

# REDRESS

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Sir Nigel Rodley  
Chairperson, Human Rights Committee  
Office of the High Commissioner for Human Rights  
UNOG-OHCHR  
CH 1211 Geneva 10  
Switzerland

24 July 2014

Dear Sir Nigel

## 112<sup>th</sup> SESSION OF THE HUMAN RIGHTS COMMITTEE – PRE-SESSIONAL MEETING ON THE UNITED KINGDOM

We are writing in relation to the pre-sessional meeting (for adoption of the list of issues) of the Country Report Task Force on the United Kingdom during the forthcoming 112<sup>th</sup> session of the Human Rights Committee (the Committee) from 7 to 31 October 2014.

Please find enclosed a brief update of recent developments pertaining to a number of key concerns in relation to the State Party's implementation of the International Covenant on Civil and Political Rights (ICCPR).

Sincerely

Carla Ferstman  
Director

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*Ending Torture. Seeking Justice for Survivors*

## **SUBMISSION TO THE HUMAN RIGHTS COMMITTEE (PRE-SESSIONAL MEETING ON THE UNITED KINGDOM)**

July 2014

### **The UK's lack of an over-all anti-torture policy relating to counter-terrorism and the conduct of its security agencies and armed forces abroad (articles 2(2); 7)**

The UK has a written foreign policy relating to its work to prevent torture around the world and continues to play a leading role in the promotion of the Optional Protocol to the UN Convention against Torture (UNCAT).<sup>1</sup> It has incorporated aspects of UNCAT into its domestic law,<sup>2</sup> and has some limited guidelines for its security agencies and service personnel relating to the treatment of detainees abroad.<sup>3</sup> Notwithstanding the above, and the UK's regular pronouncements condemning torture committed by officials of other countries,<sup>4</sup> REDRESS believes that there is an urgent need for the UK to adopt and implement a comprehensive policy to prevent, prohibit and respond to allegations of torture which concern UK agents and officials. The standard approach to allegations of torture (whether by the security agencies or by the armed forces) is to eventually set up inquiry mechanisms. This approach has been reactive and piecemeal, and has not resulted in accountability.

***Suggested question: How will the UK improve its anti-torture policy to ensure that all its various authorities are at all stages working together?***

### **Allegations of UK security agencies being complicit in torture and other ill-treatment abroad (article 7)**

<sup>1</sup> Foreign and Commonwealth Office, *Strategy for the Prevention of Torture 2011 – 2015*, Human Rights and Democracy Department, October 2011, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35449/fcostrategy-tortureprevention.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35449/fcostrategy-tortureprevention.pdf).

<sup>2</sup> Such as criminalising torture irrespective of where it takes place: see Criminal Justice Act 1988, section 134, available at:

<http://www.legislation.gov.uk/ukpga/1988/33/section/134>.

<sup>3</sup> HM Government, Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing a and Receipt of Intelligence Relating to Detainees, July 2010, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62632/Consolidated\\_Guidance\\_November\\_2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62632/Consolidated_Guidance_November_2011.pdf).

REDRESS' view is that the guidelines do not go far enough. Under the guidance where an officer knows or believes that torture will take place, he or she must report it, but may, with authorisation, continue to co-operate with the foreign agencies responsible (under the apparent discretionary power given to Ministers). REDRESS believes this could lead to complicity in torture - See REDRESS, *Universal Periodic Review, United Kingdom*, 13th Session May-June 2012, 21 November 2011, pp. 3-4, available at: <http://www.redress.org/downloads/publications/UPR-UK%20Final%2021%20November%202011.pdf>.

<sup>4</sup> See Foreign and Commonwealth Office, "Human Rights and Democracy: The 2013 Foreign and Commonwealth Office Report", 10 April 2014, p. 52: "We do not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment or punishment for any purpose, and international action against torture remains a human rights priority for the UK Government"; available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302421/18049\\_TSO\\_Cover\\_amp\\_Print\\_Text\\_with\\_trims\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302421/18049_TSO_Cover_amp_Print_Text_with_trims_1.pdf).

