation, thus we have only an assurance of denunciation.

14. Meanwhile the FCO argues for continued population agency involvement and financial sponsorship of such organisations, on the basis that such bodies may exert a moderating influence, and will remain while the potential for positive change remains. Such extenuating sophistry flies-in-the face of continued violations, increased calls for coercion, and a hardening of Chinese government attitudes to enforce the population programme.

15. On a number of occasions during our efforts to secure some positive response from the Foreign and Commonwealth Office, we have been assured that should no moderation or progress be possible, with respect to China's population programme that Britain would reconsider its position and association with agencies working inside China:

> "We would only contemplate withdrawal of support for UNFPA and IPPF activities in China if it became clear that neither organisation was making any progress in changing China's population policy and its implementation. (ODA [DFID] Correspondence to Independent Tibet Network 11 January 1995.)

16. 14 years later such implementation remains highly coercive, while the policy is inherently draconian.

> "Should it become clear that no progress is being made, the British Government would need to reconsider its support to UNFPA and IPPF work in China." (FCO Correspondence to Independent Tibet Network 30 September 1993.)

17. As campaigns of forced sterilisation are inflicted upon across China, Tibet and East Turkestan the brutalized women of those territories have witnessed nothing but state-engineered violence operating under the guise of population control. So much for progress!

18. Since 1989, in cooperation with Optimus we have furnished the Foreign and Commonwealth Office with a series of informative papers and correspondence, that has consistently appealed for greater exposure of this major human rights violation. It is therefore not a lack of detailed information that explains the FCO's virtual silence on this matter, or its regrettable decision to exclude the issue from its 2008 Human Rights Report.

19. We express our serious concern at this neglect, of what constitute a pattern of gender-based violence that Tibetan Uyghur and Chinese women suffer as a consequence of China's population policies. This includes forced or coerced sterilizations and forced abortions.

20. Furthermore such abuses take place against a background of other human rights violations, and in the case of the Tibetan people a denial of their fundamental right to self-determination, as recognized by General Assembly Resolution 1723 (XVI) (1961) and reaffirmed by Resolution 2079 (XX) (1965). Forced sterilisations, coerced abortions and sterilisations, in tandem with intrusive monitoring of women's reproductive cycles, constitute acts of discrimination that violate:

> Articles 1 and 2 of the Convention on the Elimination of Discrimination Against Women (CEDAW).
>
> Article 16(e) of CEDAW specifically guarantees women the rights:
>
> "to decide freely and responsibly on the number and spacing of their children and to have access to the . . . means to enable them to exercise these rights."

21. At the Fourth World Conference on Women, the participating governments, including Britain's and China, recognized and reaffirmed:

> "the right to have control and decide freely and responsibly . . . matters related to . . . reproductive health, free of coercion . . . and violence." (Beijing Declaration and Platform of Action, para 96.)

To this end, governments agreed to:

> "Take all appropriate measures to eliminate . . . coercive medical interventions . . ." (paras 106(h).)

22. Having collectively agreed and committed Britain to the terms and agreements of the Platform for Action and The Beijing Declaration, which rightly defined violence against women as including:

> ". . . forced sterilisation, and forced abortion, coercive/forced use of contraceptives . . ." (Paragraph 115).
>
> the Foreign and Commonwealth Office has virtually ignored such abuses as there are inflicted women in Tibet, East Turkestan and China.

23. Television Documentary Exposes Forced Sterilisations of Tibetan Women:

> Tibetan Lady: "Those who can't pay the fine have to have a sterilisation. If you have good connections you can buy a sterilisation certificate for around 1,000 Yuan. But those who don't have any money have to have the sterilisation whether they like it or not. I was forcibly taken away against my will."
>
> Tibetan Interviewer: "Did you cry?"
>
> Tibetan Lady: "I cried when I was lying on the bed after the sterilisation. I cried thinking that I'd been forced to have a sterilisation when there was nothing wrong with me. I was feeling sick and giddy and couldn't look up. It was so painful. Apparently they cut the fallopian tubes and stitch them up. When they opened me up they pulled them out by the roots. It was agonising. They didn't use anaesthetic.
>
> They just smeared something on my stomach and carried out the sterilisation. Apart from aspirin for the pain there were no other drugs. And then from the day after the operation I had to look after myself. If I needed a drip I had to pay for it myself."

Tibetan Interviewer: "Can you show me the scars from the sterilisation?"

Narration: The woman shows Tash her scars, recounting how,

Tibetan Lady: "I was so frightened. I can't even remember how I felt. I wasn't the only one. About half a dozen women in our village had to undergo sterilisation."

Tibetan Interviewer: "Forcibly?"

Tibetan Lady: "Yes, forcibly. No one would have done it willingly. They come to the door to fetch you by force. They threaten to confiscate stoves and anything valuable from the house. So people get frightened and go for the sterilisation. Some people were physically damaged by the operation. They have limps and have to drag their hips. Since then people are too scared to have many children."

(Interview with a Tibetan women as featured in the Channel Four Television Documentary, *Undercover in Tibet*. Broadcast 28 March 2008.)

24. Interview with Birth-Control Official in East Turkestan:

Radio Free Asia (RFA: "Your office is proceeding with the new birth control plan?"

Birth Control Officer 2 in Korla City: "Yes, we received a new birth control plan, the first of January in 2003, and started our job according to the new plan."

RFA: "If someone is suspected with illegal pregnancy what would happen?"

Birth Control Officer 2 in Korla City: "We forcibly make her abort her child"

RFA: "Does it have to be forced? If she refuse [sic] what will be happen?"

Birth Control Officer 2 in Korla City: "Yes, it must be forced. If not, how we can control the population? It is clearly mentioned in our birth control policy."

25. RFA also interviewed women involved in the UNFPA county project:

RFA: "Usually [do] hospitals explain anything about the risks of IUDs or abortions?"

Woman: "No . . . we accept insertion of IUD because we have to do it. Peasants [are] against birth control but government workers [are] not."

RFA: "If government workers wanted to have more children, what would happen?"

Woman: "They have to pay [a] heavy fine or they will be fired."

RFA: "If the government finds out someone is illegally pregnant, in spite of the age of [pre-born] baby, will they force her to do abortion?"

Woman: "Yes, pregnant women will be forcibly brought to the hospital by birth control officers. Birth control officials wait for her until the operation is done, because they want to make sure the baby was killed or not."

RFA: "How do birth control officers find that someone's pregnancy?"

Woman: "Their job is searching about each family's private life everyday. They can find out. In case someone had not been [discovered], all responsibility would [go] on birth control officer's head."

(Radio Free Asia, *Family Planning in Uyghur Region*, 17 March 2003.)

Conclusions

26. There remains genuine concern in this country about such medical atrocities, and a deep sense of unease at the Foreign and Commonwealth Office's association with communist China's birth-control programme, through its support; moral, political, and financial, of multi-lateral population agencies working there.

27. This was reflected in Parliament on 8 May 2008 by Mr David Amess MP, who rightfully asked if the Foreign and Commonwealth Office, in its regular discussions with China had raised the implementation, in Tibet, of the Population and Birth-planning Law 2002. Responding for the Government Mr Jim Murphy MP revealed that "We have not discussed the implementation of China's population and family planning law with the Chinese Government with specific reference to Tibet . . .".

28. Although it would seem the FCO claimed to have raised the *One Child Policy* during the UK-China Human Rights Dialogue, no details were forthcoming on the nature of such discussions. Any hope that the FCO would open up its considerable files on the subject were not encouraged by Mr Murphy's insistence that:

> "A more detailed survey of all the exchanges between UK Ministers and officials with Chinese authorities from 2006 would require a search of files held centrally and at all posts in China, which could be achieved only at disproportionate cost."

29. Why is the FCO seemingly unable or unwilling to make available for public or Parliamentary scrutiny details of its exchanges with China on human rights?

30. Meanwhile, the present policy of dialogue with communist China (which the FCO claims it regularly raises ". . . concerns with the Chinese Government about the implementation of China's population and family planning law") as a means of improving human and reproductive rights has proved a singular failure, as witnessed by ongoing coercive practices inside China, Tibet and East Turkestan. There is an urgent need to reassess this aspect of relations with communist China, for the Foreign and Commonwealth to give full and detailed coverage of this serious violation of women's human rights, and in so doing restore a much needed sense of ethics to UK foreign policy.

RECOMMENDATIONS

31. Independent Tibet Network respectfully requests that the FAC.

32. Given the Foreign Affairs Committee considers this subject to be a grave violation of human rights, as evinced by the FAC's Tenth Report (2000) which concluded that:

> ". . . restrictions on reproductive rights in China re not in keeping with Article 23 of the International Covenant on Civil and Political Rights, which give men and women the right to found a family" (Paragraph 41-Reproductive Rights.)
>
> submit a formal request to the Foreign and Commonwealth Office that it include, in all future Annual Reports on Human Rights and China, the issue of China's population control programme (as applying to Tibet, East Turkestan and China) and a detailed, forceful and critical analysis, featuring and informed by material from independent human rights organizations.

33. Call upon the FCO to include, in the UK-China Human Rights Dialogue, with specific reference to Tibet, the implementation of China's population and family planning law.

34. Ask the FCO to implement an independent evaluation involving a forum of relevant and independent organizations including human rights monitors to more factually and independently assess the Chinese population programme, as they impact upon Buddhist-Tibetan, Moslem-Uyghur women, and other subject peoples within Chinese-occupied territories.

35. Request the FCO to establish an impartial and credible investigation of the role of IPPF and UNFPA in the Chinese programme and a realistic assessment of the potential for change these organizations might deliver.

36. To request the FCO to provide genuinely independent evidence that UNFPA and IPPF have prevented coercive practices, including forced sterilisations. Should such a conclusion not be convincingly demonstrated to honour previous assurances made by both the FCO and DFID that a withdrawal of UK support for UNFPA and IPPF would be considered.

37. Call upon the FCO to make available for Parliament, human rights organisations and/or members of the public details of exchanges between its officials and Chinese representatives within the annual UK-China Human Rights Dialogue. Making available for public examination evidence that the FCO has formally expressed its condemnation to China concerning coercive practices within that population programme

38. Demand that FCO urgently establish a programme linked to future availability of international aid and involvement aimed at encouraging the Chinese government to switch their reliance on sterilization and abortion to the use of safe, effective and voluntary methods of contraception so that the Chinese programme can be brought into line with CEDAW Articles 1, 2 and 16e, The Rome Statute of the International Criminal Court Article 7.1 and the Beijing Declaration and Platform of Action, including Paragraphs. 96, 106 (h) and 115.

14 April 2009

Submission from International Centre of Trade Union Rights (ICTUR)

INTRODUCTION

1. For many decades now Gibraltar has been largely dependent upon the services of a large number of migrant workers in order to support industries associated with the military dockyards. Prior to 1969 the majority of these migrant workers were Spanish citizens, who crossed into Gibraltar on a daily basis from Southern Spain. In 1969 the Spanish authorities closed the border leaving a strategic military facility facing a severe crisis with shortages of several thousand workers who could not be replaced locally.

2. In desperation, the Gibraltarian state and the British government turned to the Kingdom of Morocco, just a few miles across the Straits. Thousands of Moroccan workers were recruited and encouraged to travel to Gibraltar and to take up employment with the Public Services Agency which managed construction, property and service operations around the naval dockyard. Within nine months of the 1969 border closure the Moroccan migrant workforce consisted of at least three thousand workers.

3. For almost 40 years—and in some cases longer that this—Moroccan migrant workers have played an essential role in supporting the economy of Gibraltar by maintaining the dockyards. During the height of the cold war, funding from the United Kingdom Ministry of Defence represented 60 percent of Gibraltar's GDP. Now that the strategic importance of the Rock no longer requires a significant military presence, a reduced number of Moroccan workers are now engaged in a wide range of other activities, typically of a civilian nature.

4. In late 2008 the Gibraltar District Office of Unite contacted ICTUR to express concern at the continuing allegations of discrimination and arbitrary treatment of Moroccan migrant workers.[49] Following a series of meetings between ICTUR staff and officials from the Gibraltar District Office of Unite, it was agreed that ICTUR would carry out a research and fact-finding mission. Although our work is on-going, we welcome this opportunity to share our preliminary findings with the Committee. But this is very much work in progress, and it is work which may continue for some time.[50]

5. In February 2009 a delegation from ICTUR travelled to Gibraltar. The District Office of Unite provided every facility to support ICTUR's visit and organised an itinerary of meetings with the Moroccan Workers' Association, the Moroccan Community Association, Unite officials and representatives of the GGCA trade union, as well as arranging a series of invaluable meetings with political leaders. Unite also organised a public meeting to which members of the Moroccan community were invited to express their views. The participation in this meeting of some 500 members of the Moroccan community demonstrated the immense level of dissatisfaction felt by the community about the current situation.

6. The local press showed considerable interest in the issue, with the Gibraltar Chronicle covering both the visit of the ICTUR delegation and the public meeting called by Unite and the migrant workers' associations in articles appearing on 14 and 21 February and again on 16 March, the last reporting the contents of an ICTUR letter published in the *Guardian* newspaper.[51] Prompted by the ICTUR letter, the *Guardian* conducted its own investigation, which largely coincided with our concerns.[52] According to the local media, there is now an "international spotlight on the plight of Gibraltar's 'second class' citizens".[53] Since then the matter has been considered intermittently in the Gibraltar press, and it will be discussed at the ICTUR Administrative Council meeting in Geneva on 13 June 2009.

The Treatment of Moroccan Workers

7. It is important to emphasise, that the discrimination against Moroccan workers that we encountered is not a problem in the private sector, in employment, in the street, or in social interactions; rather it is a problem stemming directly from the public authorities. The problems we identified include (i) allegations about slow, arbitrary, and discriminatory processing of applications for citizenship; (ii) denial of the right to vote to people who have been living, working, and paying taxes in Gibraltar for up to 40 years; (iii) discriminatory provision of public housing; (iv) separation of families; and (v) ineligibility for certain welfare benefits. We note that a senior Gibraltar government spokesman is quoted on the Guardian website as acknowledging that 'one or two public services (for example, government "council" housing) are available only to British nationals', while disputing that this amounts to "racism".[54] A Gibraltar government spokesman is quoted elsewhere as saying that "There is absolutely no discrimination in Gibraltar based on race"', which "in any case", it was said, is "unlawful under our Constitution".[55]

Naturalisation

8. Moroccan migrant workers resident in Gibraltar for long periods of time (including some resident for 40 years or more) have often struggled to obtain naturalisation. The people we spoke to complained of slow, arbitrary and discriminatory application processes for citizenship. Most of those we spoke to were aware of the allegation about arbitrary, unpublished and unofficial policies that are applied to applications. English language skills have recently introduced a new obstacle, as English may be the Moroccans' third or fourth language, and is not the language commonly used in their workplaces where even Gibraltarians often use Spanish or Llanito.

[49] ICTUR was established in 1987 to promote and defend the rights of workers and carries out its activities in the spirit of the United Nations Charter, the Universal Declaration of Human Rights, International Labour Organisation Conventions and Recommendations and other appropriate international treaties. Based in London, ICTUR has since developed a global network of expertise on international labour rights, and is now widely regarded as an internationally recognised centre of excellence on international labour standards and human rights. In 1993 ICTUR was granted accredited status with both the UN and the ILO. More than 50 national trade unions are affiliated to ICTUR, its global membership also including human rights organisations, research institutes and lawyers' associations. The ICTUR president is Sharan Burrow, President of the Australian Council of Trade Unions, and also President of the International Trade Union Confederation (ITUC). Vice Presidents are Mordy Bromberg SC, Australian lawyer; Professor Keith Ewing, British lawyer; Dr Fathi El-Fadl, Sudan Trade Union Alliance; John Hendy QC, British lawyer; Jeffrey Sack QC, Canadian lawyer; Jitendra Sharma, Senior Advocate, Supreme Court of India; and Hassan Sunmonu, General Secretary, Organisation for African Trade Union Unity.

[50] For an earlier account, see D Blackburn, *Disgrace on the Rock* (2009) (2) International Union Rights 22.

[51] D Blackburn, K Ewing and J Jeffries, *Gibraltar's Treatment of Migrant Workers*, The *Guardian*, 12 March 2009.

[52] See G Tremlett, *Rock and a Hard Place*, The *Guardian*, 28 March 2009.

[53] Vox Online, 9 April 2009.

[54] http://www.guardian.co.uk/money/2009/mar/28/work-discrimination-gibraltar-morroco

[55] *Gibraltar Chronicle*, 30 March 2009, reporting the Government's response to earlier claims made by ICTUR (*Guardian*, 12 March 2009), and the *Guardian* (28 March 2009).

9. In an interview with the Moroccan Workers' Association, we were told that there are "no clear rules in Gibraltar", but that "there is an unwritten policy, a whim". They believe that in addition to the "whim" of the authorities the rules require "roughly 20 years residency in Gibraltar, good knowledge of English, currently in employment, and have good conduct". The Association confirmed that the Moroccans living in Gibraltar overwhelmingly want to become naturalised. Of the thousands who have lived and worked in Gibraltar over the past four decades, the Association was aware of "perhaps 100–150 people" who have successfully obtained naturalisation. The application process, they told us, is "slow and mysterious".

10. In a separate interview with the Moroccan Community Association, we were told that many of the Moroccans living in Gibraltar have been resident for 30–40 years. Older, retired workers are leaving and no new workers are arriving. They were of the opinion that in some cases naturalisation could be a fast process, particularly for men without children. The process might be achieved for these applicants within two years of making an application. But these cases were the exception. The Association complained that children of Moroccan migrant workers are not entitled to a passport until they are 10 years old. They did not know, however, whether passports were provided to the children of naturalised Moroccans or Gibraltarians at an earlier age.

11. We should note that since returning to London, our attention has been drawn to Gibraltar media reports which appear to have been stimulated by our visit. Some of the coverage suggests that there has been a significant spike in the number of Moroccans who have been naturalised in recent years.

— From 1999 to 2005, the annual figures were said to be two (1999), four (2000), three (2001), one (2002), seven (2003), eight (2004), and two (2005);

— In 2006, however, the figures rose to 26, and remained stable at 21 and 28 in 2007 and 2008 respectively. Figures so far for 2009 were only two.

Although the increase is to be welcome, it does not answer the questions about the process, but simply invites more such questions. Nor does it overcome the sense of grievance felt by some who still feel that there is undue delay, as in the case of one of the people we spoke to. He applied for naturalisation in 2002 and has heard nothing since, not even an acknowledgement of his application, believing that the reason for his poor treatment is that he has young children in Morocco. These children would be entitled to join their father in Gibraltar were his application to be granted.

Political Rights

12. Long-term residents have paid taxes and contributed to society over extraordinary periods of time: in some cases their entire working lives. As non-EU nationals throughout this period they have been denied the right to vote in Gibraltar. Many migrant workers have attempted to register but have had their applications turned down on the basis of nationality. Both the MWA and the MCA presented ICTUR with copies of written claims for registration on the electoral roll which had been presented by workers and tax-payers who had been resident in Gibraltar for periods of 31 years; 35 years; 36 years; and 40 years respectively. The Electoral Office Registration Officer replied in each case: "I intend to disallow your application . . . on the following grounds . . . you are a Moroccan national".

13. We regard this position to be especially unfortunate in light of:

— The decision of the European Court of Human Rights in *Matthews v United Kingdom* (1998) 28 EHRR 361, where a complaint was lodged that a Gibraltar resident had been denied any opportunity to express her opinion in the choice of members of the European Parliament, despite the fact that legislation that emanated from the European Community formed part of the legislation in Gibraltar and the applicant was directly affected by it. This was held by the Court to breach Article 3 of the First Protocol to the European Convention on Human Rights.[56] Gibraltarians may now vote in European Parliament elections, as some of them will do on 4 June 2009.

— The decision of the European Court of Justice in Case C-145/04, *Kingdom of Spain v United Kingdom*, where it was held that Community law does "not exclude, therefore, a person who is not a citizen of the Union, such as a [Qualified Commonwealth Citizen] resident in Gibraltar, from being entitled to the right to vote and stand for election" (para 70). Later in the same decision the ECJ made clear that "in the current state of Community law, the definition of the persons entitled to vote and to stand as a candidate in elections to the European Parliament falls within the competence of each Member State in compliance with Community law, and that Articles 189 EC, 190 EC, 17 EC and 19 EC do not preclude the Member States from granting that right to vote and to stand as a candidate to certain persons who have close links to them, other than their own nationals or citizens of the Union resident in their territory" (para 78).

[56] Article 3 provides that "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

14. The satisfactory resolution of the naturalisation complaints would go a long way towards addressing the problem relating to political rights, in the sense that once naturalised a migrant worker would be entitled to be registered to vote. We see no reason, however, why a migrant worker with a sufficiently close connection to Gibraltar should not be entitled to register to vote without the need for naturalisation. To this end we fully endorse the principle which we heard in Gibraltar from several sources that there should be "no taxation without representation", a principle which in our view is as compelling in the 21st century as it was in the 18th. We also note that the compelling arguments that won Gibraltarians the franchise in European elections are just as compelling when applied to Moroccan workers resident in Gibraltar.

15. It is true that the practice of many countries is to restrict the franchise only to citizens. In the United Kingdom, however, the right to vote in parliamentary elections is extended to British and Irish nationals and to Commonwealth citizens, with an even wider franchise for local government and European elections.[57] There are thus always exceptions, and in our view the position of migrant workers in Gibraltar is quite exceptional. It is exceptional not only because of the length of time many of the workers in question have spent there, but also because of the unequivocal commitment they have made to the community and its economy. So far as we understand, there would be no obstacle in either the ECHR or in EU law to the granting of such rights to workers who qualified on the basis of a prescribed period of residency, regardless of whether or not they are naturalised.

16. To this end, we would draw attention to the ILO's Multilateral Framework on Labour Migration. This is a set of non-binding principles and guidelines for a rights -based approach to labour migration adopted by the Governing Body of the ILO in 2006. The instrument "invites governments of States Members of the ILO, employers and workers' organisations, as well as relevant international organizations, to promote and respect its contents". So far as immediately relevant, the Framework encourages States to allow "migrant workers to participate in political activities after a period of legal residence in the country, in accordance with national conditions".[58] Any such extension of the franchise would of course—as a matter of principle—apply to all migrant workers (not only Moroccans) in Gibraltar who satisfied the prescribed residency requirements, though it is likely that the Moroccan workers would form the bulk of any such extended franchise.

Housing

17. Moroccan workers complain of discriminatory access to public housing. The Moroccan Community Association in a document passed to our delegation complained that "we are unable to include ourselves on the Government housing list". We have been told that the Government of Gibraltar Housing Allocation Scheme restricts eligibility for government housing to Gibraltarians, British nationals, and Commonwealth citizens. We have also been told that the eligibility rules serve to bar the Moroccan migrant worker community from access to or even from applying for access to the government housing. The Moroccan workers are thus denied access to affordable public housing, which is subsidised and occupied by Gibraltarians, and must as a result find accommodation in the private sector or in the government run *Buena Vista* hostel.