An inquiry into allegations of UK security agencies' complicity in torture abroad, the Detainee Inquiry under the chairmanship of retired-judge Sir Peter Gibson, was halted in January 2012 after fresh allegations of complicity arose which the Government said required a police investigation.<sup>5</sup> The report of the Detainee Inquiry highlights that the evidence it received indicated UK agents were aware of abuse of some detainees by other governments and that the UK Government may have been involved in rendition, and in its preliminary findings outlines 27 separate issues that should be subject to further investigation.<sup>6</sup> The Government gave its assurance, for example, during the 2013 examination of the UK by the Committee Against Torture,<sup>7</sup> that a new independent judge-led inquiry would take place. However, in December 2013 the Government announced that the parliamentary Intelligence and Security Committee (ISC) had been tasked with examining allegations of UK complicity in torture and other ill-treatment of detainees held overseas.<sup>8</sup> REDRESS believes that an inquiry compliant with international human rights standards is what continues to be required to get to the truth and to fulfil the UK's obligations under international law and the ISC is unsuited to this task.<sup>9</sup> For instance, one of the issues requiring investigation is the effectiveness of the oversight of the security agencies during the relevant period and this should include the role of the ISC and its previous failure to investigate these allegations adequately, for example, in 2007 it said that there was "no evidence that the UK Agencies were complicit in any 'Extraordinary Rendition' operations."<sup>10</sup> Since the Government's announcement there have been no known developments, the ISC having said at the time that it was currently focussing on other matters.<sup>11</sup>

***Suggested question: Why has the UK retreated from its previous assurance to hold an independent judge-led inquiry, and how does the UK expect that an ISC examination will be compliant with the UK's obligations under the ICCPR?***

A particular aspect of alleged complicity which has come to light since the State Party submitted its report relates to further concerns involving the use of the British territory of Diego Garcia (DG) in rendition flights. While the UK Government denied in parliament in 2005, 2006 and 2007 that any rendition flights had made use of the territory, in 2008 it admitted that "[c]ontrary to earlier explicit assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when that had in fact occurred."<sup>12</sup> These were expected to be part of any investigations into complicity, but in an answer to a parliamentary question relating to the record of arrivals and departures at DG the

<sup>5</sup> Hansard, HC, 18 January 2012, col. 751.

<sup>6</sup> *Report of the Detainee Inquiry*, December 2013, available at:

[http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100\\_Trafalgar-Text-accessible.pdf](http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf). REDRESS and other NGOs had been critical of the terms of reference and protocol of the Detainee Inquiry: see *Open letter to the Prime Minister concerning the Detainee Inquiry*, 6 January 2012, available at

<http://www.redress.org/downloads/publications/Open%20letter%20to%20the%20Prime%20Minister%20concerning%20the%20Detainee%20Inquiry%2006%2001%2012.pdf>.

<sup>7</sup> See *List of issues in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its forty-ninth session (29 October-23 November 2012), Addendum, Replies of the United Kingdom to the list of issues*, CAT/C/GBR/Q/5, 2 May 2013, para 23.4, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fQ%2f5%2fAdd.1&Lang=en)

<sup>8</sup> Hansard, HC, 19 December 2013, col. 913. Shortly after he became Prime Minister Mr. Cameron ruled out the possibility of the Intelligence and Security Committee carrying out the investigation, recognising that an inquiry led by a judge who is "fully independent of Parliament, party and Government" was required "to get to the bottom of the case" - Hansard, HC, 6 July 2010, col. 175 *et seq.*, available at:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100706/debtext/100706-0001.htm>.

<sup>10</sup> Intelligence and Security Committee, *Rendition*, July 2007, p. 29 para. D, available at: <http://isc.independent.gov.uk/committee-reports/special-reports>.

<sup>11</sup> Intelligence and Security Committee of Parliament, *Detainee Inquiry - Press Release*, 19 December 2013, available at: <http://isc.independent.gov.uk/>.

<sup>12</sup> Hansard, HC, 21 February 2008, col. 547, available at:

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0008.htm>.

Government said “[d]aily occurrence logs, which record the flights landing and taking off, cover the period since 2003. Though there are some limited records from 2002...they are incomplete due to water damage.”<sup>13</sup> A few days later the Government said in answer to another question that “immigration officials have conducted a fuller inspection, and previously wet paper records have been dried out. They report that no flight records have been lost as a result of the water damage.”<sup>14</sup> The records have not been made public. These disclosures followed a Foreign Affairs Committee (FAC) report on Diego Garcia in June 2014 which included the following:<sup>15</sup>

In April 2014, it was reported that the US Senate Select Committee on Intelligence had found—as a result of its four-year inquiry into the CIA’s post-2001 torture and rendition programme—that the CIA had detained “high-value suspects” on Diego Garcia and that the ‘black site’ arrangement on the island was made with the “full cooperation” of the British Government...If the reports of the Senate Committee’s findings are substantiated, we would expect to revisit this issue, to assess the implications for the UK and for public confidence in its statements on US use of Diego Garcia.

***Suggested question: How is the UK dealing with the allegations of the USA’s use of Diego Garcia in its renditions programme, and the extent to which the UK may have been aware of this use at the time and subsequently?***

### **Allegations of UK armed forces involvement in torture and other ill-treatment in Iraq (article 7)**

Allegations of torture and other ill-treatment committed by UK armed forces in Iraq between 2003 and July 2009 continue to be of serious concern. While there have been some inquiries into the allegations such as the Baha Mousa<sup>16</sup> and Al Sweady<sup>17</sup> public inquiries, there are hundreds of unresolved cases arising from the time when UK troops were in Iraq. The Iraq Historical Allegations Team<sup>18</sup> (IHAT) is mandated to review and investigate allegations of abuse of Iraqi civilians by UK armed forces, but IHAT has been called into question by representatives of Iraqi victims who have filed a communication<sup>19</sup> with the International Criminal Court (ICC) alleging that systematic abuse of civilian detainees reaches the threshold for war crimes and that the UK authorities have failed to demonstrate their willingness and ability to carry out genuine investigations and prosecutions; the ICC Prosecutor has announced that she is conducting a preliminary investigation.<sup>20</sup> REDRESS is concerned that to date the UK has failed to mount credible prosecutions which reflect the extent and gravity of the abuse allegations.

<sup>13</sup> Hansard, HC, 8 July 2014, col.172W, available at: <http://www.publications.parliament.uk/pa/cm/201415/cmhansrd/cm140708/text/140708w0001.htm>.

<sup>14</sup> Hansard, HC, 15 July 2014, col. 643, available at: <http://www.publications.parliament.uk/pa/cm/201415/cmhansrd/cm140715/text/140715w0002.htm#14071576000099>.

<sup>15</sup> Foreign Affairs Committee, *First Report: The use of Diego Garcia by the United States*, 17 June 2014, para.15, available at: <http://www.publications.parliament.uk/pa/cm/201415/cmselect/cmfaaff/377/37702.htm>.

<sup>16</sup> <http://webarchive.nationalarchives.gov.uk/20120215203912/http://www.bahamousainquiry.org/>.

<sup>17</sup> <http://www.alsweadyinquiry.org/>.

<sup>18</sup> <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>. The aim of IHAT is to “Work with investigative independence but in partnership with other key organisations to deliver an effective criminal investigation into allegations of murder, abuse and torture.”

<sup>19</sup> European Center for Constitutional and Human Rights (ECCHR) and Public Interest Lawyers (PIL): *Communication to the Office of the Prosecutor of the International Criminal Court: The Responsibility of Officials of the United Kingdom for War Crimes Involving Systematic Detainee Abuse in Iraq from 2003-2008*, submitted 10 January 2014, available at: [file:///C:/Users/kevin.laue/Downloads/UKICC-Communication-2014-01-10\\_public%20\(4\).pdf](file:///C:/Users/kevin.laue/Downloads/UKICC-Communication-2014-01-10_public%20(4).pdf). PIL is representing over 800 Iraqi civilians who are alleged victims of abuse – *ibid*, p. 8.