18. In December 2004, Sussex University Migration Briefing commented on the high proportion of Moroccans in private rented accommodation and reported that "almost all [Moroccans] live in the oldest part of town, west of Main Street, the area of lowest quality housing". During our visit to Gibraltar, we were told by the Moroccan Community Association that there was a shortage of private rental accommodation at affordable prices. There appear also to be serious questions about the quality of the private sector accommodation, as the following passage from the Guardian report makes clear:

> From the two shabby tenement rooms he shares with four others, Ahmed Taheri can see the luxury harbourside developments where wealthy foreigners, the "high net worth individuals" who buy residency in Gibraltar, live.
>
> Caruana boasts that if Gibraltar were a sovereign state it would have the world's 13th highest GDP per capita. You wouldn't know from Kavanagh Court, where Taheri and his room-mates share an outside bathroom with other Moroccans living in rooms off a staircase and two ramshackle courtyards. Now a security company is threatening to evict them because tenants in other rooms are behind on rent.

19. Unfortunately, this report was followed by an eviction of Mr Taheri and six other Moroccan nationals, in what the local press source referred to as an act of retaliation for the *Guardian* report,[59] though it does appear that a court order was obtained prior to the eviction. A statement by Mr Charles Sisarello, District Officer of Unite was reproduced in the Gibraltar Chronicle as follows:

> At 3.30pm Security Guards from Detective and Security International, and police officers evicted seven Moroccan nationals from their "flat" at Kavanagh's Court in Prince Edward's Road. Only one Moroccan was in the flat at the time since the others were working.

[57] See A W Bradley and K D Ewing, *Constitutional and Administrative Law* (14th ed, 2007), ch 9.
[58] An example of what the ILO considers "good practice" in this area is provided by South Africa, which according to the ILO "granted migrant workers voting rights in local elections", after consultation with the National Union of Mine Workers.
[59] Vox Online, 9 April 2009.

> "A sick 70-year old man was taken out in pyjamas and slippers, and had to remain outside in the cold weather. The others when they arrived home found their door padlocked, and were not given an opportunity to collect their belongings. Another of the Moroccans who suffers from diabetes was not allowed to go inside the flat to get his insulin."
>
> Mr Sisarello said they had to take this man to hospital for treatment as not having his injections could have had fatal consequences.
>
> "We called the police and explained the problem. They said we should contact the Social Services who informed us, that the policy of the government, 'was that they would not provide alternative accommodation unless children are involved,' neither would they pay any expenses in relation to accommodation".
>
> Mr Sisarello said the evicted persons found themselves out in the street in the middle of the night without any money or any of their belongings. A collection of money by friends was organised so that they could stay the night at the Emile Hostel.
>
> "This state of affairs has happened not in a Third World or a poor country, but in Gibraltar in the 21st Century. Had it not been for the TGWU intervention, these human beings would have had to sleep in the street", added Mr Sisarello.[60]

20. Turning to the aptly named *Buena Vista* hostel, there were 50 people living in cramped conditions when we visited. The hostel was dirty, paint was peeling from the walls, there were dozens of cockroaches and cobwebs. The tiny cubicles that represented the private space for each of the men were crammed together and represented a fire hazard: bare, untreated wooden walls and sheets of fabric hung as rough "doors". In the public areas we observed fire extinguishers, but several of them were difficult to reach behind tables. Several residents complained of poor access to medical facilities for older residents and pointed out the obvious health risks, particularly for older residents, facing people living in such close, crowded and dirty conditions. Apart from the physical conditions, some of the residents we met observed that the rents paid, at £10 per week for two square metres of floor space, were considerably more expensive per square foot than government housing.

21. In 2007 human rights campaigner Peter Tatchell visited the *Buena Vista* hostel He reported that "It is decaying, cramped, dirty, infested, badly maintained and with poor amenities". Mr Tatchell continued:

> The rooms are tiny and cramped; half the showers and toilets are broken and unusable; sections of tiling have fallen off the walls in the bathrooms; the bare rough concrete floors in the toilets and showers are unhygienic; damp and mould affect many of the walls and ceilings; half the rings on the kitchen cookers do not work; only one sink per 13 residents; no heating in winter; laundry facilities are non-existent; much of the premises are infested with cockroaches; the hostel is poorly facilitated.

22. The ICTUR team observed a similar catalogue of deprivation in its March 2009 visit to Buena Vista. Any changes or improvements since Mr Tatchell's visit in October 2007 were not obviously apparent to us. Nor it seems to Giles Tremlett when he wrote in the *Guardian* on 28 March 2009 that:

> At the government-owned *Buena Vista* workers' hostel in a former barracks overlooking the Strait of Gibraltar, music blares from a radio station broadcasting from Morocco, just eight miles away.
>
> Many here pay no rent, but conditions are grim. Up to 16 men share cockroach-infested kitchens and communal bathrooms. Each immigrant gets a curtained-off, ceiling-less cubicle measuring just 8ft by 6ft. There is room only for a bed, a cupboard and about one foot of space between them.
>
> Omar Sidda, aged 64, and his friend El Amine Bukkali, aged 73, each live in one tiny cubicle. "There is no room for anything here," says Sidda. "I worked for 35 years. Why does no one help us? Everyone has rights, except for us".

We respectfully invite the Committee to travel to Gibraltar to inspect the hostel for themselves. They may wish to use the opportunity to answer Mr Sidda's question, and to explain to men of extraordinary dignity why such conditions continue to exist in one of the richest places in the world.

Family re-unification

23. Moroccan representatives from the two migrant workers' associations told us that Moroccan workers faced great difficulties in seeing their families on a regular basis. There are two major problems. The first relates to the difficulty in having families visit workers on the Rock. Visiting rights for families to come to Gibraltar are tightly controlled and, we were told, extend to just one annual visit of one month's duration during the summer. These visits are open to immediate family (wife and children), but are not available for children over the age of 18. When a woman visits her husband under these arrangements, her passport will be confiscated and held for the duration of her visit by the Gibraltar immigration authorities. This is a practice that in all of its aspects causes very great offence and deep anxiety, and no one was able to explain to us why it is carried out.

[60] *Gibraltar Chronicle*, 6 April 2009.

24. The second problem relates to the ability of workers to return home to visit their families, which can now be only on a Friday night by means of a ferry which travels from Gibraltar to Tangier. Both the Moroccan Workers' Association and the Moroccan Community Association complained that the ferry service that had previously operated on a semi-regular basis had now been reduced to this irregular and unpredictable weekly crossing, which made it difficult for its members to visit their families in Morocco. Moroccans at a public meeting told us that the ferry was "too expensive" and "unpredictable—they cancel it whenever they want". They told us that they have to "wait for hours on the floor of the jetty in the baking sun with no proper facilities". It is, they told us, "degrading" and they called for a waiting room to be provided.

25. Some confirmation of these reports is provided by an albeit anonymous posting on the *Guardian* website, following the publication of Giles Tremlett's report on 28 March 2009. There it is written that:

> Last summer I witnessed the sharp contrast between the embarkation of many wealthy visitors to the Rock as they returned to their cruise ship laden with perfume and electronic goods, while Moroccan workers were herded onto a rusty old ferry, laden with food and basic goods for their families across the sea. That was a powerful, visual confirmation of how things stand here, and how Moroccan workers—or, I should say, Gibraltarians of Moroccan origins—are treated.
>
> But it is worse than that. While tourists languish in luxury, Gibraltar's hardest and poorest workers might sit around for hours, many with very young children, waiting for this unreliable ferry service. At night, the terminal is closed, leaving a large number of people, with very young children, to wait around in the dark, sometimes in very inclement weather, with no toilet or refreshment facilities, while the ferry turns up—or not, as is often the case. And all so that they can visit families that are not allowed to join them on the Rock.[61]

26. It is important to emphasise that apart from general considerations about the frequency of the ferry and the apparent indifference to the dignity to the people directly affected by these arrangements, we also heard individual cases of real hardship which the situation causes. These include the cases of the men who work at the weekends, and so may be cut off from their families for long periods, unable to leave Gibraltar; and the workers who may have to return to Morocco for urgent family reasons (such as a bereavement), though in this latter case our attention has been drawn to the reported comments of the President of the Moroccan Workers' Association expressing "his gratitude to the Spanish authorities for their help in allowing Moroccans through when emergency situations arise".[62] It is not clear to us why sensible arrangements could not be made in all cases to enable Moroccan workers to move freely between Gibraltar and Morocco, at their own convenience, as is the practice for other people.[63]

Public services and welfare benefits

27. A final complaint related to allegations that Moroccan migrant workers and their families are denied access to some public services in Gibraltar. The Moroccan Workers' Association told us that Moroccan workers now have five-yearly renewable residency permits if they are in work. If they lose their jobs they may remain under a six month residency permit.

28. The Moroccan Community Association complained that despite contributing to society and paying taxes and social insurance, in some cases over a period of decades, Moroccan workers have limited rights to unemployment benefit, claiming that "once the basic 13 weeks expires we do not get supplementary benefits or any other type of income or support". Unequal access to welfare benefits was also identified as an issue by the *Guardian*:

> Sometimes I look around and say to myself, "I built this and I built that, too", says Harrak. Construction is slowing down, however. "My employer might start laying people off", he worries. If sacked, he will get 13 weeks of unemployment benefit. Despite 30 years paying the same taxes as Gibraltarians, he will not get the welfare payments they receive after that.

29. We understand that so-called supplementary welfare benefits are provided only through Community Care, a private social security charitable company. According to information we have been given, Community Care Ltd pays out a Household Cost Allowance (£816 per quarter for married couples except where the spouse is under the age of 60 and is in employment, in which case the single rate of £544 per quarter applies). There is also a Community Officer's wage (£424 per month between the ages of 60 and 65 for those who are not in gainful employment elsewhere) in return for social or community oriented work. In order to qualify for payment applicants must be resident in Gibraltar and be in receipt of an old age pension or an elder person allowance (between 60–65). The charity depends on funds from the Ministry of Social Security.

[61] http://www.guardian.co.uk/money/2009/mar/28/work-discrimination-gibraltar-morroco
[62] *Gibraltar Chronicle*, 30 March 2009.
[63] Although it is not directly applicable, we commend the principles in the European Social Charter 1961, whereby the Contracting Parties undertake "to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families" (article 19(3)).

30. Apart from entitlement to social security, the Moroccan Community Association also emphasised the barriers faced by migrant workers and their families in accessing health care as a key concern. It was claimed that when their families are with them during the visiting period, the families do not have full access to health services, despite the fact that the migrant worker is a lawfully resident long-term worker and taxpayer. We also heard claims reproduced in the *Guardian* that

> Moroccans also have reduced health cover. While Gibraltarians fly to Britain for serious illnesses that cannot be treated here, they have no such rights. Their taxes, they complain, pay for services reserved for others.[64]

We understand that Moroccan workers in some cases may have access to Spain for medical attention. We were told by the Moroccan Community Association, however, that a hospital card allowed migrants access to Cadiz hospital in Spain in only "very serious" cases, and in less serious cases there would be a "10 day wait for permission" to enter Spain for medical attention. It is unclear to us whether it would be necessary to visit the United Kingdom to collect a Spanish visa for this purpose, though we note the statement made by the Gibraltar government that:

> EU law requires Moroccans to be in possession of a Visa to enter the Schengen territory (even to nip over to Algeciras to catch a ferry). Spain will only issue such visas in London, and now requires the physical presence of the applicant, thus making it impractical and costly.[65]

Conclusion

31. ICTUR believes that these complaints raise a number of concerns that ought urgently to be addressed. We understand that not all of the problems we encountered are the responsibility of the Gibraltar and United Kingdom governments alone, and that the Kingdom of Spain also has an important role to play. For example, some of the migrant workers' concerns would be eased if Spain were to open her borders to facilitate the temporary transit of Moroccan workers and their families in order—for example—to access Spanish ferry services. The current state of affairs can hardly be said to be defensible, or to comport with common decency.

32. Nevertheless, we re-assert the view we previously expressed in the Guardian that Gibraltar operates a "shabby" legal regime of discrimination against Moroccan workers who originally travelled there at the invitation of the British government to deal with a labour crisis at a particularly sensitive time for the British armed forces. Although the position has unquestionably improved, there is still much room for other improvements. We have identified five key areas of concern, which we believe ought to be addressed by the British and Gibraltar governments: naturalisation, political rights, housing rights, family re-unification and access to welfare benefits.

33. As already indicated, we have no doubt that despite our concerns, the position for Moroccan workers today is better than it was (especially before 1996). For example, women are no longer deported to Morocco because they are pregnant. Nevertheless, there is still some way to go to ensure equal treatment, consistently with the opportunities provided by a prosperous economy. Whatever the reasons for the continuing discriminatory treatment of Moroccan workers in Gibraltar it is clear that a weak economy is not one of them. Among the issues identified by Guardian journalist Giles Tremlett during his recent visit to Gibraltar were the following:

- Gibraltar is actively trying to attract "high net-worth individuals" to take up residency;
- Sleek new high-rise apartment blocks for "rich foreigners" line the harbour, with demand still rising;
- The economy is booming—chief minister Peter Caruana claimed: "If we were a sovereign state we would be 13th in the world in GDP per capita";
- According to Mr Caruana, this would put Gibraltar above Canada and Switzerland;
- Gibraltar is empowered by EC law to set its own tax rates. As a result, corporate tax is expected to tumble, attracting more business.[66]

On the question of extending full citizenship rights to Moroccan workers, the Gibraltar government nevertheless takes the view that "Gibraltar simply has not got the space and financial resources to cope with any such policy, which would include access to such things as Government housing, social security benefits, health and social services, elderly care services and education. Apart from its unaffordability, there would be a massive degradation in the quantity and quality of such services to everyone else".[67]

[64] See G Tremlett, *Rock and a Hard Place*, The *Guardian*, 28 March 2009.
[65] *Gibraltar Chronicle*, 30 March 2009.
[66] G Tremlett, *Gibraltar is Swimming Ahead of the Tide*, The *Guardian*, 24 March 2009.
[67] *Gibraltar Chronicle*, 30 March 2009.

34. As already indicated, we believe that the Committee should visit Gibraltar so that members can see for themselves the living conditions of some Moroccan migrant workers in what boasts to be the world's 13th largest GDP per capita economy. Otherwise, we invite the Committee to consider the extent to which the problems we have identified are consistent with the United Kingdom's obligations under international human rights law, which the Gibraltar government claims are fully respected.[68] We also invite the Committee to consider whether the institutional discrimination by the State against a generation of workers can now be said to be justifiable in any circumstances. The Moroccan-born population has served both the United Kingdom and Gibraltar well; it now deserves better, whatever may or may not be required by international human rights law. It should not require litigation to persuade governments to do the right thing.

Daniel Blackburn
Director

Professor K D Ewing
Vice President

Jonathan Jeffries
Member of Delegation

2 June 2009

Submission from Justice for Colombia

SUMMARY

— Justice for Colombia (JFC) welcomes the fact that Colombia remains on the "Major Countries of Concern" list in the new FCO Report;

— JFC is concerned that the Report does not reflect the true gravity of the human rights situation in Colombia and is troubled by the omission from the Report of several basic categories of human rights abuses that are common in Colombia such as torture, kidnapping and forced disappearances; and

— Furthermore, JFC does not believe that the Report addresses the widespread concerns about the ongoing program of UK military assistance to Colombia.

— Among other conclusions, JFC believes that military assistance to Colombia should be suspended and that the FCO needs to speak out more forcefully about the human rights situation in Colombia—as they have quite rightly done in relation to several of the other countries covered in the Report.

INTRODUCTION

The human rights situation in Colombia remains critical with an alarming number of human rights violations occurring throughout the country on a daily basis. Whilst recent years have seen some human rights indicators improve (for example kidnapping is down), most have deteriorated (for example torture, killings of trade unionists and forced displacement are up), and the overall picture is still one of widespread and systematic abuses of human rights.

Whilst the Colombian regime has devoted substantial resources to public relations campaigns and diplomatic offensives to convince the international community otherwise, the reality is that the abuses continue to escalate, the impunity that the perpetrators enjoy persists, and the regime still fails to implement the UN's human rights recommendations—despite repeated promises to the international community to do so.

SPECIFIC AREAS OF CONCERN

1. *The Perpetrators of the Abuses*

Whilst clearly stating that the human rights situation is serious in Colombia, the FCO Report pays little attention to ascertaining who is responsible for perpetrating the abuses—in stark contrast to the sections on many other countries in the "Major Countries of Concern" list. We believe that this reduces the pressure on the perpetrators by failing to highlight their involvement.

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[68] *Ibid.*

With regards to the presumed author of human rights violations in Colombia, the Colombian Commission of Jurists estimates that in cases of extrajudicial executions, political murders and forced disappearances, committed in the 2002–07 period where the perpetrator is known, some 74.6% of cases can be attributed either directly to state agents (predominantly the Army) or to Army-backed paramilitaries.[69] As highlighted below, the state security forces are also compromised in the majority of cases of torture.

We believe that it is imperative to make clear that the Colombian military are responsible for the majority of human rights abuses perpetrated in Colombia in order to increase the pressure on them to clean up their act. We are concerned that the absence of this information may be due to the close military relationship between the UK and Colombia.

2. *Violence against Trade Unionists*

Colombia remains the most dangerous country on earth in which to be a trade unionist. Despite some assertions to the contrary, recent years have seen an increase in the numbers of murders of trade unionists: 40 were killed during 2007, 48 during 2008 and 13 during the first quarter of 2009—a higher rate than the two preceding years.[70] According to the CUT trade union federation (the Colombian TUC), the attacks are targeted and systematic and, according to CUT leader Tarsicio Mora Godoy, "the Government is trying to physically exterminate the union movement".[71]

Whilst we welcome the fact that the FCO Report refers to the violence against trade unionists in Colombia, we are concerned that the alarming increase in the numbers being assassinated in recent years goes unmentioned. It is imperative that that this is highlighted and further pressure brought to bear on the Colombian authorities.

Recent examples of murders include the 4 April 2009 assassination of Hernan Polo Barrera (President of the teachers trade union SINTRAENAL), the 27 March 2009 assassination of Armando Carreno (activist in the oil workers trade union USO), the assassinations of Ramiro Cuadros Roballo and Walter Escobar Marin on March 24th and 21st 2009 respectively (both members of the teachers' trade union SUTEV), the assassinations of Alexander Pinto Gomez and Jose Alejandro Amado Castillo, both killed on March 21st 2009 and both activists in the prison officers trade union ASEINPEC.[72]

3. *Extrajudicial Executions*

Extrajudicial executions of civilians carried out by the Colombian Army are an increasing problem with well over a thousand cases having been documented in recent years.[73] According to human rights organisations, almost double the numbers of civilians have been killed in this way since 2002, when President Alvaro Uribe came to power, as compared to the previous six year period.[74]

On her recent visit to Colombia Navi Pillay, the UN High Commissioner for Human Rights, accused the Colombian Army of carrying out "systematic and widespread" killings of civilians and indicated that the scale of the killings could constitute a "crime against humanity".[75] Another report also described the problem as systematic, saying that extrajudicial executions occurred all over the country with "the participation of a wide range of military brigades . . . revealing a phenomenon which can by no means be considered a series of isolated cases".[76]

The true severity of this issue is not reflected in the FCO Report which, on the contrary, states that the Colombian military are taking positive steps to root out the abusers and punish the perpetrators. There is little evidence to suggest that this is the case and the most recent report from the Colombia office of the UN High Commission for Human Rights categorically states that, in relation to extrajudicial executions, "the number of registered victims show that institutional policies adopted by the Ministry of Defence and the Army High Command to combat such practices have not had a significant impact in reducing the occurrence of these acts."[77]

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[69] Colombian Commission of Jurists, *Violaciones de derechos humanos y violencia sociopolítica en Colombia*. Available at www.coljuristas.org
[70] See the human rights database at www.justiceforcolombia.org for the full list of murders.
[71] Speech given by Mr Tarsicio Mora Godoy to the 2008 TUC Congress in Brighton.
[72] All examples provided by the CUT trade union federation.
[73] "Colombia: Report of the member organisations of the OIDHACO network and other international organizations on the occasion of the Universal Periodic Review" available at http://www.abcolombia.org.uk/downloads/214_080718_UPR_Colombia_EN.pdf
[74] *Ibid*.
[75] See: www.hchr.org.co/publico/oacnudhenlosmedios/2008/03110803.pdf
[76] *Vida y Libertad: blancos de una agresión estatal sistemática*, report by the Catholic human rights organisation CINEP available at www.nocheyniebla.org/?q=node/52
[77] See: www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2008_eng.pdf
[78] See: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7481000/7481399.stm

4. *Forced Disappearances*

The UN recently reported that Colombia is the only county in Latin America where forced disappearances continue to occur on a regular basis[79] however this category of human rights abuse receives only a passing mention in the FCO Report.

Recent years have seen an increase in cases in Colombia and, according to the Colombian Commission of Jurists, "public functionaries are compromised in one way or another in around 97% of the disappearances".[80] Estimates of the number of people who have been forcibly disappeared in Colombia range from 15,000 to over 30,000.[81]

Among many others, trade unionists (for example Guillermo Rivera, the leader of the Bogota public sector workers union who was last seen in April 2008) continue to be regular victims of forced disappearances. It is disappointing that the FCO Report did not draw attention to this clear violation of international humanitarian law considering the extent of the problem in Colombia.

5. *Torture*

Whilst the issue of torture receives only a passing mention in the FCO Report, it continues to be practiced widely in Colombia and the US State Department recently documented a 46% increase in cases.[82] Another recent study found that "the practice of torture is systematically and deliberately used in Colombia as a form of political persecution and to sow terror".[83]

In the vast majority of cases the perpetrators of torture are members of the Colombian state security forces[84] and we are concerned that whilst the use of torture is mentioned frequently throughout the FCO Report in relation to other countries, it is absent from the section on Colombia.

A recent case of concern involved personnel attached to the "Calibio" Battalion of the Colombian Army who, on 14 March 2009, were operating near the town of San Francisco in the region of Antioquia. According to accounts from Colombian human rights organisations one of the soldiers from the Battalion abducted, and then tortured and raped, 15-year-old Jacqueline Gutierrez and 16-year-old Rosita Henao.[85]

6. *Kidnapping*

Although cases have decreased in recent years, Colombia remains one of the places in the world with the highest level of kidnappings. A July 2008 document produced by the Colombian presidency reported that well over 500 people had been kidnapped in the previous 12 months[86] but, once again, this category of abuse was omitted from the FCO Report.

The most recent figures available indicate that 47% of kidnappings were attributed to common criminals, 23% to the FARC guerrilla group and 5% to the ELN guerrilla group. In the remaining 25% of cases it was unclear who was responsible.[87] In addition, the FARC guerrilla group also continues to hold over 20 members of the security forces captured in combat who they say they want to exchange for jailed guerrillas.[88]

7. *Political Prisoners*

Colombia continues to hold numerous political prisoners for long periods in jail without them being convicted of any crime whatsoever. Among those held are members of political opposition parties, trade union activists and human rights defenders who appear to be targeted for their opposition to the current regime in Bogota.[89]

[79] See: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7481000/7481399.stm
[80] See: www.ipsnews.net/news.asp?idnews=42993
[81] See: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_7481000/7481399.stm
[82] US State Department, *Country Report on Human Rights Practices*, available at www.state.gov/g/drl/rls/hrrpt/2007/100633.htm
[83] Report by the Colombian Coalition against Torture and the World Organisation against Torture, available at www.acnur.org/pais/docs/2397.pdf
[84] According to the report referred to above: of those cases where the perpetrator is known the state security forces are responsible for 70.4% of cases of torture, army-backed paramilitaries for 19.7% of cases and guerrilla groups for 9.8% of cases. A separate report by Amnesty International found a similar pattern, blaming the state security forces for 60% of cases, the paramilitaries for 27% and guerrilla groups for around 11%.
[85] See www.movimientodevictimas.org/index.php?option=com_content&task=view&id=271&Itemid=1 and www.prensarural.org/spip/spip.php?article2030
[86] See www.presidencia.gov.co/resultados/espanol/04_ddhh/a_victimas_080715.pdf
[87] *Ibid.*
[88] See http://en.wikipedia.org/wiki/List_of_political_hostages_held_by_FARC for an up-to-date list of those being held by the FARC.
[89] See *Union Leaders and MPs Call for Freedom for Colombian Political Prisoners*, www.justiceforcolombia.org/?link=newsPage&story=507 and *MPs, union Leaders, Lawyers, Call on FCO to Speak Out on Colombia's Political Prisoners*, http://www.justiceforcolombia.org/?link=newsPage&story=608

FCO Ministers have, in the past, expressed concern about the practice of jailing people for political reasons in Colombia and JFC has publicly welcomed this.[90] However, again, the new FCO Report fails to touch on this issue at all in relation to Colombia despite the fact that the theme comes up time and again elsewhere in the Report in relation to other countries.