<sup>20</sup> *Prosecutor of the International Criminal Court, Fatou Bensouda, re-opens the preliminary examination of the situation in Iraq*, 13 May 2014, available at: [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-iraq-13-05-2014.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-iraq-13-05-2014.aspx)

There have been no criminal prosecutions of UK armed forces personnel for the crime of torture, and only a handful of court-martial convictions for lesser offences. The prospect of the truth being reached and justice achieved for victims and their families has proved and is proving to be a long and uncertain process, even in relation to allegations made by UK servicemen themselves.<sup>21</sup>

**Suggested question: What is the UK's policy on prosecuting service personnel for torture rather than lesser offences?**

IHAT has not yet confirmed whether it is investigating the alleged involvement of UK armed forces in renditions and disappearances of captured Iraqi detainees and others to "black sites" within and outside of Iraq where they were allegedly handed over to US forces even though it was known that they faced a real risk of torture or other mistreatment. Such allegations should fall within the mandate of IHAT given that they concern allegations of abuse and torture by UK armed forces in Iraq during the relevant period and which, if proven, would amount to war crimes. However, complicity in renditions allegedly involving the UK security agencies abroad (as opposed to the armed forces) do not fall under IHAT and are supposed to be examined by the ISC (which we see as flawed), and which is a parliamentary committee, not a body with the power to consider criminal sanctions.

**Suggested questions: i) Is the alleged involvement of UK armed forces in renditions and disappearances of civilian detainees in Iraq being investigated and if so how are such investigations being conducted? ii) Will allegations of involvement of UK security agencies' personnel in renditions be investigated with a view to prosecutions?**

### Allegations of sexual abuse of women at Yarl's Wood Immigration Removal Centre (articles 2 (3); 7)

In September 2013 there were allegations made of sexual abuse of women detainees by male guards of the private company Serco Ltd (Serco) contracted by the Home Office to run the Yarl's Wood Immigration Removal Centre.<sup>22</sup> The allegations included women being forced to conduct oral sex on guards. In a subsequent report concerning other allegations of sexual assault it was said that almost from the outset it appeared Serco formed the opinion that a complainant "may have fabricated the allegation that she had been abused in order to escape removal."<sup>23</sup> The way Serco dealt with these and related complaints was criticised by the parliamentary Home Affairs Select Committee which heard evidence from senior Serco executives; one member of the Committee commented: "I am not satisfied and I very much doubt if my colleagues are. The allegations are so serious, we can't leave it at that."<sup>24</sup> REDRESS shares such concerns and has written to the Bedfordshire police and the Crown Prosecution Service submitting that if the allegations were proved to be true they could constitute torture.

<sup>21</sup> See the Guardian, *Camp Nama: British personnel reveal horrors of secret US base in Baghdad*, 1 April 2013, where it is said: "British soldiers and airmen who helped to operate a secretive US detention facility in Baghdad that was at the centre of some of the most serious human rights abuses to occur in Iraq after the invasion have, for the first time, spoken about abuses they witnessed there," available at: <http://www.guardian.co.uk/world/2013/apr/01/camp-nama-iraq-human-rights-abuses>.

<sup>22</sup> Guardian, *Detainees at Yarl's Wood immigration centre 'facing sexual abuse'*, 14 September 2013, available at <http://www.theguardian.com/uk-news/2013/sep/14/detainees-yarls-wood-sexual-abuse>. This was not the first report of sexual contact between guards and detainees, for example, in 2010 a 30-year-old woman became pregnant by an officer in Yarl's Wood: see Guardian, *Yarl's Wood abuse allegations: Tanja's story*, 14 September 2013, available at <http://www.theguardian.com/uk-news/2013/sep/14/yarls-wood-immigrant-sex-abuse-tanja>.

<sup>23</sup> Observer, *Serco, the Observer, and a hunt for the truth about Yarl's Wood asylum centre*, 17 May 2014, available at <http://www.theguardian.com/uk-news/2014/may/17/serco-yarls-wood-asylum-centre>.

<sup>24</sup> Guardian, *Serco apologises after dismissals related to Yarl's Wood allegations*, 24 June 2014, available at <http://www.theguardian.com/business/2014/jun/24/serco-apologises-dismissals-yarls-wood-allegations>.

**Suggested questions: i) Will the UK Government make public the Serco report produced on 21 January 2011 on Yarl's Wood; ii) will it disclose the terms of the contract between the Government and Serco relating to its operations at Yarl's Wood; iii) will it disclose the Government's due diligence policy in regard to the procurement of the contract with Serco relating to Yarl's Wood, and its implementation; iv) will it conduct and make public its own investigation into allegations of sexual abuse at Yarl's Wood; v) will it allow the UN Special Rapporteur on Violence to Woman to visit Yarl's Wood if she wishes; vi) will it ensure that the National Preventative Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT) is engaged in responding to the allegations of sexual abuse at Yarl's Wood?**

**Threats to civil legal aid for non-residents seeking effective remedies in the UK for torture (articles 2 (3); 7)**

The Government is seeking to introduce regulations which will significantly curtail the rights of non-residents to civil legal aid;<sup>25</sup> if the new regulations come into force individuals resident abroad (or their family members) who have been subject to serious abuses, for example at the hands of UK armed forces, would be excluded. An example of a judicial review case which would fail to qualify under the proposed changes to the legal aid system is that brought by the applicants in *Al Skeini*,<sup>26</sup> which established important principles relating to the jurisdiction of the European Convention on Human Rights in the case of operations overseas of British armed forces. A further group of important judicial review claims which would be negatively affected by a residence test are those brought by British nationals and residents detained abroad seeking assistance from UK authorities in making representations or taking other action for their release.<sup>27</sup> A UK court has ruled that the envisaged new restrictions would be unlawful,<sup>28</sup> but it appears that the judgment will be appealed.<sup>29</sup> The Government has not indicated that it will drop its plans and it is therefore likely that they will be pursued once the appeal is determined.

**Suggested question: Will the UK assure the Committee that any changes to the civil legal aid system will not negatively impact non-residents who suffer serious human rights violations such as torture in which UK personnel are allegedly involved?**

We hope the information and proposed questions will be useful for the preparation of the list of issues and would be grateful if you could make it available to all members of the Country Report Task Force on the United Kingdom.

<sup>25</sup> REDRESS and others, *Ten reasons to Vote against the Legal Aid Residence test*, July 2014, available at <http://www.redress.org/downloads/publications/140711Residence%20Test%20Briefing%20Paper.pdf>.

<sup>26</sup> *Al-Skeini and others v. Secretary of State for Defence*, [2007] UKHL 26, available at <http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070613/skeini-1.htm>.

<sup>27</sup> For example, *Abbasi and Another v Secretary of State for Foreign Affairs and Another* [2002] EWCA Civ 1598, available at <http://www.bailii.org/ew/cases/EWCA/Civ/2002/1598.html>; *Al Rawi and Others v Secretary of State for Foreign Affairs and Another* [2006] EWHC 458 (Admin), available at <http://www.bailii.org/ew/cases/EWCA/Civ/2006/1279.html>.

<sup>28</sup> *Public Law Project v. Secretary of State for Justice*, [2014] EWHC 2365 (Admin), available at <http://www.bailii.org/ew/cases/EWHC/Admin/2014/2365.html>. The Court referred at para.31 in an *obiter dictum* to the *Al Skeini* case (n.18 above) and other important judicial review cases brought by non-residents, which would fail to qualify for legal aid under the amended law if passed.

<sup>29</sup> Guardian, *Legal aid residence test 'discriminatory and unlawful', high court rules*, 15 July 2014, available at <http://www.theguardian.com/law/2014/jul/15/legal-aid-high-court-residence-test-discrimination-graying>.