High profile examples of political prisoners currently being held in Colombia's jails include:

— Liliany Obando, a human rights a trade union consultant who has toured both Australia and Canada in an effort to raise awareness about abuses perpetrated against Colombian trade unionists, detained, without having been convicted of any crime, since 8 August 2008.

— Martin Sandoval, a member of the National Executive of the "Democratic Pole" opposition party and President the Permanent Committee for Human Rights in the region of Arauca, detained, without having been convicted of any crime, since 4 November 2008.

— Andres Gil, a member of the National Executive of agricultural workers trade union ACVC, detained, without having been convicted of any crime, since 27 September 2007.

8. *"Criminalisation" of the Opposition*

In the past year the Colombian authorities have opened an increasing number of spurious legal cases against senior members of the political opposition. Those targeted include a former government Minister and President of the Colombian Conservative Party,[91] the most high profile Senator from the opposition Liberal Party[92] and several members, including two Senators and a Congressman, of the Democratic Pole, the other main opposition party in Colombia.[93] In addition, three well-known journalists have been targeted.[94]

All of those on the receiving end of these legal cases are high profile critics of the current regime in Bogota and the Colombian authorities have yet to produce any plausible evidence whatsoever against them. Human rights groups have described this new judicial onslaught, a tactic which is also being used to systematically accuse and/or jail lower profile human rights defenders and trade unionists, as a tactic designed to intimidate and silence Government opponents.[95]

The extent to which this tactic of "criminalising" opponents is currently being practiced in Colombia is alarming and it is clear that the proceedings are politically-motivated. The practice has been drawn to the attention of FCO Ministers and officials on several occasions and we are therefore disappointed that the FCO Report did not highlight this issue.

9. *Landmines*

We are deeply troubled by the assertion put forward in the FCO Report that the minefields maintained by the Colombian Army "pose no threat to the civilian population". In fact several civilians have been harmed by landmines laid by the Army including one case near the "Barracon" military base in the Colombian region of Guaviare where, according to a report from UNICEF, five children and two adults, all Nukak Maku indigenous people, were badly wounded by explosions after straying into a minefield surrounding the base.[96]

10. *Impunity*

Impunity is at the heart of the human rights crisis in Colombia. As well as failing to address the needs of the victims, the continuing failure to bring the perpetrators of human rights abuses to justice is a green light for the abuses to continue.

According to Human Rights Watch "The authorities' failure to effectively investigate, prosecute and punish abuses has created an environment in which abusers correctly assume that they will never be held accountable for their crimes."[97] Amnesty International argues that "impunity remained the norm in most cases of human rights abuses."[98]

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[90] See *FCO Expresses Concern for Colombian Political Prisoners*, http://www.justiceforcolombia.org/?link=newsPage&story=554

[91] Dr Alvaro Leyva, a senior Conservative politician, criticised President Uribe for not respecting human rights or democratic norms—soon after legal proceedings were opened against him.

[92] Senator Piedad Cordoba, of the Colombian Liberal Party, had spoken out in favour of a peace process and against human rights abuses—soon after legal proceedings were opened against her.

[93] Senator Gloria Ramirez, Senator Jaime Dussan and Congressman Wilson Borja, all former trade union leaders and now politicians representing the Democratic Pole opposition party, had repeatedly spoken out about attacks on trade unionists before legal investigations were opened against them.

[94] Dr Lazaro Vivero, Dr Carlo Lozano and William Parra had all written or broadcast pieces critical of the Colombian regime before legal proceedings were brought against them.

[95] See the new report from Washington DC based Human Rights First which looks at this issue in depth http://www.humanrightsfirst.org/defenders/reports/index.aspx

[96] See http://www.unicef.org/colombia/newsletter/octubre-04/pandi82.htm

[97] Human Rights Watch, *World Report 2008*, http://hrw.org/englishwr2k8/docs/2008/01/31/colomb17754.htm

[98] Amnesty International, *World Human Rights Report 2008*, http://thereport.amnesty.org/eng/Regions/Americas/Colombia

Whilst some high-profile cases are investigated the vast majority are not. For example, according to the CUT trade union federation, impunity for the killers of trade unionists remains at over 98%.[99] A similar pattern can be seen in other types of abuses such as extrajudicial executions, where impunity remains at over 99%,[100] and forced displacement, where the UN recently showed that 99% of cases remain in impunity.[101]

Furthermore, while according to Colombian legal norms human rights crimes should be subject to the civilian justice system, many are in fact dealt with by the deeply compromised military justice system. The UN has repeatedly recommended to the Colombian authorities that they guarantee that cases involving human rights violations are not dealt with by the military justice system though to date they have not implemented the recommendation.[102]

In spite of the aforementioned shortcomings, a number of very competent and dedicated investigators and prosecutors exist in Colombia, who are willing to examine the multitude of human rights crimes that have taken place. However, their capacity to undertake this task is severely compromised by the repeated public attacks on them and the judicial institutions by the Executive branch; particularly by President Uribe himself.[103]

Whilst the FCO Report mentions impunity briefly, much more attention needs to be paid to this issue in order to have any real impact. Allowing those responsible for human rights abuses to escape punishment is tantamount to condoning those abuses and until impunity is tackled in Colombia the human rights crisis will continue.

12. *UK Military Aid*

Though a small part of the UK military assistance package to Colombia recently came to an end (human rights and demining training were discontinued in a move welcomed by JFC), the UK continues to provide substantial military assistance to the Colombian security forces. The exact value of this assistance is secret, as are details of which units or individuals in the Colombian military benefit—making independent monitoring of its potential human rights consequences, or indeed the effectiveness of the assistance, impossible.

Furthermore, it would appear that the Government does not have any robust human rights monitoring mechanisms of their own in place with recent parliamentary answers indicating that the Colombian Army is relied upon to provide feedback on such issues.[104]

We are also concerned that UK military assistance may be benefiting Colombian military personnel or units that are involved in counter-insurgency operations, as it is during such operations that the majority of human rights abuses occur. Statements from the British Government on this matter have been contradictory with Ministers and other sources saying on some occasions that such assistance is provided,[105] whilst on others saying that it is not.[106]

The last Foreign Affairs Select Committee report on the FCO's Annual Human Rights Report described the current UK military assistance program to Colombia as "inappropriate". Given the widespread and ongoing human rights violations that are being perpetrated by the Colombian military—including by counterinsurgency units, such as the High Mountain Battalions, that have received British assistance—JFC would go further and suggest that all British assistance to the Colombian armed forces be frozen until such time as the Colombian Government has fully implemented the human rights recommendations made by the United Nations.

[99] A recent study by the CUT of 2,832 assassinations of trade unionists found that in only 56 cases had charges been brought against the presumed author see *Labor Rights and Freedom of Association in Colombia*, www.cut.org.co/dmdocuments/derechoslaboralesLIBROINGLES.pdf

[100] Recent study by five US human rights organisations, *US groups, alarmed by increase in extrajudicial executions in Colombia*, www.lawg.org/docs/eejointmemo.pdf

[101] While 619,000 displaced people were officially registered between 2002 and 2006, investigations were only initiated for 6,501 cases; of these, 32 went to trial in criminal courts, and there were sentences in 13 of these cases. UN High Commission for Refugees Office for Colombia, "Assessment of public policy for comprehensive attention to forced displacement in Colombia".

[102] See: www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2008_eng.pdf

[103] An August 2008 communiqué released by the Supreme Court described a "recurrent systematic and even orchestrated" campaign "orientated exclusively to delegitimize the judicial public servants' investigations or to undermine their credibility", available at www.semana.com/wf_InfoArticulo.aspx?idArt=114499 See also http://www.cipcol.org/?p=655 and Human Rights Watch, *President's Interference with Ongoing Investigations Threatens the Rule of Law*, at http://hrw.org/english/docs/2007/10/09/colomb17057.htm

[104] On 25 November the Parliamentary Under-Secretary at the FCO told Parliament that "The monitoring of the human rights or other performance of individual Colombian military personnel is the responsibility of the Colombian armed forces."

[105] For example, former Defence Minister John Speller told Parliament that UK military involvement in Colombia includes assistance with "operations in urban theatres, counter-guerrilla strategy, and psychiatry." (www.parliament.the-stationery-office.co.uk/pa/cm199900/cmhansrd/vo991124/text/91124w03.htm). An investigation by The *Guardian* (www.guardian.co.uk/world/2003/jul/09/colombia.davidpallister) found that counter-insurgency assistance was being provided to Colombia and in an interview with the Colombian newspaper *El Tiempo*, the head of the Colombian armed forces General Freddy Padilla de Leon, explained that British assistance was for "jungle operations".

[106] On 3 March 2009 the Parliamentary Under-Secretary at the FCO told Parliament that "We do not provide any counter-insurgency assistance." On 2 April 2009 the Minister of State at the MOD told Parliament that "The UK has not provided specific counter-insurgency assistance to the Colombian armed forces."

Lastly, given that tens of millions of dollars in US military assistance to Colombia has recently been frozen due to concerns over extra-judicial killings by the Colombian Army, it would appear that Britain, as the only other major provider of military assistance to Colombia, is increasingly at risk of becoming isolated internationally on this issue.

Conclusion

We believe that whilst the FCO Report includes positive elements, overall it fails to adequately address the human rights crisis in Colombia. Reading between the lines it would appear that an assumption has been made that the situation is improving and that the Colombian authorities are doing all that they can to tackle the abuses. We do not believe that either assumption is backed up by the facts on the ground.

The FCO Report also fails to pay sufficient attention to the Colombian State's role in the human rights crisis—effectively letting the principle abuser of human rights in Colombia off the hook.

Due to the deteriorating human rights situation in Colombia, we believe that the UK needs to change their approach and speak out more forcefully about the regular violations that occur; whoever perpetrates them.

JFC's position on military aid is well-known and is shared by many other organisations and individuals including a considerable number of Members of Parliament.[107] It is entirely unacceptable to provide secretive military assistance to an Army which is deeply implicated in systematic human rights violations, especially when there are so few signs of an improvement. The assistance is even more worrisome as there are no clear human rights monitoring mechanisms in place.

We believe that the recent freezing of tens of millions of dollars in US military assistance to Colombia is a positive example for the UK and that all UK military assistance to Colombia should be frozen until the human rights recommendations made to the Colombian authorities by the UN High Commissioner for Human Rights have been implemented in full.

24 April 2009

Letter to the Chairman of the Committee from Tony Lloyd MP, Jeremy Corbyn MP, Andy Love MP, Jim McGovern MP, Jim Sheridan MP, Colin Burgon MP, Tony Wright MP and Stephen Hepburn MP

British Military Assistance to Colombia

We are writing to you in your capacity as Chair of the Foreign Affairs Select Committee to express our concerns over ongoing UK military aid to Colombia. All of us have either visited Colombia in the past or are intending to do so very soon. We all welcome the recent statement from the Foreign Office that parts of their assistance to the Colombian military would cease.

However, we remain deeply concerned by the remaining military assistance that the UK is providing—that which the Foreign Office terms "counter-narcotics assistance".

Our concerns are twofold:

Firstly, continuing to provide aid to the Colombian military sends a clear and public political message that the UK believes the Colombian Army to be a legitimate partner. We do not believe this to be the case and we would draw your attention to the recent comments by the UN High Commissioner for Human Rights that she believes the Colombian military to be involved in "systematic and widespread" murders of civilians—an allegation that we believe to be accurate.

Continuing to provide assistance to an Army that is involved in such serious violations of human rights serves to legitimise that Army and, unless human rights conditions are attached, which they are not in the case of UK assistance, does nothing to bring about an improvement. It is deeply concerning that the aid continues to flow despite no clear signs of progress in relation to human rights.

Secondly, we are worried that UK counter-narcotics assistance may be being misused by the Colombian security forces. The Colombian Ministry of Defence makes no distinction between counter-narcotics and counter-insurgency operations and it is during the latter that so many civilians lose their lives. The UK has not made clear how they ensure that the assistance provided is only used to fight the narcotics trade and we do not believe that vague guarantees that this is the case are sufficient.

The lack of transparency around what exactly UK assistance is being used for makes independent monitoring of the effectiveness of the aid, and any potential human rights consequences that it may have, impossible. In a country such as Colombia, where large parts of the security forces are so clearly involved in abusing human rights, we do not believe that this position is sustainable. Furthermore it contrasts strongly with the position of the United States—the only other country to provide substantial military aid to Colombia—which publishes, in advance, complete details of any aid that they intend to provide to the Colombian security forces so that human rights vetting can take place.

[107] As of the time of writing 215 MPs, from all parties, had signed an Early Day Motion calling on the Government to freeze their military aid to Colombia.

We hope very much that in responding to the Colombia section of the FCO's new human rights report that the Foreign Affairs Committee will agree to make strong recommendations in relation to ongoing UK military assistance to Colombia and that you will agree with us that the current policy is both unsustainable and indefensible.

19 May 2009

Email to the Committee from Muhammad Molla

The senior leaders of four party alliance who has run the country before the current ruling party have been sent back from airport (http://nation.ittefaq.com/issues/2009/02/20/news0865.htm). Especially Secretary General of Jamaat e islami who was a former minister named Ali Ahsan Mujahid has been sent back today from the Zia Airport, Dhaka (19 February 2009) for the possible charge of war crime; though no case has been filed against him yet. How can it be justified that someone should be sent back from airport without any charge & without any investigation.

According to Article 36 of the Constitution subject to any reasonable restriction imposed by law in public interest every citizen shall have the right "to leave and re-enter Bangladesh". This right has been clearly violated by this Government.

According to the news, the government has sent a list of 62 individuals to the immigration authority at Zia International Airport and all other points for international arrivals and departures imposing a ban on their departure from the country. The list of individuals "blacklisted" includes former ministers, state ministers and members of parliament belonging to the Four-Party alliance as well as certain businessmen. According to the news published, the list has been prepared by the present government and does not include any name from the ruling party or its alliance members.

It is a case of abject harassment and violation of fundamental human rights.

The following rights protected by United Nations International Convention on civil and political rights have been clearly breached in Bangladesh by the ruling Awami League Government as they have barred the political leaders to leave the country without any valid reason.

ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own count.

Therefore we would request you to raise your voice against this gross and severe violation of human rights by the current ruling government of Bangladesh.

We also request you to pass a resolution against the violation of human rights in Bangladesh.

We would like to sit with you and your team to inform the details of the severe violation of Human Rights in Bangladesh by the current government.

25 February 2009

Email to the Committee from Muhammad Molla

Further to the last submission I would like to that Barrister Razzaque has been barred from going outside Bangladesh on 28 February 2008. He was scheduled to go to Malaysia. Mr Abdur Razzaq Siddiq, Assistant Secretary General of the Jamaat-e-Islami Bangladesh is a prominent Human Rights Lawyer.

The Jamaat-e-Islami Bangladesh is one of the largest political parties in that country and was the senior coalition partner to the Bangladesh National Party who were in government for the past five years.

BARRISTER ABDUR RAZZAQ SIDDIQ

Mr Abdur Razzaq Siddiq is one of Bangladesh's leading human rights lawyers and the Jamaat-e-Islami's Assistant Secretary General. He has been Secretary General of the Centre for Human Rights, Dhakla, since 1994.

Background info:

http://www.washingtontimes.com/article/20070626/FOREIGN02/106260033/1003/FOREIGN

3 March 2009

Letter to Rt Hon Sir John Stanley MP from the Secretary of State for Defence

UK Detention Operations in Iraq and Afghanistan

As you will recall, my officials briefed you and other members of the Foreign Affairs Committee on 11 November 2008, detailing the preliminary findings of a comprehensive detention review. This review was instigated following a series of allegations by Mr Ben Griffin, a former member of the Armed Forces, who accused the MOD of being complicit in torture and rendition as part of operations in Iraq. As you will be aware from the briefing, this review exposed the difficulties in detainee record-keeping and also exposed the fact that the MOD had inadvertently answered several PQs incorrectly, having overstated the number of detainees taken in southern Iraq.

I have attached the statement[108] I intend to make to Parliament later today outlining the issues surrounding detainee numbers—as you were briefed—and the status of our international agreements on detainee treatment and handling.

Following the briefing my officials gave you, information was brought to their attention to suggest that in one case, two detainees, originally captured by UK Forces and transferred to US detention, were subsequently moved to Afghanistan by the US. I instigated an immediate follow-up to clarify whether this was fact or speculation.

I am now in a position to report that, unfortunately, this has been confirmed and that two detainees were transferred out of Iraq to Afghanistan by the US. The two detainees remain in US custody in Afghanistan. I have outlined this case in the statement.

I apologise that the briefing to you and the other members did not cover this—information came to the team late in the review, following that briefing, and was investigated as a matter of urgency.

I hope this statement sets the record straight in relation to correspondence between you and my Department. In particular, the statement corrects some inaccuracies in the following responses from the MOD:

MOD letter dated 19 March 2008, ref MSU 4/5/2K.

MOD letter dated 5 June 2008, ref D/S of S/DB MC02699/2008.

In addition, I regret that a holding answer you received to a Parliamentary Question in December 2006 (PQ 109284/5) contained a minor inaccuracy that has only recently come to light. You asked the following question:

Sir John Stanley: *To ask the Secretary of State for Defence.*

(1) whether the requirement in paragraph 5.1 of the Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees for the UK armed forces to notify the International Committee of the Red Cross and the Afghan Independent Human Rights Commission, normally within 24 hours, and if not, as soon as possible after, of when a person has been transferred to Afghan authorities has been complied with fully in respect of all the detainees concerned; and if he will make a statement; [109284]

(2) how many individuals arrested and detained in Afghanistan by UK armed forces have been transferred to the authorities of Afghanistan since the date on which the Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees came into effect? [109285]

In our response to the above question, we incorrectly stated that the Memorandum of Understanding between the Government of the UK and the Government of Afghanistan on the transfer of detainees was signed on 30 September 2006. The date of the signing of this Memorandum of Understanding was actually 23 April 2006.

I apologise for this inaccuracy and trust that this letter, a copy of which I am placing in the library of the House, sets the record straight.

Rt Hon John Hutton MP

26 February 2009

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[108] Not published.

Letter to the Chairman from the National Council of Resistance of Iran

We are aware that the Foreign Affairs Committee has since the U.S.-led invasion of Iraq kept an eye on the developments in Camp Ashraf where some 3,500 members of the main Iranian opposition group, the People's Mojahedin Organisation of Iran (PMOI), are based.

The FAC report of 21 June 2006 quite rightly said: "350. Within Iraq's borders there are Iranian exiles based at Ashraf city. They have protected persons status under the fourth Geneva Convention. At a time of increasing dialogue with the regime in Tehran it is important for governments of the coalition in Iraq, and the Iraqi government, to reiterate their recognition of these exiles' protected persons status".

Following the implementation of the Status of Forces Agreement between the US and Iraq and the transfer of protection of the residents of Ashraf to the Iraqi government, the Iranian regime has stepped up its plots to have the members of the PMOI expelled or extradited from Iraq.

Under pressure from Tehran, senior Iraqi officials including the National Security Advisor announced in January that Camp Ashraf will be closed down soon and its residents extradited to Iran or to a third country. These announcements are in violation of the rights of Ashraf residents as "protected persons" under the Fourth Geneva Convention. They also violate the Principle of Non-Refoulement, International Humanitarian Law (IHL) and international law in general.

Iraqi forces stationed at the front gates of Ashraf are refusing entry to relatives of its residents.

Dozens of relatives of Ashraf residents hoping to visit their loved ones in Iraq were arrested at the airport in Tehran on 16 January 2009, and on 19 February 2009 the regime carried out a widespread swoop on the homes of relatives of Ashraf residents in Tehran, making many arrests.

Enclosed you will find a report on the latest developments with regards to Ashraf.

Given the imminent threats facing the residents of Ashraf and Britain's international obligations and taking into account the responsibilities of the British government, as a member of the Multi-National Force, with respect to Ashraf, I urge the Foreign Affairs Committee to urgently take up this matter.

I, further, urge the Foreign Affairs Committee to:

— request that the Iraqi government recognises the rights of Ashraf residents as "protected persons" under the Fourth Geneva Convention in the framework of International Humanitarian Law and international law and upholds their judicial protection;

— call on the British government to live up to its obligations as a member of the Coalition forces and Permanent Member of the UN Security Council; and

— urge the US government to guarantee the physical and judicial protection of the residents of Ashraf.

24 February 2009

Brief on Ashraf City, Iraq

The People's Mojahedin Organisation of Iran (PMOI) relocated from France to Iraq in 1986 after the French government struck a deal with the Iranian regime over the release of French hostages held in Lebanon. The PMOI's presence in Iraq was conditional upon its complete political, economic, and military independence from the authorities there and no meddling by either side in the other's internal affairs. Both sides upheld this commitment until 2003.

Prior to the start of the Iraq war in 2003, the PMOI wrote to the US Secretary of State, the British Foreign Secretary and United Nations officials, announcing its neutrality in the possible conflict and that its presence in Iraq is only to stand against the religious fascism ruling Iran. The PMOI provided the exact coordinates of all its bases to the UN via UNMOVIC as well as to the US and UK governments via Congress and Parliament respectively.

However in the negotiations that took place between the regime and the UK/US, the Coalition forces accepted to bomb PMOI bases in return for no Iranian meddling in Iraqi affairs in the ensuing conflict. Thus, US and British warplanes heavily bombed PMOI bases repeatedly. Some 50 PMOI members, including several women died as a result of the bombings and many more sustained serious injuries. However, in accordance with the Order they had received from Mr. Massoud Rajavi, they resisted from firing back even in self defence. The PMOI did not fire a single bullet in the course of the war.

US forces subsequently signed a ceasefire agreement with the PMOI on 15 April 2003. On 10 May 2003, the PMOI voluntarily handed over all its weapons, including heavy-weapons, medium-weapons and personal weapons, to US forces and consolidated all its personnel in Camp Ashraf, some 100 kilometres north of Baghdad. Subsequently, US forces undertook the protection of members of the PMOI residing in Ashraf. General Raymond Odierno and Ms. Mojgan Parsai (then PMOI Secretary General) led the negotiating teams for the US and PMOI sides respectively. (Enclosure 1: Remarks by General Odierno to the French news agency AFP[109])

[109] Not printed.

Simultaneously, various US agencies began conducting a thorough investigation into the residents of Ashraf. Each and every PMOI member there signed an agreement with Coalition forces—or the Multi-National Force-Iraq (MNF-I)—denouncing violence and terrorism. (Enclosure 2: Text of agreement) Senior US officials subsequently announced that a 16-month review by the United States had found no basis to charge any PMOI member. (Enclosure 3: Article in the New York Times on July 27, 2004) MNF-I and US forces formally announced that PMOI members are "protected persons" under the Fourth Geneva Convention. (Enclosure 4: Statement by the MNF-I commander on the status of PMOI members[110])

Thus, US forces, which since 2003 were obligated to protect Ashraf residents because of their bilateral agreement, were from this point onwards further obligated to provide this protection because of the Fourth Geneva Convention and relevant points of international law. In short, US forces assumed responsibility for the protection of the residents of Ashraf both because of their bilateral agreement and their obligations to international law.

Prominent jurists in the US, Europe and Iraq believe that with the termination of the UN Security Council resolution authorizing US presence in Iraq and the signing of the Status of Forces Agreement between the US and Iraq, neither of the two above reasonings have ended and the US must continue to protect the PMOI. This is especially so since the Iraqi government and its security forces are clearly influenced by the Iranian regime and a transfer of Ashraf's protection to Iraq would lead to great dangers. (Enclosures 5 and 6: Letter of European Parliament Vice President Alejo Vidal-Quadras to UN Secretary General and legal opinion of Prof. Eric David[110])

Numerous international bodies and organisations have called on US forces to continue protecting Ashraf residents. These include the Parliamentary Assembly of the Council of Europe which in a resolution on 2 October 2008 said: "Transferring protection of Ashraf under the present circumstances violates the principle of non-refoulement, the Fourth Geneva Convention, the Refugee Convention, the Convention Against Torture, IHL and International Law and would result in a humanitarian catastrophe, thus we urge US forces for as long as they remain in Iraq to continue to protect Ashraf residents and uphold their judicial protection under international law". (Enclosure 7: Full text of resolution by PACE[110])

In spite of the above, under pressure from the Iranian regime and its proxies in the Iraqi government, the US handed over protection to Iraqi forces as of 1 January 2009. At the same time the US in various declarations including a 28 December 2008 statement by its embassy in Baghdad announced:

1 The Iraqi government has given assurances to respect the rights of the PMOI.

2 US forces will monitor the protection of Ashraf residents and respect for their rights.

However, since the day the transfer took place, Iraqi forces have placed new restrictions on the residents of Ashraf and have turned this place effectively into a prison. Iraq's National Security Adviser Mowaffaq al-Rubaie said in a statement on 21 December 2008 that PMOI members must leave Iraq. (Enclosure 8: Statement by Mowaffaq al-Rubaie's Office[110]) While on a trip to Iran on 23 January, al-Rubaie announced: "The more than 3,000 residents of Camp Ashraf must leave Iraq. This camp will be closed down in two months . . . The only options available to them is to return to Iran or choose another country . . . Iraq will extradite some of these individuals to Iran to face prosecution". Al-Rubaie has repeated this stance in numerous statements and interviews both in Iran and Iraq. (Enclosure 9: Excerpts of remarks by al-Rubaie[110])

From 1 January 2009, Iraqi forces have prohibited any foreigner from travelling into Ashraf. This cruel action also applies to the relatives of the residents of Ashraf. In February 2009, 18 relatives of some of the residents were detained in two small trailers outside the camp in adverse weather conditions for over a week until they were eventually forced to return to Iran once their visas expired. Among them were children of 5, 10, 11, and 16 years of age and elderly parents in their 50s.

Iraqi forces denied the relatives entry to the camp on the orders of Mr al-Rubaie. In a bid to intimidate them, the security guards often loaded their guns in the middle of the night.

These inhumane restrictions are taking place despite the fact that for the past six years relatives of PMOI members coming from Iran and elsewhere had been visiting their loved ones in Ashraf freely, often staying there for several days.

The regime is also putting immense pressure on relatives of Ashraf residents in Iran. Dozens of elderly parents of members of the PMOI who were planning to visit their loved ones in Ashraf were on 16 January 2009 detained at Tehran Airport by suppressive forces and transferred to solitary cells in Ward 209 of Tehran's notorious Evin Prison. Some of those arrested are aged upward of 80 years. On 19 February 2009, the homes of many relatives of Ashraf residents in Tehran were raided, and many elderly parents and young children were beaten and a large number arrested.

[110] Not printed.

Since September 2005 the Iraqi government has cut off food, fuel and medicine rations to Ashraf residents. The residents are forced to buy these items on the black-market for, at times, 20 times the regular market price, and in many instances they are left without basic commodities. In paragraph 7 of a resolution on Iraq, adopted unanimously on 12 July 2007, the European Parliament declared that it: "Strongly rejects the threats of expulsion and cutting off supplies of fuel and drinking water made by some senior officials in the Iraqi Government against 4000 members of the Iranian opposition who have been political refugees in Iraq for the past 20 years and have the legal status of 'Protected persons under the Fourth Geneva Convention' and calls on the Iraqi Government to respect their rights under international law".

The Iranian regime is doing everything it can to force the Iraqi government to expel or extradite the residents of Ashraf. It hopes to both destroy its main opposition movement and close down Ashraf, which represents the greatest political, social, religious and cultural counterweight to its religious fundamentalism and influence on Iraq. In previous years, the regime tried to deceive the US into increasing pressures on the residents of Ashraf. Now it is trying to destroy Ashraf altogether with the help of the Iraqi government and its proxies in Iraq.

Ashraf enjoys widespread support among the Iraqi population and Sheikhs as well as politicians who are not under the influence of the Iranian regime. Some 5.2 million Iraqis in 2006 signed a statement in support of the residents of Ashraf. Similar statements were signed by three million Iraqi Shiites in 2008, 12,000 Iraqi lawyers and jurists and numerous Iraqi leaders. (Enclosure 10: Statements by Iraqis is support of Ashraf residents[111])

Ashraf is supported on the international scene by more than 2,000 MPs from the European committee "In Search of Justice" and eight Parliamentary committees from the national parliaments of EU member states as well as human rights organisations. The International Committee of the Red Cross, the United Nations High Commissioner for Refugees, UNAMI, Amnesty International, the European Parliament, the Parliamentary Assembly of the Council of Europe and others have urged the US and Iraq to recognise the rights of Ashraf residents in the framework of International Humanitarian Law (IHL), international law, the Principle of Non-Refoulement and Common Article 3 of the Geneva Conventions.

The British government as the second leading member of the Coalition force, or Multi-National Force-Iraq, is duty-bound to respect the provisions to which these forces committed themselves in 2003–04. Britain's international obligations, including its obligations to the Geneva Conventions, the Principle of Non-Refoulement and International Humanitarian Law, make this country responsible towards the situation of Ashraf. Therefore the British government cannot remain indifferent to the increasing threats against the more than 3,500 residents of Ashraf.

Letter to the Chairman from Network Myanmar

I have read the sections on Burma (report and evidence) in the recently released FAC report under your chairmanship with great interest and appreciation. I think the Committee has done an excellent job, though their conclusions on Burma have been rather hyped up in some media reports:

> "Stop Burma aid, government urged" reads one report, which wasn't what the Committee concluded at all. See: http://www.reliefweb.int/rw/rwb.nsf/db900SID/TUJA-7GN8TK?Open Document

If I might just make one comment of minor detail, it is that the immediate spark for the protests in August and September was indeed the massive hike in CNG prices by 500%, but that affected only a small part of the population, mainly lower paid bus commuters in Rangoon and Mandalay who were already spending up to a quarter of their wages just getting into work, and when private bus companies decided to double fares because of the 500% increase, it simply made no sense going into work by bus at all. This resulted in the protest marches in mid August which were soon snuffed out and the 88 Student Generation activists who were supporting the protests were arrested and have ever since been incarcerated.

Curiously, a 500% increase in the price of CNG in Burma means that the price is now—believe it or not—still only one-twentieth in purchasing power parity of the price of CNG in Thailand, and in Burma, as I found out when I visited in January, the doubling of fares has already been generally rescinded under Government pressure. However, the price of diesel oil, essential to businesses, was doubled at the same time causing problems for smaller enterprises who need diesel to generate electricity because of the frequent power cuts. The petrol price was also at the same increased by 66%, which was perhaps no more than an irritation because those who run cars get two gallons a day which they mostly sell on the black market.

My point is that the doubling of fares only affected a small section of the population, for whom it was the last straw, and all might have passed off quietly if a number of monks had not been beaten up in the monastic town of Pakokku, and the authorities had then refused to apologise for this insult against the Buddhist religion. From that point on wards, the protests escalated until in late September they were ruthlessly suppressed, though not after the regime had tolerated them for several days.

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[111] Not printed.

If you have not done so, you might care to glance at our website www.networkmyanmar.org. We have put a link to, and extract on Burma from the FAC Report at the top of the Main Menu item "Humanitarian Aid" and I hope our readers, over 90% American (!), will take time to read through the Burma sections.

Our website, incidentally, is read regularly by readers in Burma, according to our web statistics. Who these readers are I would not know.

Derek Tonkin
Chairman Network Myanmar

21 July 2008

Email to the Committee from the Office of Tibet

Please find below a report on the sad situation of the six Tibetans who are on an indefinite fast (without food and water), hoping that the sacrifice they are making with their precious life will help to highlight the Tibet issue and end the suffering the Tibetans inside Tibet under the repressive Chinese rule. Five are monks and one is a young man with an 18-month old child. Today is their ninth day without food or water and still one of the hunger strikers has managed to tell the world and IOC, although in a very feeble voice: "We are human beings; I wish to ask the IOC if we are not entitled to basic human rights like everyone else".

At the start of their voluntary hunger strike protest that began in New Delhi on 28 July, Sonam Dakpa, 31, told the media, "We are protesting against the Olympics in Beijing because China has failed to live up to its promise of improving human rights in the region. They accuse His Holiness of being a separatist and the Tibetan Youth Congress of being a terrorist organization. I sincerely ask them to back their accusations with material proof".

The Speaker of the US House of Representatives, Mrs. Nancy Pelosi, earlier in March stated as a matter of fact: "The issue of Tibet is a challenge to the conscience of the world".

Please do whatever you can to urge your Chinese counterparts to treat the Tibetan people as members of the same human family and also advise your ministers and government to put effective pressure on the Chinese government to resolve the issue of Tibet even if to improve their own international moral standing and image. We are confident that if China is made to strongly appreciate that human lives are more important than temporary economic gains, then the world we will be leaving for our children and grandchildren will be a much better place to live. Therefore keeping in view the desperate measures that the Tibetans in and outside are having to take to highlight the seriousness of the situation inside Chinese-occupied Tibet, please continue to act and do everything in your power to help save Tibet before it is too late. Any feedback on the actions your government has taken and word of encouragement and advice will be much appreciated. And although you are also monitoring the Tibet situation, if you require specific information or how the Tibetans actually feel, please do contact or call us. Thank you for your kind support and consideration.

Tsering Tashi
Office of Tibet

5 August 2008

[* Asterisks denote that part of the written evidence that has not been reported because it is covered by the House of Commons' *sub judice* resolution.]**

Submission from REDRESS

SUMMARY OF SUBMISSIONS

- The FCO's Human Rights Annual Report 2008 does not deal satisfactorily with the UK's anti-torture obligations in the context of its counter-terrorism policies.
- The consistent allegations of UK complicity in "extraordinary renditions" over the past several years, including specific aspects concerning Diego Garcia, as well as the role of UK agents in interrogations and other related matters, remain unanswered despite numerous detailed inquiries by a number of parliamentary committees; an independent public inquiry is now needed.
- Most if not all of these serious concerns, including direct and indirect UK complicity in torture, straddle the mandates of several parliamentary committees, and along with what can broadly be described as a stalemate between Parliament and the Executive, are added reasons for an independent public inquiry.
- Specific concerns relating to transfers of prisoners in Iraq and Afghanistan give rise to related concerns that the UK is breaching its anti-torture obligations, which too need to be fully and impartially investigated.

Introduction

1. This submission is put forward in response to the Foreign Affairs Committee's (FAC) call for evidence in respect of its new inquiry into human rights.

2. The Redress Trust (REDRESS) is an international non-governmental organisation with a mandate to assist survivors of torture to access adequate and effective remedies and reparation for their suffering. Since its establishment in December 1992, it has accumulated a wide expertise on the rights of victims of torture both within the United Kingdom and internationally.[112]

3. The submission focuses on counter-terrorism and human rights (specifically the prohibition against torture) as dealt with in the FCO's Human Rights Annual Report 2008 (hereafter the Annual Report), as well as the responsibilities of the FCO for securing the human rights of British citizens and others overseas.

4. In December 2008 REDRESS published a Report *The United Kingdom, Torture and Terrorism: Where the Problems Lie*[113] (hereafter the REDRESS Report) and a hardcopy is furnished herewith. The REDRESS Report deals in detail with three main areas: the UK and "extraordinary renditions"; victims (UK nationals and former non-national UK residents) of the "war on terror"; deportations and diplomatic assurances. References are made to aspects of the REDRESS Report in this submission.

5. In the Annual Report's section on Counter-terrorism and human rights[114] the FCO speaks of "tensions and challenges" stating that although its "human rights and counter-terrorism agendas [are] generally mutually reinforcing" one area where there are "challenges and difficult decisions" is "the use of intelligence possibly derived through torture [by other countries which] presents a very real dilemma." [115]

6. The "challenges" are not restricted to the use of such information. What is also of grave concern is the active or passive collusion of the UK with those countries in obtaining such information to begin with. The active aspect involves the role played by UK agents in collaborating with overseas agencies who use torture both generally and in specific cases, while the passive element involves the failure of the UK to protect UK nationals and others with links to the UK who have faced the risk of torture.

7. Regarding "extraordinary rendition", including Diego Garcia (DG), the Annual Report repeats what it and the Government has stated over the years: it has not and will not "approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture",[116] and that other than the two admitted incidents of renditions through Diego Garcia the UK accepts US assurances that no other use of DG, including within its territorial waters, has been made to detain and/or interrogate detainees.

8. The REDRESS Report reiterates the arguments for a proper inquiry into all relevant aspects of rendition flights which could be linked to the UK;[117] this and additional concerns regarding Diega Garcia are also dealt with below.[118]

9. Many of the issues have been the subject of inquiries by the Joint Committee on Human Rights (JCHR) and the Intelligence and Security Committee (ISC), and of course the FAC. The Defence Committee too has been involved. While this is understandable given the committees' different mandates it is submitted that the division into human rights, security matters and foreign affairs has to date failed to bring the necessary pressure to bare on the Executive to comprehensively answer the legitimate public concerns which have been repeatedly raised. This is a further reason for a more all-embracing mechanism in the form of an independent inquiry.

The Case of Binyam Mohamed

10. ***

11. ***

12. ***

13. ***

14. Another issue of concern is the UK's belated efforts to press the US to release and return *** former resident non-nationals, as well as UK nationals, from Guantanamo Bay. The Annual Report[119] glosses over the fact that the Government fought hard in the courts to avoid taking responsibility for these men. The REDRESS Report details the chronology and litigation involving both sets of detainees.[120] Concern over

[112] See generally www.redress.org
[113] http://www.redress.org/documents/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf
[114] Pgs 14–17. See also pg 9 under Counter-terrorism.
[115] Pg 15.
[116] Pgs 16–17.
[117] Pgs 13–24.
[118] Paras 23–27.
[119] Pg 16: "In 2004 and 2005 the UK was the first government to secure the release of all its nationals detained in Guantanamo Bay. We have since gone further and requested the release of all those held there who were previously legally resident in the UK."
[120] Pgs 33–41.

the Government's delayed action is not merely one of regret for what happened under Mr Miliband's predecessors, but because of the lack of a UK policy to protect its nationals and others linked to the UK who have no other state to which they can look for protection when they face a real risk of torture.

15. Even once Guantanamo Bay is closed this will not end the need for the UK's intervention with foreign powers when such persons are detained as terrorist suspects or otherwise, and face the real risk of torture. There are already numerous other cases where the UK has been seen to be at best dilatory in its intervention and at worst complicit.[121] What is required is a clear policy statement from Mr Miliband that the UK will not accept the torture of its nationals abroad, nor torture of those non-nationals who can legitimately claim UK protection; that if the real risk of torture occurs the UK will take timely, vigorous and effective steps for it to end; that in all cases of torture of such persons it will espouse their claims for reparations.

16. In the absence of such a policy and effective action, there remains a serious deficiency in the UK's anti-torture programme in the one area where it ought to be most obvious that something can and should be done: the protection of UK nationals and the non-nationals described.

Allegations of UK Complicity in Torture

17. *** the REDRESS Report also refers to other national and non-national former residents detained at Guantanamo Bay, who have alleged the UK was complicit in their rendering and/or their subsequent torture and/or ill-treatment. In fact all of them allege such UK involvement in one way or another, either after their detention and in the time leading up to their rendition or afterwards, or both.

18. Recent reports have referred to cases other than former Guantanamo Bay detainees. Thus a newspaper has said that "senior officials in both MI5 and MI6 have reviewed their files and fear that 15 similar cases *** could also lead to police investigations."[122] An even more recent campaigning group's report details 29 cases altogether, including one prior to 11 September 2001, 13 former Guantanamo Bay detainees, and others in Pakistan, Jordan, the United Arab Emirates, Syria, Egypt and Kenya.[123]

19. The FCO may say that as these allegations concern the security services they do not fall within the FAC's mandate but that of the ISC; it may also argue that they should be raised with the Attorney General or the police; in the House of Commons debate on 5 February 2009 referred to above[124] the chair of the ISC said that "the Investigatory Powers Tribunal . . . is the only body with the legal power to investigate fully any allegation of misconduct by the UK agencies."[125] However, while the responsibilities may straddle different ministries, parliamentary committees and other bodies, these self-evidently include the FCO.

20. The torture and other ill-treatment which UK nationals and non-national UK residents detained as terrorist suspects have suffered illustrates the ineffectiveness of the UK Government's approach to date in protecting these detainees from multiple violations of their rights; there are also serious questions to be answered about the UK's role in the processes concerned.

21. Information has been revealed as a result of various court cases brought in the UK as well as through parliamentary inquiries. There is *prima facie* evidence that the UK has not fulfilled its obligations under the UN Torture Convention in numerous respects including failure to prevent torture and other prohibited ill-treatment but also a subsequent failure to properly investigate the allegations.

22. What is urgently required is a full, independent and impartial public inquiry into all aspects of the treatment of these UK nationals and non-national residents, including the role of the UK authorities at all relevant times. Where the UK is found to have been at fault reparations must be made and those responsible must be held accountable. Mr Miliband should be asked how any other (and necessarily fragmented) approach can continue to be justified.

Extraordinary Rendition (Including the Possible Role of Diego Garcia)

23. It is submitted that "extraordinary rendition" cannot be separated from the UK's alleged complicity in torture of terrorist-suspects, and the concerns are inextricably linked. The Annual Report itself acknowledges that "extraordinary renditions" give "rise to increase risk of torture or cruel, inhuman or degrading treatment."[126]

24. The REDRESS Report chronicles many of the attempts of the JCHR, the ISC, the FAC and other responsible bodies[127] to interact with the Government on the issue of "extraordinary rendition", including Diego Garcia (DG). However, despite the "drip, drip" of disclosures over the past eight or so years the Government's position remains unaltered in all essentials, and it is submitted that there is in reality a stalemate between Parliament and the Executive as to what is the right thing to do.

[121] See below para 18.
[122] Duncan Gardham and Con Coughlin, *Daily telegraph* 28 March 2009 available at http://www.telegraph.co.uk/news/newstopics/politics/lawandorder/5063053/Torture-inquiry-reveals-15-new-cases.html
[123] Cageprisoners report, April 2009 *Fabricating Terrorism II : British Complicity in Renditions and Torture* available at http://www.cageprisoners.com/
[124] Footnote 10.
[125] Dr Kim Howells MP at Column 997.
[126] Pg 17.
[127] Including, for example, the All Party Parliamentary Group on Extraordinary Rendition.

25. In the circumstances it is submitted that the FAC should add its voice to the call for an independent and impartial judicial inquiry into all aspects concerning the UK's involvement in the US programme.

26. Concerning the two instances of admitted rendition through DG, a specific unanswered issue is what precisely happened to the two men who were rendered through DG and have now been returned to their countries of nationality.[128] If the US is not prepared to divulge this information to the UK and/or to authorise the UK to disclose what it already knows from the US, then the FCO should interview the men itself for full details of how and from where they were rendered, what happened to them at Guantanamo Bay, and what has happened to them on their return to their countries of nationality.

27. Although the UK cannot formally espouse the two individual's cases, the fact that their human rights were violated on UK territory by a foreign state is sufficient for the UK to take up their cases in a humanitarian capacity. The FCO should be asked whether it is prepared to follow this up, and if not why not.

Transfer of Prisoners in Iraq and Afghanistan

28. REDRESS recently submitted its views to the FAC on the handing over of prisoners in Afghanistan in connection with the FAC's inquiry into foreign policy aspects of the UK's relations with Afghanistan.[129] That submission referred, inter alia, to the assertion in the FCO's Human Rights Annual Report 2007 that the UK is "confident that the human rights of detainees handed over by UK forces are not breached and they have access to sufficient food and clean water."[130] The FCO should be asked whether there is any significance in the fact that in the current Annual Report there is no such confident assertion.[131]

29. Further, and again in regard to its inquiry into Afghanistan, the FAC very recently heard evidence of torture and renditions and the following exchange is recorded as uncorrected oral evidence:

> "*Q88 Ms Stuart*: What I wanted to pursue a little more is the fact that we have evidence that Afghanistan was used for extraordinary rendition. We know there are memorandums of agreement between the allied forces and the American Government. Currently, the understanding is that anybody captured will be handed over to the Afghan authorities. Can we be certain that they will not be tortured?
>
> *Elizabeth Winter*: I do not think we can be, no. Experience has shown that we cannot be sure. However much one might like to think that negotiations and keeping a watching brief would prevent it, I think it would be much better not to hand them over, to be honest."[132]

30. In regard to "extraordinary renditions" similar misgivings were recorded:

> "*Q91 Ms Stuart*: If we say we cannot be sure about torture, can we be sure it is no longer a base for extraordinary rendition?
>
> *Elizabeth Winter*: I could not be sure about that. I wouldn't know. Again I can try to find out from people who might, and what the rumours are. Whether I could get you any actual information I don't know. My guess is that everybody, including the British Government, is going to be fairly careful now about what they do and try to avoid it because they do not want bad publicity, to put it at its crudest."[133]

31. The FAC will be aware of the debate in the House of Commons on 26 February 2009[134] in which Defence Secretary John Hutton revealed, amongst other important details, the transfer to Afghanistan by the US of two persons captured by the UK in Iraq who were handed over to the US there. Concerns remain as to what has happened to the two men, as well as others mentioned in the debate. For example, concerning Afghanistan, Mr Hutton said:

> "As of 31 December 2008, our database holds the capture details of 479 individuals, including 254 who were subsequently transferred to the authority of the Government of Afghanistan, 217 who were released, and eight who died as a result of injuries sustained on the battlefield."[135]

34. Cogniscent that the debate involved the Secretary of State for Defence and not Foreign Affairs (and which once more illustrates the straddling of responsibilities referred to earlier) a number of immediate questions arise: what has happened to the 29 who were not released or had died; how long have these 29 men been in custody; as to the eight who died, was it reasonable for them to be handed over when they must have had serious injuries.

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[128] REDRESS was informed of this in a letter from the FCO dated 6 January 2009.
[129] On 23 January 2009.
[130] Para 7 of the REDRES submission, referring to pg 125 of the 2007 Annual Report.
[131] See pg 122 of the current Annual Report. Other aspects of the current Annual Report on detentions in Afghanistan at this page are very similar to those in the 2007 Annual Report, and therefore the difference between the two should be queried.
[132] Uncorrected transcript of oral evidence 25 March 2009 available at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfaff/uc302-ii/uc30202.htm
[133] *Ibid.*
[134] *Hansard* 26 February 2009: Column 394 Records of Detention (Review Conclusions) available http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090226/debtext/90226-0008.htm#09022651000004
[135] Column 396.

35. The same debate also once again raised many of the fundamental concerns involving the US-UK relationship when it comes to counter-terrorism and the attitude of the previous US Administration (in particular) to torture compared to the UK's acceptance of its international and domestic human rights obligations. Release on 16 April 2009 in the US of four "torture memos"[136] has added more weight to the reasons behind this long-running problem. All of these concerns apply to Iraq and Afghanistan as well as the earlier issues covered in this submission.

RECOMMENDATIONS

36. The FAC should:

- call for a comprehensive, independent, judicial inquiry into all allegations of UK complicity in torture and/or other ill-treatment arising out of counter-terrorism, including all aspects of UK involvement in the US' "extraordinary renditions" programme;
- pending such an inquiry, press the Government for specific details of what it is doing about the UK nationals and non-national former residents who have alleged torture and/or other ill-treatment abroad, including all the former Guantanamo bay detainees now back in the UK but not restricted to these;
- ***
- seek full details of the two men rendered through Diego Garcia;
- ask the Government what it is doing regarding reparations for all those who suffered abuse as a result of UK complicity; and
- press for a clearer, more effective, consistent and pro-active anti-torture policy concerning the detention abroad of UK and UK-linked terrorist suspects.

All of which is respectfully submitted.

24 April 2009

Email to the Committee from Esan Satkunarajah

APPEAL YOU TO PREVENT ANOTHER RWANDA IN SRI LANKA

I am very much aware that our government is consistently taking measures to end this worst humanitarian crisis unfolding in Sri Lanka peacefully without further loss of innocent lives and limbs.

Since my last e-mail to you, the loss of lives and limbs of Tamil civilians including children have increased and I feel so helpless that I am unable to help my brothers, sisters, mothers, fathers, children who are suffering immensely just because they were born as Tamils in Sri Lanka, I feel so powerless because I am unable to expose the worse state terror unleashed against my people in Vanni and other parts of Sri Lanka. I am so saddened of the fact that Sri Lanka openly and arrogantly ignores the international community's including our government's repeated calls for the immediate cease fire in Sri Lanka and continuing to make the world to silently watch these gruesome and horrendous crimes against humanity in Sri Lanka.

What Tamils in the Vanni, northern Sri Lanka have done to deserve these subhuman sufferings in the hands of majority Sinhalese armed forces and supposedly democratic Sri Lankan government which is boasting around the world capitals as they do care for the Tamil children in Sri Lanka? Every day at least 40 to 50 civilians are paying with their dear lives and another 40 to 50 civilians paying with the limbs of Sri Lanka's genocidal war against Tamils. As you are also quite aware, since 20 January, over 2,800 civilians were killed and over 7,000 injured according to UNHRC. The UNICEF also said hundreds of children were killed thousands more wounded within past two months alone.

Thousands of Tamil civilians who crossed into the government controlled area due to indiscriminate shelling by the government forces on the "Safe Zone" were put into many concentration camps and they are living in subhuman conditions without even basic facilities. Horror stories are coming out from these camps are so frightening, as young female inmates of these concentration camps are being used as sex slaves for the Sri Lankan forces, pregnant women were forced to undergo illegal abortions by the Sri Lankan forces and young males are being separated from their families and taken to torture camps and after the tortures in most cases many of these males are being massacred.

http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/03/31/the_silence_surrounding_sri_lanka/

I earnestly urge you to continuously use your good office to prevent another Rwanda in Sri Lanka, push both warring parties in Sri Lanka to agree for an immediate and permanent UN sponsored cease fire, unhindered access to the hundreds of thousands of displaced people in the war zone area and a peaceful, durable and meaningful solution based on Tamils' right to self-determination via negotiation.

[136] Available at http://www.aclu.org/safefree/general/olc_memos.html

Please see these links:

http://www.alertnet.org/db/blogs/57630/2009/03/2-103102-1.htm

http://www.alertnet.org/thenews/newsdesk/N26514085.htm

http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2009/03/31/the_silence_surrounding_sri_lanka/

http://www.guardian.co.uk/world/2009/mar/23/srilanka-tigers-humanitarian-crisis

http://www.hrw.org/en/news/2009/03/04/sri-lanka-urgently-evacuate-civilians

http://www.iht.com/articles/2009/03/05/asia/lanka.php

http://news.bbc.co.uk/2/hi/south_asia/7922096.stm

http://www.reliefweb.int/rw/rwb.nsf/db900SID/ASAZ-7PUERJ?OpenDocument

3 April 2009

Email to the Committee from Chelliah Selvathasan

I am a Tamil born in Sri Lanka now a British citizen since 1992. I am living in Pinner. Today Tamil people in Sri Lanka (North and East) are subjected to human rights abuse, abduction and extra judicial killing by their own government forces and their proxies all over Sri Lanka. Especially in the North over the last three months they were subjected to aerial bombardment, indiscriminate shelling by artillery and multi barrel rocket launchers. These are used by their own government against their own people. Each day there are 50–100 people dead and 200–300 people injured. 250,000 people are cornered to safe zone and they are bombing this safe zone each day. There is no medicine or food available for these people. None of the international agencies are allowed to operate in these areas. Only the Red Cross is helping to evacuate the wounded at a slow pace. Even people who escaped from this area are put under internment camps and not allowed to see their relatives or even their own MPs. Young women and men are raped and murdered in these camps. It is well known in the Tamil population and so-called concentration camps.

Why are none of the western countries not doing anything towards this human suffering. We Tamils are highly educated and very hard working people. We only want to live peacefully in our own land. Our children want to play and laugh in their own places. If you think it is unreasonable to ask then it is pointless to talk about democracy and human rights. We Tamils have a different language living in the North & East of Sri Lanka for more than 1,000 years. We had separate kingdoms before British rule. When British ruled they combined the country into one for admin purposes. When they left in 1948 they left the country with Majority people. We Tamils are paying the price since 1948 by Majority people.

Today I am writing to tell my people's story, asking your intervention with the Foreign Secretary and the United Nations to stop this war immediately and allow humanitarian aid agencies to function in this area without further delay.

What is happening to Tamils in Sri Lanka is worse than what happened to Jewish people in Germany in 1940. In the name of humanity please help these innocent civilians to save their lives. We are also human beings. We don't have a nation that is only reason no one, not a single country, is helping us.

Dear parliamentarians, I have every confidence that you all will raise this issue with relevant people and give some light to Tamil people in the world. Please remember we are a peace loving people.

27 March 2009

Letter to the Chairman from Professor L Shao

I would like to respectfully draw your attention to apparently Beijing imposed refusals of entry at Hong Kong airport, and seek your help to protect "one country two systems" for the Territory and to address the issue of financial losses of the UK organisations and individuals affected by such incidents.

I am a professor at the De Montfort University in Leicester and was visiting Hong Kong as the external examiner of two successful UK degree courses which are run in Hong Kong and have hundreds of local students. Upon arrival at the HK airport on Sunday 24 August, I was refused entry, detained for 10 hours, and subsequently deported back to London.

This irrational treatment was in sharp contrast to my trouble-free visits to HK in the past three years for exactly the same examination duties. Media reports have shown that an Olympic blacklist was in operation which was designed by Beijing to keep out dissidents during the period of the Games and has reportedly affected many including Dr Dan Wang, a leader of the democracy movement (see SCMP 24/8/08).[137] I have

[137] Not published.

been blacklisted by the Chinese regime for many years for being a follower of the Falun Gong movement and particularly for my work to help free incarcerated Falun Gong adherents including my sister-in-law, who has been sent to an RTL camp, without trial, in Guangzhou, China.

This and other reported refusals of entry pose questions about the robustness of HK's adherence to "one country, two systems", at least in the important area of freedom of travel, where Beijing seems increasingly able to impose its ways when and where it wishes.

The fact that I was refused entry when my visit was purely for business reasons made the incident all the more deplorable. In my absence as the external examiner, about 100 students would not be able to graduate properly—the consequences being substantial disruption to their lives and to the course operation by the UK University, which has done an excellent job in establishing a solid foothold in the competitive HK education market. The irrational deportation certainly has implications of financial and other losses for the UK university concerned, which you may wish to urge the HMG to address through appropriate channels in Hong Kong.

27 August 2008

Letter to the Chairman of the Committee from Jim Sheridan MP

I understand that the Foreign Affairs Select Committee is shortly to examine the FCO's Human Rights Annual Report 2008.

As you may be aware I recently visited Colombia and I have read the section of the report that covers the situation in Colombia with interest.

I was somewhat concerned that the FCO's report did not reflect the true severity of the human rights crisis in Colombia and, in particular, appears to make the assumption that the situation is improving.

Whilst some indicators undoubtedly appear to be getting better there is no doubt that many—for example the numbers of trade unionists being murdered, the numbers of people being forcibly displaced, etc—are actually deteriorating.

In particular I was concerned to see that the report made only a passing mention to the issue of forced disappearances in Colombia. Recent years have seen a large increase in cases and, according to testimony that we heard whilst in Colombia, in most instances State forces are behind the act. As you will be aware there are tens of thousands of disappeared people in Colombia and I find it astonishing that the FCO report does not tackle this issue when looking at the overall human rights situation there.

Finally, I was very pleased to see your Committee's description of ongoing UK military assistance to Colombia as "inappropriate": There is no doubt in my mind that British aid should not be being provided to the Colombian security forces due to their deep involvement in human rights abuses and, whilst I certainly welcome the recent decision to end part of the UK's military assistance to Colombia, it is, I believe, of paramount importance that all such assistance cease. This would send a clear political message to the Colombian military that their conduct is unacceptable. In addition, the resources involved could be much better spent helping the victims of Colombia's conflict.

I trust that you and the other members of the Committee will take these concerns into account when considering your own response to the FCO's new report and please don't hesitate to contact me should you require clarification on any of the above.

19 May 2009

Letter to the Chairman of the Committee from Jim Sheridan MP, Ian Davidson MP, Peter Kilfoyle MP, Andy Love MP and Jim McGovern MP

FOREIGN OFFICE ANNUAL HUMAN RIGHTS REPORT: COLOMBIA

We are writing in relation to the new inquiry that the Foreign Affairs Select Committee is holding into the Foreign Office's human rights report. Specifically I would like to draw your attention to what I believe is a glaring omission in the report in relation to the section on Colombia.

We recently visited Colombia and was able to meet with political prisoners—that is civil society actors, such as trade unionists and human rights defenders—who had been imprisoned for long periods without having been put on trial, let alone convicted of any crime.

These men and women, and there are many of them in various Colombian jails, appear to have been jailed simply for their opposition to the policies of the Colombian Government and the conditions that they are hold in are, in many cases appalling.

We were shocked that the section of the FCO's new report dealing with the human rights situation in Colombia made no mention whatsoever of the plight of Colombia's political prisoners, despite the fact that the theme comes up time and time again elsewhere in the report in relation to other countries.

We would be most grateful if you and your colleges on the Committee could include in your response to the FCO's new report some mention of this issue along with a request to the FCO to ensure that it is properly addressed in next year's report.

15 May 2009

Submission from Tamils against Genocide United Kingdom

SUMMARY

1. This submission is made in response to the inquiry announced by the Foreign Affairs Committee (FAC) on 2 April 2009.

2. Thomas Hammarberg, The Council of Europe Commissioner for Human Rights, in his speech entitled "*Protection and Promotion of Human Rights by International Structures—dilemmas and lessons learned*" (London, 7 February 2008) said:

> "The international reach of [the] human rights protection is an obvious part of the principles that all human beings have the same inherent value and that the rights are universal. Those who cannot defend their rights themselves need and deserve support from the outside. They must not be left unprotected. This is a question of very basic solidarity."

3. It is contended that Mr. Hammarberg was right, and:

— the development of a culture where fundamental rights are respected by governments and individuals alike should be a primary consideration in all aspects of international policy;

— the United Kingdom, through the Foreign Commonwealth Office (FCO), has an insufficient capacity to effectively respond to acute difficulties by affording actual protection;

— the United Kingdom must, as a matter of urgency, develop further its culture of affording primacy to the protection of human rights, using all legitimate means at its disposal—whether domestically or internationally;

— the existing mechanisms of United Kingdom domestic law are insufficient to allow for the urgent and progressive development of protection for inalienable rights: this Committee should initiate and pursue inquiry as to how the protection gap which exists in Law is to be removed; and

— the submissions above are fortified having regard to United Kingdom's response to the recent Genocide in Sri Lanka which the Committee is invited to consider as an exemplar as part of the matters under its inquiry.

THE IMPORTANCE OF PROTECTING HUMAN RIGHTS

4. The promulgation of the Universal Declaration on Human Rights and the establishment of the United Nations began a process which established a coherent framework upon which nations (and individuals) could rely upon to evince a claim for basic rights. This and other regional Instruments (for example, the European Convention on Human Rights and Fundamental Freedoms), have done much to prevent a return to wholesale abuses of "rights" within certain parts of the world—but not all.

5. International Peace and Security stands to be damaged by the denial of fundamental rights. The protection of Human Rights is not merely a matter of political convenience. An effective system of protection militates in favour of stability amongst peoples and nations. Standing up for rights can be a difficult choice, but it should not be shirked. Where absolute rights are concerned, the legal obligation must be to ensure effective and absolute protection.

6. The obligation to ensure rights is not merely a legal one. Where abuses of inalienable rights are concerned—for example, the obligation not to cause or permit Genocide—State responses which fall short of positively and immediately preventing abuse fundamentally undermine the Rule of Law and the protection of rights—to the detriment of all.

7. As has been foreshadowed, this submission invites the Committee to consider as part of the question it posed, how (if at all) the United Kingdom afforded protection when reacting to one of the most significant incidents of the use of armed force in the world today. It focuses upon an abuse of the most fundamental right vested in a people—the right to be protected from Genocide.

A New Outlook upon the Nature of State Obligations

8. Within contemporary Public International Law it is uncontroversial that binding legal norms can be created by International Instrument or by Customary International Law. Modern International Humanitarian Law has protected rights by repudiating any narrow (traditional) view of a State's obligation to protect rights being dependent upon mutuality. This is reflected in the judgment of the International Tribunal for Yugoslavia in *Kupreskic et al* (14 January 2000), where the more traditional view was roundly rejected as misconceived.

9. Individuals, NGOs and other organisations have been able to develop awareness of rights, largely by publicity and campaigns against individuals or governments that deny them. Non-state agents free from the shackles of diplomacy are often able to counter any institutional torpor which may develop within governments, by their role as an active and vocal conscience.

10. The existence of such a conscience is not enough. Such groups cannot assume responsibility for action in place of governments. Their role is limited. Some can merely mitigate the after-effects of rights abuses.

11. The continued exclusion of such parties from an effective judicial system whereby rights can be practically protected perpetuates a protection gap which facilitates the abuse of rights. (See below)

12. The Committee is invited to consider recent events in Sri Lanka in this context, particularly:

a. There has been an undoubted Genocide of Tamils in the north of Sri Lanka. It cannot be said that UK citizens were not present—it is likely that some were.

b. This Genocide is similar in method to that in the Balkans. [*See below*]

c. Such a force as is being used in Sri Lanka is unlawful and indiscriminate.

d. The international press have been excluded from the relevant areas—no good reason can exist for this.

e. The diplomatic response has been at best to issue "strong words", or to "call for" ceasefire. [*A separate bundle setting out the most recent events will be provided to the Committee*]

f. It cannot be said that the FCO were able to act effectively (whether alone or with other Foreign Services) so as to prevent Genocide. Nor can it be said that UK citizens were properly protected through this.

g. Although each individual state has a responsibility to its own citizens to prevent genocide, if the state turns within itself, it is only other countries which can act.

h. The Sri Lankan response may be characterised as unlawful having regard to Customary International Law, International Humanitarian Law and by reference to the following Resolutions of the United Nations:

A. Security Council Resolution 1265/1999.

B. Security Council Resolution 1296/2000.

C. Security Council Resolution 1366/2001.

D. Security Council Resolution 1325/2000.

E. Security Council Resolution 1460/2003.

F. Security Council Resolution 1674/2006.

G. Security Council Resolution A/RES/60/1.

The points made in this context draw upon all the material submitted in support of this submission.

Protection and the Protection Gap

13. It should be uncontroversial that the effective protection of rights is most completely secured by:

a. A system where the law is a deterrent.

b. It identifies liability in the event of breach.

c. It ensures legitimate punishment/redress in the event of breach.

14. It follows that the existence of a judicial system which determines liability against a State and/or as against the individuals responsible for human rights breaches is an important facet in ensuring that rights are protected.

15. It is a fundamental aspect of the Rule of Law that liability must be allied to an objective and impartial standard applied judicially. Inconsistency (or failure) in the application of international law between crimes of Genocide, or torture, serves only to bring the law into disrepute.

16. It is no part of this submission to question whether there is a proper distinction to be drawn between criminal liability or restitutionary remedy as part of the armoury of rights protection. It is however submitted that the Committee should be anxious to ensure that in "securing the human rights of British Citizens and others overseas" the FCO cannot and should not adopt an approach which assumes that "after-the-event" remedies are sufficient.

17. Why? The answer is complex, but can be broken down as follows:

Diplomacy which has as its substance a request that a state perpetrating an abuse desists, is not likely to provide effective remedy and should not be regarded as necessarily sufficient

18. The traditional (historic) weapons of diplomacy—including protest, ministerial statements and meetings with Ambassadors undoubtedly take time to prepare and are often well intentioned. Historically they are probably allied to the outmoded view that the citizen is the property of his state. However beloved of Diplomats, they are ill-fashioned to afford practical protection in the modern world.

19. The premise of the Committee's present inquiry is to ensure that the FCO conditions its response to Human Rights abuses so as to secure *effective* respect for human rights from the point of view of the people affected by abuses.

20. Practical help can be achieved in fact. In the recent past, the United Kingdom Government correctly identified that there was genocide within the Balkans. This violence was inflicted directly (in massacres) and included bombing of innocent civilians.

21. Why was it Genocide? In International Law Genocide is defined as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group.

(b) Causing serious bodily or mental harm to members of the group.

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;…"

22. What was done? Although initial justifications for the use of force in the Balkans were posited upon the need to quash terrorism and internal insurrection, this was a sham. External armed intervention was necessary to stop its completion. Nothing less was sufficient. The Genocide was stopped, but only after a terrible price was paid by many.

23. By contrast to the Balkans, the UK response to the situation in Sri Lanka has been inadequate. However well intentioned, it has failed to afford practical protection against genocide.

It is misconceived to equate legal remedies after the event with protection which could or should prevent breach

24. Certain rights—for example, to be free from genocide—are not to be identified with any individual. If these rights are breached by the killing of members of a group, the victims have little possibility of remedy. As a matter of fact, the members of a group subject to genocide are unlikely to be able to protect themselves against it.

25. It follows that the primary responsibility for action to prevent such an abuse of rights must lie within the province of States. If the approach of states is based on anything less than "zero tolerance" of the prospect of Genocide, irreparable harm is risked. In this context the whole of the world must be seen as the UK's "back yard".

The international judicial system is insufficiently developed to meet the immediate challenge of an imminent and wholesale breach of human rights—such as Genocide

26. Whilst within the democracies which are signatory to the European Convention on Human Rights and Fundamental Freedoms (ECHRFF), there is a relatively simple (albeit slow) system of judicial scrutiny to ensure compliance with the standards set by that Treaty. The legal framework within that treaty is novel in so far as it affords the right of individual petition against a state. This system does not in practice engender lengthy debates about its jurisdiction to act.

27. If individuals had not been afforded what was then a novel right to petition the European Court of Human Rights directly the right of petition had been limited to Member States. If it had been so, the Court would have had little to do. Actions launched by Member States to protect rights against other states signatory have been few. Instead the ECHRFF has allowed individuals to act to safeguard their rights. This has contributed to the efficacy of that body and the promotion of human rights and the Rule of Law generally.

28. Beyond Europe, and in areas where concerns exist about the abuse of the most fundamental Human Rights, protection such as that afforded by the ECHRFF is generally lacking. Although since 1982 (*Cyprus v. Turkey*) the protection afforded by the ECHRFF has been extended to allow it some scope beyond its strictly geographic borders it is impotent in the face of certain abuses perpetrated by States which are not signatory to it.

29. The legal vacuum beyond the ECHRFF is caused in part by the fact that as a matter of Public International Law by reason of the fact that individuals have no general right of petition to an International Court, or the International Court of Justice (ICJ).

30. This protection deficit is not made up by States themselves being disposed to bringing actions in defence of others' rights. Whilst such action is difficult, it is not impossible.

31. The difficulties with the ICJ being more readily deployed as a mechanism for ensuring international justice were perhaps acknowledged by its distinguished President. In her address to the Sixth Committee of the General Assembly of the United Nations, given on 31 October 2008, the President of the Court, HE Dame Rosalyn Higgins said:

> "Virtually all the great international institutions of the world have, as a concomitant of membership, the obligation to accept the compulsory jurisdiction of the Court of that institution. It is so with the Council of Europe, the European Union, and the World Trade Organization. But membership of the United Nations does not carry this obligation. Referral of disputes to its primary judicial organ is optional, and based upon the consent of both parties. The United Nations stands almost alone in this state of affairs, and all the many suggestions for Charter reform made in recent years by the Secretary-General, and by Member States, there has not been the faintest suggestion that this should change.
>
> This requirement of mutual consent in each and every case has necessarily meant that the Court is too often examining objections to its own jurisdiction, *rather than addressing the serious substantive problems at issue*." (emphasis added)

32. It is well known that the International Court has on occasion been called upon in cases which involve serious questions associated with the protection of Human Rights. However, it is submitted that the overwhelming majority of cases do not involve such issues. It follows that the limited number of opportunities in which the Court has been invited to act are minor when compared with the frequency with which such issues arise. Its lack of use and its limited capacity to ensure effective response further perpetuates a lack of protection.

33. In the context of Genocide responses in international law have been *ex post facto* and singularly failed to prevent large scale atrocity.

34. The Committee is invited to investigate this further with a view to adopting recommendations that the United Kingdom FCO strives to positively develop change in the prevailing international legal framework or culture in these respects.

The jurisprudence of the United Kingdom has been slow to expand so as to allow individuals to protect rights in the circumstances beyond the scope of the ECHRFF

35. Historically the United Kingdom's judiciary was reluctant to permit challenge to matters which fell within the sphere of Foreign Policy. Whilst this reluctance has diminished to some degree over recent years, on balance it is submitted that the deferential approach of the domestic Courts has inhibited the effective protection of Human Rights within the United Kingdom. The Committee is referred to the extra-judicial observations of Lord Justice Richards in a lecture entitled "*The International Dimension of Judicial Review*" (2006) as a useful review of the development of the law in this context.

36. It is submitted when coupled with the "deference" of the Courts to challenges to policy or decision making, the absence of effective remedies after the event serves only to diminish the framework by which human rights are protected.

37. A simple example comes to mind—the decision of the Judicial Committee of the House of Lords in *Jones v. Ministry of the Interior Al-Mamlaka Al-Arabiya AS Saudia (the Kingdom of Saudi Arabia) and others* [2006] UKHL 26. The Committee there upheld the Respondent's claim to sovereign immunity so as to prevent the Claimants from recovering damages against the very State it alleged had used torture against them.

38. Whether that decision is right, or wrong on its merits, is a matter of argument. What is clear is that whilst it remains the Law, UK citizens who have been tortured will not be able to obtain satisfaction within the UK Courts as against the states which perpetrated that torture. Satisfaction against private individuals is hardly likely to be sufficient.

39. Efforts to correct the effects of *Jones* by Torture (Damages) Bills are to be applauded. It should no longer be the case that UK law effectively permits a State responsible for torture to enjoy immunity from the potential liability in damages to those they have wronged. Calling States which engage in or permit torture to financial account should provide an incentive for them to avoid their barbaric practice.

40. One can and should question in the context of all issues under consideration by the Committee whether (or how) the FCO has sought to use domestic litigation such as the Proceeds of Crime Act 2002 to restrain the funds of individuals associated with those involved in torture or genocide as a weapon against such abuses.

THE BENEFITS OF A CHANGE OF APPROACH

41. Adopting an approach which ensures the express incorporation of Human Rights norms in legislation which governs Foreign Policy would be apt to promote the objective identified by the Committee.

42. In the United States certain Federal Laws are enacted so as to include a positive requirement upon the Executive to avoid by its actions assisting States in which the governments engage in a gross pattern of internationally recognised human rights, such as torture or cruel inhuman or degrading treatment. [For example, US Statute 22 U.S.C. 262d]

43. Placing such an obligation as is encapsulated within the US legislation referred to above upon a statutory footing within the United Kingdom would represent a positive step toward affording the protections of the type under investigation by the Committee.

44. One could surmise that such legislation would have provided clear guidance to the relevant authorities that United Kingdom law prevented it from acquiescing in torture or extra-ordinary rendition whether it was to be carried out by third party states or private agents employed by them. It would have allowed for judicial scrutiny at a much earlier stage.

45. Any counter-argument that imposing such a statutory obligation would be apt to expose the Government to unnecessary litigation is superficial, and unlikely to be well-founded in fact. No domestic government should seek to justify a policy or decision on the basis that it entailed or permitted a breach of fundamental rights. In turn, foreign powers would be aware that a fundamental requirement of dealing with the UK (or continuing to do so) would be dependent on adhering to proper standards in respecting human rights, or the UK would not be able to engage.

46. The Committee is respectfully invited to inquire further into this aspect of affording protection. It is referred to the document *Tamils against Genocide v. Timothy Geithner (and others)* in this context.[138] This document is the pleading in an extant case before the United States District Court in the District of Colombia. It evinces both the legislative and factual background which gives rise to the case.

47. The Committee is further invited to consider the document attached to this submission which is an indictment presently before the Grand Jury in the Central District of California alleging war crimes against two named Sri Lankan nationals.[139] The document evinces the legal process against them, but also sets out the evidence of Genocide which underpins the case study at the end of this submission and has been referred to above.

FURTHER MATERIAL

48. The Committee is invited to receive oral evidence in due course from the following:

a. Professor Francis Boyle, Professor of International Law at the University of Illinois. Professor Boyle instituted Proceedings before the ICJ on behalf of Bosnia Herzegovina in matters touching upon the Genocide in the Balkans.

b. Mr. Virendra Sharma, MP.

c. Ms. Karen Parker—Attorney-at-law.

d. Mr. Bruce Fein—Attorney-at-law. (Counsel in the case referred to at paragraph 46 herein)

49. The opportunity to submit further material to the Committee in the course of its investigations would be welcomed. Such further assistance as can be offered to the Committee will be made available.

24 April 2009

Submission from Tibet Support Group Grampian

EAST ASIA: INQUIRY INTO THE POLITICAL AND RELIGIOUS FREEDOMS AND HUMAN RIGHTS IN THE PRC, INCLUDING THE SITUATION IN TIBET AND XINJIANG

A petition submitted by the Tibet Support Group Grampian to the Foreign Affairs Select Committee calling for the British Government to take a more active role in securing self-determination and an end to the human and civil rights violations in Tibet.

SUMMARY

— The Tibet Support Group Grampian (TSGG) is a voluntary organisation of academics, professionals, and concerned members of the public campaigning for a free Tibet and an end to the human and civil rights abuses in Tibet. As well as holding regular fundraising events to support Tibetan refugee organisations, the group also lobbies local, national and European

[138] Not published.
[139] Not published.

administrations to take more direct action in facilitating a meaningful resolution between the People's Republic of China (PRC) and the Tibetan Government in Exile (TGiE). Many of the group's members also sit on the Scottish Parliament's Cross Party Group.

— In this submission to the annual inquiry into human rights, the TSGG requests that the Foreign Affairs Committee recommends that the British Government take a more determined stance in facilitating dialogue between the PRC and the envoys of His Holiness, the 14th Dalai Lama in order to bring an end to punitive military surveillance and to secure self-determination for the Tibetan people as is their human right.

— As supporting evidence, the TSGG is submitting two briefing papers prepared by Tibetologist Dr Martin A. Mills, Co-Director of the Scottish Centre for Himalayan Research of the University of Aberdeen. The papers were prepared for the Scottish Cross Party Group for Tibet but Dr. Mills retains the copyright. They are to be considered by the Cross Party Group at their next meeting in June and have not been adopted by them to date. Dr. Mills is a member of TSGG and also of the Scottish Parliament Cross Party Group for Tibet. The first paper *The 2008 Protests in Tibet: Main Facts and Analysis* is an analysis of the 2008 protests in Tibet, while the second *The Sino-Tibetan Dispute: Issues of Sovereignty and Legal Status* discusses the historical arguments put forward by both Tibet and China with regards to sovereignty. The conclusion in this second paper is that, in the modern context, the issue of self-determination of peoples—in accordance with Article 1, Part 2 of the 1945 United Nations Charter,[i] and with Article 1 on the International Covenant on Civil and Political Rights (ICCPR),[ii] and as enshrined in the PRC's Law of Regional National Autonomy[iii]—is far more salient than the historical debates.

Introduction

1. Claims by the PRC that Tibet has, historically, been an integral part of China since antiquity is to fundamentally misrepresent the interdependent protection religious and temporal authority each country gave to each other that characterised pre-modern statehood in South and East Asia. The claims of sovereignty based upon the inheritance of imperial possessions of dynasties that ruled China before modern statehood are outdated in the modern context of decolonisation and legal sovereignty of previously colonised nations. This claim of sovereignty based on Tibet as an imperial possession is also rather duplicitous given claims of "liberating" Tibet from British imperial forces. Given the urgency of the deteriorating situation within Tibet since the March 2008 protests, at this point the TSGG believes it is essential to address the human rights abuses, the destruction of Tibet's culture, religion, and environment, and the negative impact of the continuing population transfer of ethnic (Han) Chinese into the Tibetan Autonomous Region (TAR) and the regions of Eastern Tibet that fall under direct Chinese administration. These issues need to be addressed as a matter of urgency. We are also requesting that the Committee examines the situation based upon the principal right to self-determination of a people as enshrined in Chapter 1, Article 1, Part 2 of the 1945 United Nations Charter, which the PRC has ratified, and in accordance with Article 1 of the International Covenant on Civil and Political Rights which the PRC signed but has yet to ratify. The petition calls for the self-determination for the people of Tibet based upon these two articles, and in particular with self-determination being a human right.

2. In the second paper, *The Sino-Tibetan Dispute: Issues of Sovereignty and Legal Status* attention is drawn to the report by the International Commission of Jurists[iv] that Tibet was, at the very least, a *de facto* independent State between 1913 and 1950. The ICJ Report noted that, following Chinese aggression, Tibet surrendered its independence by signing a 17 point Agreement which, however, *inter alia* guaranteed broad autonomy. The ICJ Report concluded that, because this was consistently disregarded by the Chinese Government, "the Tibetan Government was released from its obligations with the result that she regained her sovereignty which she had surrendered under the Agreement". Dr Mills's paper, page 9, also sets out United Nations resolutions on Tibet which call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self determination. The United Nations have, therefore, acknowledged that the Tibet are a people within the meaning of the International Covenant on Civil and Political Rights. The United Nations have set out criteria for a people having the right to self determination:v The term "people" denotes a social entity possessing a clear identity and its own characteristics. It implies a relationship with a territory even if the people in question has been wrongly expelled from it and artificially replaced by another population. The term "people" should not be confused with the term "minority". A history of independence or self rule in an identifiable territory, a distinct culture and a will and capability to regain self governance. In the TSGG's opinion all these criteria apply to Tibet.

3. As has been well documented, Tibetan protests at Chinese state interference and control—sometimes violent—broke out in Tibet in March 2008. The Chinese responded with brutality, imposing a military crackdown in Tibetan regions; and an information blackout, with foreign journalists being refused visas to enter Tibet, and foreign visits being closely monitored and restricted. Despite international calls to allow independent human rights or fact-find missions entry to investigate, none have been granted access into the region. Yet despite the information blackout, reports of an increase in arbitrary detentions and unlawful executions, and other human rights violations are still being received by human rights organisations (Tibetan Centre for Human Rights and Democracy, Free Tibet, Amnesty International), and the Chinese Daily

Xinhua also covers stories of arrests and detentions, albeit from a different angle. These organisations will no doubt be submitting their own evidence for the inquiry and there is little point in reporting specific cases here; what is apparent from this recent activity however is the depth of importance that Tibetans give to their right to self-determination. A common thread through the protests is the call for religious and political freedom, an end to human rights abuses, the release of political prisoners, and for the return of the Dalai Lama. This year, Tibetans both in the region and in exile chose to boycott New Year (Lo Sar) celebrations in response to the PRC's crackdown on protests in Spring 2008, a decision that cannot have been taken lightly given the ritual significance of New Year for Tibetans.

4. Dr Mills first briefing paper, *The 2008 Protests in Tibet: Main Facts and Analysis*, highlights three principal possible catalysts for the protests: increasing state restrictions on religious practice; the intensification of ideological and military control; and poor standard of living and the lack of economic and educational opportunities. However, the PRC's response is to accuse the "Dalai Clique" (Chinese moniker for the TGiE) of orchestrating the protests in a bid to unstable Chinese control and split the nation, an accusation that seems highly improbable given the geographical breadth of the protests and the PRC's control of media and communications. Eight rounds of talks between the envoys of the Dalai Lama and PRC to negotiate a meaningful autonomy for Tibet have not resulted in any breakthrough, and since the protests no further talks are currently planned.[vi]

Self-Determination through Genuine Autonomy

5. In 1988, his Holiness addressed members of the European Parliament at Strasbourg, France with a proposal for autonomy in Tibet.[vii] In this address, His Holiness formally renounced his call for Tibetan independence, instead calling more genuine autonomy for the people of Tibet within the PRC: one that allows them the freedom to determine their future as is their right, and as enshrined in Article 4 of the PRC's constitutional principles on autonomy, that provides for organs of self-government of national autonomous regions and acknowledges their power to legislate.[viii]

6. 20 years on, in the 2008 Memorandum for Genuine Autonomy for the People of Tibet,[ix] His Holiness seeks a peaceful and mutually beneficial solution, whilst at the same time respecting the territorial integrity of the PRC, in what is described as the Middle Way Approach. In this Memorandum, the TGiE proposes solutions to the Tibetan problem which they consider to be compatible with the principles of autonomy in the constitution of the PRC and the needs and aspirations of Tibetans: the right for their own regional government and government institutions with the power to legislate upon issues of religious practice, economic development and trade, public health, security and education, environmental management and protection of natural resource-base, issues that have been cited as catalysts for the growing civil unrest in the Tibetan regions.

7. Particularly important is the issue of regulating the population transfer: there is a genuine danger that the continued transfer of Han Chinese into Tibet could lead to the destruction of the integrity of the Tibet as a compact ethnic community, and result in a loss of Tibet's right to exercise national regional autonomy as guaranteed by the Chinese Constitution, as well as a violation of the constitutional principles with regard to the treatment of minority nationalities. There is also the issue of Tibet's fragile natural environment: amongst other threats to natural resources, Tibet is the source of many significant rivers that provide water throughout much of Asia: the Mekong, the Nu (Salween) the Indus, the Yarlung Tsangpo (Bhramaputra), the Yellow River, and Yangtze River. Greater population transfer into the region could put pressure on water sources and have catastrophic consequences on the water supply to much of the Asian continent, including regions of China. Given the negative impact that continued population transfer could have on the rest of Asia, the time has never been more urgent to act.

8. In his 1988 Strasbourg address, His Holiness cites the European Union as an example of how nations that were once enemies can become friends and form beneficial political and economic alliances. He wishes to engage in this kind of alliance with China, demonstrating his understanding of the interdependence of all nations and the importance of regional alliances for contemporary global statehood. This would seem to be a reasonable suggestion, not only as a way to guarantee the self-determination for Tibetan people in their future, but for regional stability and economic cooperation. His Holiness also states how the current rule of force is more likely to result in secession and the break up of the PRC than granting self-determination. However, the Memorandum has been rejected by the PRC as an attempt at independence in disguise.[x]

9. The European Resolution on the Situation in Tibet (1992) recognised that the Tibetans are a people according to international law and that under the United Nations Covenants on Civil and Human Rights, all people have the right to self-determination according to international law and that, by virtue of this right, they may freely determine their political status and freely pursue their social and cultural development. They also noted that, in his determination to secure human rights of Tibetans by peaceful means, the Dalai Lama has made it clear that he does not insist that Tibet should become totally independent. The resolution urged the resumption of negotiations between the TGiE and the Chinese authorities, calls which have been repeated in 2008 and 2009,[xi] along with calls to open dialogue once again with the Dalai Lama, for the PRC to respect its commitment to human minority and democracy, and the urgent need for independent organisations to enter Tibet to investigate the human rights situation.

10. It is worth noting that the Chinese have previously recognised Tibet's minority status and cultural separateness, as with the now redundant 17-Point Agreement of 1951, which gave Tibet the right to exercise national regional autonomy, allowing the existing systems of political and religious authority to continue.[xii] While the International Commission of Jurists concluded that the PRC violated the principles of this agreement (See Dr Mills' second Briefing Paper *The Sino-Tibetan Dispute: Issues of Sovereignty and Legal Status* p 8), the 17-Point Agreement demonstrates that PRC has been willing to discuss the principal of autonomy for Tibet in the past. Is it such an unrealistic proposal that dialogue can be resumed?

Conclusion

11. While there is dispute as to whether or not the PRC has any legal basis for the inclusion of the Tibetan regions under Chinese sovereignty (See Dr Mills's second briefing paper *The Sino-Tibetan Dispute: Issues of Sovereignty and Legal Status*), what is evident is that Tibet's right to self-determination—the right to determine institutions of government and authority, and to legislate in the absence of state interference; the right to religious practice, organisation, and assembly in the absence of state interference—is not being respected; a right that some, his Holiness in particular, sees as being achievable through peaceful dialogue and meaningful autonomy. It is therefore imperative that the PRC renews its dialogue regarding autonomy with the TGiE in order to fulfil its constitutional obligations, and its obligations to the United Nations Charter and ICCPR. Rather than as a result of external organisation, the rise in mob-style violence could be seen as a weakening of the Dalai Lama's authority in the Tibetan regions. If this is the case, it is therefore in the PRC's interests to reach an agreeable solution that facilitates his return, and a return to order and peace in the region. Whether it be calls for complete independence or meaningful autonomy, based upon the evidence given, the fundamental concern for the Tibetan people seems to be their right to self-determination, and this is this point that needs to be addressed by foreign diplomatic services and human rights policies.

Recommendations

TSGG recommend that:

- the British Government publicly recognize that:
  - (i) the Tibetans are a people under international law;
  - (ii) that under Article 1 of the United Nations Covenants on Civil and Human Rights all people have the right to self-determination;
  - (iii) that the Tibetan people, by virtue of this right may freely determine their political status and freely pursue their economic social and cultural development;
  - (iv) that it is by virtue of their religious convictions and culture that the Tibetan people have not sought to secure their rights under international law by violent means; and
  - (v) and that it is because of the Dalai Lama's determination to secure the human rights of the Tibetan people by peaceful means that he has abandoned his call for Tibet to become independent.
- The TSGG recommends that the British Government takes a more proactive stance in calling for the PRC to allow independent organisations into Tibet to investigate claims of human rights abuses.
- The British Government should urge the PRC to demonstrate its commitment to the United Nations and to the rights of its minority nationalities by immediately ratifying the ICCPR, to which it is a signatory, as a matter of urgency.
- The British Government takes a lead in facilitating the resumption of talks based upon the Memorandum for Genuine Autonomy; and, if not already done so, the British Government appoints a special envoy to mediate between the two administrations in this matter.
- The British Government puts pressure on the PRC to regulate its policy of population transferral in order to honour constitutional commitments to China's minority nationalities, and in the interest of environmental protection not only of the Tibetan Plateau, but Asia-wide.
- The British Government urges the PRC to allow the Tibetans to enjoy the democratic and cultural freedoms that the people of China also value and wish to live by, and as enshrined in the Preamble of the Constitution of the People's Republic of China.[xiii]

23 April 2009

References

[i] http://www.un.org/aboutun/charter/chapter1.shtml

[ii] The International Covenant on Civil and Political Rights, 1966
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

[iii] Law of the People's Republic of China on Regional National Autonomy, October 1984
http://www.novexcn.com/regional_national_autonomy.html

[iv] International Commission of Jurists, http://www.ici.org/news.php3/id article = 3415&lang = en, February 2009, and International Commission of Jurists, *The Question of Tibet and the Rule of Law.* Excerpts from section: *"The Position of Tibet in International Law"*.

[v] The Right to Self-Determination. Historical and Current Development on the Basis of United Nations Instruments. Study by Aureliu Cristescu. United Nations New York 1981 pp 40–1 para 279 www.un.org/Docs/journal/asp/ws.asp?m = E/CN.4/Sub.2/404/Rev.1

[vi] As reported by the European Parliament in the European Parliament resolution on the situation in Tibet, the 50th anniversary of the Tibetan uprising and the negotiations between the People's Republic of China and the envoys of His Holiness the Dalai Lama: see http://www.europarl.europa.eu/sides/getDoc.do?pubRef = -// EP//TEXT + MOTION + B6-2009-0135 + 0 + DOC + XML + V0//EN&language = EN

[vii] The Strasbourg Proposal: address to the Members of the European Parliament in Strasbourg, June 1988. http://www.dalailama.com/page.96.htm

[viii] Article 4 of the Constitution of the People's Republic of China http://english.peopledaily.com.cn./constitution/constitution.html

[ix] Memorandum for Genuine Autonomy for the Tibetan People: www.tibetoffice.ch/web/mwa/memorandum/english.pdf

[x] As reported by the European Parliament in the European Parliament resolution on the situation in Tibet, the 50th anniversary of the Tibetan uprising and the negotiations between the People's Republic of China and the envoys of His Holiness the Dalai Lama:
see http://www.europarl.europa.eu/sides/getDoc.do?pubRef = -//EP//TEXT + MOTION + B6-2009-0135 + 0 + DOC + XML + V0//EN&language = EN

[xi] See the European Resolution of 10 April 2008 on Tibet http://www.europarl.europa.eu/sides/getDoc.do?pubref = -//EP//TEXT + TA + P6 + TA-20080119 + 0 + DOC + XML + V0//EN, and the European Parliament in the European Parliament resolution on the situation in Tibet, the 50th anniversary of the Tibetan uprising and the negotiations between the People's Republic of China and the envoys of His Holiness the Dalai Lama: see http://www.europarl.europa.eu/sides/getDoc.do?pubRef = -//EP//TEXT + MOTION + B6-2009-0135 + 0 + DOC + XML + V0//EN&language = EN

[xii] The Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, Appendix 1, Shakya, Tsering (1999), *The Dragon in the Land of Snows*, Penguin Compass 449–452.

[xiii] Preamble of the Constitution of the People's Republic of China http://english.peopledaily.com.cn./constitution/constitution.html

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Letter to the Chairman from Andrew Tyrie MP, Chairman All Party Parliamentary Group on Extraordinary Rendition

THE GOVERNMENT'S RESPONSE TO THE FOREIGN AFFAIRS COMMITTEE HUMAN RIGHTS ANNUAL REPORT 2007

I am writing to you about the Government's response to your Committee's Human Rights Annual Report 2007, in advance of the Westminster Hall Debate on Thursday 18 December.

I am concerned that this response did not adequately address the concerns that your Committee raised. I am also concerned that the Government's action on rendition to date appears to contradict statements made by the Foreign Secretary on this issue. I very much hope that your Committee will feel able to raise these points with the Government.

In summary, the key points are:

— the Foreign Secretary's stated intention in submitting a list of alleged rendition flights to the US was to *"identify whether rendition of an individual had in fact occurred"*.[140] However, the renewed assurances provided by the US apply only to rendition flights that landed in the UK. Rendition flights through UK airspace with a detainee onboard, but that did not land, are specifically excluded.

— Your Committee asked the Government to raise questions with the US Administration about 'rendition circuit' flights, and to carry out an exhaustive analysis of current US interrogation techniques. The Government's refusal to take these simple steps appears unacceptable.

— Your Committee asked the Government to seek full consular access in all cases where it is aware of mono- or dual-national British citizens being detained by the Pakistani authorities, and to provide more information on known cases. The Government's ambiguous responses, and its apparent inability to determine when and where such detentions have occurred, are of concern.

[140] Government Response to the Foreign Affairs Committee Annual Report on Human Rights 2007, paragraph 23.

I set out these points in more detail below.

Rendition

The action taken and the investigations carried out by the Government appear not to have been thorough enough to give the public confidence that no further US rendition flights have used UK airports or airspace. The renewed assurances provided by the US do not fully address the rendition of detainees through UK airspace. In addition, despite my persistent requests and the conclusions of your Committee,[141] the US was not asked any questions about flights through the UK on the way to or from a rendition.

The renewed assurances provided by the US, as set out by the Foreign Secretary, are that: "*there have been no other instances in which US intelligence flights landed in the United Kingdom, our overseas territories, or the Crown dependencies, with a detainee on board since 11 September 2001".*[142] These assurances specifically exclude rendition flights through UK airspace with a detainee onboard that did not land at a UK airport. The Foreign Secretary had said, in a letter to you of 18 March 2008, that he would seek assurances about such flights: *"our purpose here is to identify whether rendition (ie of an individual) through UK territory or airspace in fact occurred".* His failure to do so appears unacceptable.

The Government's response sets out that *"it would be unreasonable and impractical to check every aircraft transiting UK airspace on the basis that it may have been, at some point in the past, and without UK knowledge, involved in a possible unlawful operation".*[143] This is not the request that has been made. It would be straightforward for the Government to seek assurances that none of the flights on the list it submitted to the US were on the way to, or from, rendition operations at the time of their transit through UK airspace.

The US and Torture

Your Committee suggested that the Government conduct an analysis of US interrogation techniques. The Government has refused to do this. The Government says in its response that *"in some cases it will be clear that a certain technique constitutes torture. . ."*[144]. The House of Lords has expressed the view that various techniques authorised by the US Administration would be held to constitute torture.[145] An analysis of interrogation techniques could be conducted, and where definitive pronouncements on a specific technique depend on the circumstances of the case, the Government should state this fact in its analysis.

UK Officials and Torture

As you know, following the publication of your Human Rights Annual Report 2007 Dr Kim Howells wrote to me on 11 August 2008 to correct information he had provided in relation to British nationals detained in Pakistan on suspicion of terrorism offences. I attach the letter here. He revised the number of those detained from six to eight, but added the caveat that it will always be difficult to give precise numbers on this issue. Of the two additional cases, one alleged mistreatment, and press reports made allegations of mistreatment in relation to the other. The difficulty with which the Foreign Office appears able to get information about dual-nationals detained in Pakistan, and elsewhere, is of concern.

It is still not clear that the Government will seek full consular access in all cases where it is aware of mono or dual-national British citizens being detained by the Pakistani authorities, as recommended by your Committee.[146] Clearly, it is not always easy for people in detention in Pakistan to allege mistreatment to British officials, consular or otherwise, or to take their case to the Investigatory Powers Tribunal, as the Government suggests.[147]

I note Dr Howells' comment that he can *"neither confirm nor deny whether UK officials met any of these eight individuals to discuss non-consular matters"*, given both in the Response to your Committee, and in his letter of 11 August 2008 to me. This differs from the original Answer he provided on 4 June 2008, in which he stated *"British officials sought and were granted access to the two mono-British nationals".*

I am placing this letter in the public domain.

17 December 2008

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[141] *"We conclude that the Government has a moral and legal obligation to ensure that flights that enter UK airspace or land at UK airports are not part of the 'rendition circuit', even if they do not have a detainee onboard during the time they are in UK territory"*, Foreign Affairs Committee, Human Rights Annual Report 2007, paragraph 47.
[142] Terrorist Suspects (Renditions) Statement, 3 July 2008, Column 58WS.
[143] Government Response to the Foreign Affairs Committee Annual Report on Human Rights 2007, paragraph 23.
[144] Government Response to the Foreign Affairs Committee Annual Report on Human Rights 2007, paragraph 26.
[145] *A (FC) and others v Secretary of State for the Home Department*, [2005] UKHL 71, para 53 (Lord Bingham of Cornhill). Discussed in Professor Crawford's Legal Opinion on Extraordinary Rendition, para 12, enclosed with previous correspondence, and available at www.extraordinaryrendition.org
[146] Foreign Affairs Committee, Human Rights Annual Report 2007, paragraph 62. See Government Response to the Foreign Affairs Committee Annual Report on Human Rights 2007, paragraph 31.
[147] Government Response to the Foreign Affairs Committee Annual Report on Human Rights 2007, paragraphs 28 & 29.

Letter to the Chairman from Andrew Tyrie MP, Chairman All Party Parliamentary Group on Extraordinary Rendition

RENDITION: DIEGO GARCIA

The work of your Committee has been very valuable in investigating extraordinary rendition, bringing us closer to what really happened.

On 1 October 2008 I wrote to your Committee about Diego Garcia, and attached a note on the relevant legal regime. My letter set out that I would be grateful if you would consider holding a short inquiry into the involvement of Diego Garcia in the US rendition programme.

A number of us in the Group would be very grateful to know what steps your Committee is considering, in order to "examine further the extent of UK supervision of US activities on Diego Garcia, including all flights and ships serviced from Diego Garcia".[148]

As you know, almost a year on from the Foreign Secretary's confirmation that two rendition flights used Diego Garcia, both Governments have been reticent in response to requests for further information on these flights, and British involvement in the rendition programme more generally. I have subsequently discovered that the US Administration provided inaccurate assurances on this issue to the UK Government on at least eight separate occasions.[149] This information was disclosed as a result of Freedom of Information Act requests and Written Answers.

Your Committee has clarified that US assurances on torture cannot be relied upon. With this in mind, we need more information relating to the fate of the two individuals rendered through Diego Garcia. US assurances that neither of the detainees were tortured or held in secret detention are insufficient. It is important to establish, among other things, their identity; the countries in which they were held and interrogated; and the interrogation methods used on them.

It is important to examine whether the two rendition flights breached agreements in place for the use of Diego Garcia between the UK and the US; whether the law was broken in relation to the two rendition flights; and whether any amendments are needed to ensure Diego Garcia cannot be used for rendition flights in the future. Further credible allegations surrounding the use of Diego Garcia, and set out in previous correspondence, also require investigation.

I am placing this letter in the public domain.

29 January 2009

Brief to the Committee from UNICEF

CHILD RIGHTS: REGIONAL OVERVIEW—THE MIDDLE EAST AND NORTH AFRICA

Violence against children constitutes a problem throughout the Middle East and North Africa and takes many forms. Because research has tended to focus on specific kinds of violence in limited geographical areas, it is not possible to know the full scope of the problem. And because of a general acceptance of some forms of violence and a fear of throwing light on others, there is great reluctance to talk publicly about violence against children. As a result, information is often incomplete and, even where data are collected or surveys undertaken, people may not reveal all they know or think.

Factors contributing to violence in the region include poor long-term or temporary economic conditions, the impact of conflict or occupation, problems in the family such as marriage break-ups or separation and prevalent cultural beliefs and gender discrimination. Children are also vulnerable because they are children: they are expected not to retaliate and to accept violence as part of the adult/child relationship.

In the home and family:

- There is widespread use of violence as "discipline" in families in the Middle East and North Africa. 'Family' includes not only parents but members of the extended family and indeed others who may be said to part of family life and relations.
- In Syria, more than 90% of children polled said they had experienced verbal abuse and insults. Some 79% of the children reported being beaten. In most cases it is the mother who inflicts the violence.
- In Yemen, violence is the most common form of punishment of children in the home. Kuwait, Egypt, Jordan and the countries of the Gulf Cooperation Council all report violence against children in the home.
- An estimated 90% of women in Sudan, Djibouti and Egypt have been subjected to female genital mutilation/cutting, while in Yemen the figure is put at 25%.

[148] Foreign Affairs Committee, Seventh Report 2007-08: Overseas Territories, 6 July 2008, paragraph 70.
[149] My letter of 1 October 2008 had stated that inaccurate assurances were provided on at least seven occasions. Recent Written Answers have established that the earlier information provided to me was itself inaccurate.

— Early marriage is also a common practice throughout the region. While Libya has set the legal age for marriage at 20, Algeria at 19, and Djibouti, Palestine, Morocco and Jordan at 18, in most countries the legal age of marriage is low—in Sudan, for example, the minimum age for marriage of both boys and girls is 10 years.

— The association of family honour with a woman's sexual conduct frequently leads also to what is called "honour crime" but which in fact is a most severe form of violence against young women. "Honour killing" is rarely talked about. Jordan has been one of the few countries to have prompted public debate on this issue. Statistics there suggest that some 25 young women are killed every year in honour crimes, one-third of all reported murder cases.

In schools:

— The Committee on the Rights of the Child has expressed its concern about the wide use of corporal punishment in the region's schools, even where it is officially banned.

— In Syrian schools the most prevalent form of violence is that inflicted on students by teachers and administrative personnel. In general, psychological violence is the most prevalent form of "discipline" used, as teachers insult students and humiliate them, but beatings are also frequent.

— In Lebanon, despite a ministerial decree banning corporal punishment in schools, the practice is still allowed in law and continues, especially in government schools.

— In Palestinian schools, corporal punishment is regularly used, as it is in Iran, where students report that children from poor backgrounds are particularly targeted.

In institutions:

— Children admitted to punitive institutions have not necessarily done anything wrong. They may be sent to such institutions because no alternatives exist. In Yemen, for example, children who have been sexually abused in the home may find themselves in a reform institution because they have been removed from the family and admitted to the justice system. Reports show that they are at risk there of sexual abuse by guards and teachers as well as older children.

— A 2004 report on rehabilitation institutions in Damascus, Syria, indicated that a high percentage of children are subjected to different forms of psychological and physical violence, including sexual violence. The living conditions and services were also reported to be poor.

— A Human Rights Watch report on children in conflict with the law in Egypt documented violence against children during arrest or transfer to custodial institutions. Often the children were transferred with adults who also subjected them to violence, including sexual violence.

In the community:

— In Egypt, anyone under the age of 18 who does not have a permanent shelter to live in or a legal source of income is classified as potentially deviant and can be arrested. In Jordan and Lebanon, the law describes child beggars as "deviant".

— It is impossible to consider community-level violence in this region without taking into account the impact of conflict and occupation on children, their families and the communities they live in.

— The Committee on the Rights of the Child has expressed its concern that, while Israeli children are deemed to be children up to the age of 18, Palestinian children are subject to Israeli military law that allows them to be detained as young as 12 and treated as adults when they reach 16. The Committee has also expressed concern that the Israeli authorities use torture to interrogate Palestinian children.

— House demolitions, the death of the family breadwinner, men's increasing sense of frustration as a result of exceedingly high unemployment and restricted mobility all contribute to a context where domestic and communal violence are nurtured. The Gaza Community Mental Health Programme has reported that men who are detained and subjected to torture frequently return home and use violence as a means of imposing their dominance on their wives and children.

In workplaces:

— Child domestic labour is common throughout the region including in some of the wealthier countries, including the Gulf States, where children are brought in from poorer countries to work in domestic service. These children come from other Middle Eastern countries but also from South Asia, for example Sri Lanka.

— Children in domestic labour are not only frequently exploited, they are also at very high risk of violence. Hidden behind the doors of an employer's home, children in domestic labour or even those of legal working age are beaten, burned and humiliated not only by the adults of the family but often by the children too, and even by other domestic helpers.

— When they reach the legal minimum working age, young children are still at risk just because they are young and inexperienced. They are beaten by bosses and co-workers if they make mistakes or

do not work fast or well enough. They may be harassed, especially girls. Invariably, too, throughout the region children who are working do not enjoy the labour rights that other workers do. They are often badly paid and are sometimes not paid at all.

— Many children are sent into child domestic labour not only because their parents hope to receive some income from the child's labour, but because the family is relieved of the "burden" of housing and feeding the child. Many parents explain their decision to send a girl, especially, into domestic service as "education", claiming that the girl will learn valuable skills that will serve her well when she marries.

— Children from India, Pakistan and Bangladesh have also traditionally been brought into the region to work as camel jockeys in the camel races of Qatar, Oman and the United Arab Emirates. In recent years international campaigns to end this have resulted in government action to legislate against this dangerous practice.

RECOMMENDATION

We recommend that the Foreign Affairs Committee should ensure that the issue of children's rights (alongside those of human rights and the promotion of democracy) is included in the follow-up work to its 2007 inquiry into the Middle East and that it is also given greater prominence in this year's edition of the FCO report on human rights.

25 February 2009

Email to the Committee from War on Want

Please find attached a short submission from War on Want on the use and regulation of private military security companies. I also have enclosed our 2006 detailed report on the issue and our updated 2008 short briefing. More copies can be downloaded from our website.

The FASC has historically taken a very strong position on this issue and we hope they can take a similar position in the coming months. The government has recently announced a consultation on its proposal for a voluntary code of practice ie self regulation of this industry. We believe self regulation is not an option for this industry which has committed numerous human rights in recent years and urge the FASC to support our call for meaningful regulation.

Please do not hesitate to contact us for further information

11 May 2009

Submission from War on Want

THE NEED FOR REGULATION OF PRIVATE MILITARY SECURITY COMPANIES

1. *War on Want and private military security companies*

1.1 War on Want fights global poverty in developing countries in partnership and solidarity with people affected by globalisation. We campaign for human rights, especially workers' rights, and against the root causes of global poverty, inequality and injustice.

1.2 In 2006, War on Want published its groundbreaking report *Corporate Mercenaries* which detailed the rapid expansion of private military and security companies (PMSCs).[150] The report exposed how British firms are significant players in the industry and called on the UK government to introduce legislation to regulate PMSCs as a matter of urgency. There are currently tens of thousands of mercenaries working for PMSCs outside legal or democratic control. War on Want believes legislation needs to be introduced to outlaw PMSC involvement in all forms of direct combat and combat support (understood in the broadest sense) and that self-regulation by the industry is not a viable option. Our report won the support of over 100 Members of Parliament.[151]

1.3 Following a series of high-profile human rights abuses by PMSCs operating in Iraq, in 2008 War on Want produced the briefing *Getting Away With Murder* which further highlighted human rights abuses by British PMSC firms.[152] War on Want also put pressure on the government by taking steps to judicially review the government's decision to delay the publication of a consultation on the regulation of PMSCs.

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[150] *Corporate Mercenaries*, War on Want, November 2006. Can be downloaded from www.waronwant.org/campaigns/corporations-and-conflict/corporate-mercenaries
[151] EDM 690, Session 2006–07 laid on 22 January 2007
[152] *Getting Away With Murder*, War on Want, February 2008. Can be downloaded from www.waronwant.org/campaigns/corporations-and-conflict/corporate-mercenaries/inform/15215-getting-away-with-murder

1.4 War on Want was therefore initially heartened to hear that after a seven-year delay, the UK government was finally revealing its plan for dealing with the industry in a consultation published in late April 2009. However, we were deeply dismayed when we saw the government's recommendation that mercenary groups will be left to sign up to a voluntary code of conduct allowing them to police their own operations. Self-regulation could leave civilians in war zones such as Afghanistan and Iraq exposed to further abuse by mercenaries working for British firms. The UK troops' planned withdrawal from Iraq increases the need for strict regulation of mercenaries who will still work there and in other war zones.

2. *Self-regulation: the worst possible option*

2.1 Launching the consultation in April 2009, the Foreign Secretary praised PMSCs for their "important role" alongside British forces in Iraq and Afghanistan, and hailed the industry as "essential" for Britain's future military operations abroad.[153] He did not mention the hundreds of allegations of human rights abuses committed by mercenaries over the past six years in Iraq, including mercenaries working for UK group Erinys opening fire on a taxi near Kirkuk and wounding three civilians, employees of UK company Aegis Defence Services randomly shooting civilian cars out of the back of their vehicle on the road to Baghdad airport, the involvement of private military contractors in the Abu Ghraib torture scandal and the Blackwater killings, which left 17 Iraqis dead.

2.2 The government's decision to recommend self-regulation of the industry and only allow this one option to be subject to the public consultation flies in the face of the growing consensus on the need for robust regulation of the industry, This is even more remarkable given the about turn of the government's position on this issue. In 2002, the government published a green paper on PMSCs that set out six possible options. These ranged from a ban on all military activity by such groups to a licensing or registration system similar to that used for approving arms sales. A voluntary code of self-regulation was mentioned as a minimum form of action that could be taken, but the government noted it "*would not meet one of the main objectives of regulation*", namely the need to avoid a situation in which British mercenaries were hired to support a cause that was hostile to UK interests. The government also noted that self regulation by an industry association would be problematic "because of an inability to be sure exactly what was going on abroad; or if it was obliged to discipline one or more of its important members".[154]

2.3 The Foreign Affairs Select Committee also dismissed the idea of self-regulation as "*insufficient to regulate the private military industry*",[155] a position backed by more than 100 MPs from all parties.[156] The committee pressed for a complete ban on combat activity by mercenary soldiers, as well as a register of all PMSCs and a licensing system for individual contracts.

2.4 Despite its declared reservations on self-regulation, a voluntary code has now emerged as the government's preferred option. The government has proposed a code of conduct to be drawn up jointly with the PMSCs themselves and monitored through the British Association of Private Security Companies. This is the industry body that was set up to provide legitimacy and PR for mercenary groups seeking to rebrand themselves as the respectable "private security" sector. This is hardly a choice to inspire confidence among those who have suffered at the industry's hands.

2.5 The government's 2002 Green Paper already flagged up how ineffective such self-policing would be—not just because of the obvious drawbacks of asking an industry association to discipline its own members, but also because of the nature of the private military industry itself. The industry is operational in the most difficult of situations, conflict zones and PMSCs are often instructed to work in volatile areas where violence is prevalent. Mercenaries working for PMSCs regularly come under fire or engage in firefights. This had led to some notable human rights abuses by contractors working for PMSCs.

3. *The need for robust legislation*

3.1 War on Want believes the decision to reject all forms of regulation is a dereliction of duty on the government's part. It is also out of step with the positive action being taken by other states to crack down on PMSCs. Both the Iraqi and Afghan governments have passed laws restricting or banning private military groups while President Obama himself has been one of the USA's most outspoken critics of the industry's lack of accountability. The United Notions working group on mercenaries has repeatedly called for governments where PMSCs are incorporated (such as the UK) to introduce legislation to regulate the private military sector and to guard against the "inherent dangers" of privatising the use of violence in war zones.[157]

3.2 In the USA strident steps have been taken to legislate on this issue which puts the British government's record to shame. In 2007 the United States House of Congress passed the Expansion and Enforcement Act of 2007 which clarified USA jurisdiction to prosecute contractors of all USA agencies operating near a conflict area. The Bill established an FBI unit to investigate incidents of use of force by contractors and requires the Department of Justice to publicly report on its handling of cases of contractor

[153] Foreign and Commonwealth Office, Consultation on promoting high standards of conduct by PMSC's internationally, April 2009, p5
[154] Foreign and Commonwealth Office, Private Military Companies: Options for Regulation, 2002, para 76
[155] Foreign Affairs Select Committee, Ninth Report of Session 2001–02, Private Military Companies, para 137
[156] http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=32378&SESSION=885
[157] http://www2.ohchr.org/english/issues/mercenaries/index.htm

crime which are referred to it. President Obama then introduced companion legislation in the Senate, the Security Contractor Accountability Act of 2007 (S. 2147). In April 2009, the Transparency and Accountability in Security Contracting Act was introduced which would ban PMSCs from participating directly in battle or interrogating detainees. It would also require companies to provide detailed reports on their operations, which would then be stored on a state database for all security contracts, including costs and casualties. If contractors violate USA and international law they would be barred.

3.3 The British government has jettisoned all the available regulatory options in favour of the worst possible alternative: a voluntary code which, by definition, companies are free to ignore if they wish. Legally binding regulation is the only meaningful way to hold this controversial industry to account.

3.4 We urge the Foreign Affairs Select Committee to reject the voluntary self regulation option proposed by the government and demand proper regulation of the private military industry.

Yasmin Khan
Senior Campaigns Officer, War on Want

Submission from Professor N.D.White, Professor of International Law, University of Sheffield School of Law

THE RESPONSIBILITIES OF THE FCO FOR SECURING THE HUMAN RIGHTS OF BRITISH CITIZENS AND OTHERS OVERSEAS INCLUDING:

The oversight of contractors, including private security companies, employed by the FCO and UK Posts overseas:

Submission by Sheffield University, School of Law, PRIV-WAR group[158]

This submission outlines:

— The role and activities of Private Military and Security Companies (PMSCs) employed overseas by the Government.

— Self-regulation by the industry.

— International standards.

— Possible applicable national laws.

— Problems in oversight and regulation.

THE ROLE AND ACTIVITIES OF PMSCS EMPLOYED OVERSEAS BY THE GOVERNMENT

1. PMSCs now offer a range of services from military activities to support for humanitarian operations. The British market is characterised by four areas with some PMSCs attempting to provide all services while others find a niche in the market. The first area comprises more traditional security and risk management services. These services include strategic and operational risk management normally for companies operating in conflict, post-conflict or risk-prone environments. Typically this includes close protection and asset protection, convoy security, event security, travel security for individuals and other business and investigation services. The second area involves support for post-conflict reconstruction efforts as in Iraq and Afghanistan. PSMCs offer personal and site security services to non-military actors including humanitarian agencies, international organisations, states and NGOs operating in regions characterised by instability. The related third area demonstrates the expanding nature of PMSC activity into new fields such as state building, supporting and providing humanitarian and disaster relief and development tasks. PMSCs are involved with infrastructure, redevelopment and communications.[159]

2. The fourth area concerns activities that were previously performed by national militaries which are now increasingly outsourced to private companies. These services are offered to the MoD as well as foreign regimes. They include the provision of personal security for senior officials in post-conflict environments, military and non-military site and convoy security and training of police and military personnel. PMSCs offer military training, special-forces training, surveillance and intelligence gathering training, aviation security and public security. They provide technical support, maintenance, operate complex weapon systems and provide mine clearance services. The provision of full military services in conflict and post-conflict situations is extremely difficult to monitor and may give rise to infractions of criminal law such as theft, rape and murder. This area is the most controversial, giving rise to accusations of war profiteering and unethical behaviour. The ideological climate of the UK and the US, which is favourable towards privatisation of

[158] Professor Nigel White, Kerry Alexander, Ali Bohm and Christy Shucksmith. PRIV-WAR is an EU FP7 funded project involving seven European Universities looking at the legal and regulatory issues that arise from the increased use of PMSC's in conflict and post-conflict situations—see www.priv-war.eu. This submission draws on some material from our report on "The Regulatory Context of PMSCs in the UK" available on the website.

[159] Bearpark and Schulz, "The Future of the Market", Chesterman and Lenhardt (eds), From Mercenaries to Market: The Rise and Regulation of Private Military Companies (2007) 240–1.

public services, has enabled this development. Furthermore, the involvement of the UK and US in operations requiring the projection of military force, and the limited period of service in the British armed forces contributes to the increase in demand and supply for PMSCs.[160]

3. For example, Control Risks Group (CRG) is a provider of security and armed guards for British embassies and consulates. Its main client is the British Government. For the last four years its main contract has been to deliver arms security support to the UK Government in Iraq and Afghanistan. This includes armed close protection operators. These individuals have CRG uniforms and are qualified in weapons handling and safety, close protection services and drive armoured vehicles. There is additional training for team based operations. According to CRG its employees have only used weapons five times in the last four years and that was because the lives and safety of their clients were at risk.

4. A further example: from 2003–07 ArmorGroup was recruited by the FCO to provide protective security services in Afghanistan, including Kandahar and Helmand provinces. This included guard services and mobile security services, close protection and site security teams for Government personnel and UK organisations. This was part of the programme to reconstruct and redevelop Afghanistan. The ArmorGroup also provided off-road driving training for the UN and "Hostile Environment Awareness Training" for the Afghan police and UK Government agencies. In one incident in June 2007, a roadside improvised explosive device (IED) detonated next to a convoy of vehicles; the client was safely escorted back to the British Embassy.[161]

5. The London-based PMSC Hart Group Limited was hired in 2005 to provide protection for CPA staff in Iraq, which was intended to be a "passive" task. If they came under direct attack by Iraq insurgents the employees were instructed to call on military support from regional coalition forces. However, the managing director of Hart Group stated that such support was not forthcoming, consequently putting his employees in circumstances where they were obliged to hold positions of a strategically sensitive nature.[162] This indicates the difficulties inherent in the execution of PMSCs tasks when the dangers they face cause them to become engaged in situations that go beyond their mandate. While PMSCs may be able to meet such situational demands, unclear rules of engagement and mandates result in an increasing lack of control over the precise nature of PMSC operations.[163]

Self-regulation by the Industry

6. A pool of highly skilled individuals is available to PMSCs including fully-trained military personnel who have left the armed forces and ex-members of the police service. Also, given the diversification of PMSC activity they now recruit former expert staff from governmental departments, NGOs and humanitarian organisations thereby widening the category of persons employed by PMSCs.

7. The British Association of Private Security Companies (BAPSC), formed in 2006, claims that PMSCs are becoming more diligent in the recruitment of personnel ensuring that individuals are properly vetted. As part of the requirements of membership of BAPSC PMSCs must maintain employee records containing up-to-date information on disciplinary and grievance information and full employment history.[164] PMSCs are becoming unwilling to employ ex-servicemen with a dishonourable discharge or criminal record.[165] The BASPC Charter requires that PMSCs and their personnel observe all rules of international law, humanitarian and human rights law and all relevant international protocols and conventions although it does not specifically state the necessary obligations. PMSCs accept the obligation to promote compliance with UK values and interests and with the laws of the countries in which its members operate. To this end, the Charter requires that PMSCs must provide guidance on the substance and the need to comply with international legal statutes, to ensure that personnel are appropriately trained, and that precautions are taken to protect staff including the provision of protective equipment, adequate weapons, medical support and insurance.[166] In order to become a full member to the BAPSC, PMSCs must ensure that a defined disciplinary procedure is in place to monitor the activities of personnel.[167] The BAPSC Charter further requires that PMSCs must decline to accept contracts which will conflict with human rights legislation or where there is a likelihood that the service under contract will involve criminal activity.[168] PMSCs further commit not to contract where the provision of services might adversely affect the military or political balance of the country of delivery or to provide lethal equipment where there is a possibility that human rights will be infringed.[169]

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[160] *Ibid*., 241–2.
[161] Employee Awarded Prestigious Bravery Honour for Iraq Rescue http://www.armorgroup.com/mediacentre/newsarchive/?id=33234.
[162] BBC Radio 4 File on 4 programme, broadcast at 20.00, 25 May 2004, full transcript available at URL <http://news.bbc.co.uk/1/hi/programmes/file_on_4/3708232.stm>.
[163] Private Security Companies, The Case for Regulation, SIPRI Policy Paper No.9, Caroline Holmqvist available at http://books.sipri.org/product_info?c_product_id=191.
[164] BASPC Self Assessment Workbook 39 http://www.bapsc.org.uk/downloads/BAPSC%20Self-Assessment%20Workbook.pdf.
[165] *Ibid*. iii.
[166] BAPSC Charter http://www.bapsc.org.uk/key_documents-charter.asp.
[167] BASPC Self Assessment Workbook 42 .
[168] BAPSC Charter governing principles 4 and 5.
[169] BAPSC Charter governing principles 5–8.

8. In the absence of legislation, PMSCs have adopted a self-regulatory approach to the conduct of their activities. The BAPSC was launched in 2006 by leading members of the private security industry under the chairmanship of Andrew Bearpark. The formation of BAPSC was the first step towards self-regulation of the industry in recognition of the need to raise operational standards through the establishment of industry codes of conduct. The purpose of the BAPSC is to promote, enhance and regulate the interests and activities of UK-based PMSCs providing armed security services in countries outside the UK. The BAPSC represents the interests and activities of its members in matters of proposed or actual legislation with the aim to influence the political process and establish a firm legal basis for the activities of British PMSCs. It believes that raising operational standards of the industry to ensure compliance with international humanitarian law and human rights standards will be best achieved through effective self-regulation in partnership with the UK Government and international organisations. .

9. Membership of BAPSC is restricted to UK-based security firms providing armed security services overseas.[170] All UK-based firms may apply for membership subject to the membership criteria and the principles of the Charter. The BAPSC Charter commits the members to transparency implying that they must disclose corporate structures and relations with offshore bases.[171] Provisional membership is granted after a series of "Basic Checks" by the BASPC Membership Committee, chaired by the Director General of the BAPSC and including executive members elected by the General Assembly. Full BAPSC membership is granted by the Membership Committee on completion of "Due Diligence Documentation" and "Self Assessment Workbook" designed to ensure adherence to BAPSC standards and to promote best corporate practice.[172]

10. BAPSC states that it will exert pressure on its members to comply with standards by imposing financial sanctions and suspending or withdrawing membership rights. It has lobbied the Government for the introduction of an effective complaint system such as an independent ombudsman to collect complaints, investigate and process them. This is claimed to demonstrate an "aggressive self-regulation"[173] approach and a commitment to drive up standards. Further to this, BASPC has introduced compulsory training courses and random site inspections, sanctions and fines.

11. However, the industry recognises that greater regulation and/or oversight is indispensible to enhance respectability and legitimacy by putting industry operations on a firm legal basis and outlawing disreputable companies. It argues that self-regulation has the potential to be an efficient and effective means of social control but must be complemented by national or international regulatory or oversight schemes with the necessary political will to co-operate.[174] The industry considers that the Government is avoiding any reputational risks of being associated with PMSCs or condoning illegal contracts by not committing to regulation or oversight. In the meantime, it is felt that self-regulation is fundamental for the setting of industry standards and the Government is urged to take into account legitimate business interests to ensure that the British PMSC industry is not placed at a disadvantage.[175]

International Standards

12. The BAPSC supported, and has stated that it will incorporate the good practices contained in, the "Montreux Document on Pertinent International Legal Obligations and Good Practices of States Related to Operations of Private Military and Security Companies during Armed Conflict". This was agreed on 17 September 2008 following participation by 17 Governments[176] and the International Committee of the Red Cross (ICRC) with support from NGOs and industry representatives. The Montreux Document promotes respect by states and PMSCs for international humanitarian law (IHL) including the Geneva Conventions and Additional Protocols and human rights law (HRL). It contains separate guidance for contracting states, territorial states and home states but also aims to provide valuable guidance for PMSCs in their interactions with Government clients and host states. The document is not legally binding but seeks to clarify the applicable law and thereby strengthen compliance with IHL and respect for HRLs. However, it is problematic in that it infers positive as well as negative obligations on states, which will have to commit the necessary resources. It is limited primarily to situations of armed conflict, when in many circumstances PMSCs are deployed to post-conflict zones which do not cross the threshold of "armed conflict" for the application of IHL. It also presumes that PMSC personnel are civilians under IHL and therefore normally enjoy a protected status, and only have to comply with HRL "to the extent they exercise governmental authority". Its impact on international law, given its relatively narrow representative base, remains to be seen.

[170] BASPC Self Assessment Workbook ii .
[171] Bearpark and Schulz, 247.
[172] BAPSC Self Assessment Workbook iv.
[173] Bearpark and Schulz, 248.
[174] Bearpark and Schulz, 250.
[175] Ibid.
[176] Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict, 17 September 2008; Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the UK, the Ukraine and the US.

13. In relation to territorial states, the Document states that PMSCs should obtain authorisation to provide military and security services on the territory by way of an operating licence. A corporate operating licence would be valid for a limited and renewable period while a specific operating licence would be valid for specific services. Individuals should also register or obtain a licence to carry out military or security services for PMSCs. Equally, home states are encouraged to have an authorisation system for the provision of military and security services abroad. A central authority should be designated for granting authorisations with adequate resources to determine whether the PMSC has the capacity to comply with national law, IHL and HRL. Transparency of the authorisation procedure should be ensured by public disclosures. The criteria for granting an authorisation include: respect for IHL and HRL by PMSCs; notification of any subcontractors which must be able to demonstrate conformity with national law IHL and HRL; investigation of any past conduct of PMSCs and disciplinary measures taken to rectify any situation; the keeping of up-to-date personnel and property records; meeting the training and welfare needs of personnel; respect for international organisations and regulation, especially rules on the use of force and firearms, as well as policies against bribery and corruption; the lawful acquisition of weapons. States must also ensure systems are in place to monitor compliance with the terms of authorisation, to impose sanctions on PMSCs for violations and to ensure accountability mechanisms are in place. Equivalent provisions are contained for the home state authorisation system.[177]

Possible Applicable National Laws

14. The 1870 Foreign Enlistment Act is the only UK legislation directly related to the overseas activity of PMSCs and is largely ineffectual with general agreement that it should be repealed. Provisions of the Export Control Act 2001, and human rights and war crimes legislation can be applied to PMSCs but specific legislation aimed at PMSCs would improve standards and provide clearer lines of accountability. The Human Rights Act 1998 and the International Criminal Court Act 2001 have relevance, but have limitations of both jurisdiction and substance. Domestic criminal law has limited impact extraterritorially.

15. The application of military law with the new Armed Forces Act 2006 raises interesting questions for PMSCs in the UK but the ramifications of this piece of legislation are as yet unclear. The Act revises the list of persons who are subject to service jurisdiction by virtue of s. 370 and Schedule 15. Schedule 15 paragraph 7 (1) provides that a person is within this paragraph (subject to paragraph 11) if (a) he is designated for the purposes of this paragraph by or on behalf of the Defence Council or by an officer authorised by the Defence Council; and (b) he is outside the British Islands. According to Schedule 15 paragraph 7 (2) a person may be designated for the purposes of this paragraph only if it appears to the Defence Council or the authorised officer that it is desirable to do so (b) for the protection of other persons (whether or not members of any of Her Majesty's forces) and (c) for the purpose of maintaining good order and discipline. This gives rise to the possibility that PMSCs could fall within the ambit of the Act. However, if military jurisdiction was used to close the accountability gap for civilian contractors, the process should be "civilianised" within the military structure with an effective complaints system.

16. Although the Private Security Industry Act of 2001 regulates the industry within the UK (by virtue of s.26), by providing for a licensing and approvals Authority for activities such as guarding, door supervision, and security consultancy, there is no legislation directly applicable to the overseas activities of PMSCs, despite the likelihood of greater human rights abuse in these situations.

Problems in Oversight and Regulation

17. There is little regulation of the private military and security industry in the UK despite the widening scope of application of PMSCs and increasing reliance on the industry by the UK Government. The announcement by the Foreign Secretary in May 2009 in effect of an enhanced system of self-regulation took place seven years after the Green Paper indicated that self-regulation was the least acceptable option.[178] The model outlined by the Foreign Secretary would be based on the adoption of "soft law" codes of conduct at both national and international levels containing key IHL and HRL standards. The international code of conduct would be based on the Montreux Document. Compliance review would be conducted at both national and international levels. Enforcement may be achieved by fines or sanctions, but in reality the main sanction is likely to be the naming and shaming of companies who regularly violate the codes of conduct. Certainly evidence of compliance with international codes of conduct by companies in other areas is sparse.[179]

18. Industry efforts at self-regulation have made a start at standard setting but it is necessary to still consider the regulatory approach. With the lack of real national progress, the prospects of a European approach are beginning to be considered. There may be some progress to be made in suggesting European framework legislation as this will overcome problems of enforcement among the European States. European legislation which provides a consistent regulatory framework across the member states will make it more difficult for PMSCs to relocate to a member state with a less arduous national regime.

[177] Montreux Document, part 1 para 26; part 2 paras 25–73.
[178] Private Military Companies: Options for Regulation (HC 577, 2002), para.76.
[179] White and Macleod, "EU Operations and Private Military Contractors: Issues of Corporate and Institutional Responsibility", (2008) 18 European Journal of International Law 965 at 977–984.

19. The definitional problems faced in the UN context (where the focus has traditionally been on mercenaries) should be acknowledged in the drafting process of possible European legislation which should be free from political influence. Loopholes and insignificant penalties have undermined the effectiveness of the US and South African regimes and contrasting opinions on the value of each approach draws further attention to the difficulties of reaching agreement on the way forward. It is necessary to consider the UN, US and South African approaches with and further amendments in mind to produce legislation more suitable to the industry as it develops. The different models of regulation from the heavily regulatory regime of South Africa, to the licensing regimes of the US and the *laissez faire* approach of the UK should be drawn upon in the search for appropriate regulation of the private military and security industry. A European approach which takes into account these difficulties while pertaining to the minimum standards contained therein will reduce relocation of PMSCs, encourage compliance with the legislation and outlaw disreputable companies.

May 2009

Letter to the Chairman of the Committee from Noemi Sanin Posada, Colombian Ambassador in the UK

I am writing to update you on the most recent steps taken by the Government of Colombia to further safeguard human and labour rights in my country.

On 26 June, Congress passed and President of Colombia Alvaro Uribe sanctioned Law 1309/09, which strengthens protection for trade unionists and human rights defenders and increases sentences for crimes committed against them. According to the new law, the sentence for the murder of any trade union member has been increased from 20 to 30 years, in line with the crimes of genocide, forced disappearance, torture and forced displacement.

Additionally, last Saturday, President Uribe participated in a public ceremony to hand over compensation to 2,000 victims who have lost their families as a result of the violence of illegal armed groups. The Individual Compensation Programme was established by Decree 1290 of 2008 with the objective of providing reparation to those who have suffered human rights abuses at the hands of the illegal armed groups. During the ceremony, the President, in his capacity as Head of State, asked the victims for forgiveness for the violence that the country has suffered since the mid-1940s and expressed his commitment to the recovering peace through security with democratic values.

Allow me to offer the Embassy's support in providing any further information you may require.

6 July 2009

Submission from Free Tibet

Worsening Human Rights Situation in Tibet

Over 1,200 detained Tibetans unaccounted for

Since Spring 2008 the Chinese authorities have persistently failed to account for the whereabouts and identities of approximately 1,200 Tibetans detained in the immediate aftermath of the Spring protests.

A report issued by the US Congressional Executive Committee on China (CECC) issued in August 2008 noted that "The current status of more than 1,200 alleged rioters remains unknown". Free Tibet and other NGOs have constantly called on the British government, the EU and other intergovernmental organisations to press the Chinese government to supply a list of all those Tibetans still detained in connection with the protests of March-May 2008, listing names and location of detention centre.

Lack of Due Process

There are grave concerns regarding the lack of transparency and absence of legal safeguards for those detainees who are charged and tried in Tibet's courts. There is considerable evidence that Chinese procedural law is not being respected by its own courts.

In April 2009 five Tibetans were sentenced to death by the Municipal Intermediate People's Court in Lhasa for their alleged involvement in arson attacks on commercial properties in Lhasa on 14 March 2008 which led to the deaths of Han Chinese business people.[180] Three were given suspended death sentences that have been automatically commuted to life imprisonment; but two of the Tibetans, Lobsang Gyaltsen and Loyak, were not given suspended sentences and could be executed at any time. There are reports that indicate that many legal safeguards were not observed in these trials.

According to a press release issued by the Tibetan Government-in-Exile on 22 May 2009,[181] the family members of Lobsang Gyaltsen and Loyak, and those of two other Tibetans given suspended death sentences on 8 April, were not informed that the trials were taking place. Under Chinese criminal procedure law the

[180] Free Tibet's press releases on the death sentences are available at: http://www.freetibet.org/newsmedia/080409 and http://www.freetibet.org/newsmedia/210409

[181] The Tibetan government in exile's press release is available at: http://www.tibet.net/en/index.php?id=935&articletype=flash

relevant public security organ is obliged to "notify within 24 hours the relative of the detainee or his (or her) employer about the reasons of the detention or arrest and the locality of the confinement".

It was also stated that family members of the four sentenced to death on 8 April were denied the right to find legal representation for the defendants. Similarly, prisons are obliged to "guarantee the rights of lawyers to meet their clients".[182]

Official media reports on the Lhasa arson cases have failed to clarify whether Lobsang Gyaltsen and Loyak, at the time of sentencing on 8 April, were advised by the Lhasa court of their rights under Chinese criminal procedure law to appeal against their sentences. Any appeal should, according to Chinese law, take place in an open court.

Official media reports have similarly failed to state whether the death sentences passed on Lobsang Gyaltsen and Loyak were referred to the Supreme People's Court; under Chinese law all death sentences should be reviewed by the Supreme People's Court.

There are strong grounds for suspecting that such legal safeguards were ignored in the cases of Lobsang Gyaltsen and Loyak. Judgements in death penalty cases are routinely not made public and there are no institutional avenues for legal experts and scholars to scrutinise the arguments made in court that have led to death penalty verdicts.

Military Presence

The Tibetan plateau is under *de facto* martial law. Free Tibet has documented a significant military build-up in Tibet since the protests in March 2008 and the Beijing Olympics, particularly in more restive regions.

There were widespread reports of an enormous deployment of up to 20,000 Chinese troops into Tibet in the approach to 10 March 2009; the number of incoming troops cannot be verified as troop movements are a state secret in China. Pictures obtained by Free Tibet[183] display huge numbers of armed Chinese troops and police in the Tibetan monastery town of Labrang (Ch: Xia He, Gansu province).

"Strike Hard Campaign"

On 23 January 2009 the official *Lhasa Evening News* reported the launch on 18 January of a "strike-hard" campaign in Lhasa in which around 3,000 Tibetan homes were searched, 6,000 Tibetans questioned and more than 80 detained.[184] In the Tibetan monastery town of Labrang (Ch: Xia He, Gansu province) in February 2009 the state media was used to announce that the authorities would not be held responsible if anyone protesting in the town in the approach to Tibetan New Year were killed or arrested.

Restrictions on Communications

In order to restrict the flow of information within and outside Tibet the Chinese authorities regularly restrict and monitor communications networks including internet, mobile phones, national and international landlines in the Tibetan Autonomous Region and Tibetan Autonomous Prefectures, making communications within and beyond these areas both difficult and dangerous. Associated Press reported that Lhasa residents received notice on their cell phones from China Mobile Ltd that voice and text messaging services might face disruption from 10 March to 1 May 2009 for "network improvements". Similar measures have been taken in other Tibetan communities as the government seeks to restrict communications networks that activists used to spread word of protests in March 2008.

Detentions and convictions for communicating with contacts within and outside Tibet further add to the climate of fear and self-censorship. In November 2008 Wangdu, a Tibetan public health worker, was sentenced to life imprisonment by the Lhasa City Intermediary People's Court for allegedly forwarding information to people outside Tibet. The same court sentenced six other Tibetans to prison terms of between eight and 15 years for "forwarding information" to the "Dalai Clique" (Chinese terminology for sending information to the outside world).

Torture

Chinese Criminal Procedure Law specifically prohibits the use of torture. But evidence demonstrates that there is an alarming gap between the law prohibiting torture and its actual implementation. Evidence collected by Free Tibet points to the continuing widespread and routine use of torture by the Chinese authorities inside Tibet.

Free Tibet's contention that torture remains widespread inside Tibet was endorsed by the UN Committee Against Torture (CAT) which in November 2008 reviewed China's record on torture. In its conclusions[185] the CAT stated its deep concern ". . . of routine and widespread use of torture . . . especially to extract confessions or information to be used in criminal proceedings" and "Continued reliance on confessions as a common form of evidence for prosecution."

[182] These legal safeguards under Chinese law were set out by China in its response to the UN Committee Against Torture's questions prior to the Committee's Fourth Periodic Review of China in November 2008. China's responses are available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.Q.4.Add.1_en.pdf

[183] Available at: http://www.freetibet.org/newsmedia/photos-labrang-12-february-2009

[184] *The Guardian's* report is available at: http://www.guardian.co.uk/world/2009/jan/28/tibet-china-security-crackdown

[185] The UN Committee on Torture's conclusions are available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf

On 8 April 2009 the official Chinese news agency, *Xinhua,* reported that, in at least one of the cases resulting in death sentences (see above), a defendant's confession was used as evidence:[186]

> "His [Tenzin Phuntsog] crime deserves the death penalty, but judges reached the verdict [death-sentence with a two-year reprieve] while taking into consideration that he had been put up to the violence and showed a positive attitude in admitting his crime after he was arrested".

Free Tibet believes that the UN CAT's findings on the routine use of torture to obtain confessions, together with *Xinhua's* confirmed use of a confession of guilt as evidence in at least one of the arson cases, means that serious concerns must remain that the evidence presented against the five Tibetans sentenced to death in April was unreliable and that their convictions are consequently unsafe.

Some of the Committee's most damning assessments on China's record on torture refer to events in Tibet in Spring 2008. The Committee noted "with great concern" reports on the ensuing Chinese crackdown which, according to the Committee, had "deepened a climate of fear and further inhibits accountability". Referring to widespread arrests and detentions in the aftermath of the Spring Uprising, the Committee noted a "reported lack of restraint with which persons were treated, based on numerous allegations and credible reports made available to the Committee".

In its own submission to the Committee[187] Free Tibet submitted evidence it had obtained of Chinese government measures to be taken against monks, nuns and monasteries who voiced or distributed "splittist slogans" or who took part in "illegal demonstration to incite splittism". The measures were posted in the official *Tibet Daily* newspaper, indicating the importance attached by the government to them. They were subsequently posted on a Chinese government news website under the heading "Order of the Kandze Tibetan Autonomous Prefectural Government" and apply in that region. The measures clearly created the conditions for torture:

> "A monk or nun charged with quite serious crimes will remain in custody until s/he cooperates by telling the truth, confessing their guilt and submitting a shuyig [self-criticising letter]".

Weakening of British Government's Foreign Policy Strategy to Address Human Rights in China and Tibet

There is a deepening human rights crisis in Tibet, but little evidence that UK foreign policy instruments are contributing to the protection of fundamental human rights in Tibet.

Failure of the UK-China Human Rights Dialogue to make a demonstrable impact on human rights in China and Tibet

In its 2007 Human Rights Report the Foreign Affairs Committee recommended that the British government "should be ready to discontinue the UK-China Human Rights Dialogue if substantial progress is not made in the coming year." According to the Foreign Office the dialogue provides a forum for constructive discussion on human rights issues, but by its own admission it has not yielded any real progress on human rights in Tibet since its inception in 1997.

The failure of the UK-China Human Rights Dialogue in 2008–09 is further evidenced by the fact that, at the request of the Chinese government, the dialogue has taken place only once in over 18 months despite being scheduled to take place twice a year.

Free Tibet welcomes forums in which specific human rights issues can be directly addressed with representatives of the Chinese Government; however we believe the UK-China Human Rights Dialogue, now in its 12th year, needs to be more robust to ensure that actual progress can be measured. Unlike other UK bi- or multi-lateral human rights processes, the UK-China Human Rights Dialogue does not have any measurable benchmarks or timeframes to monitor progress. The simple fact these and other meetings (including bi-lateral ministerial meetings) have taken place are provided as the indicators of success, as opposed to actual improvements in human rights in China and Tibet.

Collapse of the Sino Tibetan Talks after Change to UK Foreign Policy on Tibet

On 29 October 2008, the Foreign Secretary issued a Written Ministerial Statement in which Britain's position on Tibet changed unequivocally, ending its stance that China only had a "special position" in Tibet (based on principles of suzerainty) and reversing history by recognising Tibet as part of the People's Republic of China. This change in position was made without parliamentary oversight.

The Ministerial Statement was issued only days before the last round of Sino Tibetan talks which subsequently collapsed. It is understood that the UK's change in position was cited as a "victory" by the Chinese delegation at the talks, and as evidence of international support for China's position in Tibet.

The Foreign Secretary in his written statement (cited above) referred to the Sino Tibetan talks as ". . . the only forum in which there is any realistic possibility of progress to resolve the differences between the parties involved." With their collapse it is unclear how the UK Government now expects the crisis in Tibet to be resolved.

[186] The Xinhua article is available at: http://www.china.org.cn/china/news/2009-04/21/content_17643102.htm
[187] Free Tibet's submission to the UN Committee Against Torture is available at: http://www2.ohchr.org/english/bodies/cat/cats41.htm

The UK and China: A Framework for Engagement Foreign and Commonwealth Office policy document, published January 2009.

While Free Tibet is encouraged that the promotion of human rights is central to the UK's framework for engagement with China, the stated benchmarks for human rights outcomes are weak. This brings into question whether human rights organisations were consulted to help identify benchmarks and directly challenges the sincerity with which greater respect for human rights is truly integral to the UK Government's approach to China.

For example, the strategy aims to secure China's ratification of the International Covenant on Civil and Political Rights (ICCPR) within three years, despite the fact that China signed the ICCPR more than 10 years ago and has not, despite repeated requests from UN bodies, provided any timeframe or road-map for its ratification or inclusion into Chinese legislation. On detention without trial, the UK framework calls only for a "reduction", a weakening of the UN's demand for its outright abolition.

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